

**MUTUAL EVALUATION/DETAILED ASSESSMENT REPORT
ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM**

MINISTERIAL FINAL



JAMAICA

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Preface - information and methodology used for the evaluation

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Jamaica was based on the Forty Recommendations 2003 and the Eight Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004. The evaluation was based on the laws, regulations and other materials supplied by Jamaica, and information obtained by the evaluation team during its on-site visit to Jamaica from April 4 - 15 2005, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Jamaica government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by a team of assessors composed of CFATF experts in criminal law, law enforcement and regulatory issues. The evaluation team consisted of: Garvin Gaskin Chief Counsel in the Attorney General's Office of The Bahamas - the legal expert, Chief Inspector Alan Cleave of the Bermuda Police Service - the law enforcement expert, Praveen Tiwari Supervisor of International Banks and Trust Corporations & Superintendent of International Insurance of the Financial Services Regulatory Commission of Antigua and Barbuda - financial expert, and Roger Hernandez from the CFATF Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Jamaica as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Jamaica's levels of compliance with the FATF 40+8 Recommendations (see Table 1).

Executive Summary

1 BACKGROUND INFORMATION

1 Jamaica is located in the Caribbean Sea. It has a population of 2.6 million and its official language is English. It operates a British style Parliamentary system and has a judicial system based on English common law and practice. Jamaica has a mixed economy with a market determined exchange rate.

2 Jamaica's AML/CFT framework has traditionally focused on the financial sector i.e. banking, insurance and securities. The financial sector supervisors, the Bank of Jamaica (BOJ) and the Financial Services Commission (FSC) have issued guidance notes and implemented on-site AML/CFT examinations to determine the level of compliance.

3 At the time of the mutual evaluation, Jamaica's AML/CFT legislative framework did not include any CFT statute. However the Terrorism Prevention Act (TPA) was passed during the on-site visit and became enforceable on June 6, 2005. Jamaica is also in the process of amending its Money Laundering Act (MLA) in order to incorporate DNFBPs under the AML/CFT regime. A comprehensive Proceeds of Crime Act (POCA) designed to modernize all facets of the AML framework and the Financial Investigations Division Act (FIDA) formalizing the current Financial Investigations Division (FID) are to be passed in the near future.

4 The major types of crime affecting Jamaica which lead to money laundering offences are drug and arms trafficking. The predicate offence of extortion is also on the increase. Jamaican criminals have established links via the drug trade and other illicit activity in Europe (particularly the U.K.) and in North America. The authorities have seen evidence that persons involved in the drug trade have been trying to legitimize their operations by establishing commercial enterprises and attempting to launder funds through the formal financial sector.

5 Operation Kingfish, the Counter Narcotics and Major Crimes Investigation Task Force was launched in October 2004 to target the drug trade. The Task Force provides the bases for operational units to conduct raids, searches and make arrests. During the period October 2004 – February 2005, Operation Kingfish led to the seizure of 12 metric tones of cocaine, hundreds of rounds of ammunition and the arrests of 119 persons.

6 As at 31 December 2004, the BOJ was responsible for supervising six commercial banks, five merchant banks, four building societies, fifty credit unions, 138 approved cambio locations operated by 64 entities and sixteen primary agents offering remittance services. The FSC oversees approximately 114 firms and 1,200 individuals in the securities and insurance (life and general) industries. With regard to DNFBPs, the Public Accountancy Board regulates accountants, the General Legal Council - attorneys, the Real Estate Board - real estate dealers and salesmen, the Betting, Gaming and Lotteries Commission - gaming machines and establishments. With regard to dealers in gems and precious metals there are approximately 40 jewelers in Jamaica. There is no association of precious metal dealers.

7 The Jamaican legal framework provides for a wide variety of different legal persons and arrangements including limited liability companies, co-operative societies (such as credit unions, friendly societies, and industrial and provident societies), building societies, trade unions, statutory bodies and trust arrangements. The law contains relevant statutes which provide for the registration, incorporation and activities, duties and rights of these persons and institutions and the governing of their relations.

8 Jamaica has a multi-pronged approach to AML and CFT. The Ministry of Finance is responsible for Jamaica's AML framework. Short to medium term objectives include expanding the scope of predicate offences to include all serious offences, broadening and strengthening the powers of the designated authority (i.e. the reporting authority), facilitating the cross border reporting of funds movement and bringing the DNFBPs under the AML regime.

9 The institutional framework for AML/CFT includes several government ministries and associated bodies and agencies responsible for discussing issues, developing relevant policies, reviewing legislation, facilitating the sharing of information, and coordinating effective implementation for the legal, law enforcement and financial aspects of AML/CFT.. The relevant government ministries include the Ministry of Finance & Planning, the Ministry of National Security, the Ministry of Justice, the Office of the Attorney General and the Ministry of Foreign Affairs. Associated bodies and agencies include the Financial Regulation Division of the Ministry of Finance and Planning, the FID, the National Anti-Money Laundering Committee, the Financial Crimes Legislative Task Force, the Jamaica Defence Force (JDF), the police, the Director of Public Prosecutions (DPP) and the supervisory agencies the BOJ and the FSC.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

10 Jamaica has signed and ratified both the Vienna and Palermo Conventions. Sections 3 to 5 of the MLA implements substantively the requirements of Article 3 (1)(b)&(c) of the Vienna Convention. The MLA only criminalizes the laundering of property derived from specific offences rather than proceeds of all crime. . Predicate offences for ML also do not include all serious offences and are limited to the same specific offences (drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences under the Firearms Act.) Criminalisation of ML applies to persons who commit the predicate offence. The offence of ML applies to persons that knowingly engage in such activity. Although the MLA does not expressly provide that the intentional element of the ML offence be inferred from objective factual circumstance, the courts do in practice make such inference. The offence of ML extends to corporate bodies and penalties are proportionate and dissuasive. POCA will consolidate all legislative provisions on the criminalisation of money laundering. POCA will also extend the predicate offences for money laundering to cover all serious offences and extend the mental element of money laundering to include having reasonable grounds to believe the property is derived from criminal conduct. In the circumstances, POCA should be passed with due haste.

11 Jamaica has signed the Terrorist Financing Convention. FT is criminalized on the basis of the Convention in the TPA which became enforceable on June 6, 2005. At present terrorist financing offences are not predicate offences for money laundering. Further extension of predicate offences is expected on the passage of POCA to cover all serious crimes. There is no express provision in the TPA which requires the intentional element of the offence of terrorist financing to be inferred from objective factual circumstances. However it is expected the courts will make such inference as they do for ML offences. Criminal liability for terrorist financing extends to legal persons. Natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanction for terrorist financing. The TPA has specific penalties for offences including life imprisonment for natural persons and fines to be levied at the discretion of the court on legal persons for terrorist offences. Neither MLA nor the Drug Offences (Forfeiture of Proceeds) Act (DOFTA) stipulates terrorism financing offences as predicate offences for money laundering, however the proposed POCA will provide for this. The TPA has been very recently passed; therefore the results of its implementation are yet to be obtained.

12 At present, forfeiture is applicable under DOFPA in relation to property derived from or used in the commission of predicate offences limited to drug trafficking offences or ML as defined in DOFPA and the MLA. Currently the DOFPA allows for the confiscation, freezing, and forfeiture of property derived from or instrumentalities of the predicate offences under the DOFPA. There is also provision for confiscation of property of corresponding value. There is statutory provision for a restraint order to freeze property. The definition of tainted property in DOFPA does not include the concept of intended use of instrumentality.

13 In addition to DOFPA, the Criminal Justice Reform Act (CJRA) at section 19 provides for the forfeiture of instrumentalities relating to any offence punishable on indictment with imprisonment for a term of two years or more. That statute also refers to the intended use of the property. However, restraint of property in similar circumstances is not provided for in that statute. The DPP has powers to

obtain monitoring orders while the police can obtain production orders and search warrants. POCA extends the freezing and/or seizing, and forfeiture of property derived from any conduct, where ever it occurs, which constitutes an offence in Jamaica and targets the forfeiture of property derived from offences supporting a criminal lifestyle. POCA also provides for civil forfeiture and recovery. In the circumstances, it is essential to enact POCA with due haste. There should be a provision in DOFPA for the restraint and forfeiture of property that constitutes instrumentalities intended for use in the commission of any ML, FT or other predicate offences, and property of corresponding value.

14 The TPA has established a listed entity reporting regime based on the UN Security Council list of designated terrorist entities. This regime requires foreign companies, financial institutions and any entity so designated to report to the DPP. There is no direct provision to freeze the assets of listed entities and the DPP can only apply for a restraint order in the case of a person convicted of or charged with a terrorism offence. The TPA provides for the restraint of applicable property in relation to an offence. The TPA contains provisions for seizing/ restraint orders and forfeiture of property. However there appears to be no provision for forfeiture of property of corresponding value. Applications for restraint orders can be made ex parte and property can be seized under a search warrant. The TPA also contains provisions for the DPP to apply for production and provides protection of the rights of bona fide third parties. The present TPA should but does not have any direct provision to freeze the assets of listed entities. Additionally, there should be provision in the TPA to allow for forfeiture of property of corresponding value.

15 Jamaica's Financial Intelligence Unit (FIU) is one of seven units of the FID. The FID is headed by a Chief Technical Director who was appointed the "designated authority" responsible for the receipt of suspicious transaction reports (STRs) and threshold transaction reports (TTRs). The MLA requires all financial institutions except exchange bureaus to report all cash transactions of US \$50,000 or more or an equivalent amount in any other currency. Exchange bureaus are required to report all cash transactions of US \$8,000 or more or an equivalent amount in any other currency. Under the proposed POCA the threshold reporting levels are expected to be reduced. The MLA also mandates reporting of transactions that upon reasonable suspicion could constitute or be related to money laundering. The TPA establishes a listed entity reporting regime requiring foreign companies and financial institutions to report to the designated authority, on the ownership or control of property of any of the listed entities. The TPA stipulates the designated authority to be the DPP or such other person as may be designated by the Minister. In addition, the TPA requires the reporting to the designated authority of all complex, unusual or large transactions, which have no apparent economic or obviously lawful purpose. Given the role of the Chief Technical Director of the FID as the designated authority for the receipt of TTRs and STRs for money laundering, the appointment of a similar function for FT under the TPA is appropriate.

16 The Chief Technical Director of the FID reports to the Minister of Finance and Planning through the Financial Secretary. The Chief Technical Director has not been exposed to any undue influence or interference from the political arm of Government and has been able to maintain the Division's autonomy and operational independence. The FID has its own budget. The FIU is headed by a Director and at the time of the mutual evaluation had eight employees and two vacancies. The offices are located in a secure complex with controlled access. The FIU has a secure computer network separate from the rest of the FID. Access is restricted to the members of the unit. The FIU has access to government information and can obtain production orders under DOFPA. It can also obtain information from the BOJ. Received reports are analysed and can be disseminated for the purposes of conducting investigations. While the FIU can disseminate information to the JCF, in practice most ML investigations are conducted by the Financial Crimes Unit of the FID.

17 While the FIU maintains statistics on STRs, TTRs and ML, the DPP, the Jamaica Defence Force Coast Guard, the Fraud Squad and the Narcotics Branch also maintain statistics on frozen, seized and confiscated assets. Additional procedures are being put in place by the FID to centralize all records relating to property frozen, seized and confiscated. While the FID produces a quarterly report for the Financial Secretary and the Minister of Finance no public reports have been produced. The Government of Jamaica is proposing, in the near future, to enact a FIDA to give the FID a legislated mandate and formal recognition of its functions in the AML/CFT arena. The FIU has discussed membership of the

Egmont Group with the Canadian authorities who have agreed to sponsor Jamaica's application. With the passage of the FIDA which will provide a statutory basis for the FID and allow for the exchange and sharing of information with other law enforcement and financial regulatory agencies both in and out of Jamaica the FIU will fully meet the requirements for Egmont Group membership. The passage of more comprehensive and additional legislation i.e. the POCA, FIDA and TPA within the AML/CFT regime will require a review of the funding and the resources of the FIU.

18 Law enforcement and prosecution authorities have powers appropriate to their legislated functions. These authorities can obtain search warrants, production and/or monitoring orders. The Financial Crimes Unit of the FID has the responsibility for the investigation of ML offences. The JCF's Organized Crime Investigation Division (OCID) will be responsible for the investigation of terrorism offences under the TPA. The responsibility for the investigation of terrorist financing offences will rest with the FID. Under the TPA, the DPP is the designated authority responsible for the receipt of reports relating to CFT. Statute law in Jamaica does not expressly deal with controlled delivery or undercover operations. These are dealt with under the common law. Wiretapping legislation is in effect however, 'evidence' gathered as a result of such activities is used for intelligence purposes and not for evidential purposes in Court proceedings. Special investigative techniques form an integral part of investigations conducted by the FID when necessary. Additionally, in practice, the police do engage in a wide range of investigative techniques including undercover operations.

19 The Ministries of National Security and Justice have responsibility for the investigation of narcotics offences and this is carried out by the Narcotics Division of the JCF. The JCF is mandated for a full staff complement of approximately 8,500 posts of which 7,900 posts (94.5%) are currently filled. Technical and other resources are funded from the National Budget. Designated units and sections of the JCF have been provided with specialized training in investigation and identification of predicate offences under the MLA and DOFPA.

20 The DPP has the constitutional responsibility for prosecution of all crimes in Jamaica. The DPP has identified 6 prosecutors who will be overseeing commercial crime litigation and mutual legal assistance requests. However, as a result of other responsibilities only one of these prosecutors works full time on AML matters. Prosecutors at the DPP work very closely with attorneys from the FID in case consultation and preparation. Training has been provided for several prosecutors by the Caribbean Anti-Money Laundering Programme (CALP). At the date of the mutual evaluation visit the DPP was involved in the prosecution of five cases involving money laundering charges. Four other cases are under review. On June 15, 2005, the DPP obtained the first conviction on money laundering.

PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

21 Jamaica has not made any general exception from the application of the AML/CFT requirements. However, since the definition of financial institutions in the MLA does not completely agree with the 2004 Methodology, certain institutions are excluded from the application of AML/CFT regime; for example, money lenders, pawnshops and insurance brokers. The authorities indicated that while there was a move to bring moneylenders and insurance brokers under the remit of the AML/CFT regime pawnshops were very limited in number and did not constitute a major area of risk. No information on the number of pawnshops or amount of business conducted was provided. Regulation 7 of the Money Laundering Regulations (MLR) permits financial institutions not to apply the CDD process in certain cases rather than applying simplified or reduced CDD. In such cases the party in question must either be a financial institution to which ML obligations apply or be introduced by an entity which is itself subject to AML obligations.

22 The AML regime in Jamaica is based on the MLA, the MLR, the BOJ AML/CFT Guidance Notes (GN) and the FSC AML/CFT Guidelines (GL). The legislative, regulatory and supervisory requirements are comprehensive and incorporate most of the customer due diligence requirements of Recommendations 5 to 8. However certain deficiencies were identified. At present the MLR prohibits financial institutions from maintaining numbered accounts without specifically prohibiting anonymous

accounts or accounts in fictitious names. While such prohibition is stated in the BOJ GN and the FSC GL these are not enacted legislation. This deficiency is to be addressed in the proposed amendment to the MLA.

23 The MLR does not specifically require undertaking of customer due diligence (CDD) measures when there is doubt about the veracity or adequacy of previously obtained customer identification data. There is no legislative requirement to consider making a STR when an application for the start of a business relationship or a one-off transaction is terminated due to a lack of satisfactory evidence of identity or when doubt arises regarding the identity of a client during a business relationship. There are no legislative identification requirements for legal arrangements or for financial institutions to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person. Laws or regulations do not specifically provide for determination of natural persons that ultimately own or control a legal person or arrangement. Additionally there is no legislative provision for conducting ongoing due diligence on a business relationship. With regard to politically exposed persons (PEPs), the BOJ GN and the FSC GL do not include the full requirement for the investigating and determining of the source of funds and wealth of PEPs. Finally, financial institutions are not required by statute to ascertain whether respondent institutions have been subject to an ML/FT investigation or regulatory action.

24 Requirements for third parties and introduced business are in compliance with FATF Recommendations except for the need for FSC regulated financial institutions to obtain from the third party the necessary information concerning certain elements of the CDD process and also that the ultimate responsibility for the CDD remains that of the financial institutions in case of introduced business. Generally, the financial regulators have access to all records of their relevant licensed institutions.

25 Recording-keeping requirements generally comply with FATF obligations with regard to identification documents, however there is a need to provide for transaction record-keeping and to clarify that identification records are required to be kept for at least five years after the termination of the business relationship. With regard to wire transfers, there is no obligation for financial institutions to verify the identification information of the remitting customer or beneficiary of wire transfers. Additionally there is no specific provision for full originator information to be included in cross border transfers as the requirements are stated to relate to transfers in general. The BOJ has indicated that directions to this effect are to be issued to all remittance companies and that amending legislation requiring all financial institutions to retain in their records, accurate and relevant information throughout the payment chain will be enacted. There are no directions either in law or administrative instructions to address the requirements of criteria 4, 7 of Special Recommendation VII. The supervisory authorities have not included testing for compliance with Special Recommendation VII in their examination procedures.

26 Jamaica has enacted measures to require all financial institution to carefully scrutinize all complex, unusual, large or unusual patterns of transactions. However there is no requirement to examine the background and purposes of transactions mentioned above and to record and keep such findings for competent authorities and auditors for at least five years. *BOJ stated that it will shortly amend the GN to clearly indicate that the term “pay special attention to” as used in MLA section 6B(1) should be interpreted to mean the examination of the background and purpose of these types of transactions, the formal recording of the institution’s findings and the retention of these findings for a period not less than 5 years. There is also no direction or requirement to examine the background and purpose of transactions (from countries which do not or insufficiently apply the FATF Recommendations) that have no apparent economic or visible lawful purpose and make the findings available to the competent authorities. It should be noted that under the TPA all such transactions must be reported regardless of their country of origin.

* See Updates to Mutual Evaluation/Detail Assessment Report on page 116

27 The existing provisions regarding suspicious reporting are broadly in compliance with the Methodology criteria. The MLA provides protection for financial institutions, their directors and employees making reports in accordance with the law. However, certain other provisions if incorporated in the existing legal framework would improve clarity. The definition of ML should be extended to incorporate all serious offences as predicate offences. It should be clearly stated that STRs need to be filed irrespective of whether a transaction relates to a tax matter. Tipping off should be prohibited when STRs or related information is being reported.

28 Reporting of cross border transportation of cash falls under the Customs Act at present. Amending legislation to the MLA includes a reporting regime for cross border movement of cash reaching or exceeding USD 10,000. The FID has issued guidance to reporting institutions as to the procedures for making reports. The BOJ and the FSC have issued guidance notes and guidelines respectively concerning AML and CFT. The FID interacts closely with reporting institutions and has implemented a system of acknowledgement of the receipt of reports. There is no feedback system for DNFBPs, as they are not under the AML/CFT regime as yet.

29 Internal controls, compliance and audit requirements comply with FATF Recommendations. With regard to the operations of branches, subsidiaries and other entities in foreign jurisdictions, financial institutions are required to adopt a consolidated approach for the establishment and implementation of AML/CFT policies and procedures which at minimum apply the requirements of Jamaican law. There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. However BOJ and FSC regulated financial institutions are required to apply Jamaican AML/CFT standards to their subsidiaries and branches and permission to establish branches or subsidiaries abroad are only granted based on this requirement. The implementation of the above requirement should be tested by the supervisory authorities through consolidated supervision.

30 The Banking Act (BA) requires the establishment of a principal office in Jamaica by any foreign company seeking a banking licence. While the Financial Institutions Act (FIA) does not have a similar provision, the BOJ has advised that it will not recommend licensing any institution that is a shell bank. However the authorities should consider making similar provisions as in the BA. Additionally there is no specific requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks although this would form a part of the assessment of the AML framework within which the respondent institution operates.

31 The Director of the FID as the designated authority is responsible for administering the MLA and MLR. The designated authority is empowered to apply sanctions under the MLA and MLR. The sectoral supervisors, the BOJ and FSC have been designated as the competent authority under the MLA for ML purposes. Under the TPA the designated authority is the DPP.

32 The BOJ supervises banks, merchant banks, building societies, cambios, bureaux de change and remittance companies and agencies and has comprehensive powers of enforcement and sanctions. Money transfer, remittance agents and agencies were brought under the BOJ's licensing regime in 2004 and at the time of the mutual evaluation, the BOJ was conducting CDD assessments of these institutions. These assessments were due to be completed by June 2005. The BOJ is also in the process of implementing a monitoring system for money transfer service providers. Presently, the BOJ is in the preliminary stages of regulating credit unions and has to await the enactment of the Credit Union Regulations in order to have sanction powers over credit unions. The BOJ conducts on-site examinations annually on all its supervised institutions on the basis of CAMELS and has legal access to all documents. Since including a specific AML component in its examination activities in 2001, the BOJ has carried out annual AML examinations on all its licensed entities. The supervisory function of the BOJ is carried out by the Financial Institutions Supervisory Division headed by a Deputy Governor. The Division has a current complement of 73 employees, 60 of whom are examiners who have received extensive AML and CFT training.

33 The FSC was established in August 2001 under the Financial Services Commission Act (FSCA)

and regulates insurance companies, pension funds, securities dealers and collective insurance schemes. The FSC, like the BOJ has comprehensive powers of enforcement and sanctions, may conduct examinations of and obtain information from its licensed institutions. The FSC is currently developing its assessment techniques in the AML/CFT area. The examination of insurance companies has started in a limited manner. FSC employs 93 staff divided into units, has recently established an AML unit and has an active employee training program. The FSC is managed by a board of commissioners and has its own budget financed principally by fees from the industry. While the supervisory bodies have taken steps to meet the relevant supervisory requirements for their sectors, consolidated supervision of regulated entities remain a challenge. As many of the licensed entities belong to financial conglomerates with affiliates in several countries, it is important that this issue be addressed quickly.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

34 The current AML/CFT regime does not extend to the DNFBPs. The customer due diligence, record keeping and reporting obligations under the remit of the MLA/MLR and TPA extend only to financial institutions as defined under the MLA, although the categories of financial institutions under both statutes may be expanded by the Minister. The authorities informed that it was proposed to amend the MLA to allow the Minister to designate individuals or institutions as designated non-financial institutions which will then be under certain money laundering obligations including customer identification, suspicious transaction reporting, record keeping, and adherence to supervisory Guide Lines. The TPA does provide for the Minister to designate entities by order to be subject to the reporting and regulatory controls requirements of the TPA.

35 There has not been any formal assessment of the AML/CFT risks posed by the non financial businesses and professions other than DNFBPs (dealers in high value and luxury goods, pawnshops, auction houses, investment advisers etc) nor are there any provisions for imposing AML/CFT obligations on these entities. The authorities stated that this regime had to be developed with more research into the industries and professions at risk, and the resources that will be necessary to monitor these industries. Interviews with various parties indicated that at least one of these, used car dealers, were at considerable risk from the money laundering point of view and needed to be brought under the purview of the AML/CFT laws.

36 While the banking and financial system in Jamaica is fairly well developed by regional standards, interviews with a cross section of people indicated a high incidence of cash in the society; the estimates varied from 30% to 50% of the total payments. While the authorities attributed this to cultural factors, such high reliance on cash as a means of payment presents significant vulnerabilities from the AML/CFT point of view. While the authorities are aware of this fact, no concrete action appears to have been taken to reduce the incidence of cash in the economy. The authorities state that the development of non-cash means of payment has been primarily driven by the private sector mainly through the Automated Clearing House System and the establishment of an electronic switching network to handle the country's ABM and Point of Sales transactions. The authorities are however working on an electronic transactions statute that will encourage consumers to conduct internet, electronic transactions.

5. LEGAL PERSONS, LEGAL ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

37 Jamaica has a centralized registry of companies, the Registrar of Companies. Under the Companies Act, each company must ensure that its articles of association, particulars of its directors and managers and other critical information are filed with this Registry. These documents are public and can be searched either in person or online at the Office of the Registrar of Companies. However, beneficial ownership information is not available in case of a company-incorporated company. Changes in the ownership or the directors are required to be notified. However, the nationality of the owners/ directors is not being captured in the information base. Bearer shares are not permitted in terms of Table A of the First Schedule to the Companies Act. Inasmuch as information about beneficial ownership was stated to be publicly available the financial institutions should be in a position to verify customer identification data.

38 Under the Friendly Societies Act, societies are also required to make annual filings to the Registrar of Co-operatives and Friendly Societies indicating among other things the number of members on its roll, including every person who at any time during the year was a financial member of the society or branch. The public may access information on any Friendly Society through the Registrar of Co-operatives and Friendly Societies, through the provisions of the Access to Information Act.

39 The legal requirements with regard to deeds provides for the recording of deeds including information about the grantor (in the case of a trust the settler) and grantee (trustee) of the deed. This information is publicly available. Access to the Public Records allows financial institutions to verify information concerning beneficial ownership and control so as to verify customer identification data.

40 Non profit organizations in Jamaica are established under a number of statutes or instruments. They may be established under the Companies Act, the Friendly Societies Act, or pursuant to deeds/instruments of Charitable Trusts. The authorities have not conduct a review of the adequacy of the laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.

41 While the TPA has been recently enacted, it does not include non-profit organizations within its ambit. There are no measures in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations including for the purpose of escaping asset freezing or seizing measures. Other than the measures already mentioned for the registration of non-profit organizations there is no formal oversight of the sector which could ensure that funds or other assets collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organizations.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

42 The National Anti-Money Laundering Committee provides a means for national cooperation and coordination. The committee is chaired by the Financial Secretary and is comprised of representatives from the Ministry of Finance & Planning, the BOJ, the FID, the FSC, the Attorney General's Chambers, the DPP, the JCF, the JDF, the Ministry of National Security, the Jamaica Customs Department and the Ministry of Justice. Committee meetings are held on a regular basis. The Committee provides a forum for the discussion of AML issues and to ensure that the necessary measures are taken to improve the country's AML regime and to facilitate compliance with international obligations.

43 In November 2002 the Financial Crimes Legislative Task Force was established with a mandate to review Jamaica's existing AML/CFT legislative framework and make recommendations to strengthen the legislation where appropriate. The Task Force was made up of representatives from the BOJ (Chair), the Ministry of Finance, the Attorney General's Chambers, DPP, The Department of Legal Reform, the FID, the Ministry of National Security and the FSC. The Task Force has produced two reports with recommendations for key reforms to increase the effectiveness of the AML framework.

44 Cooperation and coordination also occur between competent authorities on their own initiative. The BOJ and the FID hold periodic meetings regarding ongoing FID investigations which affect institutions supervised by the BOJ. The FID also meets with and conducts joint operations with the JCF. The FID has commenced a process to open up dialogue with the financial institutions particularly in the areas of STRs and the legal requirements and guidelines. The National Anti-Money Laundering Committee should join the FID in this process to sensitize the public, financial institutions and the DNFBBPs about their roles and responsibilities under the AML/CFT regime. With the enactment of the TPA consultation in the area of CFT should be possible. Guidance notes and guidelines should be reviewed with the enactment of the POCA, TPA and FIDA. The present process of cooperation does not formally include any of the DNFBBPs. A formal means of consultation by the competent authorities with the DNFBBPs should be established.

45 Jamaica has substantially implemented the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention. Articles 6(1) and 6(2)(b) of the Palermo Convention requiring criminalisation of the laundering of the proceeds of crime and the inclusion of all serious crime as predicate offences to ML are not fully enforced. The TPA also has no provisions to directly freeze the assets of listed entities or allow for the confiscation of property of corresponding value, although it is an offence to deal with the property of such an entity and the authorities may obtain warrants to seize applicable property (i.e. used to facilitate or derived from a terrorist offence). Terrorist offences are also not predicate offences for money laundering. Pending legislation such as the proposed POCA should improve Jamaica's implementation of the Vienna and Palermo Conventions.

46 The current avenue for the sharing of information between law enforcement authorities in Jamaica, including the FIU, is through the Mutual Legal Assistance Treaty (MLAT) and the Mutual Assistance (Criminal Matters) Act (MACMA), whereby requests for information are made by a foreign state to the Central Authority (in Jamaica's case the DPP) who coordinates the meeting of the request. Mutual legal assistance for search and seizures, restraints and confiscations on behalf of a relevant foreign state are restricted to the prescribed offences in the DOFPA, a drug or money laundering offence against the law of a relevant foreign state, and related inchoate offences. The TPA provides for the appropriate amendment of MACMA to incorporate terrorism offences under the TPA within the framework of the MACMA. Assistance that may be granted is in compliance with FATF Recommendations.

47 Jamaica Customs also meets the requirement of mutual assistance through its membership in the Caribbean Customs Law Enforcement Council (CCLEC). The JCF facilitates the exchange of information on a "police to police" basis and in this regard accommodates requests from foreign law enforcement officers to undertake investigations, gather evidence, execute search warrants and serve court documents (such as Summons etc.), in Jamaica. Requests for assistance from other law enforcement agents can be facilitated by the JCF through the Organized Crime Investigation Division Mutual Assistance Unit. The DPP and the JCF maintain statistics on mutual legal assistance. Since 1995 there have been 250 MACMA requests all of which have related either to ML or to one of the predicate offences for ML. There have been 2 known instances of requests to the police for assistance pursuant to the investigation of suspected terrorist activities. Both requests were satisfied on a timely basis. Spontaneous referrals are not applicable as information is only provided on request.

48 The Sharing of Forfeited Property Act, 1998 makes provision for the sharing of assets with countries with whom Jamaica has entered into asset sharing agreements, pursuant to the terms of the Vienna Convention. In addition, there are also other avenues for the sharing of assets, under Agreements between Governments and law enforcement bodies. In March 2003 the Government of Jamaica decided to place the forfeited proceeds of drug related activities in a special fund to be used specifically for law enforcement programmes, justice related projects, debt servicing related to the acquisition of capital equipment for the Ministry of National Security, the Ministry of Justice and respective departments, and education and health projects related to the criminal justice system.

49 The DPP maintains statistics on extradition requests and according to these records there have been 51 extradition requests made to Jamaica between 2002 and March 31, 2004. Most of these requests have been satisfied. In other cases the parties are in dialogue as regards additional information required. The Extradition Act (EA) requires dual criminality, however there are no legal or practical impediments to rendering assistance where Jamaica and the requesting country criminalise the conduct underlying the offence. The EA limits extraditable offences to those which would constitute an offence in Jamaica and/or be punishable by a two year term of imprisonment or greater. It is imperative that POCA is passed in order to make international cooperation more effective. The TPA has amended the EA to include terrorism offences as extraditable offences. Jamaica does extradite its nationals.

50 When the FIDA is enacted the FID will have the statutory power to exchange and share information with other law enforcement and financial regulatory agencies both in Jamaica and overseas.

The BOJ also has a number of memoranda of understanding with various regional supervisors regarding the sharing of information. The BOJ also stated that it had in the past accommodated inspection requests, related to non-AML issues and that it would have no objection to inspections with regards to AML issues.

51 The authorities stated that the FSCA had been amended to enable the FSC to share information with an overseas regulatory authority. By appointed day notice dated April 27, 2005 the Minister declared April 1, 2005 as the effective date for the bringing into effect of the amendment. The FSC also informed that it was developing Regulations under the FSCA prescribing the method for sharing information with overseas regulators.

MUTUAL EVALUATION REPORT

1 General

1.1 General information on Jamaica

1. Jamaica is located in the Caribbean Sea 145 km/90 miles south of Cuba and 160km/100miles west of Haiti. Its official language is English and it has a population of 2.6 million. Jamaica has a written constitution and operates a British style Parliamentary system with executive power residing in the Cabinet, which is led by the Prime Minister. The legislature comprises of an elected House of Representatives and an appointed Senate. Elections are held every five years.

2. The judicial system is based on English common law and practice with final appeal to the Judicial Committee of the Privy Council in the UK. Jamaica and several other Caribbean countries are currently engaged in the establishment of the Caribbean Court of Justice, which is expected to replace the Privy Council as the final court of appeal. Justice is administered by the Supreme Court, the Court of Appeal, Resident Magistrate's Courts, Courts of Petty Sessions and other specialised courts.

3. Jamaica operates as a mixed, free market economy with state enterprises as well as private sector businesses. Major sectors of the Jamaican economy include agriculture, mining and quarrying (bauxite, aggregates and other), manufacturing, telecommunications, tourism and financial and insurance services. Tourism and mining are the leading foreign exchange earners. Jamaica's per capita GDP was US\$3,918.00 in 2002. Jamaica recorded real GDP growth of 2.6% for the first six months of 2004 in respect of the fiscal year 2004/2005. The main sectors contributing to this increase were mining, tourism, transportation, storage and communications and miscellaneous services which includes the hotels, restaurants and clubs sub-sector.

4. Jamaica posted a fiscal deficit in the financial year 2003/2004 of J\$27.3 billion, or 5.6% of GDP. Jamaica has budgeted for a reduced fiscal deficit of J\$20.3 billion consistent with its programme to achieve zero deficit by financial year 2005/2006. Budgeted revenue for financial year 2004/2005 amounts to J\$175.7 billion, with 88.6% projected to be received from tax revenue. Since 1992, Jamaica's exchange rate has been determined by market conditions. Jamaica has continued to strengthen its existing regulatory framework by passing amending legislation to enhance supervisory authority and protect customers of financial institutions.

5. The BOJ - the central bank - has issued and continues to issue standards of best practices addressing corporate governance issues for banks and other deposit-taking institutions under its regulatory authority. These standards have the force of law and include areas of risk management and internal controls. The laws relating to the financial sector also make directors and officers criminally liable for non-compliance and negligence. Standards of professional conduct have been mandated for the securities industry through regulations. The FSC – the supervisor of the insurance and securities industry - has also issued standards of best practices. Transparency and good governance in the public sector have been intensified as a result of the Access to Information Act. Statutory bodies and government companies are legally required to implement corporate governance policies and disclosure practices.

6. A corporate governance code for the Jamaican private sector is being developed. The accountancy profession operates under a code of ethics issued by the Institute of Chartered Accountants of Jamaica. Attorneys operate under the Legal Profession Act, and the Canons of Professional Conduct and Etiquette of the General Legal Council. Non-compliance with the standards of conduct can result in suspension or revocation of the right to practice law. The Judiciary publishes the Annual Court Report of Jamaica. Real estate dealers are governed by the requirements of the Real Estate Dealers and Developers Act, which are enforced by the Real Estate Board. This Board, among other things oversees the regulation and control of the practice of real estate business.

7. Jamaica's current AML/CFT framework has traditionally focused on the financial sector i.e. banking, insurance and securities. The financial sector supervisors, the BOJ and the FSC, have been encouraging a culture of compliance in the industry through the issue of Guidance Notes; through

specific AML/CFT on-site examinations aimed at determining the level of adherence to laws/regulations, international norms and best practice guidelines; and by conducting training with the industries involved. Jamaica is currently in the process of reforming its AML framework in order to inter alia introduce a regime for bringing designated non-financial institutions under AML obligations.

8. In addition to the financial sector, the professionals involved in the administration of Jamaica's AML/CFT framework have also themselves engaged in substantive training to improve their knowledge and expertise in this area. This includes training for Judges, Prosecutors, Regulators and Investigators.

9. In May 1995, the Caribbean Regional Drug Law Enforcement Training Centre [(REDTRAC) was established. The Centre's main focus is the strengthening of the capabilities of the Police, Customs, Port Security, Defence Force, Judiciary, Prosecutors and other drug control bodies of eighteen (18) English speaking Caribbean countries.

10. Jamaica has enacted legislation requiring members of Parliament, certain public officers and public sector employees to file declarations of assets and income. The passage of the Corruption Prevention Act served to evidence Jamaica's ratification of the Inter-American Convention Against Corruption established by the Organization of American States of which Jamaica is a member. The Act is administered and enforced by the Commission for the Prevention of Corruption. Jamaica participated in the negotiations of the 2003 U.N. Convention against Corruption and is moving towards signature with a view to ratification.

11. The coming into effect of the Civil Procedures Rules 2002 was designed to improve the efficiency of the courts by introducing mandatory case management procedures and electronic filing of cases. The Commercial Court was established in November 2002 to provide for speedy trials in commercial matters. Continuing legal education for the judiciary has been implemented. The Justice Training Institute caters for the need of the judiciary by organizing and coordinating training programmes. Information and communication systems of the court framework have been expanded with the establishment of a computerized integrated management information system at the Ministry of Justice. Jamaica's court system is currently embarking on an information technology project that will see the modernization of court case management; document management and imaging; office automation; internet access; and electronic case filing.

12. Part of the requirements for entry into the Jamaica Constabulary Force (JCF) include a certificate of character from a magistrate, minister of religion or an adjudged respectable person and recommendations from past employment. A selection board carefully reviews all applicants to the force. Under the Police Service Regulations, the Police Services Commission makes recommendations as regards appointments to the Force.

13. Judicial officers and prosecutors are qualified attorneys and are subject to the Legal Professions Act and the Canons of Professional Conduct issued by the General Legal Council. These Canons deal specifically with the standards required of attorneys in their practice. Judges are also governed by the specific statute governing their particular court and by the provisions of the Jamaican Constitution.

14. The requirements of the Legal Profession Act and the Canons of Professional Conduct are enforced by the Disciplinary Committee of the General Legal Council. Attorneys may be subject to disciplinary action including fines or disbarment. Judges may be removed by the Governor General or the Judicial Services Commission on such grounds as are specified in the Jamaican Constitution. Accountants are subject to the Public Accountancy Act which is administered by the Public Accountancy Board. The Board can implement disciplinary proceedings against accountants which can result in the revocation or suspension of registration or the imposition of fines.

1.2 General Situation of Money Laundering and Financing of Terrorism

15. At the time of the team's visit, Jamaica's AML/CFT legislative framework did not fully comply with international standards. The CFT component of Jamaica's legislative framework was not legislated,

however the TPA was passed during the on-site mutual evaluation and became enforceable on June 6, 2005. The government as part of its commitment to the fight against serious crime and money laundering has also introduced amended and new legislation for enactment in Parliament. The mutual evaluation team was advised that the Government of Jamaica intends to put before its House of Representatives a Proceeds of Crime Bill designed to modernise all facets of Jamaica's anti-money laundering framework. This will include provisions for civil forfeiture and provide for all serious offences to become predicate offences for money laundering purposes. In addition, the proposed Proceeds of Crime Act (POCA) will considerably enhance the powers of law enforcement agencies in their fight against money laundering.

16. The Government of Jamaica has also proposed legislation entitled The Financial Investigations Division Bill which has been referred to a Joint Select Committee of Parliament. The Bill will formalize and put on a legislative footing the current FID which will be established as an independent body to become Jamaica's FIU for the purposes of receiving, analyzing and disseminating STRs and TTRs. The FID will also conduct investigations relating to financial crimes, make application for forfeiture and confiscation orders and share financial information with competent authorities both locally and foreign. With the enactment of the FIDA it is expected that Jamaica's FIU will fully meet the requirements for entry into the Egmont Group. Canada is sponsoring Jamaica's application for membership which is expected to be presented at the 2006 Plenary Meeting.

17. Legislation to ensure that financial sector supervisors may share information and institute regulatory measures against institutions failing to meet their AML obligations has been enacted.

18. The view of the authorities is that the major types of crimes affecting Jamaica which lead to money laundering offences are drug trafficking and arms trafficking. This is due in large part to the island's geographic location on the international drugs transshipment route for cocaine to the United States. This is having serious effects at the domestic level, generating a continued increase in gun violence and murders. Whilst Jamaica is on the transshipment routes, local cocaine use is not thought to be significant. Jamaica has large tracts of land being used for the cultivation of ganja and since 2001 authorities have eradicated 1,591.31 hectares of ganja cultivation. Ganja is consumed locally and also cultivated for exportation.

19. Jamaica has a high murder rate which in previous years has exceeded 1,000 murders a year. Up to the first week in April of 2005 over 400 persons had been murdered in Jamaica. The JCF Constabulary Communications Network reported 29 murders during the week of the 3rd April. The Constabulary Communications Network also reported that the motive for 22 of the murders was undetermined and that 22 of them resulted from the use of guns. It was an escalation in gun violence and murders that led to the formation of Operation Kingfish.

20. The authorities also take the view that other forms of organized crime, particularly the predicate offence of extortion are also on the increase. Importantly, Jamaican criminals have now established linkages both as regards the drug trade and other illicit activity in Europe (particularly the U.K.) and in North America.

21. The authorities have seen evidence that persons involved in the drug trade have also been trying to legitimize their operations by establishing commercial enterprises. It is also likely that criminal elements do attempt to launder funds through the formal financial sector.

22. The Narcotics Police, the OCID of the police force, the JDF, the JCF and the Customs Contraband Enforcement Unit have been making strenuous efforts to control the situation. Joint operations by the Police Force and the Customs Contraband Enforcement Unit have been particularly successful in this area in the seizure of illegal drugs and, weapons and ammunition. However, the authorities acknowledge that drugs and gun related crime remain at unacceptable levels.

23. Operation Kingfish, the Counter Narcotics and Major Crimes Investigation Task Force was launched in October 2004 to target the drug trade in partnership with law enforcement authorities from the UK, USA and Canada. The Task Force provides the bases, through case preparation and analyses,

for operational units to conduct raids, searches and make arrests. The operational units include the Special Anti-Crime Task Force, Mobile Reserve, Organized Crime Investigation Unit, the Flying and Fraud Squads, the FID (Min Of Finance), and the Customs Department as well as the Caribbean Search Centre and the Narcotics Division.

24. During the period October 2004 - February 2005, Operation Kingfish led to the seizure of hundreds of rounds of ammunition; the arrests of 119 persons for offences ranging from illegal possession of drugs to murder; the seizure of 30 firearms; and the detention of 45 boats on suspicion of use in organized criminal dealings. In addition, significant amounts of ganja (3,846 lbs of compressed ganja and 7 hectares of ganja seedlings) and unspecified quantities of hash oil were also seized.

25. Operation Kingfish has also participated in the seizure of some 12 metric tonnes of cocaine (with an estimated street value in the United States of hundreds of millions of dollars), and 36 pieces of crack/cocaine; the capture of 5 wanted persons; 101 coast guard boardings on suspicions of criminal activity; and the seizure/recovery of 16 motor vehicles.

26. Operation Kingfish is continuing the process of consolidating its information base and has been utilizing the information received, to undertake decisive action to dismantle the major organized criminal gangs. The work of the Kingfish Task Force is impartial. The Ministry of National Security reports that the programme has been gaining the support of the Jamaican public, as evidenced by the thousands of actionable calls made to the Task Force's toll free line.

27. In addition to the interdiction and seizure of the items described above, Operation Kingfish has resulted in the arrest of five Jamaican nationals who are now in custody following requests for extradition from the Government of the United States of America. Extradition proceedings are ongoing in all five cases.

28. The relations between the Jamaican authorities and their international counterparts have proven critical to the fight against organized crime. Through collaboration with the British government, Jamaica has been able to decrease the flow of cocaine through its borders and to reduce by approximately 90 per cent, the flow of cocaine into the United Kingdom by body packers and couriers, who ingest the substance.

29. Jamaica has also received strong support from the UK Authorities with the modernization of the JCF, including procedures to focus on practical operational measures to improve the capabilities and integrity of the JCF. Special emphasis will be placed on skills transfer and capacity building in investigative techniques and case preparation. Jamaica has also sought support towards the acquisition of modern forensic technologies to boost its authorities' forensic capabilities, and will be securing the services of an expert to assist in the establishment of the National Independent Investigative Authority in Jamaica.

30. With regards to Jamaica's efforts in the fight against the financing of terrorism, Jamaica is currently developing this framework. Integral to this area is the enactment of the TPA. The statute criminalizes terrorist acts and other related offences including the financing of terrorism and imposes reporting and other obligations on financial institutions. It also prescribes the powers of the DPP to proscribe "listed entities" that are deemed to be engaged in terrorist activities.

31. The financial system regulators (the BOJ and the FSC) also disseminate particulars of suspected terrorists/terrorist groups or entities (as contained in UN lists), and financial institutions are required by their regulatory agencies to determine and report on whether they are in possession of property owned or controlled by these individuals or groups/entities. Under the provisions of the TPA, these financial institutions are under a legal obligation to make this determination on an ongoing basis. There have been no indications that terrorist organizations have been active in the Jamaican financial system. The JCF and the JDF have also received training in measures to combat terrorist actions, and a special unit in the JCF is being trained and equipped to specialize in this area.

1.3 Overview of the Financial Sector and DNFBP

32. As at 31 December 2004, the deposit taking system comprised six commercial banks with total assets of J\$ 341.3 billion, five merchant banks operating under the Financial Institutions Act (FIA) with total assets of J\$ 50.5 billion, four building societies with total assets of J\$79.9 billion, and fifty credit unions with total reported assets of J\$28.4 billion (average conversion rate - J\$62 to US\$1). The banking system (commercial banks, merchant banks and building societies) has an extensive network of 191 branches and approximately 6,850 employees, providing island-wide service and coverage. As at December 2004, the number of approved cambio locations was 138 operated by 64 entities. Approved cambios are located in every parish in Jamaica with 24 percent operating in the corporate area (Kingston & St. Andrew). BOJ's in-house remittance master list reflects that as at the end of January 2005 there were sixteen primary agents offering remittance services through five hundred and fifty-seven sub-agent locations throughout the island.

33. The FSC oversees the registration, solvency and conduct of approximately 114 firms and over 1,200 individuals doing business in the securities and insurance (life and general) industries. As at September 2004 there were six (6) life and thirteen (13) general insurance companies and thirty (30) securities firms. The FSC is responsible for the registration and oversight of the pensions industry, with the enactment of the Pensions (Superannuation and Retirement Schemes) Act in November 2004 and the gazetting of the Appointed Day Notice which brought the Act into force on March 1, 2005.

34. With regard to DNFBPs, at the time of the mutual evaluation, the Public Accountancy Board, the statutory regulator under the Public Accountancy Act had licensed 498 persons under the Act. The General Legal Council advised that in 2004 practicing certificates for 921 attorneys had been issued. The Real Estate Board advised that it licensed 300 dealers and 275 salesmen in 2004. During the period April 1, 2003 to March 21, 2004, the Betting, Gaming and Lotteries Commission licensed approximately 3241 gaming machines. With regard to dealers in gems and precious metals there are approximately 40 jewelers operating in Jamaica. There is however no association of precious metals dealers.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

35. The Jamaican legal framework provides for a wide variety of different legal persons and arrangements including limited liability companies, co-operative societies (such as credit unions, friendly societies and industrial and provident societies) as well as statutory bodies and trust arrangements. The law contains numerous statutes that deal with the incorporation and activities, duties and rights of these persons and institutions and the governing of their relations.

36. Industrial and provident societies are established to carry on industries, businesses, or trades specified in or authorized by their rules, including dealings of any description in land provided. The societies are registered under the Industrial and Provident Societies Act, by the Registrar of Companies. Any natural or legal person may own shares. However, no member (other than a registered society) shall have or claim any interest in the shares of the society exceeding \$400.00. The register of members or shares keeps particulars of the names, addresses and occupation of members, the number of shares held by them, date on which the name of any person, company or society was entered in such register or list as a member, and the date at which any such person, company, or society ceased to be a member. A committee of management controls each society. Every registered society is required to have a registered office and to send to the Registrar, notice of the situation of such office; submit its accounts for audit in respect of each financial year; make annual returns; and make annual declaration of assets.

37. The Co-operative Societies Act establishes co-operative societies, including credit unions. Section 8 of the Act confers corporate status on a society when it is registered, thereby making it a legal person. Co-operative societies are registered by the Registrar of Co-operative Societies. Every registered society must have a registered address. Any natural or legal person may own shares in a society. Where the liability of the members of a registered society is limited by shares, no member, other than a registered society shall hold more than such portion of share capital of the society, subject to a maximum of twenty percent (20%) as may be prescribed by the rules. The register of members is

evidence of the date on which the name of any person was entered in such register or list as a member, and the date at which any such person ceased to be a member. A committee of management controls each society.

38. Credit Unions are a special type of co-operative society, which engages in banking type business, namely accepting deposits from their members and making loans. As a consequence, the Minister of Finance in July 1999 designated credit unions as specified financial institutions under the Bank of Jamaica Act (BOJA), paving the way for supervision by the BOJ.

39. By section 3 of the Building Societies Act, any number of persons who desire to establish a building society may, on having its rules certified, obtain from the Deputy Keeper of the Records, a certificate of incorporation. The Attorney General does certification of the rules. By section 8A, application for licences to operate as a building society must be made to and approved by the Minister of Finance. This is because under the BOJA, building societies have been designated specified financial institutions and as such falls under the regulatory ambit of the BOJ. Any natural or legal person may own shares in the society. A board of directors or committee of management, auditors and other officers exercises control.

40. Section 9 of the Friendly Societies Act confers corporate status on friendly societies and charities. Section 3 sets out the various purposes for which they may be formed including the relief or maintenance of its members, insuring money to be paid on the death of a member, any benevolent or charitable purpose. In order to become registered, an application must be filed with the Registrar. A certificate of registration signed by the Registrar is conclusive evidence that the society is duly registered.

41. By virtue of section 20, every registered society and every branch is required to have a registered office, make annual returns of members and investments, annual returns of receipts and expenditure and funds. Any natural or legal person may own shares in a society. A committee of management controls each society.

42. Under section 3(1) of the 2004 Companies Act, one or more person may form a company. Incorporation is achieved through the filing of the Articles of Incorporation and a Declaration of Compliance. An incorporated private company may be either a company limited by shares, a company limited by guarantee and not having a share capital, a company limited by guarantee and having a share capital or an unlimited company having a share capital. Section 4 establishes a company as a legal person.

43. Registration is effected when the Registrar issues a Certificate of Incorporation. Legal or natural shareholders may own a company. Article 86 provides for the business of a company to be managed by a board of directors. A company incorporated in Jamaica must have a registered office situated in the country and is required to file with the Registrar of Companies the particulars of its shareholders and directors. The registers of members, shareholders and directors are available for viewing free of cost to the members of the company and to the public on payment of the requisite fees. These registers must be kept in Jamaica.

44. Trade unions are governed by the Trade Unions Act and are required to apply for registration to the Registrar, which is the Deputy Keeper of Records. The Registrar's certificate is conclusive evidence of registration. Trade unions may own property, including bank accounts. Committees of management, trustees or directing authorities can control unions. Every registered trade union is required to have a registered office and submit statement of accounts and audit certificates in respect of each year to the Registrar and make annual returns.

45. In order to establish a partnership, no formal agreement is necessary. However, some partnerships prefer a more formal establishment such as a Deed of Partnership or registration under the Registration of Business Names Act. A firm is defined under the Act as an unincorporated body of two or more individuals or one or more individuals and one or more corporations, who have entered into partnership with one another with a view to carrying on business for profit. Registration is effected by submitting a statement containing particulars including the general nature of the business, the principal

place of the business, the name, nationality, occupation of each partner, and corporate name and registered or principal office of every corporation which is a partner. Registration is effected when a certificate is issued.

46. The partnership is usually owned and controlled by the partners. The partnership may own property, including bank accounts. Any person may inspect the documents filed by the Registrar or request a certificate of the registration of any firm upon payment of the prescribed fee. Under the general law relating to partnerships, the partners are jointly liable for any act done by one of the partner in pursuance of the objectives of the partnership.

47. Every individual having a place of business in Jamaica and carrying on business under a business name and every trader having a place of business in Jamaica may be registered pursuant to the Registration of Business Names Act. Application for registration must contain particulars including the general nature of the business and the principal place of the business. Registration is effected when a certificate is issued. The proprietorship is usually owned and controlled by an individual. The proprietor may own all types of property, including bank accounts. Any person may inspect the documents filed by the Registrar or request a certificate of the registration upon payment of the prescribed fee.

48. A club is generally an unincorporated association. It may operate informally or with written rules or constitutions. Depending on the size of the club, control may be exercised by officers or a management committee. Clubs may own property. As it relates to a members club, the members own the property. In the case of a proprietary club, some person owns the property and makes it available to the other persons for a fee.

49. The law of trusts has been received in Jamaica, as part of the law of England. A trust may be defined as an equitable obligation binding a person, who is called a trustee, to deal with property over which he has control (the trust property), for the benefit of persons, who are called beneficiaries. A trustee may be an individual or a company. Where the trustee is a company, registration would have taken place pursuant to the Companies Act. Trust property may be any type of property. There is no regime for mandatory registration of trusts.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

50. Jamaica has a multi-pronged approach to the combating of money laundering and the financing of terrorism. Responsibility for Jamaica's AML framework was transferred from the Ministry of National Security to the Chief Technical Director of the FID of the Ministry of Finance and Planning in 2002. With this transfer, the designated authority to whom reports under the MLA are to be made was subsequently changed from the DPP to the FID of the Ministry of Finance. However responsibility for the country's anti-terrorism framework remains with the Ministry of National Security.

51. The current control policies and objectives are focused on ensuring that the financial system does not become a vehicle for money laundering or the financing of terrorism. The short to medium term objectives include expanding the scope of predicate offences under the proposed POCA to include all serious offences, broadening and strengthening the investigatory powers of the designated authority, facilitating the cross border reporting of funds movement under the Customs Act, and opening avenues for designated non-financial institutions and individuals to be placed under AML obligations. In addition the Act will provide the widest range of investigatory tools to law enforcement officials, the introduction of "criminal lifestyle" provisions that will seek to deprive individuals of ill-gotten gains accumulated over a period, and will introduce provisions for civil forfeiture, which will result in the forfeiture of assets without the need for a criminal conviction. The proposed POCA will take an "all crimes" approach, which means that it would not be limited to a specific range or description of predicate offence, and would also impose an expansive regime for the management and disposal of seized/forfeited assets.

52. The areas of the AML policies that currently have the highest priorities are with regards to drug offences and gun related money laundering. However the proposed changes to the law as indicated above

will move the focus to all serious crimes and will further strengthen the Government's commitment and ability to get at the proceeds of all criminal conduct.

53. New initiatives planned by the government for combating money laundering and the financing of terrorism include the implementation of enhanced anti-money laundering legislation through the passage of the omnibus POCA and the FIDA. There are also enhanced relations and joint operations already in train and being commenced with overseas law enforcement authorities to deal with the transnational nature of Jamaica's crime problem.

54. The Government is formulating an appropriate regime to centralize the intelligence and information gathering capabilities of the Jamaican law enforcement authorities. This will entail the establishment of the National Intelligence Authority, which will act as Jamaica's investigative services center.

b. The institutional framework for combating money laundering and terrorist financing

55. The Ministry of Finance & Planning has the portfolio responsibility for ML since 2002. The FID and the Financial Regulation Division (FRD) of the Ministry carry out the portfolio responsibilities for anti money laundering matters.

56. The FRD of the Ministry is responsible for developing the policy for anti -money laundering. To carry out this mandate, the FRD is involved in conducting extensive research on and reviewing best practices in anti-money laundering with a view to making recommendations to the Minister as regards reforms that should be incorporated in the legislative and institutional framework. Additionally, the Division acts as coordinator of joint AML initiatives between the financial supervisory and the law enforcement agencies.

57. The FID was formed as a result of the merger of the Financial Crimes Unit and the Revenue Protection Division. Its staff includes investigators, forensic accountants, financial analysts, intelligence officers, police investigators, computer forensic specialists and attorneys-at-law. The FID carries out the functions of a FIU. It is the body responsible – the “designated authority” – for the receipt of STRs and TTRs, their analyses and the dissemination of financial intelligence concerning money laundering and other financial crimes, shares information with law enforcement agencies and provides guidance to financial institutions within the anti-money laundering regime.

58. The National Anti-Money Laundering Committee has been formed to provide a forum for the discussion of anti-money laundering issues and to ensure that the necessary measures are taken to improve the country's anti-money laundering regime and facilitate compliance with international obligations. The committee is chaired by the Financial Secretary and is comprised of representatives from the Ministry of Finance & Planning, the BOJ, the FID, the FSC, the Attorney General's Chambers, the DPP, the JCF, the JDF, the Ministry of National Security, the Jamaica Customs Department and the Ministry of Justice. The committee meets on a regular basis.

59. The Financial Crimes Legislative Task Force was established in November 2002 comprising representatives of the BOJ(Chair), the Ministry of Finance, the Attorney General's Department, DPP, The Department of Legal Reform, the FID, the Ministry of National Security and the FSC with a mandate to review the existing legislative framework and make recommendations to strengthen the country's AML and CFT Frameworks. The Task Force has produced two reports drawing on international best practice, i.e. FATF requirements, together with operational deficiencies observed by practitioners which make recommendations for key reforms to increase the effectiveness of the anti-money laundering framework. Simultaneously, the Ministry of National Security has spearheaded the development of the comprehensive Proceeds of Crime statute, which will incorporate provisions relating to civil forfeiture and criminal lifestyle. Additionally, a number of representatives on the Task Force also participated in the development of the TPA.

60. The Ministry of National Security exercises overall responsibility for the security and defense of Jamaica. The security of Jamaica is provided by the national forces - the JDF provides military service,

and the JCF has responsibility for the maintenance of law and order. The Ministry co-ordinates the activities of the forces and also engages in the negotiation of bilateral arrangements with other Governments in the area of international law enforcement. The Ministry of National Security has also established the National Anti-Narcotics Committee with membership including the Minister and Permanent Secretary of the Ministry of National Security, the Commissioner of Police, the Chief of Staff of the JDF, the DPP, the Commissioner of Customs and Excise Duty, the Director of Port Security and Narcotics of the Ministry of National Security.

61. The Ministry of Justice is responsible for ensuring the delivery of justice to all Jamaicans. It is responsible for the administration of justice through the Jamaican court systems and through various government legal offices, including the Office of the DPP, the Office of the Attorney General, the Department of Legal Reform and the Office of the Chief Parliamentary Counsel.

62. The Ministry of Foreign Affairs and Foreign Trade is responsible for maintaining Jamaica's diplomatic relationships abroad, formulating Jamaica's foreign policies and for promoting Jamaica's interests in the area of foreign trade. In the areas of ML and FT, the Ministry of Foreign Affairs would convey information as to treaty developments, work shops, training seminars etc. to the relevant Ministries and/or agencies for participation or instruction as to the extent of Jamaica's representation in the particular forum. The Ministry of Foreign Affairs also circulates the U.N. Security Council lists of terrorists and terrorist organizations to the respective Government agencies.

63. The Office of the DPP is established under the Jamaica Constitution. Its main function is to institute and undertake criminal proceedings against any person before any court other than a court-martial in respect of any offence against the law of Jamaica. The Constitution entrenches the independence of the DPP by ensuring that the office is not subject to any direction or control of any other person. The DPP is established for thirty-seven Prosecutors, currently the full complement stands at thirty-one. Recently special emphasis has been placed on the issue of "white-collar" crime and in this regard, the Department has identified 6 prosecutors who oversee this area (specifically forfeiture applications and money laundering) and mutual legal assistance requests.

64. The Constitution of Jamaica establishes the Office of the Attorney General, which is the principal legal adviser to the Government of Jamaica. Under the Crown Proceedings Act all civil proceedings by or against the Government are instituted in the name of the Attorney General. The overall nature and responsibilities of the Office of the Attorney General require him to protect the public interest, and as principal advisor to the Government, the Attorney General plays an important role in upholding the rule of law in Jamaica. The Office is headed by the Solicitor General and comprises 5 divisions and employs 40 attorneys at law.

65. The JDF's main functions include defence of the nation in the event of aggression, assistance to the police and other agencies in the event of civil disturbances or major disasters and surveillance of Jamaica's territorial waters in support of fisheries protection, anti-smuggling and narcotics control measures.

66. The Jamaica Defence Force Coast Guard is responsible for the surveillance and security of Jamaica's coastal waters, which involves the apprehension of illegal immigrants, criminals, bandits and other undesirables entering Jamaica's territorial waters, and handing them over to the police. It also undertakes search and rescue operations and assists in narcotic control, and the protection of fisheries. The JDF therefore plays a critical role in combating the drug trade and in carrying out operations to stymie the trafficking of drugs and other contraband.

67. The JCF mission is the maintenance of law and order, protection of life and property, prevention and detection of crime, and preservation of peace. A Commissioner who is appointed by the Police Services Commission heads the JCF. The Commissioner reports to the Minister of National Security and is supported by four (4) Deputy Commissioners, fourteen (14) Assistant Commissioners and a total complement of 8,300 officers (as at February 2005). The capacity of the established system is 8,500 officers. The JCF holds its authority under the Jamaica Constabulary Force Act, which sets out the responsibilities of the police.

68. The Police comprise the JCF and the Island Special Constabulary Force (ISCF). The ISCF is the first reserve to the regular police force in all facets of policing. The current complement of the ISCF stands at about 2,200. Special units under the direction of area commanders or other designated officers carry out policing and crime fighting operations.

69. The Control and Investigation of Narcotics Division of the Force deals with the investigations of narcotic trafficking, eradication of ganja cultivation, and all related offences including money laundering and asset forfeiture. These operations take place islandwide, and give special attention to the seaports, airports, aerodromes and illegal airstrips.

70. The intelligence capabilities of the Force are established by the Criminal Investigations Branch and the National Firearms and Drug Intelligence Unit. These units deal with information gathering, storage and dissemination of intelligence relating to firearms and drug offences. It also supervises the INTERPOL Unit, which is responsible for tracking wanted and missing persons, and monitoring deportees and extradition proceedings.

71. The JCF maintains close liaison and cooperation with the JDF and Jamaica Customs in investigating and sharing information pertaining to various offences. The JCF has mechanisms in place to facilitate the process of information exchange with Government and external law enforcement agencies.

72. The BOJ has supervisory responsibility for deposit-taking institutions licensed under the financial legislation administered by the Central Bank. The BOJ's Financial Institutions Supervisory Division carries out the supervisory responsibility, which covers commercial banks, merchant banks, building societies, and to a limited extent credit unions. In the discharge of its supervisory functions, the BOJ uses a combination of well-established and internationally accepted supervisory techniques, which take account of banking and its related risks. Among these techniques are specific AML/CFT on-site examinations. The BOJ has issued guidance notes governing the AML/CFT obligations of its licensees.

73. The FSC supervises and regulates the securities industry, the insurance industry and soon, the private pensions industry. The FSC has structured its organization with specialist divisions for insurance, securities, examinations & investigations, legal, actuarial, corporate services and pensions. The FSC has issued AML/CFT guidelines for its licensees.

74. The Betting, Gaming and Lotteries Commission is an independent statutory body established under the provisions of the Betting, Gaming and Lotteries Act. The Commission licences, regulates and monitors the gaming industry. The gaming industry is presently comprised of the betting gaming machine and lotteries sector. The racing sector is comprised of 1 promoter and 11 book makers, the lotteries sector of three lottery licensees. The sector with the highest risk of money laundering is assessed to be the gaming machine sector. The mandate behind the Commission's regulatory role in this sector is the regularization of gaming machine operations. This is done through the licensing of gaming machines and the premises on which the machines are operated. There are currently 441 licences issued by the Commission within this sector.

75. The Enforcement Division is the law enforcement arm of the Commission. This division's primary functions include, gathering intelligence and managing a database of organized criminal groups involved in illegal gaming activities; conducting criminal and regulatory investigations on persons involved in illegal gaming activities; and conducting background investigations on potential licensees and making recommendations regarding the granting of licences.

76. Currently attorneys and accountants are self-regulated professions. Accountants are regulated under the Public Accountancy Act, whose provisions are administered by the Public Accountancy Board, a body appointed by the Minister of Finance and Planning. Attorneys-at-law are regulated pursuant to the provisions of the Legal Professions Act, whose provisions are administered by the General Legal Council (as indicated earlier herein).

c. Approach concerning risk

77. As regards traditional financial institutions identified in the MLA, the risk based approach to AML/CFT matters in relation to the BOJ regulated institutions can be found at section IVC of the BOJ AML/CFT Guidance Notes. These Guidance Notes are informed by the FATF 40 +8 recommendations and the Basel Customer Due Diligence Paper.

78. The Guidance Notes refers to variations from full know your customer (KYC) banking standards in relation to cambios/bureaux de change and remittance companies. (see section IVB of the Guidance Notes). The variation does not equate to a lowering of standards but merely a shift in emphasis on the matters required for certain transactions and the verification of these matters. Cambios and remittance companies are required to collect full identification details (in the case of cambios this requirement is applicable to transactions of US\$250.00 and over.) Verification of addresses can be done subsequently to the conduct of transactions subject to the cambios and remittance companies ensuring that full and sufficient information is captured to facilitate the verification. Transactions equal to or exceeding US\$8,000 for cambios and US\$5,000 for remittance companies in Jamaica, constitute significant transactions and are therefore subject to the full KYC banking standards.

Progress since the last mutual evaluation

79 The last mutual evaluation report of Jamaica dated March 10, 1999 identified deficiencies and made the following recommendations;

1. The failure to criminalise non-drug money laundering and the omission to create an obligation on financial institutions to report suspicious transactions should be addressed immediately. This obligation should also include the reporting of transactions which involving negotiable instruments.
2. Additionally the critical issue of extending the predicate offences to serious crimes including fraud and arms trafficking should be given priority so that Jamaica is in step with international standards.
3. The Office of the DPP needs to be strengthened as regards the engaging of relevant and experienced personnel such as a forensic accountant for the analysis of threshold transactions as are presently being reported as well as suspicious transactions in the future. Moreover, with a view to the future, adequate computer equipment should be secured for the nature of the task to be undertaken.
4. The Government of Jamaica should ensure that the relevant legislation which allows the proceeds of confiscated assets to be utilised in the provision of health education and towards national security efforts is fully implemented.
5. The provisions of the DOFPA should make mandatory, the existing discretion a financial institution presently has to report to a constable or the DPP information which may be relevant to an investigation of, or the prosecution of, a person for a proscribed offence or which would otherwise be of assistance in the enforcement of the Act or any regulations thereunder. Additionally the legislation should provide for adequate penalties where there is a non-compliance.
6. The provision of mutual legal assistance in money laundering matters should be extended to cases where the predicate offence under investigation or prosecution by the requesting state is not merely a drug-related offence.

7. Further the delays in securing the assent of the Governor General to the bill which provides for the sharing of assets confiscated as a result of co-operative efforts of mutual assistance should be addressed and the legislation implemented.
8. Given the increased level of arms trafficking which go hand in hand and exacerbates the ravages of the drugs trade, and the use of the container trade to further these enterprises, adequate levels of resources and equipment should be made available to the Jamaica Customs Department so that they can be effective partners in the protection of the country's sea and airports.
9. Additionally the gravity of the drugs trade should see the provision of more manpower and resources to the Narcotics Unit. The Asset Forfeiture and Money Laundering Unit should be provided with on going training in order to meet the demands of the increasing sophistication of the money launderers and fraudsters.
10. Legislation enacting fit and proper criteria requirements for directors, managers and shareholders of insurance companies should be put in place.
11. The Government of Jamaica needs to continue their efforts to tackle head on the level of corruption which exists throughout the society and should consider enacting legislation to deal with offending civil servants in order that the fabric of the society is protected on all fronts from the predatory instincts of the drug traffickers and money launderers.

80 As a result, the following measures have been taken by the Government of Jamaica

A. Operationally -

- (i) the establishment of the FID;
- (ii) the introduction of new customs declaration forms which track the cross border movement of funds;
- (iii) measures to strengthen overall security at Jamaica's ports of entry and better detect and stop shipments of contraband. The Customs Department has undergone significant structural and equipment changes designed to effectively enhance the security of Jamaica's borders. These initiatives include increased manpower and other resources to the Anti-Narcotics Unit; the modernization of Customs systems and procedures including simplification of document procedures; the introduction of elevated security provisions in use of fixed and mobile x-ray machines at both air and sea ports, automation and use of technology; transparency and consistency and modernization of border-crossing administration; implementation of the Valuation Intelligence Risk Management System. The cargo processing system is enhanced with the implementation of the Valuation Intelligence Risk Management System which tracks all import entries filed in accordance with set profiles from the database, which is continuously updated. All high-risk shipments are routinely flagged and forwarded to compliance and enforcement for interception and stripping at the container stripping station.
- (iv) introduction of computer readable passports (in 2003);
- (v) enhanced police/law enforcement initiatives against drug traffickers and gun-runners, in conjunction with the authorities of overseas governments;
- (vi) introduction of revised and enhanced AML/CFT Guidance Notes by BOJ for all BOJ regulated institutions ;
- (vii) establishment of the FSC to regulate the securities and insurance sectors on a more comprehensive basis;

- (viii) the issuance of AML/CFT Guidelines for FSC regulated institutions (securities companies and insurance companies);
- (ix) the introduction of a specific regulatory regime for cambios and bureaux de change under the purview of the BOJ, and resultant regulatory action to suspend and revoke licences of entities not adhering to the law and BOJ's operating requirements;
- (x) Ministerial designation of remittance companies in 2002 as financial institutions for the purposes of the MLA, and regulatory regime now in the process of being implemented under the BOJ's the purview. (The law placing regulatory oversight with the BOJ was passed in February 2004)
- (xi) The establishment of a high-level National Anti-Narcotics Committee with representation from the Ministry of National Security , law enforcement, the JDF, Customs and Excise, Port Security and Narcotics Branch of Ministry of National Security;
- (xii) The reconstitution of the National Anti-Money Laundering Committee under the leadership of the Ministry of Finance and Planning, consequent on transfer of ministerial responsibilities for money laundering;
- (xiii) The establishment of the Financial Crimes Legislative Task Force
- (xiv) The start of procedures for Egmont membership
- (xv) Drafting of the Proceeds of Crime Act
- (xvi) New Companies Act which addresses the issues of beneficial ownership and the legal person

B. Legislatively –

- (i) Passage of amendments to the BOJA, Banking Act (BA), FIA, the Building Societies Act and the FSCA to expressly allow the responsible regulatory agencies to impose regulatory sanctions including revocation of licences for breaches of the MLA and any other Act under which these institutions have obligations; and expanded authority for information sharing between local regulators and with their overseas counterparts.
- (ii) Passage of amendments to the MLA. Amendments to the MLA in 1999 extended the predicate offences to include arms trafficking and any offence involving fraud dishonesty and corruption. These amendments also included the imposition of legal obligation on financial institutions to report suspicious transactions. With the expansion of the predicate offences in 1999, there has been a concomitant expansion of offences for which assistance can be provided to foreign states under the MACMA.
- (iii) Introduction of the Sharing of Forfeited Assets Act in 1998 under which Jamaica has on at least 2 occasions shared assets with the Canadian authorities amounting to J\$9.6 million in one case and J\$360,000 in the other case.
- (iv) Passage of the Corruption Prevention Act, 2001. The provisions of this statute apply to all public servants earning over a certain threshold (J\$2m annual salary) and include the filing of comprehensive annual declarations of assets, liabilities and income. Public servants in certain departments (customs, immigration etc) earning lower salaries are also subject to this.
- (v) Passage of amendments to the Securities Act (SA) and passage of a new Insurance Act (IA). These legislative initiatives established the fit and proper framework for the securities and

insurance industries and introduced provisions for the strengthening of the overall regulatory framework for these industries.

- (vi) Passage of the FSCA, 2001.

2 Legal System and Related Institutional Measures

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

RECOMMENDATION 1

81 Jamaica has signed and ratified both the Vienna and the Palermo Conventions. Sections 3 to 5 of the (MLA) implements substantively the requirements of Article 3 (1)(b)&(c) of the Vienna Convention. However the list of specified offences as outlined in the Schedule attached to the MLA excludes the following requirements:

- a. the possession or manufacture, transport or distribution of all equipment, materials or substances listed in tables attached to the Vienna Convention. (The Precursor Chemicals Act was passed in 1999 to establish a regime for the regulation of dealings in substances used in the manufacture/preparation of narcotics and psychotropic substances. The Act came into effect on July 1, 2005.)

82 With regard to Article 6(1) of the Palermo Convention and the criminalisation of the laundering of the proceeds of crime, the MLA only criminalizes the laundering of property derived from specific offences (including drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences against the Firearms Act).

83 The offence of ML as stated in section 3(1) of the MLA “involves property that is derived from the commission of a specified offence” and does not include all proceeds of crime. It is not necessary in proving that property is derived from the commission of a specified offence that a person be convicted of the specified offence. Predicate offences for money laundering do not include all serious offences. Specified predicate offences are limited to a Schedule attached to the MLA and include drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences against the Firearms Act.

84 According to section 2 of the MLA, a specified offence for ML includes an act or omission that occurred outside Jamaica which had it occurred in Jamaica, would have constituted such an offence. The criminalisation of ML as stipulated in section 3 of the MLA applies to persons who commit the predicate offence. Section 5 of the MLA provides for conspiring to commit, aid, abet, counsel, or procure the commission of ML.

RECOMMENDATION 2

85 The offence of ML applies to persons that knowingly engage in such activity. Section 3 (1) of the MLA indicates that the person must know at the time of engaging in any transaction that the property is derived from the commission of an offence. Although the MLA does not expressly provide that the intentional element of the offence of ML be inferred from objective factual circumstances, the courts do in practice make such inference.

86 Under the MLA, the offence of ML also extends to persons which include bodies corporate. Section 3 (2) of the MLA provides the penalty to be imposed on a body corporate that engages in ML and is found liable of the offence. Under the Interpretation Act the term “person” is defined as including any corporation, either aggregate or sole, and any club, society, association or other body, of one or more persons.

87 In addition to criminal liability for ML under the MLA, legal persons are also subject to the following punitive actions:

1. Under the BA and FIA, the BOJ/Supervisor of Banks may take action where an institution acts in an “unsafe and unsound” manner. In the banking supervisor’s guidance to the industry it has been officially communicated that a failure to comply with proper AML practices including breaches of the law will constitute unsafe and unsound practice, thus exposing the institution to regulatory sanctions.
2. With regards to cambios, the BOJ has the authority to impose sanctions on cambios for failure to adhere to reporting and other AML obligations under the MLA. This authority has already been exercised by the BOJ in several cases and has also included the suspension as well as revocation of cambio licences.
3. With regards to institutions regulated by the FSC (securities dealers, insurance companies, unit trusts/mutual funds, pension funds), where the financial institution engages in unsafe or unsound practices in conducting the institution’s business or has contravened any condition of its licence, the FSC can impose regulatory sanctions. Money laundering is considered by the FSC to be an unsafe and unsound practice and a financial institution which engages in money laundering will no longer be considered “fit and proper” by the FSC.

88 Section 3 of the MLA provides for penalties with respect to money laundering offences. On summary conviction (Resident Magistrate’s Court) an individual is exposed to a fine not exceeding \$1mn or to imprisonment for a term not exceeding 5 years, or if convicted in the Circuit Court the individual may be liable to imprisonment for up to 20 years and/or a fine of an amount to be determined by the court. In the case of a body corporate, the fine is a maximum of \$3mn for conviction in the Resident Magistrate’s Court and an unspecified amount for conviction in the Circuit Court. The amount of the fine to be imposed in the latter case is in the discretion of the court.

2.1.2 Recommendations and Comments

89 The POCA will be duly tabled in Parliament in very short order. POCA will consolidate all legislative provisions on the criminalisation of money laundering. POCA will therefore repeal the MLA and DOFPA. POCA will also extend the predicate offences for money laundering to cover all serious offences and criminalize the laundering of the proceeds of crime. POCA also extends the mental element of money laundering to include having reasonable grounds to believe the property is derived from criminal conduct. In the circumstances, POCA should be passed with due haste.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	PC	<p>The MLA only criminalizes the laundering of property derived from specific offences (including drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences against the Firearms Act)</p> <p>Predicate offences for money laundering are limited and do not cover the range</p>

		of offences in the FATF designated categories of offences.
R.2	C	The recommendation is fully observed

2. Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and Analysis

SPECIAL RECOMMENDATION II

90. Jamaica has signed the Terrorist Financing Convention. The TPA was in the process of being enacted by Parliament at the time of the mission visit. Subsequently, the TPA became law on June 6, 2005. Resolution 1373 is substantially implemented by the TPA.

91. Section 4 of the TPA criminalizes the provision of or making property available to facilitate terrorist activity in terms compliant with requirements of the Terrorist Financing Convention. Property is defined to include money and all other property, real or personal, including things in action and other intangible or incorporeal property.

92. There is no requirement in the TPA for funds in terrorist financing offences to be actually used to carry out or attempt a terrorist act(s); or be linked to a specific terrorist act(s). The statute refers to the term “applicable funds which relates to funds used in part or in whole to facilitate any terrorism offence, or is derived from the commission of a terrorism offence (i.e. the offences contained in the Act, including the inchoate offences). Sections 7 and 10 of the TPA provide for the types of conduct set out in Article 2(5) of the Terrorist Financing Convention, to be offences. The definition of terrorism offence in the TPA includes a conspiracy or attempt to commit offences specified under the various sections of the TPA. At present terrorist financing offences are not predicate offences for money laundering. Further extension of predicate offences is expected on the passage of POCA to cover all serious crimes.

93. Under the TPA, the terrorist financing offence would also apply if the terrorist or terrorist organization is located in another jurisdiction or when the terrorist acts take place in another jurisdiction. The definition of terrorist activity in section 2 of the TPA includes an act or omission in or outside Jamaica that, if committed in Jamaica, would constitute a specified terrorist offence.

94. There does not appear to be an express provision in the TPA which requires the intentional element of the offence of terrorist financing to be inferred from objective factual circumstances. However it is expected the courts will make such inference as they do for ML offences. Criminal liability for terrorist financing extends to legal persons as all penalties for listed offences in the TPA include natural and legal persons.

95. There is no provision in the TPA excluding legal persons subject to criminal liability for terrorist financing from being subject to parallel criminal, civil or administrative proceedings. The BOJ has issued Guidance Notes requiring all BOJ regulated institutions (commercial banks, merchant banks, building societies, credit unions, cambios & remittance companies) to have in place CFT procedures to ensure that these institutions did/do not deal with terrorists or property which was involved or suspected to be involved in the financing of terrorism. Noncompliance with these requirements are construed by the BOJ as “unsafe and unsound business practices” which may trigger regulatory sanctions, including licence revocation as per the 2004 amendments to the financial legislation.

96. Natural and legal persons are subject to effective, proportionate and dissuasive criminal, civil or administrative sanction for terrorist financing as noted with regard to the regulatory sanctions of the BOJ for its licensees. The TPA has specific penalties for offences including life imprisonment for natural persons and fines to be levied at the discretion of the court on legal persons for terrorist offences.

2.2.2 Recommendations and Comments

97 The TPA has been very recently passed; therefore the results of its implementation are yet to be obtained. Neither MLA nor DOFPA stipulates terrorism financing offences as predicate offences for money laundering, however the proposed POCA will provide for this. POCA should be passed as soon as possible.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	LC	Terrorist financing offences are not predicate offences for money laundering. Due to its recent enactment, there are no results to assess the effectiveness of implementation of the TPA.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

RECOMMENDATION 3

98. At present, forfeiture is only applicable in relation to property derived from or used in the commission of predicate offences under DOFPA. These are confined to drug trafficking offences or money laundering as defined under the MLA as stipulated in the list of prescribed offences in the Schedule to DOFPA. Currently DOFPA allows for the seizure (Section 20), restraint (Sections 27 and 28), freezing (Section 28) and forfeiture (Section 7) of property derived from or instrumentalities of the predicate offences under DOFPA. There is also provision for a pecuniary penalty (“value confiscation”) order to be made against the person convicted in respect of the total value of any benefits derived by or accruing to him from the commission of the prescribed offence. (Sections 3 and 14 of DOFPA).

99. The definition of tainted property in DOFPA does not include the concept of intended use of instrumentality. However, Section 19 of the Criminal Justice Reform Act (CJRA) provides for the forfeiture of any property in the possession of a person convicted of an offence punishable on indictment for a term of 2 years or more, where the property has been used for committing or facilitating the offences or was intended by the offender to be used for the commission of the offence. The section does not provide for restraint of property in similar circumstances. Section 12 of DOFPA provides that if property that is subject to a forfeiture (property confiscation) order is not available; the judge has the power to order the convicted person to pay an amount that is equal to the value of the property.

100. With regard to terrorism financing the TPA also contains similar provisions (Sections 23 to 44) on seizing/restraint orders and forfeiture of property (where such property is applicable property i.e. used in part or whole to facilitate or carry out a terrorism offence or derived, obtained or realized from the commission of a terrorism offence). The TPA does not provide that property may be forfeited, where the said property, although not used, is collected/possessed or made available, intending that it be used, or knowing that it will be used, for the purpose of facilitating or carrying out a terrorism offence. There appears to be no provision for confiscation of property of corresponding value.

101. There is statutory provision for a restraint order to be made to “freeze” property that may become subject to either forfeiture (i.e. property confiscation) or a pecuniary penalty order (i.e. value confiscation) (Sections 27-34 of DOFPA). The initial application for a restraint order may be made on an ex parte basis (Section 27 of DOFPA). There is also power to seize such property (Sections 20-26 of DOFPA).

102. The DPP has powers to obtain monitoring orders under section 8 of MLA and section 44 of DOFPA and the FID has the right to receive threshold and suspicious transaction reports (Sections 6 and 6B of MLA). A monitoring order under DOFPA may be granted to direct a financial institution to disclose information or produce documents about transactions conducted through an account, held by a

particular person, with the institution. This order may be granted if there are reasonable grounds for suspecting that the account holder has committed, was involved in or about to commit a predicate or money laundering offence, or if he has benefited or about to benefit from the commission of such an offence. Monitoring orders are also available under the TPA (section 19).

103. Sections 38 to 42 of the DOFPA provides for the police to obtain production orders to require specific persons to produce documents relevant to identifying and tracing tainted property and section 43 allows for search warrants for the same documents. Under DOFPA, the police can obtain search warrants to enter premises to locate tainted property (Sections 20 -26). Search warrants are also available under the TPA (section 23).

104. Section 10 of DOFPA provides protection of the rights of bona fide third parties with regard to freezing and/or seizing of property. Section 9 of DOFPA authorizes the judge, prior to making the forfeiture order to set aside any conveyance or transfer of the property that occurred after the seizure of the property or service of the restraint order, unless the conveyance or transfer was made for valuable consideration to a bona fide purchaser. Similar provisions are contained in section 19 of the CJRA.

Additional elements

105 Currently, there is no specific law that provides for the forfeiture of property of an organization solely because its principal function is to perform or assist in the performance of illegal activities. That is, unless that criminal organization is found liable for a specified offence it would not be subject to a forfeiture order. However, the TPA contains provisions at section 14 relating to a regime for listed entities, which involves the identification of terrorist groups. It is an offence to deal with the property of such a group, or carry out any transaction as regards such property (section 6). There is no provision for civil forfeiture at present.

2.3.2 Recommendations and Comments

106 POCA extends the freezing and/or seizing, and forfeiture of property derived from any conduct, where ever it occurs, which constitutes an offence in Jamaica. POCA also targets the forfeiture of property derived from offences supporting a criminal lifestyle. There is also provision for reverse burden of proof; this is where the Court makes adverse rebuttable assumptions against the defendant, if he has held property or incurred expenses during a prescribed period. POCA also provides for civil confiscation and recovery. In the circumstances, it is essential to enact POCA with due haste. There should be a provision in DOFPA for the restraint and forfeiture of property that constitutes instrumentalities intended for use in the commission of any ML, FT or other predicate offences, and property of corresponding value. The TPA should be amended to include a provision for forfeiture of property of corresponding value.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	LC	<p>The relevant extant legislation limits forfeiture to property derived from or used in the commission of predicate offence which does not include all serious offences.</p> <p>There is no provision for restraint of property intended to be used in the commission of an ML, FT or other predicate offence.</p> <p>There is no provision for forfeiture of property of corresponding value with regard to terrorism offences.</p>

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

SPECIAL RECOMMENDATION III

107. Section 14 of the TPA provides for the establishment of a listed entity regime based on the United Nations Security Council list of designated terrorist entities. Section 15 of the TPA requires foreign companies, financial institutions and any entity designated by the Minister to determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity. Property is defined in the TPA to include money and all other property, real or personal, including things in action and other intangible or incorporeal property.

108. Reports are to be submitted at least once every 4 months to the designated authority by the entities above as to whether or not they possess or control any property of the listed entities. In making any report the entity must comply with the directions of the designated authority. There is no provision to directly freeze the assets of listed entities in the TPA. Section 34 requires a person to be convicted of or charged with a terrorism offence in order for the DPP to apply to the Court for a restraint order against any property. The definition of a terrorism offence includes conspiracy, attempt to commit, aiding or abetting, procuring or counselling in relation to any offence stipulated in the TPA and incorporates terrorist activity i.e. an act or omission in or outside Jamaica that, if committed in Jamaica would be an offence under the TPA.

109. Section 34 of the TPA provides for the restraint of “applicable property in relation to the offence”. The restraint order can also be made “against a person other than the defendant” for applicable property in relation to the offence and under the effective control of the defendant. Section 48 and the Second Schedule of the TPA amend the Mutual Assistance (Criminal Matters) Act (MACMA) to cover terrorism offences and thus provide for restraint and forfeiture orders to be made in relation to actions initiated under the freezing mechanisms of other countries.

110. As at the date of the on-site visit, the TPA was not law, and it was therefore not possible to assess the effectiveness of any system for communicating actions taken under the freezing mechanisms in the TPA.

111. Section 15(4) of the TPA requires entities reporting on property of listed entities to comply with directions of the designated authority. Sections 14(6), (7) and (9) of the TPA provides for the application by listed entities for review and revocation of a listing order within sixty days of publication of such order. The DPP is also required to review all listing orders every six months to determine whether there is need to apply for revocation of any order in respect of any listed entity.

112. Section 44 of the TPA allows for the DPP to apply for the revocation of a restraint order once the property is no longer required for any enactment providing for forfeiture, any investigations or evidence in proceedings. Section 35(3) of the TPA allows for a person’s reasonable living expenses including those of the person’s dependants, and reasonable business and legal expenses to be provided for from the property under restraint.

113. Section 42 of the TPA provides for a person who has interest in property under a restraint order to apply for an order to vary or revoke the original restraint order if the person is the lawful owner and appears innocent of any complicity or collusion in a terrorism offence.

114. The TPA contains provisions (sections 23 to 44) for seizing and restraint orders and forfeiture of property (where such property is applicable property i.e. used in part or whole to facilitate or carry out a terrorism offence or derived, obtained or realized from the commission of a terrorism offence). However, there appears to be no provision for confiscation of property of corresponding value.

115. Applications for restraint orders can be made ex parte and property can be seized under a search warrant. Sections 21 and 22 of the TPA also contain provisions for the DPP to apply for production orders. Section 31 of the TPA provides for the protection of the rights of bona fide third parties.

116. As at the date of the on-site visit, the TPA was not law. However, the main supervisory agencies, the BOJ and the FSC, had already implemented systems to monitor compliance of their licensees in the banking, insurance and securities industries with the CFT measures outlined in their respective guidance notes. Additionally, these agencies were preparing for the enactment of the TPA.

2.4.2 Recommendations and Comments

117 As noted before the TPA has been recently passed; therefore the results of its implementation are yet to be obtained. The present TPA should, but does not, have any provision to directly freeze the assets of listed entities. The requirement for a person to be convicted of or charged with a terrorism offence, in order to apply for a restraint order against any property, would seem to limit the ability of the DPP. Additionally, there should be provision in the TPA to allow for forfeiture of property of corresponding value.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	LC	No provision to directly freeze the assets of listed entities in the TPA. No provision to allow for the forfeiture of property of corresponding value in the TPA. Due to its recent enactment there are no results to effectively assess the implementation of the TPA.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26, 30¹ & 32²)

2.5.1 Description and Analysis

RECOMMENDATION 26

:

118 Under the provisions of the MLA, the DPP was nominated as the “designated authority” responsible for the receipt of STRs and TTRs. On the 27th June 2003 as a consequence of The Money Laundering (Designated Authority) Order 2003 the Chief Technical Director of the FID was appointed the “designated authority” responsible for the receipt of STRs and TTRs..

119 The FID is headed by a Chief Technical Director and consists of seven units with one hundred and fifteen positions as outlined: -

Unit:	Establishment:	Positions Filled:	
Office of the Chief Technical Director	2	2	
Financial Crimes Unit	24	24	
Financial Intelligence Unit	11	8	- 3
Special Investigation Unit	28	18	- 10

¹ See also information relating to Recommendation 30 in sections 2.6 and 3.10

² See also information relating to Recommendation 32 in sections 2.6, 3.13, 6.3 – 6.5

Internal Investigation Unit	16	6	- 10
Legal Unit	5	3	- 2
Administration Unit	22	21	- 1
Information Technology Unit	7	3	- 4
	115	85	- 30

120. The FID performs a number of investigative functions including revenue enforcement and collection. The FIU falls under the umbrella of the FID and the unit is responsible for the receipt, analysis and dissemination of reports made to the “designated authority” pursuant to section 6 of the MLA.

121. The MLA requires two types of reporting, value based or threshold reporting in accordance with section 6(1) and suspicion based reporting in accordance with section 6(B).

122. The threshold reporting provision of the MLA (section 6 (1)) requires all financial institutions except exchange bureaus to report all cash transactions of US \$50,000 or more or an equivalent amount in any other currency. Exchange bureaus licensed by the BOJ are required to report all cash transactions of US \$8,000 or more or an equivalent amount in any other currency. Section 6B of the MLA mandates reporting of transactions that upon reasonable suspicion could constitute or be related to money laundering.

123. At the time of the mutual evaluation visit there were no reporting requirements with regard to CFT. However, terrorism prevention legislation in the form of the TPA was passed during the on-site visit and became law on June 6, 2005. Section 15 of the TPA establishes a reporting regime requiring foreign companies, financial institutions and any entity designated by the Minister to report on the ownership or control of the property of listed entities at least once every four months. Reports are to be submitted to the designated authority which the TPA stipulates to be the DPP or such other person as the Minister may designate by order. Additionally, section 16 of the TPA requires the prompt reporting to the designated authority of all complex, unusual or large transactions, which have no apparent economic or obviously lawful purpose. Given the role of the Chief Technical Director of the FID as the designated authority for the receipt of TTRs and STRs for money laundering, the appointment of a similar function for FT under the TPA is appropriate.

124. Received reports are manually keyed into a computer database for future analysis and if appropriate, dissemination. Whilst the seven units of the FID use networked computers, the FIU has a separate and secure network which is not accessible to other members of the FID. Statistics are maintained on STRs and TTRs submitted to the FID.

125. On the 29th July 2004 the Chief Technical Director of the FID issued an ‘advisory’ to all financial institutions outlining the procedure for reporting STR’s and TTR’s to the designated authority. The Advisory provides clear guidance on the legal requirements to report, the method of reporting, when and where to report to and the information required to be provided.

126. All financial institutions are instructed to use the form prescribed in the Schedule to the Money Laundering Regulations (MLR) for making both types of reports. STRs are identified by the insertion of a red ‘S’ at the top right hand corner of the form.

127. During the last quarter of 2004 the FID conducted three ‘educational programmes’ designed to increase awareness on the part of financial institutions of the anti-money laundering framework and reporting requirements. The Division is also developing a public awareness programme scheduled to be launched in mid 2005 to sensitize financial institutions of their obligations under the MLA and MLR. .

128. The FIU has access or can get access to Government information including motor vehicle records, passport information, criminal records, revenue information and company registration information. The FIU is currently in discussions to obtain a ‘live’ link to the new computerized

immigration system. This will allow real-time access to travel information concerning persons of interest to the unit. The FIU can also obtain information from the BOJ regarding financial information from financial institutions supervised by the BOJ as a result of the Chief Technical Director being nominated under section 34D of the BOJA.

129. The FIU has the ability to seek additional information in connection with reports received and can also use the investigative tools provided for in DOFPA . This Act does not provide investigative tools to investigate the offences rather the provisions of the Act allows for productions orders to be obtained for the purpose of seeking documents to identify, locate or quantify property of a convicted person or where a person is suspected of committing a prescribed offence, tainted property in relation to the offence or documents evidencing the transfer of such tainted property. Information can be obtained by ministerial order and used for evidential purposes.

130. The FIU has the ability to disseminate information for the purposes of conducting an investigation – section 6C of the MLA creates an offence if a person makes an ‘unauthorised’ disclosure of information and section 6C(2)(b) specifically provides for the disclosure of information for the purposes of facilitating an investigation. The FIU can disseminate this information to the JCF however, in practice most money laundering investigations are conducted by the Financial Crimes Unit of the FID..

131. The Chief Technical Director of the FID reports to the Minister of Finance and Planning through the Financial Secretary. During his tenure, the Chief Technical Director has not been exposed to any undue influence or interference from the political arm of Government and he has maintained his and the Division’s autonomy and operational independence. The FID has its own budget which is published annually in the Government’s Estimates of Expenditure.

132. Access to the information held by the FIU is restricted to members of the Unit. Their offices are located in a secure complex with controlled access. Card access points restrict access to the FID and further internal card access points restrict access to the FIU offices. The computer network operated by the FIU is not linked or connected to other computer networks within the FID. Within the unit, vaults and safes are used for the storage of files containing sensitive or confidential information.

133. The FID produces a quarterly report for the Financial Secretary and the Minister of Finance and Planning. FIU has not to date produced any public reports. They have produced guidance in the form of an Advisory to Financial Institutions on the reporting framework.

134. Financial institutions expressed a desire to have money laundering typologies provided to them, both from an international and local experience perspective. This can be achieved not only with the production of reports but with an increased interaction between members of the FIU and financial institutions. Whilst many of the financial institutions interviewed have training programs to enhance staff awareness of the anti-money laundering legal framework and the responsibilities of employees, they would welcome a greater participation on the part of the FIU in some of these training programs. It is not recommended that the FIU take over the training functions at these financial institution but they should become involved and have face to face participation.

135. Statistics are maintained by the FIU and when future reports, including an Annual Report, are produced they will no doubt include these statistics.

136. The FIU has discussed membership of the Egmont Group with the Canadian authorities who have agreed to sponsor Jamaica’s application. FINTRAC, Canada’s FIU will assist Jamaica in this regard and it is expected with the passage of the FIDA Jamaica’s FIU will fully meet the requirements for Egmont Group membership.

137. When enacted the FIDA will put on a statutory footing the exchange and sharing of information with other law enforcement and financial regulatory agencies both in Jamaica and overseas. Section 11(5) of the proposed Act provides exceptions to the secrecy provisions laid out in Section 11(1) to allow the

sharing of information to enable the Division to carry out its functions, in the interest of preventing or detecting crime, in the discharge of any international obligation or pursuant to an order of the Court.

RECOMMENDATION 30

:

138. The FIU is headed by a Director with ten staff positions reporting to the Director. The ten positions encompass secretarial support, managerial, analysis and intelligence functions. Eight of the eleven established positions are currently filled. All staff members are civilian staff.

139. The Financial Crimes Unit within the FID has been tasked with the conduct of investigating alleged money laundering offences and other serious financial crimes; tracing identifying and quantifying property for the purposes of forfeiture and the management of restrained and forfeited property. The Financial Crimes Unit has a staff compliment of twenty four (24) and is headed by a Director. Seven of the staff are police officers and the remaining, civilian staff.

140. Current staff of the FIU and the Financial Crimes Unit underwent a selection process following the transition of responsibilities from the DPP to the FIU. They are required to maintain high professional standards and are subject to the provisions of the Corruption (Prevention) Act 2000 and the Corruption (Prevention) Regulations 2002 which require the annual filing of a statutory declaration.

141. The Act was established to eliminate bribery and corruption within Government services and it makes provision for the investigation of those Government employees who declare assets that are not in keeping with their total emoluments. The Act is administered and enforced by the Commission for the Prevention of Corruption (“CPC”). To date the CPC has forwarded approximately two hundred (200) individual complaints to the DPP for non-compliance with the statutory declaration filing requirements. Proceedings have been instituted in a number of cases which resulted in compliance with the filing requirement prior to the hearing date. Other cases are under review.

142. Staff in the FIU and the Financial Crimes Unit within FID has received specialized training both locally and internationally. The FID has adopted the special training and certification under the Caribbean Anti-Money Laundering Programme (“CALP”) and to date eleven (11) employees have completed the training course, of which two (2) have been accredited. A third investigator has been certified by Hendon Detective College, Peel Centre in the UK. It is intended that the remaining employees involved in money laundering investigations, also receive training towards the accreditation process.

143. During the last quarter of 2004 four (4) members of the Financial Crimes Unit attended a Basic Financial Investigators Course conducted by the CALP at REDTRAC. Members of the unit’s Technical Team attended an Advanced Financial Investigators Course held in mid November. In addition, two members of the Financial Crimes Unit successfully completed a Criminal Intelligence Analysis Course held in Las Vegas, Nevada, USA and a member of the Financial Intelligence Unit participated in a Financial Manipulation Analysis (FMA) Course held in Miami, Florida, USA. FID personnel trained in AML and CFT measures conduct lecture courses at REDTRAC.

144. Whilst in the past some reliance has been placed on the CALP for the training of staff, it should be noted that the programmes operated by CALP have now come to an end. However, the Basic Investigators Course has been taken over by the Jamaican authorities and the Advance Financial Investigators Course by the authorities in Bardados.

RECOMMENDATION 32

145. The Financial Crimes Legislative Task Force was established for the purpose of reviewing the shortfalls identified by the relevant authorities in the current legislation which effectively hamper the investigation and prosecution of financial crimes and to recommend changes that would enhance the effectiveness of the authorities’ ability to achieve successful investigations, prosecutions and convictions,

as well as the ultimate confiscation of criminal proceeds. This has culminated in the drafting of a comprehensive Proceeds of Crime Bill which is designed to address identified shortfalls. It was anticipated that this Bill would be put before the legislature before the end of April 2005. When enacted, it is intended that the POCA will replace the current MLA and the DOFPA and will incorporate a more comprehensive regime for the investigation and prosecution of all serious crimes including the confiscation, freezing and forfeiture of assets. The statute also contains provisions to introduce the concept of civil forfeiture.

146. On a case by case basis, where an investigation is carried out in respect of money laundering, an analysis of the investigation, the prosecution and the result is undertaken by the Legal Unit of the FID in order that any difficulties or legal issues can be identified and addressed to ensure the success of future investigations.

147. The legislative framework for combating terrorist financing has only come into force in June 2005 and consequently no review of its effectiveness is possible at this time.

148. Since the appointment of the Chief Technical Director of the FID as the designated authority (June 2003), the FID has maintained statistics on the data received from reporting institutions under the provisions of the MLA.

149. The data up to December 31, 2004 is as follows: -

Threshold Transaction Reports (TTR's)

	2004:	2003:	2002:	2001:
Reports Received:	49,754	7,975	4,870	3,505
Reports Analysed:	42,300	7,975	4,870	3,505
Reports Disseminated:	23	20	12	-
Reports Investigated:	23	20	12	-

Suspicious Transaction Reports (STR's)

Reporting Institution:	2004:	2003:	2002:	2001:	Totals:
Commercial Bank	175	51	114	73	413
Merchant Bank	1	-	-	1	2
Insurance Security & Investment Dealers	9	10	-	-	19
Building Society	34	116	92	1	243
Credit Union	3	3	-	12	18
Cambios	9	2	-	-	11
Totals:	231	182	206	87	706
Reports Analysed:	231	10	-	-	241
Disseminated for Investigation:	12	15	20	16	63
Reports Investigated:	12	15	20	16	63

150 The followings dispositions resulted from the twelve (12) reports investigated during 2004: -

Investigation in progress	4
Legitimate transaction - closed	2
Predicate offence established – ongoing	3
Case statements being taken	1
Report related to matters already reported	2

Selected Cases/Offences Investigated by the Financial Crimes Unit:

Main Offence:	2004:	2003:	2002:	2001:
Firearms Act	-	-	-	2
Drug Trafficking	6	6	7	4
Fraud	9	5	4	-
Tax Evasion	4	4	1	-
Unlawful Possession of Property	7	8	2	-
Money Laundering	3	-	-	-
Cross Border Movement of Funds	-	1	-	-
Suspicious Transaction Reports	10	1	-	-
Threshold Transaction Reports	13	1	-	-
Financial Profiling	20	21	1	-
Co-operation	14	-	1	-
Mutual Legal Assistance Treaty	6	3	-	-

151 The statistics provided and outlined above do not reflect the nine money laundering cases currently either before the Court or with the DPP for review. This is due to the fact that the majority of cases involve defendants laundering the proceeds of their original criminal offences. Consequently, the main offence/investigation will be reported under the original offence.

Summary of Cases & Status of Offences Investigated by the Financial Crimes Unit:

	2004:	2003:	2002:	2001:
Total Cases	95	51	16	7
Closed	11	12	4	2
Work in Progress	64	18	8	3
To Be Assigned	10	0	0	0
Discontinued	1	5	2	0
Referred for Prosecution	9	16	2	2
Trial in Progress	5	9	0	1
Cases Dismissed	1	1	0	0
Conviction	1	2	0	0
Conviction & Forfeiture	2	3	1	1
Conviction & Detention	1	1	1	0
Mutual Legal Assistance Treaty Requests	9	3	0	0
Co-operation	16	0	0	0

152 Details of the seven forfeiture cases are as follows: -

2001 forfeitures – 1: Vehicle used during commission of offence

2002 forfeitures – 1: Cash US\$119,900 - unlawful possession of cash contrary to The Unlawful Possession of Property Act

2003 forfeitures – 3: Cash US\$39,900 & US\$69,900 & US\$57,090 - unlawful possession of cash contrary to The Unlawful Possession of Property Act

2004 forfeitures – 2: Cash US\$88,400 & £11,935 + US\$15,000 + J\$4,900 - unlawful possession of cash contrary to The Unlawful Possession of Property Act

153 In addition to the statistics provided above, the DPP, the Jamaica Defence Force Coast Guard, the Fraud Squad and the Narcotics Branch, maintain statistics on frozen, seized and confiscated assets. Whilst this is not an ideal situation, additional procedures are being put in place by the FID to centralize all records relating to property frozen, seized and confiscated.

2.5.2 *Recommendations and Comments*

154 Jamaica’s FIU, in its current form, was established in mid 2003 and much hard work has gone into developing it to meet the FATF standard. General feedback from the financial institutions interviewed was positive and they expressed a desire to have FIU involvement in their training programmes and also more feedback, where possible, on the outcomes of reports made. It must also be said that the current AML/CFT legislative framework is not as comprehensive as it should be which does on occasion hamper investigative work in this area. The proposed FIDA which will put the FIU on a statutory footing should be enacted as soon as possible.

155 Whilst funding and resources for the various agencies involved in the AML effort are currently adequate, with the passage of more comprehensive and also additional legislation, it will be prudent to review these staffing levels. In particular the FIU – under the Proceeds of Crime Bill it is proposed that the threshold reporting levels be reduced. Last year at the current reporting levels the unit received in excess of 49,000 TTR’s – a number which increased five fold from the previous year. If the current manual data inputting system remains in place, staff resources will have to be looked at. An area to consider in this regard would be an electronic reporting system. The FIU stated that they are currently examining this possibility. Given that Jamaica’s economy is very ‘cash based’ TTR’s can play an important role in the AML framework if they are managed properly, otherwise they can become a burden on resources with no real benefit.

156 Secondly, with the passage of the TPA either a whole new structure will have to be put into place or the current structure enhanced in terms of staffing, financing and the provision of technical resources. Jamaica has recently undertaken a complete review of its AML/CFT regime recognising that some weaknesses existed, particularly with respect to the legislative framework in the case of AML.

157 Statistics are now being produced by the FID. However, other agencies or bodies have similar responsibilities regarding the forfeiture of property or the investigation of offences. These figures are not consolidated. This deficiency has been recognised and as the FID develops and the legislative framework put in place it is intended that they will become the centralized body responsible for recording all of the statistics required. This will allow for the production of more complete statistics on all the required areas. The lack of consolidated statistics is a minor shortcoming which is being addressed.

2.5.3 *Compliance with Recommendations 26, 30 & 32*

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	LC:	Jamaica’s FIU, in its current form, was established in mid 2004 and much hard work has gone into developing it to meet the FATF standard. Egmont membership has not yet been achieved but it should be noted efforts are well underway to obtain it. The current AML/CFT legislative framework is not as comprehensive as it should be which does on occasion hamper investigative work in this area and it should be noted - the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them.
R.30	LC:	Whilst funding and resources for the various agencies involved in the AML

		<p>effort are currently adequate, with the passage of more comprehensive and also additional legislation, it will be prudent to review these budgets and staffing levels. In particular the FIU - under the Proceeds of Crime Bill, it is proposed that the threshold reporting levels be reduced. Last year at the current reporting levels the unit received in excess of 49,000 TTR's – a number which increased five fold from the previous year. If the current manual data inputting system remains in place staff resources will have to be looked at. An electronic reporting system may go some way to addressing staffing levels in this area.</p> <p>The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. A whole new 'TPA' structure will have to be put into place or the current structure enhanced in terms of staffing, financing and the provision of technical resources now that the legislation is in effect.</p>
R.32	LC:	<p>Statistics are maintained with regard to the AML legislation. Jamaica has recently undertaken a complete review of its AML/CFT regime having recognised that some weaknesses existed, particularly with respect to the legislative framework in the case of AML and the lack of a legislative framework in the case of CFT. To this end, the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation and various other legislative initiatives are underway such as a POCA. Many of the statistics are now being produced by the FID. However, other agencies or bodies have similar responsibilities regarding the forfeiture of property or the investigation of offences and these figures are not consolidated. This deficiency has been recognised and as the FID develops and the legislative framework put in place it is intended that they will become the centralized body responsible for recording all of the statistics required. This will allow for the production of more complete statistics on all the required areas. The lack of consolidated statistics is a minor shortcoming which is being addressed.</p>

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30³ & 32⁴)

2.6.1 Description and Analysis

RECOMMENDATION 27

158. The Financial Crimes Unit within the FID has been given the responsibility for the investigation of money laundering offences by the Minister of Finance through the designation of the Chief Technical Director as the 'designated authority' under the MLA.

159. The enactment of the TPA provides for combating the financing of terrorism. The Act contains provisions for the making of suspicious transaction reports and reports regarding the holding of any property owned or controlled by a listed entity to the 'designated authority'. The Act currently provides that the designated authority in this case is the DPP or such other person as the Minister may designate by order.

³ See also information relating to Recommendation 30 in sections 2.5 and 3.10

⁴ See also information relating to Recommendation 32 in sections 2.5, 3.13 and 6.3 – 6.5

160. The OCID of the JCF is also expected to carry out investigations under the TPA and the proposed POCA. The FID is expected to be given the responsibility for the areas of asset forfeiture and management.

161. The Government of Jamaica is proposing, in the near future, to enact a FIDA to give the FID a legislated mandate and formal recognition of its functions in the anti-money laundering / combating the financing of terrorism arena. Given that the FID is a separate and distinct body from the JCF it is possible that a duplication of effort maybe encountered with both bodies having a responsibility and role to play in the investigation of AML/CFT matters. One specialized unit/body properly resourced and financed would avoid any unnecessary duplication or overlap.

162. During the mutual evaluation interviews conducted with financial institutions, favourable comment was made regarding the transition from the DPP to the FID of the role and responsibility of the 'designated authority'. Favourable comment was made regarding enhanced interaction with the FID leading to a greater awareness of Jamaica's anti-money laundering programmes and measures. The FID and more particularly the FIU developed a higher profile for itself as the 'designated authority'. This will no doubt lead to greater compliance on the part of financial institutions with Jamaica's anti-money laundering regime.

163. Having said that, it may be appropriate for the Minister, under the TPA to appoint as the 'designated authority' the Chief Technical Director of the FID. The DPP has a very clear role to play within Jamaica's criminal justice system which requires very specific training and skills. The role of the 'designated authority' requires a different skill set which is already in place and is being developed further at the FID.

164. The MLA does not specifically make provision for the 'designated authority' or a police officer to consent to a financial institution continuing a transaction or business relationship once they have made a STR. However, administratively the FID does request financial institutions to continue with transactions / customer relationships where it is appropriate. Guidance notes issued by the BOJ address this issue and have stated that the continued association or business relationship between a BOJ regulated entity and a customer in respect of whom suspicious transactions reports are made, will expose the entity to the possibility of regulatory sanction. The guidelines go on to state that entities are directed to consider the legal termination of their business relationship with the customer so as to minimize the legal and reputation risk to which entities may be exposed. The guidelines also state that an exception can be made where the 'designated authority' requests the financial institution to continue the business relationship to aid an ongoing investigation.

165. Terminating a business relationship can lead to the risk of 'tipping off' and financial institutions did express some concern regarding this issue. This matter needs to be addressed from a legislative stand point and provisions presently included in the proposed POCA cover this specific point.

166. Statute law in Jamaica does not expressly deal with controlled delivery or undercover operations. These are dealt with under the common law. Wiretapping legislation is in effect by virtue of The Interception of Communications Act. While 'evidence' gathered as a result of such activities is not used for evidential purposes in Court proceedings, it is used for intelligence purposes.

167. Where necessary special investigative techniques form an integral part of investigations conducted by the FID. Additionally, in practice, the police do engage in a wide range of investigative techniques including undercover operations.

168. More recently Jamaica has formed specialized units specifically to address the increasing incidents of organized crime. These units include, the OCID and most recently Operation Kingfish (which was established in October 2004).

169. Operation Kingfish is a significant joint operation led by the Assistant Commissioner of Police and involves members of the JCF, the JDF and overseas agencies from the United Kingdom, the USA

and Canada. Operation Kingfish was launched in late 2004 following an escalation in crime particularly drug related crime and homicides – amongst other things, it has resulted in the arrest and detention of five individuals who were sought for extradition to the United Kingdom or the USA.

170. Jamaica has also entered into formal and informal cooperation arrangements with other states with a view to enhancing law enforcement efforts to suppress the illicit traffic in narcotic drugs and psychotropic substances, for example the Agreement Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking between the Government of Jamaica and the Government of the United States, May 6, 1997 (“Ship-rider Agreement”). Additionally, in 2002 the Maritime and Police Cooperation Agreements was signed between Jamaica’s Ministry of National Security and Columbia’s Ministry of National Defence.

RECOMMENDATION 28

171 Sections 20, 38 and 44 of DOFPA provide for the obtaining of search warrants, production orders or monitoring orders respectively. These provisions allow law enforcement authorities to search for, identify, locate or quantify property. The provisions of sections 20 and 38 relate to ‘tainted property’ which are not necessarily for the gathering of evidence of the commission of an offence. Monitoring orders are broader in scope.

172 The DPP has powers to obtain monitoring orders under section 44 of DOFPA. The FID has the authority to receive threshold and suspicious transaction reports under sections 6 and 6B of MLA. A monitoring order under DOFPA may be granted to direct a financial institution to disclose information or produce documents about transactions conducted through an account held by a particular person with the institution. This order may be granted if there are reasonable grounds for suspecting that the account holder has committed, was involved in or about to commit a predicate or money laundering offence, or if he has benefited or about to benefit from the commission of such an offence.

173 Sections 38 to 42 of DOFPA provides for the police to obtain production orders to require specific persons to produce documents relevant to identifying and tracing tainted property and section 43 allows for search warrants for the same documents. Under section 20 – 26 of the Act, the police can obtain search warrants to enter premises to locate tainted property. The DPP also has the power to apply for and obtain monitoring orders under section 8 of the MLA.

174 To date the DPP has not sought this type of order under either piece of legislation – it should be noted that on two occasions law enforcement authorities have attempted to put a monitoring order into effect but the grounds for the order were deemed to have been insufficient. Witness statements can be obtained in connection with the investigation and prosecution of money laundering offences and predicate offences. Similar capability is provided for in the TPA.

RECOMMENDATION 30

175. The Ministries of National Security and Justice have responsibility for the investigation of narcotics offences and this is carried out by the Narcotics Division of the JCF. The Narcotics Division is headed by a Senior Superintendent of Police and comprises two hundred (200) staff members, including forensic analysts, information technology personnel, investigators and intelligence coordinators.

176. The JCF is established by virtue of the Constabulary Force Act, which provides for a full staff complement of approximately 8,500 posts of which 7,900 posts (94.5%) are currently filled. The principal mandate of the JCF is the prevention and detection of all crimes including money laundering and predicate offences under the MLA. Technical and other resources are funded from the National Budget and managed by the Finance Branch of the JCF, with the Commissioner of Police being the chief financial officer. Designated units and sections of the JCF have been provided with specialized training in investigation and identification of predicate offences under the MLA and DOFPA.

177. The Marine Unit of the JCF has a staff complement of eighty two (82) persons spread over six

stations – the majority of the staff being stationed at the Marion Headquarters. The activities of the unit include coastline patrols with particular emphasis on drug and firearms interdiction. Specific security tasking of potential high risk vessels, search and rescue and joint operations with the Coast Guard are also conducted.

178. The Marine Unit has two (2) vessels in service at the Marion Headquarters and one (1) vessel in each of the five other stations. One of the two vessels' at the Marion Headquarters is a 35 footer which is used for patrolling up to forty miles off the coastline. Budgetary constraints have had an impact on the unit's ability to maintain its vessels in serviceable condition which in turn impacts on its ability to provide full coverage.

179. The Jamaica Constabulary Force OCID will be given the responsibility for the investigation of terrorist offences under the TPA. Reports required to be made under the TPA will be made to the DPP. The responsibility for the investigation of terrorist financing offences will rest with the FID.

180. The DPP has the constitutional responsibility for prosecution of all crimes in Jamaica. The DPP is placing particular focus on the issue of "white-collar" crime and in this regard the Department has identified 6 prosecutors who will be overseeing this area of commercial crime litigation and mutual legal assistance requests. However, as a result of other responsibilities only one of these prosecutors works full time on anti-money laundering matters.

181. Prosecutors at the DPP work very closely with attorneys from the FID in case consultation and preparation. The two offices also work together during the prosecution of any cases prepared by the FID.

182. The Jamaica Defence Force Coast Guard has an establishment of some 200 including civilian and military personnel. The current structure is being reviewed to increase the current work force as well as funds allocated to meet the added thrust and responsibilities of the Coast Guard. To this end a strategic defence review is currently underway and this will inform the structure of the force going forward. There will be an increase in the size and structure of the Coast Guard.

183. Members of the JCF are subject to the provisions of the Corruption (Prevention) Act 2000 and the Corruption (Prevention) Regulations. The DPP commences approximately two prosecutions a week involving police officers who it is alleged took 'bribes' in connection with traffic stops or traffic offences. The mutual evaluation team was also provided with figures showing that 203 members of the JCF are either on suspension or interdiction from duty as a result of allegations ranging from assaults to neglect of duty. The figure represents approximately 2.5% of the JCF.

184. Some of the interviewees did express general concerns regarding the confidence they have in the JCF's ability to perform its functions impartially and with integrity. The Commissioner of Police spoke on this topic recently, stating that one of the biggest challenges facing the JCF is improving the quality of recruits. The Commissioner said that during the he JCF's mass recruiting campaign in the mid 1990's to increase the establishment from 7,000 to its current 8,500 some officers may have slipped into the JCF who would have ordinarily been excluded.

185. The Commissioner stated that the Force would intensify its monitoring of new recruits during the first two years of their training to ensure they are suitable for the job – this is clearly a move in the right direction. The police must have the confidence of the public they serve in order to perform their functions in all aspects of policing including AML/CFT. The level and quality of STRs is dependant on the financial institutions having confidence in the ability of law enforcement agencies to perform their functions in a professional manner.

186. Selected personnel in the JCF have been provided training in the areas of money laundering offences and investigations thereof, related laws and predicate offences as well as typology techniques to facilitate prosecutions. Financial investigators in the JCF have also benefited from special training provided by CALP, REDTRAC, FBI, and from basic CIB In-Service training courses.

187. Training has been provided for several prosecutors by CALP. The last major training for officers in the DPP's Office occurred in October 2003 and February 2004 where a total of 4 members received intensive training in anti-money laundering and forfeiture related topics. The one prosecutor dedicated full time to anti-money laundering and white collar crime has also spent a period of time training at a private chambers in London, England. This prosecutor is due to return to the chambers for additional training.

188. It should be noted that the programmes operated by CALP have now come to an end. Alternative training programmes or initiatives will have to be developed to fill this void.

Additional elements

189 The CALP also provided a two day training seminar for the judiciary. The Justice Training Institute was established in July 1997 to design, develop, organize, and co-ordinate training programmes for personnel employed in the various agencies in the public and private sector that serve the justice system.

190 The Institute, in consultation with the Chief Justice caters for the need of the judiciary by organizing and coordinating training programmes to satisfy their requisite needs. The Institute also has responsibility for the training of Justices of the Peace. Additionally it may undertake, participate in or commission research to areas relevant to the administration of justice and publish this research.

RECOMMENDATION 32

191 At the date of the mutual evaluation visit the DPP was involved in the prosecution of five cases involving money laundering charges – these cases were before the Courts and trial dates had been set. Four other cases are under review. On June 15, 2005, the DPP obtain the first conviction on money laundering.

192 The team was informed that the majority of these cases involve defendants charged with laundering the proceeds of predicate offences which they themselves are alleged to have committed. It was stated that the prosecution will try and prove the predicate offences during the course of the money laundering trials against the accused. These will be the first such prosecutions in Jamaica.

193 Predicate offences on which a money laundering charge can be based is restricted to those "specified offences" as listed in the MLA. The list of specified offences is not an 'all crimes list' and specific mention is made of drug and firearms related offences however, item 5 does include "any offence involving fraud, dishonesty or corruption". This is very broad terminology and would appear to capture many criminal offences but the scope of this terminology had not been tested in the Courts at the date of the mutual evaluation. However, the first conviction on money laundering obtained on June 15, 2005 was based on predicate offences of falsification of accounts and larceny.

194 Prosecuting a money laundering case also involves proving the defendant knew that property is derived or realized directly, or indirectly from the commission of a specified offence. A very difficult evidential burden is placed on the prosecution in having to prove direct knowledge, although this requirement is in keeping with the current FATF Recommendation.

195 These prosecutions are to be conducted before the Resident Magistrate's Court where five years imprisonment is the maximum sentence the Court can impose for an offence. It was explained that the rationale for this is that since the late 1980's most drug cases are heard before a Resident Magistrate as opposed to a jury as a result of concerns over possible 'jury tampering' or intimidation of jurors. The Resident Magistrate's Court is also preferred in long cases involving a lot of documentary evidence such as fraud and money laundering due to the challenges attendant on long trials involving a jury.

196 The decision not to use the jury system to its fullest raises the question of whether this is the best

way to address the problem and whether other solutions such as a panel of three or five Judges sitting together or better protection for jury members or increased penalties for ‘jury tampering’ have been considered.

197 The DPP is responsible for making application before the court for restraining orders – it was noted that such restraining orders can only be obtained after a person has been convicted or charged with an offence (sections 27 & 28 of DOFPA). Although this was said not to be a problem, a case was quoted whereby a defendant was charged with an offence after which funds in a bank account were released to a third party, at this point a restraining order had to be obtained in respect of the released funds. This situation might have been avoided if the prosecution had the ability to put a restraining order in place prior to charge.

198 To date the DPP has not exercised his powers under the provisions of section 8 of the MLA to make application to a Judge in Chambers for a monitoring order. Law enforcement authorities have requested that such orders be applied for but the evidence supporting the request was not thought to be strong enough to warrant making the application.

2.6.2 *Recommendations and Comments*

199 The Financial Crimes Unit within the FID has primary responsibility for the investigation of money laundering offences along with the JCF which has the primary responsibility to enforce all the criminal statutes in place in Jamaica. It is proposed that the OCID of the JCF will have responsibility for the investigation of terrorism offences under the TPA. The DPP or such other person as the Minister may designate by order will be responsible for the receipt of disclosures made under this Act. It has been recommended that the Minister consider appointing the Chief Technical Director of the FID as the “designated authority” for the reasons stated. In addition, it would avoid two separate agencies having similar responsibilities and possibly having to implement two systems running parallel with one another.

200 Evidence gathering provisions are in place in the MLA and DOFPA however, they only relate to money laundering and not terrorism related matters. The evidence gathering powers relating to the financing of terrorism are contained in the TPA. To date not one monitoring order application has been made – it is difficult to assess whether this is a difficulty with the legislation or a deficiency in the investigative process. When the POCA is enacted, it will implement a more robust legislative framework providing for wider investigative powers particularly with respect to AML matters, and no doubt monitoring orders and other orders compelling the production of records, will be used more frequently.

2.6.3 *Compliance with Recommendation 27, 28, 30 & 32*

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC:	The TPA became operative in Jamaica on the 6 th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. The office of the DPP or such other person as the Minister may designate by order will be responsible for the receipt of disclosures made under this Act. It has been recommended that the Minister consider appointing the Chief Technical Director of the FID as the “designated authority” for the reasons stated.
R.28	LC:	Evidence gathering provisions are in place in the MLA and DOFPA. Similar provisions are contained in the TPA. The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them.

		As at the time of the on-site mutual evaluation no monitoring order application had been made to the Court – it is difficult to assess whether this is a difficulty with the legislation or a deficiency in the investigative process. It should be noted that when POCA is enacted, it will implement a more robust legislative framework providing for wider investigative powers particularly with respect to AML matters, and no doubt monitoring and other orders compelling the production of records, will be used more frequently.
R.30	LC:	<p>Whilst funding and resources for the various agencies involved in the AML effort are currently adequate, with the passage of more comprehensive and also additional legislation, it will be prudent to review these budgets and staffing levels. In particular the FIU - under the Proceeds of Crime Bill, it is proposed that the threshold reporting levels be reduced. Last year at the current reporting levels the unit received in excess of 49,000 TTR's – a number which increased five fold from the previous year. If the current manual data inputting system remains in place staff resources will have to be looked at. An electronic reporting system may go some way to addressing staffing levels in this area.</p> <p>The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. A whole new 'TPA' structure will have to be put into place or the current structure enhanced in terms of staffing, financing and the provision of technical resources now that the legislation is in effect.</p>
R.32	LC:	<p>Statistics on ML cases are maintained by the DPP. Jamaica has recently undertaken a complete review of its AML/CFT regime having recognised that some weaknesses existed, particularly with respect to the legislative framework in the case of AML and the lack of a legislative framework in the case of CFT. To this end, the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation and various other legislative initiatives are underway such as a POCA. Many of the statistics are now being produced by the FID. However, other agencies or bodies have similar responsibilities regarding the forfeiture of property or the investigation of offences and these figures are not consolidated. This deficiency has been recognised and as the FID develops and the legislative framework put in place it is intended that they will become the centralized body responsible for recording all of the statistics required. This will allow for the production of more complete statistics on all the required areas. The lack of consolidated statistics is a minor shortcoming which is being addressed.</p>

3 Preventive Measures - Financial Institutions

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

3.1.1 Description

201 Jamaica has not made any general exception from the application of the AML/CFT requirements. However, it was seen that since the definition of financial institutions in the MLA did not

completely agree with that given in the 2004 Methodology, certain institutions are excluded from the application of AML/CFT regime; for example, money lenders, pawnshops and insurance brokers. The authorities indicated that while there was a move to bring the moneylenders and insurance brokers under the remit of the AML/CFT regime, pawnshops were very limited in number and did not constitute a major area of risk. No information about the number of pawnshops and the amount of business conducted by them was provided.

202 In addition, Regulation 7 of the MLR (MLR 7) permits financial institutions not to obtain evidence of the identity of an applicant for business in certain cases, which is not the same as applying simplified or reduced customer due diligence (CDD). MLR 6 of the MLR permits simplified or reduced CDD measures in case of an applicant for business acting on behalf of a principal, if such applicant is in a business regulated by a foreign regulatory authority and based or incorporated in, or formed under the law of, a country which has in force provisions at least equivalent to those of the MLA. In such cases, the applicant for business has to give a written assurance that evidence of the identity of the principal has been obtained and recorded under procedures maintained by the applicant for business.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

RECOMMENDATION. 5

203 MLR 11 prohibits financial institutions (FIs) from maintaining numbered accounts, without specifically prohibiting anonymous accounts or accounts in fictitious names; such prohibition has, however, been made in the BOJ AML/CFT GN (Guidance Note 93, page 53) and FSC AML/CFT GL of February 2005 (section V), of which a court has to take account while determining compliance with MLR (MLR 3(3)). However, inasmuch as the requirement to prohibit the keeping of anonymous accounts or accounts in fictitious names is a “basic obligation” that has to be provided in the law or regulations, there is only partial compliance.. This deficiency is to be addressed in the proposed Money Laundering (Change of Name and Amendment) Bill.

204 Regulation 3 of the MLR prohibits a business relationship or a one-off transaction without carrying out the required identification procedure. There is no mention of any threshold or exemptions.. The MLR, however, does not specifically require undertaking of the CDD measures when there is doubt about the veracity or adequacy of previously obtained customer identification data. This issue is however dealt with in the BOJ AML/CFT GN, which outlines the requirements for ongoing due diligence and the need for periodic review of identification information. MLR 3(3) expressly provides that a court shall take into account the guidance issued by a supervisory authority in making its determination that a financial institution has met its statutory obligations. The examiners have received advice from Jamaica’s Attorney General’s Office which indicates that while the guidance issued by both supervisory bodies do not have the force of law “per se”, MLR 3(3) makes compliance with guidance notes from both agencies compulsory.

205 MLR 3(1) requires any person carrying on a financial business to follow the identification procedures in accordance with MLR 4 and 6. MLR 4 (1) requires obtaining from an applicant for business concerning any particular business relationship or one-off transaction satisfactory evidence of the identity, as soon as is reasonably practicable after contact is first made; or take such measures as will produce satisfactory evidence of his identity; and where satisfactory evidence of identity is not obtained the business relationship or one-off transaction in question shall not proceed any further. There is no requirement for the financial institution to consider making a STR when satisfactory evidence or verification of identity is not obtained. In such cases, institutions are required not to proceed with the transaction under MLR 3.

206 MLR 4(2) provides that where the applicant for business is a body corporate, evidence

that reasonable due diligence procedures concerning the identification of the body corporate have been carried out shall be sufficient. MLR 6 requires, in case an applicant for business is or appears to be acting otherwise than as principal, reasonable measures to be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting.

207 Para 48 of the BOJ's AML/CFT GN prescribes that positive identification should be obtained from documents issued by reputable sources such as a valid passport, drivers licence, a valid voter's identification card with a photograph or a signed (known) employer identity card bearing a photograph and signature. Paragraph 49 stipulates that the name and permanent address of a customer should be verified by an independent source, other than those provided by the customer. . Similar requirements have been laid down in the FSC GL on AML/CFT.

208 MLR 8 provides that evidence of identity is satisfactory if it is reasonably capable of establishing the applicant's identity and the person who obtains the evidence is reasonably satisfied, in accordance with the procedures prescribed by the Regulations that such evidence establishes the applicant's identity. However, the MLR does not lay down the identification requirements for legal arrangements.

209 MLR 4(2) requires that if the applicant for business is a body corporate, evidence that reasonable due diligence procedures concerning the identification of the body corporate have been carried out shall be sufficient; while this would seem to meet the requirement in respect of legal persons, there is no mention of legal arrangements. Similarly, there is no requirement in the MLA/ MLR for the FIs to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person. The authorities do however point out that the obligation for obtaining proper identification information applies to all applicants for business and that therefore this would capture any applicant whether acting for his own purpose or on behalf of another person. In addition the BOJ GN does provide further advice on the particulars to be obtained in such a case (inclusive of the authorization, all trustees, beneficiaries or settlers involved).

210 MLR 6 states that where an applicant for business is or appears to be acting otherwise than as principal, reasonable measures should be taken for the purpose of establishing the identity of any person on whose behalf the applicant for business is acting. It further provides that in determining what constitutes reasonable measures in any particular case, regard shall be had to all the circumstances of the case and, in particular, to the best practice which, for the time being, is followed in the relevant field of business and is applicable to those circumstances. MLR 8 states that the evidence of identity is satisfactory if-(a) it is reasonably capable of establishing that the applicant is the person he claims to be; and (b) the person who obtains the evidence is reasonably satisfied, in accordance with the procedures maintained under these Regulations in relation to the relevant financial business concerned, that such evidence establishes the fact that the applicant is the person he claims to be.

211 Paragraph 50 of the BOJ GN states that financial institutions should be vigilant when dealing with corporate vehicles as they may be used as a method of ensuring anonymity and in all cases should understand the structure of the organization, the source of funds and the beneficial owners and controllers. Similar provisions have been made in Part V of the FSC GL. However, the laws or regulations do not specifically provide for determination of the natural persons that ultimately own or control the legal persons or legal arrangements (MLR 6 would not appear to address this issue fully as it speaks of identifying any person-not necessarily the natural person- on whose behalf the applicant for business is acting. As a result, it may be possible for a natural person to hide behind several layers of legal persons or arrangements.).

212 Paragraph 44 of BOJ GN states that KYC policies and procedures should address the processes for the identification and verification of the nature and purpose of a customer's business in order for the financial institution to have a basis for determining whether a transaction is unusual or suspicious, or fits the norm expected of such a business.

213 The existing laws and regulations do not contain a provision for conducting ongoing due

diligence on the business relationship. While, such requirement has been included in paragraph 44 of BOJ GN and Part V of FSC GL, it is not a basic obligation provided for in the law or regulation.

214 The BOJ GN defines higher risk customers. Paragraph 75 requires financial institutions to develop graduated “know your customer” policies and procedures for higher-risk customers that go beyond the basic information-gathering requirements for average/low risk clients. This would include a detailed description of the types of customers that are likely to pose a higher than average risk to a financial institution based on assessment of certain factors including customers’ background, country of origin, important public or high profile position/(s) held, linked accounts, business activities or other risk indicators. Paragraph 76 requires that the accounts for high-risk customers must not be opened unless senior management approval is obtained. Further, financial institutions should ensure that there are adequate management information systems to provide timely and comprehensive management reports to facilitate effective monitoring of high-risk client accounts by senior management. The BOJ GN identifies the categories of clients and situations that should be subject to enhanced due diligence policies. These include private banking, politically exposed persons (PEPs), non face to face customers etc. Part W of FSC GL also deals with PEPs. The implementation of these requirements is yet to be fully tested, especially in respect of the licensees of the FSC, whose guidelines were issued only recently (in February 2005) and which has not completed onsite examination for insurance companies.

215 The BOJ GN (paragraph 72) permits reliance on introduced business, subject to the introducer meeting certain conditions and the ultimate responsibility for customer identification remaining with the financial institution. Paragraph 74 of the BOJ GN permits reduced CDD in case of pooled accounts introduced by professional intermediaries, subject to the intermediary meeting certain conditions, including verifiability of the soundness of its CDD system and process.

216 MLR 6 permits simplified or reduced CDD measures to be taken in case of an applicant for business acting on behalf of a principal. The regulation requires that such applicant should be in a business regulated by a foreign regulatory authority and based or incorporated in, or formed under the law of, a country in which there are in force provisions at least equivalent to those mentioned in the MLA. In such cases, the applicant for business has to give a written assurance to the effect that evidence of the identity of the principal has been obtained and recorded under procedures maintained by the applicant for business. Regulation 6 further states that in establishing such identity regard shall be had in particular to the best practice that is followed in the relevant field of business.

217 MLR 7 (2) states that the exemption from CDD measures will not apply to cases where any person handling the transaction knows or suspects that the applicant for business is engaged in money laundering or that the transaction is carried out on behalf of another person engaged in money laundering. Financial institutions are permitted to apply simplified or reduced CDD measures only in conditions specified in the BOJ GN and the FSC GL.

218 As stated above, it is not permitted to commence a business relationship unless the identity has been established. Paragraph 46 of BOJ GN requires financial institutions to undertake regular reviews of all existing client identification records under certain circumstances including when, during the course of the business relationship, doubt arises regarding the true identity of the client. However there is no requirement for financial institutions to terminate existing business relationships once the financial institution is not able to obtain satisfactory evidence or verification of the identity of customers/beneficial owners and to consider making STR in such cases.

219 Paragraph 46 of BOJ GN requires that the financial institutions should undertake regular reviews of all existing client identification records to ensure that they remain up-to-date and relevant and that the documents establishing the relationship with the financial institution should include the requirement for customer notification of any change in identification information. Regular reviews of existing client identification records would be necessary under the following circumstances: upon the execution of a significant transaction; upon material changes to customer documentation standards; when

there is material change in the manner in which the account is operated; when, during the course of the business relationship, doubt arises regarding the true identity of the client; when there is any change in the ownership or control of a corporate customer; where the financial institution becomes aware at anytime that it lacks sufficient information about an existing customer.

220 Paragraph 93 of the BOJ GN prohibits anonymous or numbered accounts. Paragraph 46 of the BOJ GN stipulates regular reviews of all client identification records to ensure that they remain up to date and relevant.

221 Both the BOJ and the FSC have started conducting on site examinations to ensure compliance with the CDD requirements, as stipulated in their respective guidelines. As part of the examination process the policies and procedures manuals are reviewed to ensure this requirement is communicated to all staff and therefore captured in the day to day activities of the entity. The on-site examination also involves review of client account opening forms.

RECOMMENDATION 6

222 Both the BOJ GN (paragraph 79) and the FSC GL (part W) require enhanced measures and procedures in place for establishing business relationship with foreign PEPs. These include:

- obtaining all the relevant client identification information as would be required for any other client prior to establishing the business relationship;
- taking the decision to open an account for a PEP at the senior management level;
- structuring the information gathering forms/procedures to reasonably allow the financial institution to ascertain whether a client is a PEP, and to identify persons and companies clearly related to or connected with the PEP.
- accessing the publicly available information to assist in the determination as to whether or not an individual is a PEP;

223 The BOJ GN requires in addition to the above, investigating and determining the source of funds prior to opening an account, while the GL requires the determination of the source of wealth. Neither document stipulates both obligations together as required under Recommendation 6. The banking supervisors do state however that the term “source of funds” is interpreted to include the source of a PEPs wealth.

224 The BOJ GN also provides that following the commencement of banking relationships, there should be:

- regular review of customer identification records to ensure they are kept current; and
- ongoing monitoring of PEP accounts.

225 The BOJ GN further provides that the abovementioned procedures should also be followed for the existing_client base to ensure that all current PEPs have been so identified and remain subject to enhanced customer due diligence processes. Similarly, part W of the FSC GL requires all regulated entities to apply additional oversight to PEP accounts.

226 The above requirements have not been extended (which is optional but desirable under the FATF framework) to PEPS who hold prominent public functions domestically. Jamaica has not signed the 2003 United Nations Convention against Corruption But the authorities indicated that they were moving towards signing it with a view to ratification.

RECOMMENDATION 7

227 Para 82 of the BOJ GN states that the financial institutions must apply appropriate levels of due diligence by gathering sufficient information from and performing enhanced due diligence processes on respondent banks prior to setting up correspondent accounts. This should, inter alia include: -

- Obtaining authenticated/certified copies of Certificates of Incorporation and Articles of

Association (and any other company documents to show Registration of the institution within its identified jurisdiction of residence);

- Obtaining authenticated/certified copies of banking licences or similar authorization documents, as well as any additional licences needed to deal in foreign exchange;
- Determining the supervisory authority which has oversight responsibility for the respondent bank;
- Determining the ownership of the financial institution;
- Obtaining details of respondent bank's board and management composition;
- Determining the location and major activities of the financial institution;
- Obtaining details regarding the group structure within which the respondent bank may fall, as well as any subsidiaries it may have;
- Obtaining proof of its years of operation, along with access to its audited financial statements (5 years if possible);
- Information as to its external auditors;
- Ascertaining whether the bank has established and implemented sound customer due diligence, anti-money laundering and anti-terrorism financing policies and strategies and appointed a Compliance Officer (at management level), inclusive of obtaining a copy of its AML/CFT policy and guidelines;
- Establishing the purpose of the correspondent account;
- Documenting the respective responsibilities of each institution in the operation of the correspondent account;
- Identifying any third parties that may use the correspondent banking services; and
- Ensuring that the approval of senior management is obtained for the account to be opened.

228 While the above requirements are compliant they do not include that the financial institutions should also ascertain whether the respondent institution has been subject to a ML/FT investigation or regulatory action. This should be clarified in future amendments to the BOJ GN.

229 Para 86 of the BOJ GN states that the banks should be particularly alert to the risk that correspondent accounts might be used directly by third parties to transact business on their own behalf, for example a payable-through account, in respect of which the banks must be guided by the criteria established for introduced business, as outlined in paragraph 72. Paragraph 72 states that in case of introduced business, whether by individuals or companies, the ultimate responsibility is on the recipient financial institutions to know the referred customer and his/her business. Financial institutions should therefore not place excessive reliance on the identification procedures of the introducers and must carefully assess the fitness and propriety of introducers as well as the customer identification standards that the introducers maintain, using the following criteria: -

- (i) Introducers should adhere to minimum "Know Your Customer" standards as identified within the guidelines;
- (ii) Financial institutions must be able to verify the due diligence procedures undertaken by the introducer at any stage and the reliability of the systems put in place to verify the identity of the customer;
- (iii) Notwithstanding any reliance on an introducer's representations, a financial institution should ensure that it procures and reviews all the relevant identification data and other documentation pertaining to the customer's identification. This information must be available for review by the Supervisory Authority.

230 Where it has been determined that the referenced identification standards are unsatisfactory or weak, then the licensee should conduct its own customer due diligence assessment.

RECOMMENDATION 8

231 Paragraph 81 of the BOJ GN states that the licensees should proactively assess various risks posed by emerging technologies and design customer identification procedures with due regard to such risks. However, there is no such requirement in respect of FSC regulated institutions, except that financial service providers offering services over the internet are required to implement procedures to verify the identity of their clients. In view of the additional risks of conducting business over the internet, financial institutions are required to monitor on a regular basis the activity in customer accounts opened on the internet (pg 124 of the FSC GL) Paragraph 80 of the BOJ GN states that financial institutions should avoid the practice of opening new accounts via post, unless higher standards of scrutiny are applied. In the case of electronic banking accounts opened via the Internet or similar technology, these should be subject to more rigorous identification and verification standards including independent verification by a reputable third party. The FSC GL (pg 124) requires care to be taken to ensure that the same supporting documentation is obtained from internet customers as for other customers, particularly where face to face verification is not practical. The FSC has stated that the FSC GL are considered to be mandatory and that they do in practice take action upon discovering breaches.

3.2.2 *Recommendations and Comments*

232 While the legislative framework for customer due diligence in Jamaica is quite comprehensive, there are some requirements which need to be enacted as legislation in order to fully comply with international standards. These requirements are as follows;

- Financial institutions should be required to undertake customer due diligence measures when there is doubt about the veracity or adequacy of previously obtained customer identification data;
- Specific prohibition against the keeping of anonymous accounts or accounts in fictitious names should be enacted;
- Financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person;
- Financial institutions should be required to take reasonable measures to determine who are the natural persons that ultimately own or control customers who are legal persons or legal arrangements;
- Financial institutions should be required to conduct ongoing due diligence on the business relationship.

233 Additionally, the BOJ GN and the FSC GL should be reviewed in order to be consistent with the requirement for the investigating and determining of the source of funds and wealth of PEPS, the consideration of making of STRs when satisfactory proof or verification of the identity of a customer is not obtained and the formulation of reasonable due diligence procedures for the verification of the legal status of legal arrangements. Financial institutions should also be required to terminate existing business relationships once they are not able to obtain satisfactory evidence or verification of identity of customers/beneficial owners and to consider making an STR in such cases. . Financial institutions should be required to ascertain whether respondent institutions have been subject to an ML/FT investigations or regulatory action. FSC regulated institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML/FT schemes and address specific risks associated with non-face to face business relationships or transactions.

3.2.3 *Compliance with Recommendations 5 to 8*

	Rating	Summary of factors underlying rating
R.5	PC	No specific law prohibiting the keeping of anonymous accounts or accounts in fictitious names; No undertaking of CDD measures when there is doubt about the veracity or adequacy of previously obtained customer identification data;

		<p>No requirement for financial institutions to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person;</p> <p>No specific statute for conducting ongoing due diligence on a business relationship;</p> <p>No specific requirement for determination of the natural persons that ultimately own or control legal persons or legal arrangements;</p> <p>No requirement for financial institutions to consider making a STR when unable to obtain satisfactory evidence or verification of identity of customers/beneficial owners</p> <p>No requirement for verification of legal status of legal arrangements;</p> <p>No requirement for financial institutions to terminate existing business relationship once the financial institution is not able to obtain satisfactory evidence or verification of the identity of customers/beneficial owners and to consider making an STR in such cases;</p> <p>Compliance testing yet to be completed in the case of FSC regulated institutions</p>
R.6	LC	Guidance notes and guidelines do not fully comply with the requirement for ascertaining the source of funds and wealth for PEPs.
R.7	LC	Financial institutions are not required to ascertain whether respondent institutions have been subject to a ML/FT investigation or regulatory action.
R.8	PC	Absence of requirement for the licensees to be cognizant of misuse of technological advancements and have policies and procedures to address any specific risks associated with non-face to face business relationships or transactions in respect of non BOJ regulated institutions. .

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

RECOMMENDATION 9

234. MLR 7 grants exemptions from identification procedures if (1) the applicant for business is a financial institution subject to the ML legislation at least equivalent to the MLA and MLR and (2) any one-off transaction is carried out with or for a third party pursuant to an introduction by such a financial institution which has provided an assurance that evidence of the identity of all third parties introduced by it will have been obtained and recorded under procedures maintained by it. Regulation 7 does not require financial institutions to immediately obtain from the third party the necessary information concerning elements of the CDD process stipulated in criteria 5.3 to 5.6 of Recommendation 5. However, Paragraph 72 of the BOJ GN requires a financial institution to ensure that it procures and reviews all the relevant identification data and other documentation pertaining to the customer's identification in case of introduced business. The FSC GL requires that the financial institution should require written assurance that identification data would be made available from the third party, immediately upon request. While the provisions in the BOJ GN are broadly in line with essential criterion 9.1, the FSC GL needs to clarify

that the financial institution should immediately obtain from the third party the necessary information concerning elements of the CDD process stipulated in criteria 5.3 to 5.6 of Recommendation 5.

235. Under the FSC GL financial institutions are required to ensure that an introducer is an eligible financial institution from a recognised foreign regulated institution subject to equivalent regulatory standards as those of Jamaica or an eligible regulated institution in Jamaica and identification measures are in place in accordance with FATF recommendations. The BOJ GN requires that introducers should adhere to minimum KYC standards as stipulated in the BOJ GN.

236. Paragraph 87 of the BOJ GN advises financial institutions to exercise added care when dealing with clients residing in countries with weak or non-existent laws and regulations to detect and prevent money laundering and terrorist financing. As a general guide in identifying these jurisdictions, financial institutions may refer, on a continual basis, to the FATF’s list of countries, which have been identified as “non-cooperative” in the fight against money laundering . It further says that the BOJ will also periodically update its licensees with significant information on this issue, based on advisories received from the CFATF and the FATF. Similarly, the FSC GL also identifies the countries that can be considered to be applying the AML standards equivalent to Jamaica and also refer to the “non-cooperative” list of the FATF. .

237. While the BOJ GN clearly states that where business is being introduced by individuals or companies, the ultimate responsibility is on the recipient financial institutions to know the referred customer and his/her business, there is no such provision in the FSC GL.

3.3.2 Recommendations and Comments

238 While the existing provisions are broadly in accordance with Recommendation 9, there is need to clarify, especially in case of the financial institutions regulated by the FSC that they must immediately obtain from the third party the necessary information concerning certain elements of the CDD process and also that the ultimate responsibility for the CDD remains that of the financial institution in case of introduced business.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	LC	Broadly in compliance except for lack of requirement for FSC regulated FIs to obtain from the third party the necessary information concerning certain elements of the CDD process and also that the ultimate responsibility for the CDD remains that of the FIs in case of introduced business.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

RECOMMENDATION 4

239. There are several legal avenues for the authorities to access information required from the financial institutions. These include monitoring orders under the MLA or DOFPA; orders under the BA and FIA; requests made to the supervisor or by production orders and search warrants under the DOFPA (MLA section. 9, DOFPA sections. 20, 38, 43 and 44.).

240. Under Section 8 of the MLA, the DPP may apply to a Judge in Chambers for a "monitoring

order" directing a financial institution to give information and such documents as he may specify in the application, other than items subject to legal privilege. The designated authority can access information through lawful process by production orders and search warrants. .

241. Section 30 of the BA and section 30 of the FIA give the Supervisor of Banks access to all books, records and documents in the possession or control of any director, manager, officer or employee of any bank; and to require any director, manager, officer, auditor, former auditor or employee of any bank to furnish such information or to produce such books, records or documents as are in his possession or control. The Supervisor can make this demand provided the information relates to the operations of the bank and may be reasonably required for the performance of those duties. Failure to comply with this requirement is an offence. (See also regulation 47 of the BOJ (Building Societies) Regulations of 1995).

242. Section 46 of the IA empowers the FSC to demand from insurance companies any information concerning insurance business; Section 47 empowers the FSC to investigate an insurance company and Section 48 empowers it to demand production of any securities, documents etc and examine on oath a director, servant, shareholder or auditor etc of the company during investigations. FSC has similar powers to access information (section 17) and conduct investigations (section 68) under the SA and Regulations 19 - 21 of the Securities (Conduct of Business) Regulations.

243. Section 16 of the FSCA provides for the FSC to disclose information to a competent authority (defined as Minister, Supervisor of Banks and Financial Institutions, CEO of Jamaica Deposit Insurance Corporation (JDIC) or the Financial Secretary); the DPP, and to a Court. The authorities stated that the FSCA had been amended (December 2004) to enable the FSC to share information with the designated authority, an authority prescribed by the Minister, an overseas regulatory authority and the Solicitor General in his capacity as a member of a committee to facilitate co-ordination among financial regulatory agencies. By appointed day notice dated April 27, 2005 the Minister declared April 1, 2005 as the effective date for the bringing into effect of the amendment. FSC also informed that it was developing Regulations under the FSCA prescribing the method for sharing information with overseas regulators. Because of absence of power to share information at the time of the mutual evaluation, the FSC, although a member of IOSCO, had not as yet signed the IOSCO MOU, as the existing legislation did not permit it to fulfill its obligations under the MOU.

244. The BOJ may exchange information with domestic authorities (the Minister or his nominee; the Governor, Senior Deputy Governor or Deputy Governors; any officer of the Supervisory Department; the Chief Executive Officer of the JDIC, the Executive Director of the FSC the Financial Secretary or his nominee) to facilitate coordination among financial regulatory agencies and any supervisory authorities in a country in which a branch, subsidiary or representative office of a commercial bank or specified financial institution is located.

245. In December 2001 an MOU establishing the Financial Regulatory Council (FRC) was signed. The FRC is chaired by the BOJ Governor/Supervisor; other members comprise the chief executives of the FSC and the JDIC, as well as the Financial Secretary of the Ministry of Finance and most recently, the Solicitor General. The FRC meets periodically (usually once per month) to discuss any regulatory issues that exist in relation to the BOJ and FSC regulated institutions. The MOU also speaks to adopting a collaborative approach in the conduct of examinations where there is shared jurisdiction over any financial institution or group of institutions and to the upgrading of staff, via means of staff training.

246. The BOJ also has a number of memoranda of understanding with various regional supervisors (BVI, Cayman Island, Turks and Caicos, Barbados, Bahamas, Belize etc.) regarding the sharing of information. Customer account information may only be released to third parties on the Minister's direction (section 45(3)(i), BA). BOJ stated that this discretion of the Minister would not normally be exercised without prior consultation and recommendation of the Supervisor. BOJ also stated that it had in the past accommodated these inspection requests, related to non-AML issues and that it would have no objection to these inspections with regards to AML issues.

247. Section 45 of the BA and Section 44 of the FIA prohibit bank officials from releasing customer

account information except in certain circumstances set out in the Fourth Schedule. These circumstances include cases where it is in the bank’s best interest that the information be disclosed. This as well as the other circumstances outlined in the Fourth Schedule (e.g. upon the written direction of the Minister of Finance or upon the tendering of a court order) provide avenues for the sharing of information. Similar latitude however is not available in case of the FIs regulated by the FSC.

3.4.2 Recommendations and Comments

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	The FSC’s inability at the time of the mutual evaluation to sign the IOSCO MOU allowing the sharing of information.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

RECOMMENDATION 10

248 Section 46 of DOFPA requires financial institutions to retain documents in their original form that relate to financial transactions (opening and closing of accounts, operation of accounts, opening/use of deposit boxes, telegraphic or electronic transfer of funds by the institution, transmission of funds between Jamaica and another country, loan applications). The minimum retention period has been prescribed in subsection (2) and is as follows:

- where the document relates to the opening of an account with the institution, five years after the day on which the account is closed;
- where the document relates to the opening by a person of a deposit box held by the institution, five years after the day on which the deposit box ceases to be used by the person; and
- in any other case, the period of five years after the day on which the transaction takes place.

249 DOFPA also requires the financial institution to retain documents in such manner that makes retrieval of the information contained in the documents or, as the case may be, the documents, reasonably practicable. A financial institution that contravenes the above requirements is guilty of an offence and is liable on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two hundred thousand dollars. The DOFPA definition of the term financial institutions, however, is narrower in scope than that in the MLA. The definition does not include exchange bureaux licensed under the BOJA, dealers or investment advisers licensed under the Securities Act or any person so declared by the Minister, by order subject to affirmative resolution to be a financial institution.

250 MLR 9 prescribes for keeping of records of identity for five years commencing with the date on which the relevant financial business was completed. There is no mention in this statute of record keeping requirement for transactions, although there is such reference in the DOFPA. It will be helpful if the MLR incorporate provisions regarding transactions record keeping in line with Recommendation 10. The BOJ GN (paragraphs 94 through 98) detail the record keeping requirements of BOJ regulated entities and paragraph 95 specifically states that transaction records must be maintained in such a form that would allow for reconstruction of individual transactions, to provide if necessary, evidence for prosecution of criminal activity. Paragraph 98 directs institutions to ensure that where the records relate to ongoing investigations by law enforcement or are the subject of disclosure orders, they should be retained beyond the five year period and until the designated authority confirms that further retention is unnecessary. Licensees of the FSC are required to keep identification records for a minimum period of 5 years (FSC GL Sections AA and BB) and licensees that fall under the Securities Act and Regulations (Conduct of Business) are required to maintain all records for a minimum period of seven years. (FSC GL of February 2005).

251 Essential criterion 10.2 requires that records of the identification data, account files and business correspondence be maintained for at least five years following the termination of an account or business relationship. DOFPA requires that where the document relates to the opening of an account, the records should be kept for five years after the day on which the account is closed. However, MLR 9 requires record-keeping for a period of five years commencing with the date on which the relevant business was completed. It is not clear whether the expression “period of five years commencing with the date on which the relevant business was completed” in MLR 9 (3) would have the same meaning as “five years following the termination of an account or business relationship”, as required in essential criterion 10.2. The authorities maintained that both mean substantially the same thing; however, there appears to be a need to make the position abundantly clear in future amendments. . The laws or regulations also do not make a provision for maintenance of records for a longer period if requested by a competent authority in specific cases upon proper authority.

252 The laws or regulations do not impose a requirement on the financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic authorities. However, the domestic authorities have been given the power under the laws to have access to the information of the financial institutions as discussed before, which must be maintained for the minimum periods specified in the MLA and DOFPA.

SPECIAL RECOMMENDATION VII

253 Paragraph 92 of the BOJ GN requires that the following information should be obtained when conducting electronic fund transfers (wire transfers, remittances etc): -

- The identity of the originator/remitting customer (including name, address and account number) whether or not the originator is a customer of the licensee;
- The identity of the ultimate recipient/beneficiary, where practical (including name, address and account number);
- Related messages/instructions that accompany transfers.

254 The above information should be retained for a minimum of five years from the date on which the relevant financial business was terminated. BOJ informed that its licensees were being examined in this regard and had been found largely compliant; where deficiencies are identified, remedial actions are required and specifically followed up by BOJ examiners.

255 The BOJ GN does not require financial institutions to include full originator information in the message or the payment form accompanying cross border wire transfer. However, BOJ informed that it was planning to issue directions to remittance companies to ensure that all transactions are clearly documented to include accurate and meaningful originator information and local remitters will also be required to ensure that the information and any related amendment remains with the transfer to which it relates, throughout the payment chain. The authorities also informed that the proposed Money Laundering (Change of Name and Amendment) Bill will be effecting changes to the MLR and formalize the current obligation on all financial institutions conducting wire transfers to ensure that they receive and retain in their records, accurate and relevant information for funds transfers throughout the payment chain, including the correct name and address of the transferor and the account number, if any. The Bill needs to be enacted.

256 There is no specific instruction that for domestic wire transfers the ordering financial institution should either comply with the requirement for cross border transfers or include in the message or payment form the originator’s account number or a unique identifier. There are no directions either in law or administrative instructions requiring financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing..

257 Paragraph 92 of the BOJ GN requires the financial institution to obtain originator information while conducting wire transfers. While this can be interpreted to include all intermediary financial

institutions, further revisions to the BOJ GN should clarify the matter for removal of any doubts, specifically mentioning that this requirement extends to each intermediary financial institution in the payment chain.

258 Jamaica does not have a de minimis threshold in place. There is no specific requirement for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.

259 While the BOJ and the FSC have in place a supervisory regime that allows for testing compliance with laws and regulations, the module regarding the testing compliance with Special Recommendation VII is yet to be included in the examination procedures. The authorities indicated that this would be done in a time bound manner.

260 Existing instructions do not ensure that the requirements of Recommendation 17 also apply in relation to the obligations under Special Recommendation VII. These requirements should be specified and sanctions for their violation clearly defined.

3.5.2 Recommendations and Comments

1. Amend MLR to (a) provide for transaction record keeping for at least five years after the completion of the transaction or longer if requested by a competent authority in specific cases and upon proper authority, (b) clarify that identification records are required to be kept for at least five years after the termination of the business relationship, and (c) impose a requirement on the financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic authorities.
2. Amend legislation (BOJA) to provide statutory basis for guidelines issued by the BOJ and provide for sanctions for non compliance.
3. Enact [the](#) Money Laundering (Change of Name and Amendment) Bill to give effect to the proposed obligations of the FIs relating to the wire transfers. Proposed obligations should rectify deficiencies identified in compliance with Special Recommendation VII
4. Develop modules for testing compliance with Special Recommendation VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<p>There is no specific legal provision for transaction record keeping requirements for exchange bureaux and the securities industry.</p> <p>There is no specific legal provision for transaction records to be kept longer than five years after the completion of the transaction on the instructions of a competent authority in specific cases and upon proper authority.</p> <p>Laws or regulations do not impose a requirement on the financial institutions to ensure that all customer and transactions records and information are available on a timely basis to domestic authorities.</p> <p>No provision in the MLR for transaction record keeping (although contained in the DOFPA).</p>
SR.VII	PC	<p>Financial institutions are not required to include full originator information in the message or the payment form accompanying cross border wire transfers;</p> <p>There is no specific instruction that for domestic wire transfers the ordering financial institution should either comply with the requirement for cross border transfers or include in the message or payment form the originator’s account</p>

		<p>number or a unique identifier;</p> <p>There are no directions either in law or administrative instructions requiring financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing;</p> <p>There is no specific requirement for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</p> <p>There are no measures in place to effectively monitor the compliance of financial institutions with Special Recommendation VII</p> <p>Existing instructions do not ensure that the requirements of Recommendation 17 also apply in relation to the obligations under Special Recommendation VII.</p> <p>.</p>
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Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

RECOMMENDATION 11

261 Section 6B(1) of the MLA requires financial institutions to pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, which appear to the financial institution to be inconsistent with the normal transactions carried out by a customer.

262 The BOJ GN also provides substantial guidance on the issue of transaction monitoring and reporting (see Part V paragraphs 101 - 106A) and Appendix 1 details examples of unusual or suspicious activities. Pages 98 - 100 and Appendix A of the FSC GL of February 2005 also provide similar guidance to FSC regulated entities.

263 There are no specific provisions in legislation or related guidelines requiring financial institutions to examine as far as possible the background and purpose of transactions mentioned above and to set forth their findings in writing. The requirement under Section 6B(2) of the MLA is that upon reasonable suspicion that such a transaction could constitute or be related to money laundering a financial institution should promptly report the transaction to the designated authority.

264 In the absence of any specific direction to the financial institutions to examine the background and purpose of all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, there is no requirement to keep such findings, except for the general requirement for the record keeping as prescribed in MLR 9. Under the TPA however, such transactions are required to be reported to the designated authority.

265 BOJ stated that it will shortly amend the GN to clearly indicate that the term “pay special attention to” as used in MLA section 6B(1) should be interpreted to mean the examination of the background and purpose of these types of transactions, the formal recording of the institution’s findings and the retention of these findings for a period not less than 5 years. It will also make clear that these findings should be available for review by the Supervisor.

RECOMMENDATION 21

266 The BOJ GN (paragraphs 87 and 88) provide guidance on dealings with countries with weak or non-existent laws and regulations to detect and prevent money laundering and terrorist financing. The BOJ regulated institutions are required to exercise added care in dealing with these countries and advised to ensure that any transactions conducted with such territories should have the prior approval of senior management before the transaction is commenced. Any suspicious transactions originating from such countries must be investigated, the findings established in writing and immediately reported to the designated authority. Banking institutions are also referred to the FATF web site for references as to the jurisdictions listed therein.

267 Section V of the FSC GL lists the regions considered to present high AML risks and the territories which can be considered to have similar AML policies to Jamaica. This section also refers institutions to the FATF web site for further guidance and directs that countries included in this listing should be treated as having financial institutions with no or poorly regulated anti-money laundering system. The GL also direct that acceptance of business from an institution in a jurisdiction outside the list of recognized foreign financial institution jurisdictions is not precluded but, except as outlined in the GL, an introduction from an institution in such a jurisdiction may not, without proper verification, be treated as a reliable introduction.

268 There is no direction or requirement to examine the background and purpose of transactions (from such countries) that have no apparent economic or visible lawful purpose and make available to the competent authorities the findings of such examination, although under the TPA there is a general reporting obligation relating to transactions of this type (regardless of the country of origin).

269 BOJ informed that it may exercise the following countermeasures in relation to a country with a weak AML framework.

- a. Advise the domestic supervised institutions to use enhanced due diligence in dealing with individuals or institutions situated in the country, including obtaining senior management's approval prior to the establishment of such relationships (see BOJ GN 87 and 88);
- b. Issue statutory directions pursuant to section 29F of the BA and FIA, which could include limits on transactions with any member of a group situate in a country with a weak AML framework;
- c. Refuse to approve applications from domestic institutions for the establishment of branches in such countries, as well as the refusal of licensing applications with regards to institutions which are headquartered or owned by nationals of that country.

3.6.2 Recommendations and Comments

1. Financial institutions should be required to examine as far as possible the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and set forth their finding in writing. These finding should be kept available for competent authorities and auditors for at least five years.
2. The background and purpose of transactions that have no apparent economic or visible lawful purpose with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF should be examined. Written findings on such transactions should be available to assist competent authorities and auditors.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	PC	Financial institutions are not required to examine as far as possible the background and purpose of all complex, unusual patterns of transactions that have no apparent or visible economic or lawful purpose and set forth their findings in writing. Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.

R.21	PC	No direction or requirement to examine the background and purpose of transactions that have no apparent economic or visible lawful purpose from or in countries which do not or insufficiently apply the FATF Recommendations and make available to the competent authorities the findings of such examination.

3.7 *Suspicious transaction reports and other reporting (R.13-14, 19, 25⁵ & SR.IV)*

3.7.1 *Description and Analysis*

RECOMMENDATION 13 and SPECIAL RECOMMENDATION IV

270 MLA-Section 6B (1) prescribes that a financial institution shall, in relation to each customer, pay special attention to all complex, unusual or large business transactions, or unusual patterns of transactions whether completed or not, which appear to the financial institution to be inconsistent with the normal transactions carried out by that customer with the institution. Sub-section (2) provides that upon reasonable suspicion that the transaction described in subsection (1) could constitute or be related to money laundering, a financial institution shall promptly report the transactions to the designated authority. Sub-section (3) makes the failure to report an offence. Section 6B (1) read with Section 6B (2) of the MLA therefore prescribes reporting of all suspicious transactions, whether completed or not. While the wordings “could constitute or be related to money laundering” can be construed to be wide ranging, the reporting obligation under this section is seriously impaired by the narrow definition of money laundering in section 3. The definition of money laundering incorporates “specified offences” i.e. domestic predicate offences as listed in an appended schedule to the MLA. This schedule does not incorporate all the predicate offences as required under Recommendation 1.

271 Section 16 (2) of the TPA which came into force on June 6, 2005 requires financial institutions to pay special attention to all complex, unusual or large transactions, or unusual patterns of transactions whether completed or not which appear to be inconsistent with a customer’s normal transactions. Section 16 (3) further requires prompt reporting to the designated authority (the DPP or such other person as the Minister may designate) of all of the above transactions which have no apparent economic or obviously lawful purpose. The above provision is general in its coverage and does not specifically refer to transactions where there are reasonable grounds to suspect they are linked or related or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. This requirement should be clearly stated in basic law. Section 16(4) makes the failure to report an offence and imposes cash and imprisonment penalties.

272 BOJ currently circulates the UN Terrorist lists received through the Ministry of Foreign Affairs, to its regulated entities with a requirement that they review their records and transactions to determine whether any property is being held for or transactions are being conducted on behalf of the listed terrorists or terrorist organizations. BOJ stated that the licensees had confirmed no involvement of any kind with listed terrorists or terrorist groups.

273 The law does not exempt from reporting suspicious transactions if they are thought to involve tax matters. However, it would be desirable that this is clearly stated in the laws/ regulations/ guidelines at the time of future revisions.

274 The existing provisions regarding reporting are broadly in compliance with the Methodology criteria. However, certain other provisions as discussed above, if incorporated in the existing legal framework, would enhance its clarity for operational purposes.

⁵ See also elements relating to Recommendation 25 in section 3.12

RECOMMENDATION 14

275 Section 6 B (6) of the MLA provides protection for financial institutions, their directors and employees making reports in accordance with the law from;

(a) any liability to prosecution for conspiring, aiding, abetting in or committing money laundering ;

(b) any criminal, civil or administrative liability, as the case may be, for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision,

regardless of the outcome of the reports. Subsequent to the mission a similar provision has been incorporated in section 16(7) of the TPA.

276 Section 6C of the MLA deals with unauthorized disclosures. It states that a person is guilty of an offence if, knowing or suspecting that a designated authority is acting or is proposing to act, in connection with an investigation which is being, or is about to be conducted in relation to money laundering, he discloses information or any other matter, relating to the investigation, to any other person, except—(a) an attorney-at-law for the purpose of obtaining legal advice; or (b) for the purpose of facilitating the investigation or any proceedings which might be conducted following the investigation.

277 Section 6C (2) further states that a person is guilty of an offence if, knowing or suspecting that a report has been made to the designated authority under section 6B (2), he discloses information or any matter, relating to the report, to any other person, except—(a) an attorney-at-law for the purpose of obtaining legal advice; or (b) for the purpose of facilitating any investigation or proceedings which might be conducted following that report. Identical provisions have been incorporated in section 17 of the TPA subsequent to the mission.

278 The above provisions are largely compliant, except that Section 6C (2) would not seem to cover a situation where a STR or related information is being reported (as distinct from having been reported). Tipping off at the stage of the STR or related information being reported is time- sensitive information and there should not be any ambiguity, howsoever small, that such an action would be unlawful. It would therefore be useful if future amendments to the law clarify that tipping off is prohibited even when a STR or related information is being reported or provided to the FIU.

279 There is no provision in the existing laws, regulations or other instructions to ensure that the names and personal details of staff of financial institutions that make a STR are kept confidential by the FIU.

RECOMMENDATION 19

280 There are currently no provisions in the MLA for the reporting of cross border transportation of cash. The ML (Change of Name and Amendment Bill) includes a reporting regime for the cross border movement of funds reaching or exceeding US\$10,000.00 or the equivalent thereof in any other currency. In 2003 the Customs Department revised the requisite customs declaration forms to include declarations of whether funds being brought into the country amount to or exceed US\$10,000.00. The Declaration is made effective by The Customs (Prescribed Forms) Order, 2003. Failure to declare is a breach of Section 209 of the Customs Act and is punishable. If the passenger fails to answer or answers in negative and currency in excess of USD 10,000 is found on search, then it can be forfeited in terms of Section 57 of the Customs Act. If the currency was packaged in a way to deceive the officer, then it is a breach of Section. 211 which provides for forfeiture of the money and a fine of three times the value of the money. The authorities also reported some prosecutions in this regard.

281 Section 6 of the MLA requires that currency transactions above a prescribed amount be reported to the designated authority; certain organizations like Govt. ministries and departments, foreign missions etc are exempt from this requirement. These TTRs are required to be made for amounts of US\$ 50,000 and above in case of a financial institution and US\$ 8,000 and above in case of an exchange bureau. Failure to make this report is an offence. These reports at present are being made to the FID.

282 In case of the discovery of an unusual international shipment of currency, monetary instruments, precious metals, or gems etc, there is no well established administrative or legal framework for notifying the Customs Service or other competent authorities of the countries from which the shipment originated and/ or to which it is destined; however, the authorities informed that an informal relationship exists whereby the information is shared. .

283 At the time of the mission the Customs department photocopied the passenger declaration forms and forwarded them to the FID at intervals. Section 19 A of the Customs Act obligates the persons in possession of official documents to maintain their confidentiality.

RECOMMENDATION 25

284 The FID interacts closely with the institutions having statutory obligations to make reports and has implemented a system of acknowledgement of the receipt of reports made to it. With the passage of the proposed FIDA the FID will on a systematic basis provide information on typologies, statistics and other materials relating to financial crimes to public bodies, executive agencies, Ministries and Departments of Government (clause 5(4)(b) of the proposed FIDA). FID also provides general feedback to Jamaican financial institutions by way of meetings seminars and the issue of Guidance. The FID has issued specific advice to institutions as regards different investigations that are underway. The FID advised that it will provide specific advice to any institution with regards to a report made to the FID once such a request for advice is received. There is no feedback system for the DNFBPs, as they are not under the AML/CFT regime as yet.

285 The BOJ provides feed-back to the supervised institutions through on-site inspections meetings with management and training seminars. BOJ examination findings point to general compliance with threshold and suspicious transaction reporting requirements. Where exceptions or weaknesses are found, immediate ameliorative action is required, which may include additional training for bank staff. Depending on the severity of the breach, legal sanctions may also be applied by the BOJ – this has taken place in a few cases - through the requirement of board undertakings from a banking licensee; and suspension and revocation of some cambio licences.

3.7.2 Recommendations and Comments

1. The definition of money laundering in the MLA should be extended to incorporate all the predicate offences required by Recommendation 1.
2. Clearly state in law that the obligation to make a STR applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.
3. Clarify that the STRs need to be filed irrespective of whether a transaction relates to tax matters.
4. Clarify that the tipping off is prohibited when STR or related information is being reported to the FIU.
5. Establish a formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc.
6. Enact FIDA in order to establish a proper system of feedback to the FIs and the DNFBPs with regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons. .

286 The proposed POCA will provide for protected disclosures in relation to suspicion of money laundering (clause 114) and authorized disclosures (clause 115) in relation to criminal property.

287 The proposed amendments to the MLA will include an adjustment to the threshold transaction amount changing the declaratory level from US\$50,000 to US\$15,000 or its equivalent for institutions other than cambios and remittance companies. Cambios threshold reporting limits will remain at US\$8,000.00 and the reporting limits for remittance companies will be set at US\$5,000.00. In addition, it

will establish an obligation to disclose the transportation of funds in excess of US\$10,000. Once the POCA is passed, it will repeal the MLA and these amendments will be incorporated into the POCA.

3.7.3 *Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV*

	Rating	Summary of factors underlying rating
R.13	PC	Reporting of STRs for ML does not apply to funds that are the proceeds of all offences including predicate offences as required by Recommendation 1. The requirement for the reporting of transactions in the TPA is general and does not specifically refer to transactions where there are reasonable grounds to suspect they are linked or related or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Compliance with recently enacted CFT measures yet to be fully implemented.
R.14	LC	No specific provision to prohibit tipping off when STR or related information is being reported
R.19	LC	No formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc.
R.25	PC	Insufficient mechanism for providing feedback to the financial institutions and DNFBPs on a systematic basis. Additional reasons for rating in section 3.12
SR.IV	PC	The requirement for the reporting of transactions in the TPA is general and does not specifically refer to transactions where there are reasonable grounds to suspect they are linked or related or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Compliance with recently enacted CFT measures yet to be fully implemented.

Internal controls and other measures

3.8 *Internal controls, compliance, audit and foreign branches (R.15 & 22)*

3.8.1 *Description and Analysis*

RECOMMENDATION 15

288. Section 7 of the MLA requires financial institutions to establish and implement such programmes, policies, procedures and controls as may be necessary for the purpose of preventing or detecting money laundering. Section 7 (3) of the MLA requires that a financial institution shall designate an officer of the institution who performs management functions to be responsible for ensuring the implementation of such programmes, policies, procedures and controls, including the reporting of suspicious transactions. Similar requirements for CFT have been prescribed in section 18 of the TPA. The MLR requires the financial institutions to implement procedures regarding CDD, record retention, internal control and communication, detection of unusual and suspicious transactions and reporting obligations. These requirements have been supplemented by the BOJ GN and the FSC GL.

289. The FSC GL (page 69) provide that financial institutions must appoint an executive to be responsible for the establishment and implementation of policies, programmes, procedures and controls for the purposes of preventing or detecting money laundering. Depending on the size of the firm, there may be one such officer or a Compliance Department. Such an individual / office, referred to as the “Appropriate Person”, must be separate and apart from the day to day activities/operational aspects of the business and report directly to the Board of Directors (where possible) or the Audit Committee. In addition, the “Appropriate Person” should have access to all relevant information throughout the organization and, or have knowledge as to the existence of such information. Similar requirements are

stipulated in paragraphs 99, 100 and 116 of the BOJ GN for the BOJ licensees. It should be noted that while the BOJ GN includes both AML/CFT functions the FSC guidelines only refers specifically to AML in its text. With the enactment of the TPA the authorities should consider issuing specific CFT guidance for all entities covered by the TPA.

290. Our interviews with the financial institutions indicated that most of them have designated compliance officers at the senior management level and these compliance officers are in active touch with the regulatory and supervisory authorities.

291. Section 7(2)(d) of the MLA and section 18(2)(d) of the TPA require financial institutions to make arrangements for an independent audit in order to ensure that programmes for prevention and detection of money laundering and reporting duties with regard to terrorism stipulated in the TPA are implemented. This is elaborated in paragraphs 115 and 116 of the BOJ GN to include an adequately resourced unit responsible for day to day consideration and monitoring of compliance and establishment of a strong compliance plan that provides for ongoing independent review. Section III Part B of the FSC GL under compliance monitoring has specific guidance on the requirement for compliance audits. Our interviews with the financial institutions indicated that most of them had an independent internal audit department reporting to the Audit Committee of the Board. The supervisory authorities should encourage the internal audit to carry out extensive testing of the AML/CFT programs as another pillar of assurance supplementing their own supervisory tests.

292. Section 7 (2)(c) of the MLA and section 18 (2)(c) of the TPA require the establishment of programmes for training of employees on a continuing basis and for instructing employees as to their responsibilities in respect of legal obligations. Section VI of the BOJ GN and Section 111 Part B of the FSC GL specify details of the required education programmes. Our interviews of the financial institutions indicated that their employees had been exposed to a number of internal and external training programs, including some organized by the supervisory authorities. Some of the interviewees also indicated that they conducted tests for their employees at the end of the training program. These programs have helped in creating awareness, which will help in improving compliance. These efforts should be sustained and it should be ensured that all aspects of the laws and obligations under the newly enacted TPA are explained to all financial institutions.

293. Section 7 (2)(b) of the MLA and section 18 (2)(b) of the TPA require the establishment of procedures to ensure high standards of integrity of employees and the development of a system to evaluate the personal employment and financial history of employees. While the financial institutions interviewed informed that they had implemented systems for ensuring this, there is a need to test compliance during the on-site supervisory visits.

Additional elements

294 While there is no specific legislative requirement allowing the compliance officer to act independently, the BOJ GN and the FSC GL both stipulate that the compliance officer should report directly to the Board of Directors in specific circumstances.

RECOMMENDATION 22

295 The BOJ GN require financial institutions to assess the AML/CFT framework of the jurisdictions in which their subsidiaries operate, to ensure that subsidiaries adhere to the Jamaican standards at a minimum (paragraph 4). Branches are considered to be subject to Jamaican law (paragraph 5). Paragraph 39 states that financial institutions are required to adopt a consolidated approach to the establishment and implementation of policies and procedures, which would cover the activities of all local and foreign branches, subsidiaries and other entities within the group. Section 1 Part B of the FSC GL requires entities to ensure that subsidiaries, regardless of the jurisdiction in which they are located, apply at minimum the requirements of the Jamaican law especially where the AML/CFT requirements in the jurisdiction in which these subsidiaries operate, fall short of the requirements obtaining in Jamaica. .

296 The implementation of the above provisions should be tested by the supervisory authorities through consolidated supervision. A number of the financial institutions in Jamaica are part of conglomerates, comprising both financial and non financial businesses spread over many jurisdictions. There is a need for the authorities to target their examinations to see whether any difference in supervisory standards, including the AML/CFT standards, is adding any AML/CFT vulnerability to the financial institutions. The FSC is currently developing its techniques in the AML/CFT area and should incorporate procedures to deal with this issue.

297 There is no requirement for financial institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. However BOJ regulated financial institutions are required in paragraphs 4 and 5 of the BOJ GN to apply Jamaican AML/CFT standards to their subsidiaries and branches. Similar requirements are contained in the FSC GL (page 6 and 126). The BOJ has also advised that it would not approved any of its licensees establishing branches or subsidiaries in countries where appropriate AML/CFT measures are prohibited by local laws, regulations or other measures.

298 Implementation of paragraph 39 of the BOJ GN and Section 1 Part B of the FSC GL by financial institutions would require application of consistent CDD measures at the group level.

3.8.2 *Recommendations and Comments*

1. As part of a consolidated supervision regime financial institutions should be tested to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations. Risks posed by affiliates outside the supervisory ambit should be taken into account.
2. Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.
3. The authorities should consider issuing specific CFT guidance for all entities covered by the TPA

299 The authorities informed that the proposed Money Laundering (Change of Name and Amendment) Bill will impose a statutory duty on all financial institutions under the MLA to ensure that their subsidiaries and branches resident in foreign jurisdictions adhere to Jamaican AML standards at a minimum.

3.8.3 *Compliance with Recommendations 15 & 22*

	Rating	Summary of factors underlying rating
R.15	LC	Due to the recent enactment of CFT measures and the need to issue specific CFT guidance particularly to FSC regulated institutions; assessment of effectiveness was not possible.
R.22	LC	Financial institutions are not required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. However BOJ and FSC regulated entities are required to apply Jamaican AML/CFT measures to their branches and subsidiaries. Need for supervisory authorities to test compliance with requirements of Recommendation 22 to assess effective implementation.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

RECOMMENDATION 18

300 Under the BA (Section 4(4)) a licence shall not be granted to any company having its head office outside Jamaica unless such company designates and notifies to the Minister-

- (a) a principal office in Jamaica;
- (b) by name one of its officers who is to be the company's authorized agent in Jamaica; and
- (c) by name another of its officers who, in the absence or inability to act of the officer named under paragraph (b), is to be the company's authorized agent in Jamaica.

301 BOJ confirmed that it would not recommend the licensing of a company to carry out deposit taking activities under the FIA unless it is satisfied that the institution is not a "shell bank". They clarified that the point is not directly addressed in the law, perhaps because Jamaica does not have an offshore banking sector and therefore there is no regime in the country presently contemplated for establishment of corporate entities that would resemble "shell banks". It is noted that the overall features of the FIA (e.g. the obligations of management, capital requirements, examination requirements, the obligations of auditors, the reporting of prudential data, etc.) indicate that the institution must have domestic operations to meet these requirements. In addition, Section 18 (1)(c) of the FIA implies that a licence must have a place of business in Jamaica.

302 Section IV of the BOJ GN at paragraphs 84 & 85 specifically advises financial institutions against the practice of doing business with shell corporations and provides specific guidance for financial institutions when dealing with unincorporated associations.

303 There is no specific requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks. Paragraph 82 of the BOJ GN states that financial institutions must apply appropriate levels of due diligence to correspondent accounts by gathering sufficient information from and performing enhanced due diligence processes on respondent banks prior to setting up correspondent accounts. The BOJ stated that Jamaican institutions do not carry out correspondent banking functions, save and except in the case of overseas banking subsidiaries of a Jamaican deposit taking institution holding accounts with the Jamaican parent institution. In such cases, the BOJ would not recommend to the Minister that a Jamaican institution be allowed to establish a shell subsidiary whether in Jamaica or in any other jurisdiction. Secondly, BOJ stated that correspondent institution is required to review the respondent institution's policies and guidelines prior to establishing such accounts and the issue as to whether to accept shell banks as customers would be a key issue in such examination. However, it would be advisable that the above requirement is clearly stated in the Guidance Notes.

3.9.2 Recommendations and Comments

1. Consider making provisions in the FIA expressly prohibiting the establishment of operation of shell institutions.
2. Guidance Notes should clearly require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

Rating	Summary of factors underlying rating
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R.18	LC	The requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks is not stated clearly in the Guidance Notes
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Regulation, supervision, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs

Role, functions, duties and powers (including sanctions) (R.17, 23⁶, 29⁷ & 30⁸)

3.10.1 Description and Analysis

RECOMMENDATION 17

304 The MLA and MLR provide for various sanctions, which include:

- A person who engages in money laundering or conspires with another to commit, aids, abets, counsels, or procures the commission of money laundering is liable -(a) on summary conviction before a Resident Magistrate to a fine not exceeding one million dollars or to imprisonment for a term not exceeding five years or to both such fine and imprisonment (in the case of an individual) and fine not exceeding three million dollars (in the case of a body corporate); (b) on conviction in a Circuit Court (i) in the case of an individual, to a fine or to imprisonment for a term not exceeding twenty years or to both such fine and imprisonment; (ii) in the case of a body corporate, to a fine. (S. 3, MLA).
- Failure to report under section 6 is punishable on summary conviction by a fine not exceeding \$400,000, while failure to report a suspicious transaction is punishable by a fine not exceeding 1 million dollars or an imprisonment for a term not exceeding 12 months (Section 6B, MLA).
- Unauthorised disclosures are punishable with a fine not exceeding two million dollars or by imprisonment not exceeding two years or both. (S. 6C, MLA)
- Failure to implement programs, policies, procedures and controls for prevention and detection of money laundering and designating an officer for their implementation is punishable by a fine not exceeding 400,000 dollars. (S.7, MLA)
- Contravention of a monitoring order and providing false or misleading information or documents in purported compliance with the order is punishable by a fine not exceeding one million dollars.(S. 8, MLA)
- Disclosure of the existence of a monitoring order is punishable by a fine not exceeding 200,000 dollars or imprisonment of three years or both (in case of individuals) and a fine not exceeding 600,000 dollars (body corporate).
- Failure to comply with the obligations in respect of identification procedures, record keeping procedures and procedures of internal control and communication under the MLR is punishable by a fine not exceeding 400,000 dollars.

305 For banks and merchant banks, the BOJ has powers to require board undertakings to issue directions, issue cease and desist orders, impose fines and take temporary management (see section 25 of the BA and the FIA). The Minister of Finance exercises these powers for building societies under the Building Societies Act and the BOJ Building Societies Regulations. The Minister in all cases has the power to issue and revoke licences as well as to vest ownership of shares in order to effect restructuring

⁶ See also the elements relating to Recommendation 23 in sections 3.11 and 3.13.

⁷ See also the elements relating to Recommendation 29 in section 3.13.

⁸ See also the elements relating to Recommendation 30 in sections 2.5 and 2.6

of troubled entities. The BOJ also supervises the activities of cambios, bureaux de change, and remittance companies and agencies. It has the power to issue, suspend or revoke licences for this category of entities.

306 The BOJ is now in the preliminary stages of regulating credit unions and has no sanction powers which will have to await passage of the draft Credit Union Regulations by Parliament, by which the BOJ will assume the statutory responsibility for the prudential supervision of these institutions.

307 The following table outlines instances where there were areas of major concern, which required more formal regulatory action on the part of the BOJ:

Type of Institution	Nature of Concerns	Action Required/Taken
Commercial Banks (2)	Weaknesses in reporting structures resulting in failure to report significant transactions.	Board Undertaking to rectify reporting omissions and upgrade AML/CFT policies; to commission review by external auditors so as to identify operational weaknesses and recommend remedial action. Reportage of breaches also to FID. All above to be taken within specific time frame.
FIA Licensees (2)	a. Major deficiencies in AML policy documents, internal controls, internal audit review and KYC requirements. b. No compliance officer specifically employed to the licensee (group compliance officer only), and inadequate AML/CFT policy manual.	a. Detailed Board Undertaking required to address all outstanding issues. b. Directive for compliance officer to be appointed and AML/CFT manual and policies to be immediately upgraded.
Building Societies (1)	Concerns relative to large volume of threshold transactions emanating from specific accounts in their money transfer business operations. However these transactions were consistently reported to the FID.	Requirement for comprehensive trend analysis data to be provided to the FID and for direct advice to be sought from the FID as regards treatment of these accounts vis-a-vis any investigations in train.

308 The FSC has the powers (Section 8 of the FSCA) to issue directions (including the direction to remove a director or manager), and cease & desist orders; it may wind up, take temporary management and revoke licences under conditions listed in the Third Schedule. It has also been designated as “Competent Authority” under the MLA for the purpose of the IA, SA and the Unit Trust Act. Under Section 21 of the FSCA, the FSC has the power to impose fixed penalty as specified in the Fourth Schedule, in discharge of a person’s liability to conviction for an offence under the IA and the SA.

309 Under the TPA, passed subsequent to the mission, terrorism offences and activities are punishable either by life imprisonment for individuals or fines for corporate bodies. Additionally, failure to disclose information about the commission of a terrorism offence is liable on summary conviction to a fine not exceeding one million dollars and a term of imprisonment not exceeding a year or both. Failure to report listed entities as clients or suspicious transactions, contravention of monitoring, production and restraint orders, disclosure of monitoring orders and the provision of false or misleading information or documents in compliance with relevant orders are liable in the case of individuals to a fine not exceeding one million dollars or a term of imprisonment not exceeding a year or both and in the case of corporate bodies, a fine not exceeding three million dollars. Unauthorised disclosure of information regarding investigations is punishable in the case of individuals to a fine not exceeding two million dollars or a

term of imprisonment not exceeding two years or both and in the case of corporate bodies a fine not exceeding six million dollars. Failure by entities to establish and implement programs, policies, procedures and controls for the purpose of fulfilling their functions under the TPA is liable to a fine not exceeding one million dollars.

310 The designated authority (in FID) is empowered to apply sanctions under the MLA and the MLR. Under section 45 of the TPA proceedings in respect of a terrorism offence, failure to report terrorism offence or failure in the duty of entities to report can only be instituted with the consent of the DPP who is the designated authority under the TPA. Other authorities authorized to apply sanctions are: BOJ for deposit taking institutions, money transmission agents and exchange bureaus, and the FSC for the insurance, securities and pension sectors.

311 Section 49 (2) of the Interpretation Act provides that where an offence under any Act passed after the 1st April, 1968, has been committed by a body corporate the liability of whose members is limited, then notwithstanding and without prejudice to the liability of that body, any person who at the time of such commission was a director, general manager, secretary or other similar officer of that body or was purporting to act in any such capacity shall, subject to subsection (3) be liable to be prosecuted as if he had personally committed that offence and shall, if on such prosecution it is proved to the satisfaction of the court that he consented to, or connived at, or did not exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions in that capacity and to all the circumstances, be liable to the like conviction and punishment as if he had personally been guilty of that offence. Section 49 (3) provides that a person shall not be charged under subsection (2) except upon the direction of the DPP. The BA, FIA and the Bank of Jamaica (Building Societies) Regulations also contain similar provisions imposing the liability of directors and officers in cases where the financial institution may be liable under these statutes provided that the breach took place with the knowledge or connivance of such directors or officers.

RECOMMENDATION 23

312. The FID has been entrusted with the responsibility for administering the MLA and MLR and is the designated authority. The sectoral supervisors viz., the Supervisor of Banks and Financial Institutions of the BOJ and the FSC have been designated as the competent authority under the MLA for the money laundering purposes. Under the TPA the designated authority is the DPP.

313. Exchange bureaus are listed as financial institutions under the MLA and are already subject to the requirements of the MLA and MLR. Remittance companies were also designated as 'financial institutions' in 2002. Similarly, under the TPA exchange bureaus and remittance companies are designated financial institutions and are subject to the CFT requirements of the TPA.

314. The definition of the financial institution under the MLA is at variance with the FATF definition in so far as the latter is activity based while the former is institution based. This has led to some obvious exclusions. For example, the MLA defines a financial institution to include an insurance company registered under the IA, which excludes other insurance entities e.g, brokers from the purview of MLA. A review indicated that along with insurance brokers, money lenders and pawnshops are not under the purview of the MLA in this manner. While the authorities indicated that insurance brokers were brought under the MLA by a Ministerial Order in June 2005, there is a need to harmonise the definition of financial institution in the MLA with that given by the FATF so as to ensure complete coverage. A similar change in the definition of financial institution in the TPA will also be needed in order to be consistent.

RECOMMENDATION 29

315 The BOJ is entitled to conduct inspections of commercial banks, merchant banks and building societies including, summoning the management, board of directors and auditors and obtaining any document or information from banks and merchant banks (section. 30 of the BOJA). With regards to building societies, the Bank relies on section 34A of the BOJA (which empowers the Supervisor to

periodically examine specified financial institutions).

316 The BOJ has legal access to all documents of its supervised institutions pursuant to section 30 of the BA and FIA. The FSC is also empowered to exercise similar powers under the FSCA with respect to its licensees. Pursuant to section 6(2)(b) of the FSCA, it may conduct examinations, whilst under section 6(2)(e) the FSC may summon the auditors or actuaries. Section 6(3) empowers the FSC to obtain information from its licensed institutions and require their directors, officers and auditors etc. to furnish books, records etc

317 As discussed in earlier sections, both BOJ and FSC have comprehensive powers of enforcement and sanctions, which are also applicable to the directors and senior management in terms of the Interpretation Act. BOJ has revoked the licences of cambios for non-compliance with AML requirements. It has also required a Board Undertaking from one deposit-taking licensee for ameliorative action to be taken within a prescribed time period. FSC may issue statutory directions or cease and desist orders pursuant to section 8 of the FSCA and may also impose fines in terms of Schedule 4 to the Act. However, these powers have seldom been used by the FSC.

RECOMMENDATION 30

Bank of Jamaica (BOJ)

318 The BOJ has been appointed as the competent authority for its regulated institutions. The functions of the competent authority are carried out by the supervisory arm of the BOJ the Financial Institutions Supervisory Division (FISD). The FISD has a current complement of 73 officers which include a Deputy Governor, a Division Chief, 3 Senior Advisors, 4 Directors heading 4 on-site examination Portfolios, a Statistical and Early Warnings Systems Department, a Methods Analysis and Quality Review Department (MASQR), an Administrative Support & Records Management Unit (ASMRU), and other technical/support staff. The Deputy Governor directly supervises the BOJ's AML measures for its licensees, with AML policies and procedures being developed and updated by the Division's MASQR Department, and the examination portfolios implementing these policies and procedures into their onsite and off site examination of their supervised institutions. The FISD has 60 examiners who have benefited from extensive AML and CFT training both locally in programmes put on in association with the DPP, CFATF and CALP as well as overseas in association with CFATF, CALP, CEMLA/BIS and the Federal Reserve Board. BOJ functions with a fair amount of operational independence, inasmuch as most of the regulatory powers are exercised by the BOJ except a few like termination of licenses, which is in the hands of the Minister.

Financial Services Commission (FSC)

319 The FSC was established in August 2001 by the FSCA. It currently regulates insurance companies, pension funds, securities dealers, and collective investment schemes (including mutual funds and unit trusts). The FSC employs 93 staff, divided into divisions namely, Insurance, Securities, Pensions, Actuarial, Legal Services, Examinations and Investigations and Corporate Services. It has recently established an AML Unit. FSC is managed by a board of commissioners and functions through a number of committees. The FSC has its own budget that is financed principally by fees from the industry.

320 Both the BOJ and the FSC have qualified and trained staff who are subject to secrecy obligations under their respective statutes [section. 34(D) BOJA; section. 15 FSCA]. There is also a code of conduct for the BOJ employees that deal with matters like conflict of interest, personal financial embarrassment, loans by the employees, gratuities and gifts from the public etc. There is no such code for the FSC staff.

321 BOJ has been active in providing training to its staff. Between June 2003 and February 2005, 6 senior officers and 74 examiners attended 6 training seminar organized by agencies like CALP, IMF-WB, Federal Reserve, the Bank for International Settlements (BIS) and CFATF. Some of the BOJ staff are also regular trainers.

322 FSC too has an active training policy. Its staff has participated in training programmes by CARTAC, CALP, IMF, WB, US Securities Commission etc. In the past about 36 staff of the FSC have participated in 9 such programmes.

3.10.2 Recommendations and Comments

1. Harmonise the definition of financial institutions in the MLA and the TPA with that given in the AML/CFT Assessment Methodology

3.10.3 Compliance with Recommendations 17, 23 (criteria 23.2, 23.4, 23.6-23.7), 29 & 30

	Rating	Summary of factors relevant to S.3.10 underlying overall rating
R.17	LC	The assessment of the implementation of CFT measures was not possible due to recent enactment. .
R.23	LC	Exclusion of some financial institutions from the purview of MLA. Additional reasons for rating are in sections 3.11 and 3.13
R.29	LC	See reason for rating in section 3.13
R.30	LC	Largely compliant with all the essential criteria. Reasons for the final overall rating are given in sections 2.5 and 2.6

3.11 Financial institutions - market entry and ownership/control (R.23⁹)

3.11.1 Description and Analysis

RECOMMENDATION 23

323. The AML regime is provided in the MLA and the MLR, supplemented by the sector specific guidelines issued by the BOJ and the FSC. Subject to the observations made in this report, these together present a comprehensive regulatory and supervisory framework for the AML. The enactment of the TPA will enhance the framework by incorporating CFT measures and thereby increase the level of compliance with international standards. Both the BOJ and FSC have started on-site testing for compliance (the latter at a very basic stage); however, the process will take some time before it provides a reasonable assurance that the AML/CFT measures are being implemented effectively and in full, as the AML-CFT framework would require modification in view of the Methodology.

324 Directors, senior management and owners of BOJ regulated entities viz. deposit-taking entities, cambios and remittance companies, and FSC regulated entities must be approved contingent on “fit and proper” assessments by the BOJ and/or the FSC. The assessments cover the integrity, probity, professional background and expertise of these persons. In the case of deposit-taking licensees, the BOJ has also extended its “fit and proper” due diligence to officers who, while they may not occupy senior corporate positions, may occupy sensitive operational positions which also have the potential to significantly impact the financial health and viability of the licensee (e.g. officers operating in the trading area). The industry has also been advised that such determinations will be made by the BOJ from time to time, as necessary.

⁹ See also the elements relating to Recommendation 23 in sections 3.10 and 3.13

325. The exchange bureaus are licensed under the BOJA (S. 22A). By an amendment to the BOJA in 2004, the money transfer and remittance agents and agencies have been brought under the licensing regime of the BOJ (Section 22G of the BOJ Act, which states that money transfer and remittance agents would require Minister’s approval to operate). As part of the licensing process, the BOJ is conducting CDD assessments on all money transfer and remittance agents and agencies and hopes to complete this process by June 2005.

3.11.2 Recommendations and Comments

326 The measures implemented to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution appear adequate.

3.11.3 Compliance with Recommendation 23 (criteria 23.1, 23.3-23.5)

	Rating	Summary of factors underlying rating
R.23	LC	Non completion of CDD assessments for money remittance agents. Additional reason for final rating in section 3.10

3.12 AML/CFT Guide Lines (R.25¹⁰)

3.12.1 Description and Analysis

RECOMMENDATION 25

327 The BOJ has issued Guidance Notes for the financial institutions subject to its supervision. Subject to observations in this report, these detail the primary responsibilities of these institutions and the international best practices in the areas of AML/CFT techniques and also provide information on other relevant statutes e.g. the USA Patriot Act. Similarly, the FSC also has issued (February 2005) AML/CFT Guide Lines for its regulated institutions. Though both these guidelines do not by themselves have the force of law, Regulation 3(3) of the MLR makes compliance mandatory by providing that a court shall take account of any relevant supervisory or regulatory guidance which applies to that person. The BOJ considers an institution’s breach of its statutory obligations under the MLA and the MLR as “unsafe or unsound practice” for the purposes of Section 25(1) of the BA and FIA, and for regulation 64 of the Bank of Jamaica (Building Societies) Regulations respectively.

328. The FSC Guidelines were adapted from the Securities Commission, the former regulator of the securities industry, and revised in line with the requirements of the MLA and MLR. The FSC GL operates like the BOJ GN under Regulation 3(3) of the MLR. However, pg 131 of the FSC GL states that “use of this guide is not mandatory”. The FSC has advised that this statement is an error inadvertently retained from a previous draft. Breach of any part of the FSC GL is considered “unsafe and unsound practice” by the FSC and liable under section 8 of the FSCA to the FSC requiring an undertaking or giving direction to or issuing a cease and desist order to the prescribed institution. FSC licensees regard the FSC GL as mandatory for their operations and the FSC has incorporated testing for compliance with the Guidelines as part of their AML/CFT examinations. The FSC has advised that the erroneous statement on pg 131 will be removed. It is recommended that this be done as soon as possible.

329. The FID has also issued procedural Guide Lines to the financial sector outlining the information

¹⁰ See also elements relating to Recommendation 25 in section 3.7

requirements relating to suspicious transaction reporting. However, no guidelines have been issued for the DNFBPs.

3.12.2 Recommendations and Comments

1. Issue guidelines for the DNFBPs after bringing them under the AML/CFT regime.
2. The FSC should remove the statement advising that use of the FSC GL is not mandatory.

3.12.3 Compliance with Recommendation 25 (criteria 25.1, financial institutions)

	Rating	Summary of factors underlying rating
R.25	PC	No guidelines for the DNFBPs. Additional reason for rating in section 3.7

3.13 Ongoing supervision and monitoring (R.23¹¹, 29¹² & 32¹³)

3.13.1 Description and Analysis

RECOMMENDATION 23

330 All the three prudentially regulated sectors apply the Core Principles. The FSC is a member of IAIS and IOSCO and is in the process of implementing the requirements of these Core Principles. FSC, as well as the BOJ, have taken steps to meet the requirements of the Core Principles, including the licensing and structure, risk management process and ongoing supervision. However, consolidated supervision of the regulated entities is an important supervisory challenge as many of the licensed entities belong to financial conglomerates with affiliates in several countries and some of them even have non financial affiliates like retail stores and food business. It is important that the supervisory authorities address this issue quickly so as to effectively manage the prudential and AML/ CFT risks flowing from these conglomerates. It should be noted that amendments to the legislation relating to the deposit taking sector in 2003 incorporate numerous provisions relating to consolidated supervision. These include:

- (a) Power to obtain information from any institution within a group that contains a deposit taking institution;
- (b) Power to order the restructuring of group to ensure transparency, including requiring the establishment of a holding company for the financial institutions in the group;
- (c) Application of fit and proper requirements to the management and directors of holding companies;
- (d) Power to issue directions to the deposit taking institution or its holding company relating to the control of group risks including group capital adequacy, large exposures and intra group transactions.

The BOJ is currently in discussions with most deposit taking groups to work out group frameworks that will permit proper consolidated supervision.

RECOMMENDATION 29

331 As discussed in section 3.10, the supervisory authorities have wide ranging powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and with the enactment of the TPA the financing of terrorism.

¹¹ See also elements relating to Recommendation 23 in sections 3.10 and 3.11

¹² See also elements relating to Recommendation 29 in section 3.10

¹³ See also elements relating to Recommendation 32 in sections 2.5, 2.6 and 6.3 – 6.5

332 Onsite examinations are carried out annually by the BOJ on the basis of CAMELS (capital adequacy, asset quality, management, quality of earnings, liquidity management, and overall risk management).

333 The BOJ examinations of deposit taking institutions and cambios also incorporate assessments of AML compliance and this area has been a critical feature of examinations since 1999. In 2004, the examination methodologies were significantly enhanced, consistent with the issuance of revised Guidance Notes, to allow for a more risk-focused and detailed review of an entity's AML/CFT framework. The onsite exam process is preceded by a detailed planning exercise to ensure that there is a thorough understanding of the entity's profile (strategy, product offerings, etc.), policy framework and governance structure to further inform the specific procedures to be undertaken by the examiner while onsite. The onsite exercise takes a top-down approach and typically involves an assessment/review of:

- Compliance with relevant legislative and regulatory requirements as outlined primarily in the MLA, MLR and BOJ GN;
- Compliance with internal policies and procedures established by licensee;
- Effectiveness of procedures implemented to facilitate timely detection, monitoring and reporting of threshold/suspicious transactions and activities, and to verify whether there is timely and accurate reporting to the FID as statutorily required;
- Effectiveness of KYC/CDD procedures to ensure that these are in compliance with the Regulations, Guidance Notes and international standards. The examiners review a representative sample of customer files to determine whether there is consistent application of KYC requirements;
- Governance and control framework to assess involvement of board/ senior management in AML/CFT program. Specific focus is placed on the compliance officer who is responsible for day-to day management of the AML/CFT function, and the contribution of the independent input of the internal audit function is reviewed. The Guidance Notes specifically require that the compliance officer report directly to the Board of Directors on the effectiveness of the AML/CFT function. The BOJ examiners comprehensively review this report as well as internal audit scope and reports also submitted to the board.
- Employee integrity and awareness which includes a review of the licensee's procedures for hiring and monitoring staff to ensure maintenance of high integrity. Staff awareness is assessed via spot interviews with key personnel having direct responsibilities within the AML/CFT program and a review of the effectiveness, comprehensiveness and frequency of the licensee's training program. Specific and detailed procedures for this area of assessment are contained in the BOJ's examination manual.

334 The FSC is currently developing its assessment techniques in the AML/CFT area. The examination of insurance companies has started in a limited manner.

RECOMMENDATION 32

335 The AML system has undergone continuous reviews, as indicated by amendments to the MLA, issue of guidelines by the regulators, and the proposed legislation (POCA and proposed amendments to the MLA), Legislation concerning CFT has also just been passed.

336 Both BOJ and FSC maintain statistics on onsite examinations conducted. Since the BOJ included a specific money-laundering component in its examination activities in 2001, the BOJ has carried out annual AML examinations on all its licensed entities (currently 6 commercial banks, 5 merchant banks and 4 building societies). As previously mentioned the FSC is currently developing its assessment techniques in the AML/CFT area. The examination of insurance companies has started in a limited manner. BOJ had not received any request so far for sharing of information in respect of ML nor has it had occasion to make any request to foreign regulators in respect of AML. It has however had domestic requests from the FID and the US Embassy with regards to possible money laundering activities, which

have all been acted upon. BOJ currently has a signed Memorandum of Understanding with the Cayman Islands Monetary Authority (CIMA) on the sharing of information. BOJ has also signed a regional multilateral Memorandum of Understanding, to which the ten bank supervisory authorities in the region are signatories. At the time of the mission no statistics were maintained for FT related issues since the TPA had not become law as yet. Since the DNFBPs are not under the AML/CFT regime there are no statistics concerning their compliance.

Recommendations and Comments

1. Introduce and implement consolidated supervision.
2. FSC should implement a comprehensive system of AML/CFT on-site examinations to test compliance of its licensees.
3. Statistics related to FT issues should be maintained.
4. Bring DNFBPs under AML/CFT regime and maintain statistics on their compliance..

3.13.3 Compliance with Recommendations 23 (criteria 23.4, 23.6-23.7), 29 & 32 (rating & factors underlying rating)

	Rating	Summary of factors relevant to s.3.13 underlying overall rating
R.23	LC	Lack of proper consolidated supervision. Additional reasons for final rating are in sections 3.10 and 3.11
R.29	LC	FSC currently developing assessment techniques in the AML/CFT area. Examination of insurance companies started in a limited manner.
R.32	LC	No statistics maintained for DNFBPs and FT related matters. See additional reasons for rating in sections 2.5,2.6 and 6.3 – 6.5

3.14 Money or value transfer services (SR.VI)

3.14.1 Description and Analysis (summary)

SPECIAL RECOMMENDATION VI

337 BOJ is the competent authority to register and license the money or value transfer services and ensuring their compliance with licensing requirements. BOJ is currently in the process of completing due diligence enquiries in respect of all the applicants for licenses and hopes to complete it by June 2005. The full regulatory regime for remittance companies is due to come into effect in July 2005.

338 The Ministerial Order made pursuant to section 2 (1) (h) of the MLA has categorised money transfer and remittance agents and agencies as financial institutions and therefore made them subject to the full AML regime. The enactment of the TPA by incorporating most of the requirements of the FATF Eight Special Recommendations effectively extends Jamaica's regime to include both AML and CFT. Money transfer and remittance agents and agencies are subject to the TPA.

339 BOJ is in the process of implementing a monitoring system for the money or value transfer (MVT) service operators that will include periodic reporting in a prescribed format that will be fed into its electronic reporting system, E-Gate. BOJ has already issued operational guidelines for the cambios and MVT service operators under section 22G of the BOJA.

340 MVT service operators and their primary agents have to be licensed. Sub agents are permitted subject to a formal arrangement vetted by the BOJ and satisfying the fit and proper requirements.

341 Breach of compliance with BOJ directions will render MVT service operators liable to administrative sanctions including the suspension or revocation of approval, and such action may be taken without notice. The breach also constitutes an offence under part IVB of the BOJA which will

attract penalties under that Part and/ or under section 22D of part IVA of the BOJA.

3.14.2 Recommendations and Comments

3.14.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	LC	Regulatory regime for remittance companies to come into effect by July 2005.

4 Preventive Measures - Designated Non-Financial Businesses and Professions

4.1 Customer due diligence and record-keeping (R.12¹⁴) (applying R.5 to 10)

4.1.1 Description and Analysis

RECOMMENDATION 12

342 The current AML/CFT regime does not extend to the DNFBPs. The customer due diligence, record keeping and reporting obligations under the remit of the MLA/MLR and TPA extend only to financial institutions as defined under the MLA. The authorities informed that it was proposed to amend the MLA to allow the Minister to designate individuals or institutions as designated non-financial institutions which will then be under certain money laundering obligations including customer identification, suspicious transaction reporting, record keeping, and adherence to supervisory Guide Lines. The TPA does provide for the Minister to designate entities by order to be subject to the reporting and regulatory controls requirements of the TPA.

4.1.2 Recommendations and Comments

343 The proposed amendments to the MLA should be enacted to ensure compliance with Recommendation 12 with regard to applying Recommendations 5 to 10. In addition, the DNFBPs should also be covered under the CFT regime.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	NC	DNFBPs are not covered under the existing AML/CFT regime.

4.2 Monitoring of transactions and relationships (R.12¹⁵ & 16¹⁶) (applying R.11 & 21)

4.2.1 Description and Analysis

RECOMMENDATIONS 12 AND 16

344 The current AML/CFT regime does not extend to the DNFBPs. The monitoring of transactions

¹⁴ See also elements relating to Recommendation 12 in section 4.2

¹⁵ See also elements relating to Recommendation 12 in section 4.1

¹⁶ See also elements relating to Recommendation 16 in sections 4.3 and 4.4

and relationships obligations under the remit of the MLA/MLR extend only to financial institutions as defined under the MLA. The authorities informed that it was proposed to amend the MLA to allow the Minister to designate individuals or institutions as designated non-financial institutions which will then be under certain money laundering obligations.

4.2.2 Recommendations and Comments

345 The proposed amendments to the MLA should be enacted to ensure compliance with recommendations 12 and 16 with regard to applying Recommendations 11 and 21. In addition, the DNFBPs should also be covered under the CFT regime.

4.2.3 Compliance with Recommendation 12 and 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.12	NC	DNFBPs are not covered under the existing AML/CFT regime.
R.16	NC	DNFBPs are not covered under the existing AML/CFT regime.

4.3 Suspicious transaction reporting (R.16¹⁷) (applying R.13 & 14)

4.3.1 Description and Analysis

RECOMMENDATION 16

346 The DNFBPs are not subject to the suspicious transaction reporting requirements as required under Recommendation 16.

4.3.2 Recommendations and Comments

347 The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBPs to report suspicious transactions. It is recommended that such amendments are effected in order to comply with Recommendation 16 with regard to applying Recommendations 13 and 14.

4.3.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.16	NC	No statutory requirement for the DNFBPs to report suspicious transactions.

4.4 Internal controls, compliance & audit (R.16¹⁸) (applying R.15)

4.4.1 Description and Analysis

RECOMMENDATION 16

348 The DNFBPs are not subject to the requirements of Recommendation 15 as it applies to internal controls, compliance and audit.

¹⁷ See also elements relating to Recommendation 16 in sections 4.2 and 4.4

¹⁸ See also elements relating to Recommendation 16 in sections 4.2 and 4.3

4.4.2 Recommendations and Comments

349 The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBPs to institute measures regarding internal controls, compliance and audit. It is recommended that such amendments are effected in order to be compliant with Recommendation 16 with regard to applying Recommendation 15.

4.4.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.4 underlying overall rating
R.16	NC	No statutory requirement for the DNFBPs to institute measures regarding internal controls, compliance and audit.

4.5 Regulation, supervision and monitoring (R.17, 24-25)

4.5.1 Description and Analysis

RECOMMENDATION 17

350 Since DNFBPs are not yet subject to the legal requirements of the AML/CFT regime the applicability of sanctions for AML/CFT violations is non-existent. Not all the DNFBPs are subject to the overall control of a designated authority that can apply sanctions (if so empowered) for violations of AML/CFT obligations. However, regulatory structures, with varying degrees of control, do exist in case of some of the DNFBPs. For example, the gaming industry is regulated by a Betting, Gaming and Lotteries Commission (BGLC), which consists of several departments including an Enforcement Department, which has undertaken 128 investigative operations in 2003 and 168 operations in 2004, leading to several arrests and convictions.

351 At the time of the evaluation the only type of legally approved gaming activity was the use of gaming machines. There are two types of gaming machines in the island, slot machines and “10c” machines. The mandate behind the BGLC’s regulatory role in the gaming industry is the regularization of gaming machine operations. This is done through the licensing of not only gaming machines but also the premises on which the machines are operated. Each gaming machine licence requires that that machine be operated on the prescribed premises to which the licence is attached.

352 Lawyers are subject to the Legal Profession Act (LPA) which requires a certain standard of the practice of law to be maintained through the prescription of professional standards and etiquette. The requirements of this Act are enforced by the General Legal Council (Section 3 of the LPA) through a Disciplinary Committee (Section 11 of the LPA). In addition, the Council has also issued the Canons of Professional Conduct and Etiquette, the non-compliance with which may lead to the suspension or the revocation of the Certificate to Practice Law in Jamaica. The Bar Association of Jamaica is one of several Associations of Attorneys formed by the legal profession to ensure the maintenance of standards throughout the profession and in the courts.

353 Real estate dealers are governed by the Real Estate Dealers and Developers Act of 1988, enforced by the Real Estate Board, which oversees the regulation and control of the practice of real estate business, including the disposition of land in development schemes and the operation of such schemes and applications for (a) registration as real estate dealers and real estate salesmen; (b) licences and the renewal of licences to engage in the practice of real estate business as real estate dealers and real estate salesmen.

354 The Public Accountancy Board (PAB) acts as the statutory regulator of the accounting profession pursuant to the provisions of the Public Accountancy Act and has the power to issue practising certificates as well as to discipline members, including the issue of sanctions such as suspension and striking off the Register (s. 13). The Board may, with the approval of the Minister, make rules in relation to the promotion by the Board in the public interest of acceptable standards of professional conduct

among registered public accountants. Such rules may prescribe a code of professional conduct to be observed by all registered public accountants and may make provision with respect to any other matter or thing prescribed by the Regulations for the purposes of this section (s. 28). The accountancy profession led by the Institute of Chartered Accountants of Jamaica (ICAJ) has its own policy documents, in particular the “Code of Ethics”, compliance with which is a requirement for continued membership with the ICAJ.

355 Trust and company service providers and dealers in precious metals and precious stones are not under the regulatory authority of any body at present. In most cases, companies are formed and secretarial services provided by attorneys or accountants.

356 While the DNFBPs are not subject to the AML/CFT requirements at present, the sanctions, as and when they are made applicable, can be extended to the directors and senior management in terms of Section 49 of the Interpretation Act, which provides for the prosecution of a director, general manager or secretary of an entity for an offence committed by a body corporate.

RECOMMENDATION 24

357 Jamaica has no internet casinos. As stated, the casinos are licensed and regulated by the BGLC an independent statutory body established in 1975 under the provisions of the Betting, Gaming and Lotteries Act. Since casinos have not yet been brought under the purview of the AML/CFT regime, there is no obligation for a designated authority or the BGLC to enforce AML/CFT compliance.

358 The Gaming and Lotteries Division of the BGLC is responsible for the licensing, monitoring and regulation of all gaming activities conducted in Jamaica. The Enforcement Division is the law enforcement arm of the Commission, whose functions include, gathering intelligence and managing a database of organized criminal groups involved in illegal gaming activities; conducting criminal and regulatory investigations on persons involved in illegal gaming activities; and conducting background investigations on potential licensees and making recommendations regarding the granting of licences.

359 As discussed above in respect of Recommendation 17, other categories of DNFBPs are not subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements because of (a) non extension of the AML/CFT regime to the DNFBPs and (b) inadequate/ no powers for monitoring, sanctions and limited technical and other resources to enforce compliance with AML/CFT requirements.

RECOMMENDATION 25

360 At present no specific AML/CFT guidelines exist for the DNFBPs, either by the regulatory authorities or the SROs. The competent authorities and the FIU have not issued any feedback to the DNFBPs with regard to the FATF Best Practice Guidelines.

4.5.2 Recommendations and Comments

361 As indicated by the authorities, the DNFBPs should be brought under the purview of the legal requirements of the AML/ CFT regime. The regulatory authorities/SROs for these should be established, if not already done, and vested with sufficient powers, sanctions, technical and financial resources to enable them to carry out their AML/CFT mandate effectively.

4.5.3 Compliance with Recommendations 17 (DNFBP), 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	NC	DNFBPs are not subject to the AML/CFT regime, therefore sanctions for AML/CFT violations are non-existent.
R.24	NC	Despite a regulatory machinery for casinos, they are outside the purview of the AML/CFT measures, as are the other categories of DNFBPs, in whose case the regulatory machinery is either absent or inadequate.
R.25	NC	No specific guidelines for the DNFBPs on AML/CFT compliance and no

4.6 *Other non-financial businesses and professions*

Modern secure transaction techniques (R.20)

Description and Analysis

RECOMMENDATION 20

362 There has not been any formal assessment of the AML/CFT risks posed by the non financial businesses and professions other than DNFBPs (dealers in high value and luxury goods, pawnshops, auction houses etc) nor are there any provisions in place for placing AML/CFT obligations on these. The authorities stated that this regime had to be developed with more research into the industries and professions at risk, and the resources that will be necessary to monitor these industries. Our interviews with various parties indicated that at least one of these, used car dealers, were at considerable risk from the money laundering point of view and needed to be brought under the purview of the AML/CFT laws.

363 While the banking and financial system in Jamaica is fairly well developed by regional standards, our interviews with a cross section of people indicated a high incidence of cash in the society; the estimates given by the interviewees varied from 30 to 50% of the total payments. While the authorities attributed this to cultural factors, such high reliance on cash as a means of payment presents significant vulnerabilities from the AML/CFT point of view. While the authorities are aware of this fact, initiatives to reduce the incidence of cash in the economy have been largely market determined with the establishment of the Automated Clearing House and the shared electronic transaction switching network administered by JETS Limited (which administers ABM and Point of Sale transactions). The Government is however seeking to promulgate an Electronic Transactions Act, which will also encourage consumers to conduct transactions electronically.

Recommendations and Comments

1. Assess the AML/CFT risks posed by non financial businesses and professions other than DNFBPs and consider applying FATF Recommendations 5, 6, 13-15, 17 and 21.
2. Take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.

4.6.3 *Compliance with Recommendation 20*

	Rating	Summary of factors underlying rating
R.20	NC	No effective measures in place to counter the vulnerabilities posed by non financial businesses and professions other than DNFBPs (e.g, the car dealers) and the high incidence of cash in the economy.

5 Legal Persons and Arrangements & Non-Profit Organisations

5.1 Legal Persons - Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

RECOMMENDATION 33

364 Jamaica has a centralized registry of companies, the Registrar of Companies. Under the Companies Act, each company must ensure that its articles of association (s. 8), particulars of its directors and managers (s.178), and other critical information (e.g. annual returns, s. 121) are filed with this Registry. These documents are public documents, which can be searched either in person or online at the Office of the Registrar of Companies. The companies may also be investigated by a nominee of the Minister pursuant to section 161. However, beneficial ownership information is not available in case of a company-incorporated company. Changes in the ownership or the directors are required to be notified. However, the nationality of the owners/ directors is not being captured in the information base. The registry maintains an electronic database of the shareholders and the documents filed. Bearer shares are not permitted in terms of Table A of the First Schedule to the Companies Act. Inasmuch as information about beneficial ownership was stated to be publicly available the financial institutions should be in a position to verify customer identification data.

365 Under the Friendly Societies Act, societies are also required to make annual filings to the Registrar of Co-operatives and Friendly Societies and to produce annual filings relating to members under section 22 indicating among other things the number of members on its roll, including every person who at any time during the year was a financial member of the society or branch. The public may access information on any Friendly Society through the Registrar of Co-operatives and Friendly Societies, through the provisions of the Access to Information Act.

366 The Jamaica Stock Exchange also has detailed rules relating to the submission of information by companies listed on the Exchange, including quarterly and annual reports and financial statements, which include the 10 largest shareholders. These documents are public documents and can be accessed from the Exchange or its website.

5.1.2 Recommendations and Comments

367 The Registrar of Companies should consider instituting measures to capture information regarding beneficial ownership of a company incorporated company as well as information regarding the nationalities of the beneficial owners.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	LC	While much of the requirements of R33 is met, the information regarding beneficial ownership of a company incorporated company is not captured.

5.2 Legal Arrangements - Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

RECOMMENDATION 34

368 In Jamaica, the treatment of the Deeds and other documents is dealt with under the terms of the

Record of Deeds, Wills and Letters Patent Act and the Records Office Act. Section 4 of the Record of Deeds, Wills and Letters Patent Act provides that the act and process of the recording of deeds will constitute conclusive evidence of the transaction or arrangements that the deed refers to, while the Records Office Act makes it clear that the public may inspect these deeds during office hours; Section 33 allows the public to search and examine the Public Records and to take abstracts and short notes and Section 34 allows the Keeper of the records to permit copies to be made of Public Records. The Rules issued under the Records Office Act (Rule 5) provides for maintenance of an Abstract Book in the prescribed form, which includes information about the Grantor (in the case of a trust the settler) and Grantee (trustee) of the deed. This information is publicly available. Access to the Public Records allows financial institutions to verify information concerning beneficial ownership and control so as to verify customer identification data.

5.2.2 *Recommendations and Comments*

5.2.3 *Compliance with Recommendations 34*

	Rating	Summary of factors underlying rating
R.34	C	The recommendation is fully observed.

5.3 Non-profit organisations (SR.VIII)

5.3.1 *Description and Analysis*

SPECIAL RECOMMENDATION VIII

369 Non profit organizations in Jamaica are established under a number of statutes or instruments. They may be established under the Companies Act (under section 16), or under the Friendly Societies Act, or pursuant to deeds/instruments of Charitable Trusts. Both companies and friendly societies are required to maintain accounting records. Under the Friendly Societies Act, friendly societies are required to produce annual filings relating to members under section 22 indicating inter alia the number of members on its roll, including every person who at any time during the year was a financial member of the society or branch. The public may access information on any Friendly Society through the Registrar of Co-operatives and Friendly Societies, through the provisions of the Access to Information Act. The companies established under the Companies Act may also be investigated by a nominee of the Minister pursuant to section 161 of the Companies Act. The authorities have not conduct a review of the adequacy of the laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism.

370 While the TPA has been recently enacted, it does not include non-profit organizations within its ambit. Section 15 of the TPA defines entities subject to the TPA as including foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts, financial institutions and any entity designated by the Minister. There are no measures in place to ensure that terrorist organizations cannot pose as legitimate non-profit organizations including for the purpose of escaping asset freezing or seizing measures. Other than the measures already mentioned for the registration of non-profit organizations there is no formal oversight of the sector which could ensure that funds or other assets collected by or transferred through non-profit organizations are not diverted to support the activities of terrorists or terrorist organizations.

5.3.2 *Recommendations and Comments*

371 The authorities should implement the requirements of Special Recommendation VIII taking into consideration the measures set out in the relevant Best Practices Paper.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	NC	Terrorism legislation does not cover non-profit organisation and inadequate system for regulating the non profit organizations.

6 National and International Co-operation

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

RECOMMENDATION 31

372. The National Anti-Money Laundering Committee provides a means for national cooperation and coordination. The Committee has been formed to provide a forum for the discussion of anti-money laundering issues and to ensure that the necessary measures are taken to improve the country's anti-money laundering regime and to facilitate compliance with international obligations.

373. The committee is chaired by the Financial Secretary and is comprised of representatives from the Ministry of Finance & Planning, the BOJ, the FID, the FSC, the Attorney General's Chambers, the DPP, the JCF, the JDF, the Ministry of National Security, the Jamaica Customs Department and the Ministry of Justice. Committee meetings are held on a regular basis.

374. The exchange of information between the BOJ and the FID is permitted by virtue of section 34D of the Bank of Jamaica Act. This section permits information to be released directly to the Minister's nominee and the FID has been so nominated by the Minister for the purposes of conducting criminal investigations.

375. Periodic meetings are held between the two bodies regarding ongoing FID investigations which may touch or impact on institutions supervised by the BOJ. In that regard the BOJ has been able to assist in the furtherance of such investigations by providing technical information on banking operations, as well as carrying out targeted reviews of specific banking transactions.

376. The BOJ has also referred to the FID for further investigation, issues of concern which have arisen as a result of its normal AML/CFT on-site examinations. The BOJ GN is updated from time to time with information in relation to money laundering typologies and trends which are informed by the advice received from the FID.

377. The FID also meets with and conducts joint operations with the JCF. The information gained from these contacts is disseminated to the Unit's investigative and analysis staff.

378. The CALP conducted training to ensure that all relevant personnel from the country's law enforcement, legal and regulatory agencies are conversant with international trends in money laundering. Typology exercises are attended by crime analysts in the JCF and other law enforcement officials, and the information disseminated to the relevant personnel through training courses and seminars, lectures and weekly divisional tasking and briefing sessions.

379. In November 2002 a task force was established, The Financial Crimes Legislative Task Force, with a mandate to review Jamaica's existing AML/CFT legislative framework and to make recommendations to strengthen the legislation where appropriate. The Task Force was made up of representatives from the BOJ (Chair), the Ministry of Finance, the Attorney General's Chambers, DPP, The Department of Legal Reform, the FID, the Ministry of National Security and the FSC.

380. To date, the Task Force has produced two reports drawing on international best practice, i.e.

FATF requirements, together with operational deficiencies observed by practitioners which make recommendations for key reforms to increase the effectiveness of the anti-money laundering framework.

381. The National Anti-Narcotics Committee chaired by the Minister of National Security is another critical multi-agency committee established with responsibility for charting a cohesive security strategy for the country and ensuring cooperation and coordination of action between critical stakeholders.

382. In the areas of anti-money laundering and combating the financing of terrorism the Ministry of Foreign Affairs disseminates information as to treaty developments, work shops, training seminars etc. to the relevant Ministries and/or agencies for participation or instruction as to the extent of Jamaica’s representation in the particular forum.

383. The Ministry of Foreign Affairs also circulates the United Nations Security Council lists of terrorists and terrorist organizations to the respective Government agencies for their own information and use, as well as for onward dissemination to financial entities.

384. The Financial Regulation Division of the Ministry of Finance and Planning is responsible for developing Jamaica’s anti-money laundering policies. In addition, the Division acts as coordinator of joint anti-money laundering initiatives between the financial supervisory and the law enforcement agencies.

385. As outlined above, the National Anti-Money Laundering Committee also acts in the area of national cooperation and coordination. The committee includes members from various agencies along with the regulatory and supervisory bodies. The inclusion of bodies such as the BOJ and the FSC provide an avenue for consultation and feedback from its members. In addition, the FID has commenced a process to open up dialogue with the financial institutions particularly in the areas of STRs and the legal requirements and guidelines. With the enactment of the TPA consultation in the area of combating the financing of terrorism should be possible. The present process of cooperation does not formally include any of the DNFBPs.

6.1.2 Recommendations and Comments

386 Whilst substantive action has been taken with respect to this recommendation, the recent enactment of the TPA should enhance Jamaica’s efforts as CFT is formally incorporated into the functions of the cooperative structure. 389 The FID advised that they were going to engage in an awareness campaign to sensitize the financial institutions as to their responsibilities under the various Acts. It is suggested that the National Anti-Money Laundering Committee become involved in such a campaign and perhaps broaden its scope to include the general public. Public awareness of the activity and legal consequences of money laundering and its detrimental effect on the country’s financial system should be among the aims of such a campaign. Additionally, the DNFBPs should be sensitized to their role in preparation for future enhancements in the AML/CFT regime. This type of campaign can be properly directed by a national body such as the National Anti-Money Laundering Committee.

387 The content of Guidance Notes currently in issue will have to be re-visited with the enactment of the POCA, the TPA and the FIDA. A co-ordinated and co-operative approach to this task will allow input from all interested parties.

388 There needs to be a formal means of consultation by the competent authorities with the DNFBPs. The General Legal Council and the Bar Association, for example are crucial consultants with respect to proposed AML/CFT legislation. A greater partnership in this regard may lead to a greater reduction in contention when it comes to due implementation of laws.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	LC:	Substantive action has been taken with respect to this recommendation however, Jamaica’s efforts have been hampered by a legislative framework that did not

		<p>include terrorism prevention legislation. The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. The FID are going to engage in an awareness campaign to sensitize the financial institutions as to their responsibilities under the various Acts. It is recommended that the National Anti-Money Laundering Campaign become involved in such a campaign and perhaps broaden its scope. Is the public aware of what is money laundering and the consequences for engaging in such activities? Do they understand the detrimental impact money laundering can have on the country's financial system? This is the type of campaign that can be properly directed by a national body such as the National Anti-Money Laundering Committee.</p> <p>The content of Guidance notes currently in issue will have to be re-visited with the enactment of the TPA and the proposed enactment of the Proceeds of Crime Act and the Financial Investigations Division Act. A co-ordinated and co-operative approach to this task will allow input from all interested parties. The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, the rating in this section has been greatly influenced by this factor and only now can the systems and processes be implemented. As a result there are no results to effectively assess those systems and processes.</p>
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6.2 *The Conventions and UN Special Resolutions (R.35 & SR.I)*

6.2.1 *Description and Analysis*

RECOMMENDATION 35

389 Jamaica is a party to the Vienna Convention. Jamaica signed the Convention on October 2, 1989 and ratified same in December 1995. The Convention has been substantially implemented by the Dangerous Drugs Act, DOFPA, the Customs Act (CA), the MACMA, EA, the MLA and the MLR, The Corruption (Prevention) Act (CPA), and the Parliament (Integrity of Members) Act (PIMA). There is also the Precursor Chemicals Act, which was passed in 1999, and came into effect in July 2005. It establishes a regime for the regulation of dealings in substances used in the manufacture/preparation of narcotics and psychotropic substances.

390. The UN Convention Against Transnational Organized Crime [The Palermo Convention] was signed by Jamaica on 26 September 2001 and ratified on 29 September 2003. The implementation of this Convention has been achieved by the passage of the MLA, MACMA, DOFPA, CPA and the IA. However, with regard to Article 6(1) of the Palermo Convention and the criminalisation of the laundering of the proceeds of crime, the MLA only criminalizes the laundering of property derived from specific offences (including drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences). Additionally, Article 6(2)(b) requires that all serious crime be considered as predicate offences to the laundering of proceeds of crime. As already noted in this report, predicate offences for ML in Jamaica are limited to specific offences in a schedule attached to the MLA and include drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences. The Government of Jamaica has established under the Ministry of Finance, the FID which acts as the designated authority under the MLA and investigates money laundering offences.

391. Jamaica has entered into formal and informal cooperation arrangements with other states with a view to enhancing law enforcement efforts to suppress the illicit traffic in narcotic drugs and psychotropic substances. An example is the Agreement Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking between the Government of Jamaica and the Government of the United States

of America dated May 6, 1997 (“ Ship-rider Agreement”). Additionally, in 2002 the Maritime and Police Cooperation Agreements were signed between Jamaica’s Ministry of National Security and Columbia’s Ministry of National Defence.

392. With regards to organized crime, the Jamaican Cabinet has approved the drafting of a comprehensive Proceeds of Crimes statute (POCA). The POCA is based on the UK Proceeds of Crime Act and will reflect the UK scheme of criminal and civil forfeiture. The POCA will target all serious offences and in respect of convictions for such offences, will make available to prosecutors the option of (a) seeking forfeiture in respect of any benefit obtained by the convicted person from the particular offence for which he was convicted; or (b) in circumstances where the convicted party is adjudged to have a criminal lifestyle, seeking forfeiture in respect of any property transferred to the accused during the 6 year period immediately prior to the conviction date on the assumption that it represents the fruit of his general criminal conduct. In this case the accused will be required to rebut the presumption of criminal lifestyle. POCA will also introduce the new measure of civil forfeiture which will enable the requisite authority under the POCA to apply to the Court for forfeiture of property proven to the court on a balance of probabilities, to constitute property derived from criminal activity. These proceedings will be civil proceedings and do not require a conviction to be a prerequisite step to this process. The POCA will also seek to address all the loopholes currently hampering investigative and prosecutorial efforts to combat ML that exist under the current DOFPA. Currently the DOFPA which was passed in 1994, is designed to provide a scheme for depriving persons who have been convicted of specified drug crimes of the benefits of their illicit activity. In 1996 the offences targeted under this Act were subsequently widened to include money laundering offences.

393. Jamaica has signed the United Nations International Convention for the Suppression of the Financing of Terrorism 1999 on 10 November 2001. Ratification and implementation has been substantially achieved by the passage of the TPA. Deficiencies noted in the TPA include; terrorist offences are not predicate offences for ML; no provision to directly freeze the assets of listed entities in the TPA; and no provision to allow for the confiscation of property of corresponding value in the TPA. The Convention has three Protocols as follows:

- (1) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. The Protocol was signed by Jamaica on 13 February 2003.
- (2) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime. This was signed by Jamaica on 13 February 2002 and ratified on 29 September 2003.
- (3) Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime. Jamaica signed this Protocol on 13 November 2001 and ratified it on 29 September 2003.

Additional elements

394 With regards to regional AML/CFT Conventions, Jamaica’s status in relation thereto is as follows:

395 Inter-American Convention Against Terrorism (signed by Jamaica on 6 March 2002). This Convention incorporates the offences created by the UN terrorism conventions and requires State Parties to combat terrorist financing by implementing measures to regulate/monitor financial institutions, entities, etc., cross border movement of cash, utilizing FATF and CFATF guidelines, extradition, mutual legal assistance, etc.

396 The Convention to Prevent and Punish the Acts of Terrorism taking the Form of Crimes Against Persons and Related Extortion that are of International Significance (Organisation of American States

Convention) was also signed on 2 February 1971. This is an older convention and speaks to terrorism in the limited context of criminal acts (namely murder, kidnapping, and other assaults against the life or personal integrity of internationally protected persons – who are defined as persons to whom the State has the duty to give special protection and extortion related thereto) against persons entitled to special protection under international law. It does not address terrorist financing.

397 Jamaica is not a signatory to the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime.

SPECIAL RECOMMENDATION 1

398 The Terrorist Financing Convention and Security Council Resolution 1373 have been substantially implemented by the TPA. The deficiencies which have already been identified in this report include; terrorist offences are not predicate offences for ML; no provision to directly freeze the assets of listed entities in the TPA; and no provision to allow for the confiscation of property of corresponding value in the TPA. Certain obligations flowing from Resolution 1373 have already been addressed administratively under current laws; for example border controls obligations. The Ministry of Foreign Affairs forwards UN updates to the Committee List to the Immigration, Citizenship and Passport Division where it is incorporated into the national “Watch List” which is available to all officers at ports-of-entry.

399 Jamaica’s obligations in relation to the 1951 Refugee Convention are currently addressed administratively. A revised refugee policy is in the process of being finalized and legislation is being considered.

6.2.2 Recommendations and Comments

400 While the TPA substantially implements the International Convention for the Suppression of the Financing of Terrorism, the deficiencies identified in the report should be rectified by enacting appropriate amendments. The POCA should be enacted as soon as possible.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	PC	Articles 6(1) and 6(2)(b) of the Palermo Convention requiring criminalisation of the laundering of the proceeds of crime and the inclusion of all serious crime as predicate offences to ML are not fully enforced.
SR.I	LC	Terrorist offences are not predicate offences for ML; No provision to directly freeze the assets of listed entities in the TPA; No provision to allow for the confiscation of property of corresponding value in the TPA. Assessment of the effectiveness of the implementation of the TPA is not possible because of the recent enactment of the legislation.

6.3 Mutual Legal Assistance (R.32¹⁹, 36, 37²⁰, 38, SR.V²¹)

6.3.1 Description and Analysis

RECOMMENDATION 32

401 The DPP (as the Central Authority under MACMA) does maintain statistics. Since 1995 there have been 250 MACMA requests all of which have related either to ML or to one of the predicate offences for ML. In 2003, 34 requests for assistance were received and 33 of these requests have been satisfied. Last year, Jamaica made 5 requests for assistance. Three of these requests were satisfied, one withdrawn and another is being revised and will be reissued. Spontaneous referrals are not applicable as information is only provided on request.

402 Statistics are maintained by the JCF. There have been 2 known instances of requests to the police for assistance pursuant to the investigation of suspected terrorist activities. Both requests were satisfied on a timely basis. Under the MLAT 12 requests for assistance from the UK have been received between November 2002 and March 2004, of these 7 requests have been satisfied, 4 are being acted on. The status of one matter is not known. One request each from the USA and Canada has been received in January and March of 2004, respectively. Both matters are ongoing with the parties in dialogue (as at April 2004). The JCF also maintains statistics on street crimes and other predicate and specified offences.

403 By virtue of section 34D of the BOJA, the BOJ is able to release information to the other domestic competent authority (FSC), the JDIC, the Solicitor General, the FID and to overseas regulatory authorities carrying out functions similar to the BOJ or FSC. In the case of requests from law enforcement agencies, the Minister has designated the FID as one of the persons authorized to receive information from the BOJ. In the case of cambios, requests from the police have also been facilitated. Under section 16 of the FSCA, the FSC may disclose information to the Supervisor of Banks (BOJ), the CEO of the JDIC, and to the DPP for the institution of criminal proceedings arising out of any relevant Act and to any other person nominated by the Minister via ministerial order subject to affirmative resolution. Regulations outlining the circumstances and method by which the FSC can share information with overseas regulatory authorities are being developed.

RECOMMENDATIONS 36, 37 AND 38

404 The current avenue for the sharing of information between law enforcement authorities (including the FIU) of Jamaica, and the law enforcement authorities of a foreign state, is through the MLAT and the MACMA, whereby requests for information are made by a foreign state to the Central Authority (in Jamaica's case the DPP) who coordinates the meeting of the request. Assistance under this Act may be rendered with regards to criminal matters i.e., matters relating to revenue or to the confiscation, forfeiture, imposition of a pecuniary penalty, the restraining of dealings in property or the freezing of assets in respect of a prescribed offence (i.e. a drug offence against the law of a relevant foreign state, money laundering offence and related inchoate offences). The assistance that may be granted includes:

- (a) the location and identification of persons and objects;
- (b) the examination and taking of testimony of witnesses;
- (c) the production of documents and other records, including judicial or official records; and other articles;
- (d) the making of arrangements for persons to give evidence or assist investigations;

¹⁹ See also elements relating to Recommendation 32 in sections 2.5, 2.6, 3.13, 6.4 and 6.5

²⁰ See also elements relating to Recommendation 37 in section 6.4

²¹ See also elements relating to Special Recommendation V in sections 6.4 and 6.5

- (e) the temporary transfer of persons in custody for the giving of testimony;
- (f) the carrying out of search and seizure;
- (g) the service of documents;
- (h) the restraining of dealings in property, or the freezing of assets that may be forfeited or that may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of a prescribed offence;
- (i) the tracing, seizure and forfeiture of property that may be subject to a forfeiture order in force for the time being in relation to a prescribed offence in the foreign state which makes a request; and
- (j) such other matters as may be included in an agreement or arrangement in force between Jamaica and a foreign state.

405 The Act applies to all proceedings arising out of a criminal matter as defined in section 2, therefore proceedings under the Act can be commenced where the offence committed is an offence against a relevant foreign state which involves dangerous drugs or money laundering or any related inchoate offence. Differing standards regarding the intentional element of the offence will not constitute a limitation on the provision of assistance under this Act as under s. 16(1)(b)(i) a request for assistance may be refused inter alia only if the request relates to conduct which would not constitute an offence under any law in Jamaica. Requests from a foreign state for forfeiture orders or pecuniary penalty orders or restraint orders require that the offence in relation to which the action is being taken must constitute an offence for which equivalent action could be taken under Jamaican law.

406 Further, section 3 of the MACMA recognizes the importance of informal means of exchange of information by expressly preserving arrangements or practices with respect to co-operation between Jamaica and a foreign state or organization. This would facilitate the exchange of information regarding the subjects of investigations between local law enforcement and their foreign counterparts.

407 The MACMA applies to all requests from a designated Commonwealth state or states which are parties to any treaty, convention or other international agreement that is in force or and to which Jamaica is a party, the purpose of which is to provide for mutual legal assistance in criminal matters.

408 Jamaica is a signatory to the following conventions :-

	Signed	Ratified
U.N. Convention Against Transnational Organised Crime, 2000	2001	2003
Protocol to the Convention Against the Smuggling of Migrants By Land, Sea and Air.	2002	2003
Protocol to the Convention to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.	2002	2003
Protocol to the Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and ammunition.	2002	2003
Inter-American Convention Against Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives and other Related Materials, 1997	1997	In progress
Inter-American Convention Against Corruption, 1996	1996	2001
Inter-American Convention on Mutual Assistance in Criminal		

Matters, 1992 (On January 5, 2004, Cabinet granted approval for the ratification of this Convention		In Progress
U.N. Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1998	1989	1995
U.N. Convention on Psychotropic Substances, 1971)	1989	1989
U.N. Single Convention on Narcotic Drugs, 1961 as amended by the 1972 Protocol	1989	1989

409 Jamaica is also party to a number of bilateral agreements with various states for instance:

- (i) Jamaica has entered into bilateral agreements to combat the Illicit Trafficking and use of Drugs and Psychotropic substances with the Government of the Republic of Chile, the Government of the Argentine Republic, Government of the Republic of Columbia, Government of the Republic of Venezuela, Government of the Republic of Cuba, Government of the United States of America and the Government of the United Mexican States. Jamaica has also entered into bilateral agreements.
- (ii) Jamaica has entered into bilateral agreement on Mutual Legal Assistance in Criminal Matters with the Government of Canada and the Government of the United States of America.
- (iii) Jamaica has entered into an Extradition Treaty with the Government of the United States of America and a Protocol of Exchange of Instruments of Ratification in relation to the Extradition Treaty and the bilateral agreement on the Mutual Legal Assistance in Criminal Matters.
- (iv) Jamaica has entered into bilateral agreement with the Government of Canada regarding the Sharing of the Proceeds of the Disposition of Forfeited Assets and Equivalent Funds.

410 Jamaica is also party to a Commonwealth Mutual Legal Assistance Scheme and a Commonwealth Extradition Scheme. The National Intelligence Bureau through its Interpol and Joint Intelligence Coordinating Centre affiliates facilitate the exchange of information and general cooperation with counterparts. Jamaica Customs also meets this requirement of mutual assistance through its membership in the CCLEC.

411 The JCF facilitates the exchange of information on a “police to police” basis and in this regard accommodates requests from foreign law enforcement officers to undertake investigations, gather evidence, execute search warrants and serve court documents (such as Summons etc.), in Jamaica.

412 Requests for assistance from other law enforcement agents can be facilitated by the JCF through the Organized Crime Investigation Division Mutual Assistance Unit. Requests to the JCF in this regard must however first be routed through the Office of the DPP as the DPP is the designated Central Authority for the purposes of facilitating requests under the MLAT. Intelligence requests to Jamaica online can be facilitated through the JCF’s Joint Intelligence Coordination Centre .

413 The Sharing of Forfeited Property Act, 1998 makes provision for the sharing of assets with countries with whom Jamaica has entered into asset sharing agreements, pursuant to the terms of the Vienna Convention.

414 Under the Sharing of Forfeited Assets Act, Jamaica has on 2 occasions, shared assets with the Canadian authorities amounting to J\$9.6 million in one case and J\$360,000 in the other case. The JCF was also involved in facilitating the sharing of assets with the U.S. Government, the amount involved in this case was US\$100,000.

415 In addition, there are also other avenues for the sharing of assets, under Agreements between Governments and law enforcement bodies. In the case of the Agreement Concerning Co- operation in Suppressing Illicit Maritime Drug Trafficking, between the Governments of the USA and Jamaica, parties that have seized assets have powers to transfer these assets to the other party.

416 In March 2003 the Government of Jamaica decided that the forfeited proceeds of drug related activities should be placed in a special fund to be used specifically for law enforcement programmes, justice related projects, debt servicing related to the acquisition of capital equipment for the Ministry of National Security, the Ministry of Justice and respective departments, and education and health projects related to the criminal justice system. As at the 31st December 2004 the balance in the fund was US\$694,184 and J\$4,734,400.

SPECIAL RECOMMENDATION V

417 Section 48 of the TPA provides for the appropriate amendment of MACMA to incorporate terrorism offences under the TPA within the framework of the MACMA as outlined in previous paragraphs.

6.3.2 Recommendations and Comments

418 While mutual legal assistance can be extended for prescribed offences which are widely defined, enactment of POCA will serve to extend and clarify the definition in Jamaica’s statutes. . The TPA provides for a terrorism offence to be prescribed under MACMA. .Again, POCA needs to be passed with due haste.

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.32	LC	Statistics concerning mutual legal assistance and international requests for co-operation are maintained. See sections 2.5, 2.6, 3.13, 6.4 and 6.5 for other reasons for rating.
R.36	LC	Assessment of full implementation of TPA with regard to mutual legal assistance is not possible because of recent enactment.
R.37	LC	MACMA does not expressly require dual criminality, and with the enactment of the TPA covers both ML and TF predicate offences. SEE ALSO SR.V SUMMARY OF FACTORS.
R.38	PC	Laws and procedures to provide response to mutual legal assistance requests are limited to the definition of ML, FT and other predicate offences which do not cover all serious offences as required in Recommendation 1.
SR.V	LC	The TPA now provides for mutual legal assistance and extradition, but because of its recent enactment, its overall effectiveness cannot be duly determined.

6.4 Extradition (R.32²², 37²³ & 39, & SR.V²⁴)

6.4.1 Description and Analysis

RECOMMENDATION 32

419 The DPP maintains statistics on extradition requests and according to these records there have been 51 extradition requests made to Jamaica between 2002 and March 31, 2004. Most of these requests have been satisfied. In other cases the parties are in dialogue as regards additional information required.

RECOMMENDATION 37

420 The EA requires dual criminality, however there are no legal or practical impediments to rendering assistance where Jamaica and the requesting country criminalise the conduct underlying the offence.

RECOMMENDATION 39

421 Section 5 of the EA outlines the types of extraditable offences as follows:

5. (1) For the purposes of this Act, any offence of which a person is accused or has been convicted in an approved State is an extradition offence, if -

- (a) in the case of an offence against the law of a designated Commonwealth State
 - (i) it is an offence which is punishable under that law with imprisonment for a term of two years or any greater punishment; and
 - (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica (or in the case of an extra-territorial offence, in corresponding circumstances outside Jamaica) and would be punishable under the law of Jamaica with imprisonment for a term of two years or any greater punishment;
- (b) in the case of an offence against the law of a treaty State -
 - (i) it is an offence which is provided for by the extradition treaty with that State; and
 - (ii) the act or omission constituting the offence, or the equivalent act or omission, would constitute an offence against the law of Jamaica if it took place within Jamaica or, in the case of an extra-territorial offense, in corresponding circumstances outside Jamaica.

(2) Any offence -

constituted by an act, including an act taking place in Jamaica, that is of a kind over which Contracting States under the Hague Convention are required by paragraph 1 of Article 4 of that Convention to establish jurisdiction; or

constituted by an act, including an act taking place in Jamaica, that is of a kind over which Contracting States under the Montreal Convention are required by paragraph 1 of Article 5 of that Convention to establish jurisdiction,

is an extradition offense for the purposes of this Act and shall be deemed to be committed within the

²² See also elements relating to Recommendation 32 in sections 2.5, 2.6, 3.13, 6.3 and 6.5

²³ See also elements relating to Recommendation 37 in section 6.3

²⁴ See also elements relating to Special Recommendation V in sections 6.3 and 6.5

jurisdiction of any Contracting State that appears to a court in Jamaica, having regard to the provisions of the Hague and Montreal Conventions, to be appropriate. A money laundering offence and predicate offence would therefore constitute extraditable offences. The TPA has amended the EA to include terrorism offences as extraditable offences. Jamaica does extradite its nationals.

422 Sections 8-11 of the EA outlines the authority on which Jamaica can rely to proceed with an extradition request. The requisite sections state as follows:-

8 (1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as "authority to proceed") issued in pursuance of a request made to the Minister by or on behalf of an approved State in which the person to be extradited is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section by or on behalf of any approved State -

(a) in the case of a person accused of an offence, a warrant for his arrest issued in that State; or

(b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that State and a statement of the part, if any, of that sentence which has been served, together with, in each case, the particulars of the person whose extradition is requested, and of the facts upon which and the law under which he is accused or was convicted, and evidence sufficient to justify the issue of a warrant for his arrest under section 9.

3) On receipt of such a request the Minister may issue an authority to proceed, unless it appears to him that an order for the extradition of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

9. Arrest for purpose of committal.

9. (1) A warrant for the arrest of a person accused of an extradition offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued -

(a) on receipt of an authority to proceed, by a magistrate within the jurisdiction of whom such person is or is believed to be; or

(b) without such an authority, by a magistrate upon information that such person is in Jamaica or is believed to be on his way to Jamaica; so, however, that the warrant, if issued under this paragraph, shall be provisional only.

(2) A warrant of arrest under this section may be issued upon such information as would, in the opinion of the magistrate, authorize the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence, within the jurisdiction of the magistrate.

(3) A warrant of arrest issued under this section (whether or not it is a provisional order) may, without an endorsement to that effect, be executed in any part of Jamaica, whether such part is within or outside the jurisdiction of the magistrate by whom it is so issued, and may be so executed by any person to whom it is directed or by any constable.

(4) Where a provisional warrant is issued, the magistrate by whom it is issued shall forthwith give notice of the issue to the Minister, and transmit to him the information and evidence, or a certified copy of the information and evidence, upon which it was issued; and the Minister may in any case, and shall, if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(5) Where a warrant is issued under this section for the arrest of a person accused of an offence of stealing or receiving stolen property or any other offence in respect of property the magistrate shall have the same power to issue a warrant to search for the property as if the offence had been committed within his jurisdiction.

10. Proceedings for committal.

10. (1) A person arrested in pursuance of a warrant issued under section 9 shall, unless previously discharged under subsection (4) of that section, be brought as soon as practicable before a magistrate (in this Act referred to as "the court of committal") who shall hear the case in the same manner, as nearly as may be, as if he were sitting as an examining justice and as if that person were brought before him charged with an indictable offence committed within his jurisdiction.

(2) For the purposes of proceedings under this section, a court of committal shall have, as nearly as may be, the like jurisdiction and powers (including power to remand in custody or to release on bail) as it would have if it were sitting as an examining justice and the person arrested were charged with an indictable offence committed within its jurisdiction.

(3) Where the person arrested is in custody under a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may, subject to subsection (4), fix a reasonable period (of which the court shall give notice to the Minister) after which he shall be discharged from custody unless an authority to proceed has been received.

(4) Where an extradition treaty applicable to any request for extradition specifies a period (hereinafter referred to as the treaty period) for the production of documents relevant to an application for extradition, any period fixed pursuant to subsection (3) shall be such as to terminate at the end of the treaty period.

(5) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the extradition of that person or on behalf of that person, that the offence to which the authority relates is an extradition offence and is further satisfied -

(a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if the offence had been committed in Jamaica; or

(b) where the person is alleged to be unlawfully at large after conviction for the offence, that he has been so convicted and appears to be so at large,

the court of committal shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his extradition under this Act; but if the court of committal is not so satisfied or if the committal of that person is so prohibited, the court of committal shall discharge him from custody.

11. Applications for habeas corpus, etc.

11. (1) Where a person is committed to custody under section 10(5), the court of committal shall inform him in ordinary language of his right to make an application for *habeas corpus* and shall forthwith give notice of the committal to the Minister.

SPECIAL RECOMMENDATION V

423 Section 48 of the TPA provides for the appropriate amendment of the EA to incorporate terrorism offences under the TPA within the framework of the EA as outlined in previous paragraphs.

6.4.2 Recommendations and Comments

424 Once again it is imperative that POCA is passed in order to make international cooperation, in this regard, more effective. POCA, as noted before, sets the table for a full range of mutual legal

assistance.

6.4.3 Compliance with Recommendations 32, 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.32	LC	Statistics concerning extradition are maintained. See sections 2.5, 2.6, 3.13, 6.3, and 6.5 for other reasons for rating.
R.37	LC	The reason for rating is given in section 6.3.
R.39	C	The recommendation is fully observed.
SR.V	LC	The TPA now provides for mutual legal assistance and extradition, but because of its recent enactment, its overall effectiveness cannot be duly determined.

6.5 Other Forms of International Co-operation (R.32²⁵ & 40, & SR.V²⁶)

6.5.1 Description and Analysis

RECOMMENDATION 32

425 There are no additional statistics for assistance to include to those already cited for mutual legal assistance, extradition and terrorist investigation in the relevant sections.

RECOMMENDATION 40

426 Section 3 of the MACMA recognizes the importance of informal means of exchange of information by expressly preserving arrangements or practices with respect to co-operation between Jamaica and a foreign state or organization. This would facilitate the exchange of information regarding the subjects of investigations between local law enforcement and their foreign counterparts.

427 The National Intelligence Bureau through its Interpol and Joint Intelligence Coordinating Centre affiliates facilitate the exchange of information and general cooperation with counterparts. Jamaica Customs also satisfies the requirement of mutual assistance through its membership in the Caribbean Customs Law Enforcement Council (CCLEC).

428 The JCF facilitates the exchange of information on a “police to police” basis and in this regard accommodates requests from foreign law enforcement officers to undertake investigations, gather evidence, execute search warrants and serve court documents (such as summons etc.), in Jamaica.

429 Requests for assistance from other law enforcement agents can be facilitated by the JCF through the Organized Crime Investigation Division Mutual Assistance Unit. Requests to the JCF in this regard must however first be routed through the Office of the DPP as the DPP is the designated Central Authority for the purposes of facilitating requests under the MLAT. Intelligence requests to Jamaica online can be facilitated through the JCF’s Joint Intelligence Coordination Centre (JICC).

²⁵ See also elements relating to Recommendation 32 in sections 2.5, 2.6, 3.13, 6.3 and 6.4

²⁶ See also elements relating to Special Recommendation V in sections 6.3 and 6.4

430 When the FIDA is enacted the FID will have the statutory power to exchange and share information with other law enforcement and financial regulatory agencies both in Jamaica and overseas. Section 11(5) of the proposed Act provides exceptions to the secrecy provisions laid out in Section 11(1) to allow the sharing of information to enable FID to carry out its functions, in the interest of preventing or detecting crime, in the discharge of any international obligation or pursuant to an order of the Court.

431 The BOJ also has a number of memoranda of understanding with various regional supervisors (BVI, Cayman Island, Turks and Caicos, Barbados, Bahamas, Belize etc.) regarding the sharing of information. Customer account information may only be released to third parties on the Minister’s direction (section 45(3)(i), BA). BOJ stated that this discretion of the Minister would not normally be exercised without prior consultation and recommendation of the Supervisor. BOJ also stated that it had in the past accommodated these inspection requests, related to non-AML issues and that it would have no objection to these inspections with regards to AML issues.

432 The authorities stated that the FSCA had been amended (December 2004) to enable the FSC to share information with an overseas regulatory authority. By appointed day notice dated April 27, 2005 the Minister declared April 1, 2005 as the effective date for the bringing into effect of the amendment. The FSC also informed that it was developing Regulations under the FSCA prescribing the method for sharing information with overseas regulators.

SPECIAL RECOMMENDATION V

433 Prior to the enactment of the TPA there have been two (2) known instances of requests to the police for assistance pursuant to the investigation of suspected terrorist activities. Both requests were satisfied on a timely basis. The assistance was provided by the JCF. The enactment of the TPA should allow for the statutory basis for such future requests.

6.5.2 Recommendations and Comments

434 There are no provisions for spontaneous reporting. Therefore, there should be due provision for spontaneous reporting, by virtue of bilateral and multilateral agreements or arrangements. The proposed legislation to empower the FID to share information with overseas counterparts should be enacted as soon as possible. .

6.5.3 Compliance with Recommendations 32 & 40, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.32	LC	No additional statistics for assistance to those already cited for mutual legal assistance, extradition and terrorist investigation in the relevant sections. See sections 2.5, 2.6, 3.13, 6.3 and 6.4 for other reasons for rating.
R.40	PC	The FID does not legally have the power to share information with overseas counterparts, although there are avenues available to other law enforcement agencies. Spontaneous reporting by virtue of bilateral or multilateral agreements or arrangements is absent.
SR.V	LC	The TPA now provides for mutual legal assistance and extradition, but because of its recent enactment, its overall effectiveness cannot be duly determined.

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures or issues

435 In addition to the foregoing certain 1373 obligations have been addressed administratively under current laws, for example border controls concerns. The Ministry of Foreign Affairs forwards UN updates to the Committee List to the Immigration, Citizenship and Passport Division where it is incorporated into the national “Watch List” which is available to all officers at ports-of-entry.

436 Jamaica Customs also meets this requirement of mutual assistance through its membership in the CCLEC. In keeping with international standards, Jamaica Customs is placing great emphasis on trade facilitation. Trade facilitation must be done without compromising the nation’s security and economic well-being. Consequently, the government of Jamaica has embarked on the modernization of Customs systems and procedures. Trade facilitation, includes simplification of document procedures; automation and use of technology; transparency and consistency and modernization of border-crossing administration. Another service, which emanated from the modernization process, is e-Customs. E-Customs, is essentially, Jamaica Customs on the world wide web. Clients are now able to go directly to the Customs website and retrieve information about Customs procedures and requirements. E-Customs will facilitate Pre-Arrival Processing; Fast Track; e-Payment; e-Manifest; C78X and e-export system.

Pre-Arrival Processing

437 Pre-Arrival Processing (PAP) allows for importers/brokers to lodge C78X entries for processing up to 10 days before the vessel arrives, thus giving a kind of “just in time” effect for cargo belonging to those importers who need them right away.

Fast Track

438 This facility is available to brokers whose error rating is 5% or less. The turn-around time for fast track entries is 2 hours.

E-Payment

439 This facility allows for clients to pay duties for their C78 entries conveniently through the internet using their credit cards. An importer/broker can access e-Payment by using the Jamaica Customs website at <http://jacustoms.gov.jm> or the C78 broker application.

E-Manifest

440 The e-Manifest system allows shipping agents, non-vessel operating common carrier (NVOCC), freight forwarders, couriers, and airlines to submit manifest documentation to Jamaica Customs, which forms a part of the overall development of the automated systems in the Customs Computerization Project. This system is the flagship that it is hoped will cause a quantum leap in the type of rapid service delivery without the fear of compromise in security standards. This system enables the electronic submission of the carriers manifest 24 hours prior to the arrival of the vessel, and is an integral part of the electronic cargo processing system of the Customs Department. It also enhances the risk management process.

C78X

441 Effective June 21 the C78X entry processing system will replace the C79 for non-commercial imports of a CIF value not exceeding US\$1000.00. This entry will be accompanied by the C86 form that will ask for a detail description of the contents of the shipment. This will serve as the importers formal declaration of the consignment received.

442 The C78X will facilitate a completely automated system for both commercial and non-commercial imports. This will give Customs the information it needs to exercise prudent expediency while at the same time improving customer satisfaction.

e-Export System

443 The e-Export System is a component of the Trade Point which allows exporters/ brokers, etc, to log onto the Jamaica Promotions Corporation (JAMPRO) website and register online to export goods. At this same site, they will be able to prepare the invoices and Customs export entry (C82). These are then electronically filed to Customs for processing.

444 The passenger declaration form (C5) was also redesigned to capture additional information pertinent to Customs operations and to reflect the increased passenger allowance of US\$500 per visit per passenger (Jamaican residents age 18 and over), instead of US\$150 twice per year. The passenger declaration if properly filled out will reduce interviewing time with Customs, hence, speedier processing of passenger.

BORDER CONTROL SYSTEMS

Valuation Intelligence Risk Management System

445 The cargo processing system is enhanced with the implementation of the valuation Intelligence risk management system which tracks all import entries filed in accordance with set profiles from the database, which is continuously updated. All high-risk shipment are routinely flagged and forwarded to compliance and enforcement for interception and stripping at the container stripping station. If violations are detected importers may be charged under sections 55a, 65, 209,210, 211 of the CA with penalties ranging from \$500000 to three times the value which ever is greater.

446 Section 198 of the CA covers threats against officers (up to 15 years in jail mandatory). Additionally 48 sections of the CA were amended increasing penalties substantially.

Non-intrusive Inspection System

447 Gamma ray equipment was acquired for the two major ports in Jamaica to screen all containers imported or exported into or from the island. This was achieved through an MOU signed between the Port Authority and Jamaica Customs.

Contraband Enforcement Unit

448 The major port of Kingston is under continuous surveillance by enforcement officers who routinely examine all high-risk shipments intercepting firearms narcotics, explosives and illicit commercial goods including undeclared foreign currency or monetary instruments.

7.2 General framework for AML/CFT system (see also section 1.1)

449 The existing framework addresses the AML issue through several legal instruments, which include the MLA, MLR and the guidelines issued by the sector specific supervisors, mainly the BOJ and FSC. This evaluation report points out the deficiencies encountered in the existing framework, in the context of the FATF recommendations and the Methodology. Some of the deficiencies can be attributed to the multiplicity of the instruments through which AML regime has been sought to be implemented. The central legislation, the MLA and the MLR, do not address many of the elements of the recommended framework. While some of these are present in the sector specific guidelines / framework, which has served to mitigate to some extent the deficiencies in the MLA and MLR, their usefulness is limited by the scope of their application (restricted to the specific sector to which the guidelines pertain). Therefore, it will be more efficient if future legislative amendments address the implementation of AML/CFT framework through a central legislation that is applicable to all the financial institutions and which conforms to the Methodology; the sector specific supervisors or regulators can supplement this core framework by sector specific guidelines.

450 The BOJ GN by themselves do not carry the full weight of legislative provisions passed in the usual manner. Instead, the GN derives its strength from Regulation 3 (3) of the MLR which states that a court will give consideration to the supervisory or regulatory guidance issued by the competent authority which has jurisdiction over an entity which is charged with an offence under that Regulation. In the view

of the BOJ and the Attorney General, a court is bound to have regard to the GN to determine the appropriateness of the AML and CFT measures adopted by the financial institution. However, it should be mentioned that the MLR pertains only to the offence of money laundering and not terrorist financing. . With regards to CFT matters, the authorities have indicated that they would rely on the provisions of section 18 of the TPA which require that financial institutions in meeting the requirements under the Act must be guided by the competent authority. This notwithstanding, it is felt that for greater certainty, the provisions of the BOJA which allows the Minister to make regulations should be broadened to empower the BOJ to specifically issue regulations/guidelines prescribing prudential criteria and minimum solvency standards on any issue that affects the safety and soundness (including the AML/CFT matters) of its regulated institutions; and suitably empower it to enforce these with appropriate sanctions. This will bring it on par with the other regulator, the FSC, which is empowered to issue regulations under Section 18 of the FSCA.

451 Almost all the interviewees expressed concern over high incidence of cash in the economy which they felt added to the AML/CFT vulnerability at the systemic level. The authorities may like to consider measures that will help in reducing the incidence of cash and thereby mitigate the ML/FT potential.

TABLES

Table 1: Ratings for Compliance with the FATF Recommendations

Table 2: Recommended Action Plan for Improving the AML/CFT System

Table 3: Authorities' Response to the Assessment (if applicable)

Table 1: Ratings for Compliance with the FATF Recommendations

Compliance with the FATF Recommendations should be rated on the basis of the four compliance levels laid down in the 2004 Methodology: *Compliant (C)*, *Largely compliant (LC)*, *Partially compliant (PC)* and *Non-compliant (NC)*, or, in exceptional circumstances, should be marked *Not applicable (na)*. These ratings, which are based solely on the essential criteria, are defined as followed:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country, e.g. a particular type of financial institution does not exist in that country..

Forty Recommendations	Compliance rating	Summary of reasons justifying the compliance rating ²⁷
Legal systems		
ML offence	PC	The MLA only criminalizes the laundering of property derived from specific offences (including drug offences, offences involving fraud, dishonesty or corruption, and arms trafficking offences against the Firearms Act) Predicate offences for money laundering are limited and do not cover the range of offences in the FATF designated categories of offences.
ML offence (mental element and corporate liability)	C	The Recommendation is fully observed
Confiscation and provisional measures	LC	The relevant extant legislation limits forfeiture to property derived from or used in the commission of predicate offence which does not include all serious offences. There is no provision for restraint of property intended to be used in the commission of an ML, FT or other predicate offence.

²⁷ These reasons must be stated only in those cases in which the rating is less than compliant.

		There is no provision for forfeiture of property of corresponding value with regard to terrorism offences.
Preventive measures		
Secrecy laws consistent with Recommendations	LC	The FSC's inability at the time of the mutual evaluation to sign the IOSCO MOU allowing the sharing of information.
Customer due diligence	PC	<p>No specific law prohibiting the keeping of anonymous accounts or accounts in fictitious names;</p> <p>No undertaking of CDD measures when there is doubt about the veracity or adequacy of previously obtained customer identification data;</p> <p>No requirement for financial institutions to verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of that person;</p> <p>No specific statute for conducting ongoing due diligence on a business relationship;</p> <p>No specific requirement for determination of the natural persons that ultimately own or control legal persons or legal arrangements;</p> <p>No requirement for financial institutions to consider making a STR when unable to obtain satisfactory evidence or verification of identity of customers/beneficial owners</p> <p>No requirement for verification of legal status of legal arrangements;</p> <p>No requirement for financial institutions to terminate existing business relationship once the financial institution is not able to obtain satisfactory evidence or verification of the identity of customers/beneficial owners and to consider making an STR in such cases;</p> <p>Compliance testing yet to be completed in the case of FSC regulated institutions</p>
Politically exposed persons	LC	Guidance notes and guidelines do not fully comply with the requirement for ascertaining the source of funds and wealth for PEPs.
Correspondent banking	LC	Financial institutions are not required to ascertain whether respondent institutions have been subject to a ML/FT investigation or regulatory action.
New technologies & non face-to-face business	PC	Absence of requirement for the licensees to be cognizant of misuse of technological advancements and have policies and procedures

		to address any specific risks associated with non-face to face business relationships or transactions in respect of non BOJ regulated institutions.
Third parties and introducers	LC	Broadly in compliance except for lack of requirement for FSC regulated FIs to obtain from the third party the necessary information concerning certain elements of the CDD process and also that the ultimate responsibility for the CDD remains that of the FIs in case of introduced business.
Record keeping	PC	<p>There is no specific legal provision for transaction record keeping requirements for exchange bureaux and the securities industry.</p> <p>There is no specific legal provision for transaction records to be kept longer than five years after the completion of the transaction on the instructions of a competent authority in specific cases and upon proper authority.</p> <p>Laws or regulations do not impose a requirement on the financial institutions to ensure that all customer and transactions records and information are available on a timely basis to domestic authorities.</p> <p>No provision in the MLR for transaction record keeping (although contained in the DOFPA).</p>
Unusual transactions	PC	<p>Financial institutions are not required to examine as far as possible the background and purpose of all complex, unusual patterns of transactions that have no apparent or visible economic or lawful purpose and set forth their findings in writing.</p> <p>Financial institutions are not required to keep such findings available for competent authorities and auditors for at least five years.</p>
DNFBP – R.5, R.6, R.8-R.11	NC	DNFBPs are not covered under the existing AML/CFT regime.
Suspicious transactions reporting	PC	<p>Reporting of STRs for ML does not apply to funds that are the proceeds of all offences including predicate offences as required by Recommendation 1.</p> <p>The requirement for the reporting of transactions in the TPA is general and does not specifically refer to transactions where there are reasonable grounds to suspect they are linked or related or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.</p>

		Compliance with recently enacted CFT measures yet to be fully implemented.
Protection & no tipping off	LC	No specific provision to prohibit tipping off when STR or related information is being reported
Internal controls, compliance and audit	LC	Due to the recent enactment of CFT measures and the need to issue specific CFT guidance particularly to FSC regulated institutions; assessment of effectiveness was not possible.
DNFBP – R.13-R.15 & R.21	NC	DNFBPs are not covered under the existing AML/CFT regime.
Sanctions	LC	The assessment of the implementation of CFT measures was not possible due to recent enactment.
Shell banks	LC	The requirement for financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks is not stated clearly in the Guidance Notes
Other forms of reporting	LC	No formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc.
Other non-financial businesses and professions & secure techniques of money management	NC	No effective measures in place to counter the vulnerabilities posed by non financial businesses and professions other than DNFBPs (e.g. car dealers) and the high incidence of cash in the economy.
Special attention for higher risk countries	PC	No direction or requirement to examine the background and purpose of transactions that have no apparent economic or visible lawful purpose from or in countries which do not or insufficiently apply the FATF Recommendations and make available to the competent authorities the findings of such examination.
Foreign branches and subsidiaries	LC	Financial institutions are not required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. However BOJ and FSC regulated entities are required to apply Jamaican AML/CFT measures to their branches and subsidiaries. Need for supervisory authorities to test compliance with requirements of Recommendation 22 to assess effective implementation.
Regulation, supervision and monitoring	LC	Lack of proper consolidated supervision; Exclusion of some financial institutions from the purview of MLA. Non completion of CDD assessments for money remittance agents.
DNFBP - regulation, supervision and monitoring	NC	Despite a regulatory machinery for casinos, they are outside the purview of the AML/CFT measures, as are the other categories of

		DNFBPs, in whose case the regulatory machinery is either absent or inadequate.
Guidelines and feedback	PC	Insufficient mechanism for providing feedback to the financial institution and DNFBPs on a systematic basis. No guidelines for the DNFBPs;
Institutional and other measures		
FIU	LC	Jamaica's FIU, in its current form, was established in mid 2004 and much hard work has gone into developing it to meet the FATF standard. Egmont membership has not yet been achieved but it should be noted efforts are well underway to obtain it. The current AML/CFT legislative framework is not as comprehensive as it should be which does on occasion hamper investigative work in this area and it should be noted - the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them.
Law enforcement authorities	LC	The TPA became operative in Jamaica on the 6 th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. The office of the DPP or such other person as the Minister may designate by order will be responsible for the receipt of disclosures made under this Act. It has been recommended that the Minister consider appointing the Chief Technical Director of the FID as the "designated authority" for the reasons stated.
Powers of competent authorities	LC	Evidence gathering provisions are in place in the MLA and DOFPA. Similar provisions are contained in the TPA. The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. As at the time of the on-site mutual evaluation no monitoring order application had been made to the Court – it is difficult to assess whether this is a difficulty with the legislation or a deficiency in the investigative process. It should be noted that when POCA is enacted, it will implement a more robust legislative framework providing for wider investigative powers particularly with respect to AML matters, and no doubt monitoring other orders compelling the production of records, will be used more frequently.
Supervisors	LC	FSC currently developing assessment

		techniques in the AML/CFT area. Examination of insurance companies started in a limited manner.
Resources, integrity and training	LC	<p>Whilst funding and resources for the various agencies involved in the AML effort are currently adequate, with the passage of more comprehensive and also additional legislation, it will be prudent to review these budgets and staffing levels. In particular the FIU - under the Proceeds of Crime Bill, it is proposed that the threshold reporting levels be reduced. Last year at the current reporting levels the unit received in excess of 49,000 TTR's – a number which increased five fold from the previous year. If the current manual data inputting system remains in place staff resources will have to be looked at. An electronic reporting system may go some way to addressing staffing levels in this area.</p> <p>The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. Consequently, there were no systems and processes in place and no results to effectively assess them. A whole new 'TPA' structure will have to be put into place or the current structure enhanced in terms of staffing, financing and the provision of technical resources now that the legislation is in effect.</p>
National cooperation	LC	<p>Substantive action has been taken with respect to this recommendation however, Jamaica's efforts have been hampered by a legislative framework that did not include terrorism prevention legislation. The TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation. The FID are going to engage in an awareness campaign to sensitize the financial institutions as to their responsibilities under the various Acts. It is recommended that the National Anti-Money Laundering Campaign become involved in such a campaign and perhaps broaden its scope. Is the public aware of what is money laundering and the consequences for engaging in such activities? Do they understand the detrimental impact money laundering can have on the country's financial system? This is the type of campaign that can be properly directed by a national body such as the National Anti-Money Laundering Committee.</p> <p>The content of Guidance notes currently in issue will have to be re-visited with the enactment of the TPA and the proposed enactment of POCA and FIDA. A co-ordinated and co-operative</p>

		approach to this task will allow input from all interested parties.
Statistics	LC	Statistics are maintained with regard to the AML legislation and include STRs, forfeiture, ML cases, mutual legal assistance, international requests for co-operation and extradition. Jamaica has recently undertaken a complete review of its AML/CFT regime having recognised that some weaknesses existed, particularly with respect to the legislative framework in the case of AML and the lack of a legislative framework in the case of CFT. To this end, the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation and various other legislative initiatives are underway such as POCA. Many of the statistics are now being produced by the FID relating to 32.2. However, other agencies or bodies have similar responsibilities regarding the forfeiture of property or the investigation of offences and these figures are not consolidated. This deficiency has been recognised and as the FID develops and the legislative framework put in place it is intended that they will become the centralized body responsible for recording all of the statistics required. This will allow for the production of more complete statistics on all the required areas. The lack of consolidated statistics is a minor shortcoming which is being addressed.
Legal persons – beneficial owners	LC	While much of the requirements of Rec 33 is met, the information regarding beneficial ownership of a company incorporated company is not captured.
Legal arrangements – beneficial owners	C	The Recommendation is fully observed. .
International cooperation		
Conventions	PC	Articles 6(1) and 6(2)(b) of the Palermo Convention requiring criminalisation of the laundering of the proceeds of crime and the inclusion of all serious crime as predicate offences to ML are not fully enforced. .
Mutual legal assistance	LC	Assessment of full implementation of TPA with regard to mutual legal assistance is not possible because of recent enactment
Dual criminality	LC	MACMA does not expressly require dual criminality, and with the enactment of the TPA covers both ML and TF predicate offences. See also SR V for other factors.
Mutual legal assistance on confiscation and freezing	PC	Laws and procedures to provide response to mutual legal assistance requests are limited to the definition of ML, FT and other predicate offences which do not cover all serious offences as required in Recommendation 1.
Extradition	C	The Recommendation is fully observed
Other forms of cooperation	PC	The FID does not legally have the power to

		share information with overseas counterparts. Spontaneous reporting by virtue of bilateral or multilateral agreements or arrangements is absent.
Eight Special Recommendations	Compliance rating	Summary of reasons justifying the compliance rating
SR.I Implementation of UN instruments	LC	Terrorist offences are not predicate offences for ML; No provision to directly freeze the assets of listed entities in the TPA; No provision to allow for the confiscation of property of corresponding value in the TPA. Assessment of the implementation of the TPA is not possible because of the recent enactment of the legislation.
SR.II Criminalising the financing of terrorism	LC	Terrorist financing offences are not predicate offences for money laundering. Due to its recent enactment, there are no results to assess the effectiveness of implementation of the TPA.
SR.III Freezing and confiscating terrorist assets	LC	Due to its recent enactment there are no results to effectively assess the implementation of the TPA. No provision to directly freeze the assets of listed entities in the TPA. No provision to allow for the forfeiture of property of corresponding value in the TPA.
SR.IV Reporting suspicious transactions	PC	The requirement for the reporting of transactions in the TPA is general and does not specifically refer to transactions where there are reasonable grounds to suspect they are linked or related or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Compliance with recently enacted CFT measures yet to be fully implemented
SR.V International cooperation	LC	The TPA now provides for mutual legal assistance and extradition, but because of its recent enactment, its overall effectiveness cannot be duly determined.
SR.VI AML/CFT obligations applicable to transmission of money or value services	LC	Regulatory regime for remittance companies to come into effect by July 2005.
SR.VII Wire transfer rules	PC	Financial institutions are not required to include full originator information in the message or the payment form accompanying cross border wire transfers; There is no specific instruction that for domestic wire transfers the ordering financial institution should either comply with the requirement for cross border transfers or include in the message or payment form the originator's account number or a unique identifier;

		<p>There are no directions either in law or administrative instructions requiring financial institutions to ensure that non-routine transactions are not batched where this would increase the risk of money laundering or terrorist financing;</p> <p>There is no specific requirement for beneficiary financial institutions to adopt effective risk based procedures for identifying and handling wire transfers that are not accompanied by complete originator information.</p> <p>There are no measures in place to effectively monitor the compliance of financial institutions with Special Recommendation VII</p> <p>Existing instructions do not ensure that the requirements of Recommendation 17 also apply in relation to the obligations under Special Recommendation VII</p>
SR.VIII	Non-profit organisations	NC
		Terrorism legislation does not cover non-profit organisations and inadequate system for regulating non profit organisations.

Table 2: Recommended Action Plan for Improving the AML/CFT System

AML/CFT system	Recommended action (in order of priority)
1. General	
2. Legal system and other related measures	
Criminalisation of money laundering (R.1 & R.2)	The POCA should be passed with due haste.
Criminalisation of the financing of terrorism (SR.II)	The POCA should be passed as soon as possible.
Confiscation, freezing and seizure of the proceeds of crime (R.3)	<ul style="list-style-type: none"> • POCA should be enacted with due haste; • DOFPA should have a provision for the restraint and forfeiture of property that constitutes instrumentalities intended for use in the commission of any ML, FT or other predicate offences, and property of corresponding value. • The TPA should be amended to include a provision for forfeiture of property of corresponding value.
Freezing of funds used for the financing of terrorism (SR.III)	<ul style="list-style-type: none"> • The TPA should have a direct provision to freeze the assets of listed entities. • The TPA should have provision to allow for forfeiture of property of corresponding value.
The Financial Intelligence Unit and its functions (R.26, R.30 & R32)	<ul style="list-style-type: none"> • The proposed FIDA which will put the FIU on a statutory footing should be enacted as soon as possible. • With the passage of more comprehensive and additional legislation, it will be prudent to review the funding, staffing and resources of the various agencies involved in the AML/CFT effort. • The proposed reduction in the threshold reporting level under POCA and the recent enactment of the TPA requires that the staffing, and provision of technical resources for the FIU be reviewed. • Statistics regarding the forfeiture of property or the investigation of offences should be consolidated with the FID as the centralized body responsible for the recording all of the statistics required.
Law enforcement authorities, criminal investigation authorities and other competent authorities (R.27, R.28, R.30 & R.32)	It is recommended that the Minister under the TPA consider appointing the Chief Technical Director of the FID as the “designated authority” for the receipt of disclosures.
3. Preventives Measures – Financial Institutions	
Risk of money laundering or the financing of terrorism	None
Customer due diligence, including enhanced or reduced measures (R.5 to R.8)	<ul style="list-style-type: none"> • Financial institutions should be required to undertake customer due diligence measures when there is doubt about the veracity or adequacy of previously obtained customer identification data; • Specific prohibition against the keeping of anonymous accounts or accounts in fictitious names should be enacted; • Financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorized, and identify and verify the identity of that person; • Financial institutions should be required to take reasonable measures to determine who are the natural persons that ultimately own or control customers who are legal persons or legal arrangements; • Financial institutions should be required to conduct ongoing due diligence on the business relationship.

	<ul style="list-style-type: none"> • The GN and GL should be reviewed in order to be consistent with the requirement for the investigating and determining of the source of funds and wealth of PEPS, the consideration of the making of STRs when satisfactory proof or verification of the identity of a customer is not obtained and the formulation of reasonable due diligence procedures for the verification of the legal status of legal arrangements. Financial institutions should also be required to terminate existing business relationships once they are not able to obtain satisfactory evidence or verification of identity of customers/beneficial owners and to consider making an STR in such cases. . • Financial institutions should also be required to ascertain whether respondent institutions have been subject to an ML/FT investigations or regulatory action. • FSC regulated institutions should be required to have policies in place or take such measures to prevent the misuse of technological developments in ML/FT schemes and address specific risks associated with non-face to face business relationships or transactions.
Third parties and introduced business (R.9)	There is need to clarify, especially in case of the financial institutions regulated by the FSC that they must immediately obtain from the third party the necessary information concerning certain elements of the CDD process and also that the ultimate responsibility for the CDD remains that of the financial institution in case of introduced business.
Financial institution secrecy or confidentiality (R.4)	<ul style="list-style-type: none"> • None.
Record keeping and wire transfer rules (R.10 & SR.VII)	<ul style="list-style-type: none"> • Amend MLR to (a) provide for transaction record keeping for at least five years after the completion of the transaction or longer if requested by a competent authority in specific cases and upon proper authority, (b) clarify that identification records are required to be kept for at least five years after the termination of the business relationship, and (c) impose a requirement on the financial institutions to ensure that all customer and transaction records and information are available on a timely basis to domestic authorities. • Amend legislation (BOJ Act) to provide statutory basis for guidelines issued by the BOJ and provide for sanctions for non compliance. • Enact Money Laundering (Change of Name and Amendment) Bill to give effect to the proposed obligations of the FIs relating to the wire transfers. Proposed obligations should rectify deficiencies identified in compliance with Special Recommendation VII. • Develop modules for testing compliance with Special Recommendation VII.
Monitoring of transactions and business relationship (R.11 & R.21)	<ul style="list-style-type: none"> • Financial institutions should be required to examine as far as possible the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and set forth their finding in writing. These finding should be kept available for competent authorities and auditors for at least five years. • The background and purpose of transactions that have no apparent economic or visible lawful purpose with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF should be examined.

	Written findings on such transactions should be available to assist competent authorities and auditors.
Reporting of suspicious transactions and other reporting (R.13, R.14, R.19, R.25 & SR.IV)	<ul style="list-style-type: none"> • The definition of money laundering in the MLA should be extended to incorporate all the predicate offences required by Recommendation 1. • Clearly state in law that the obligation to make a STR applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or be terrorist organizations or those who finance terrorism. • Clarify that the STRs need to be filed irrespective of whether a transaction relates to tax matters. • Clarify that the tipping off is prohibited when STR or related information is being reported to the FIU. • Establish a formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc. • Enact FIDA in order to establish a proper system of feedback to the FIs and the DNFBPs with regard to the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons.
Internal controls, compliance, audit and foreign branches (R.15 & R.22)	<ul style="list-style-type: none"> • As part of a consolidated supervision regime financial institutions should be tested to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and FATF Recommendations. Risks posed by affiliates outside the supervisory ambit should be taken into account. • Financial institutions should be required to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. • The authorities should consider issuing specific CFT guidance for all entities covered by the TPA.
Shell banks (R.18)	<ul style="list-style-type: none"> • Consider making provisions in the FIA prohibiting the establishment of operation of shell institutions. • Guidance Notes should clearly require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
System of regulation and supervision – competent authorities and SROs (R.17,R.23, R.29 & R.30).	<ul style="list-style-type: none"> • Harmonise the definition of financial institutions in the MLA and the TPA with that given in the AML/CFT Assessment Methodology
Financial institutions - market entry and ownership/control (R.23)	None
AML/CFT guidelines (R.25)	<ul style="list-style-type: none"> ▪ Issue guidelines for the DNFBPs after bringing them under the AML/CFT regime. ▪ The FSC should remove the statement advising that use of the FSC GL is not mandatory.
Ongoing supervision and monitoring (R.23, R.29 & R.32)	<ul style="list-style-type: none"> • Introduce and implement consolidated supervision. • FSC should implement a comprehensive system of AML/CFT onsite examination to test compliance of its licensees.

	<ul style="list-style-type: none"> Statistics related to FT issues should be maintained. Bring DNFBBs under AML/CFT regime and maintain statistics on their compliance.
Money or value services (SR.VI)	None
4. Preventives measures - Designated non-financial businesses and professions	
Due diligence and record keeping (R.12)	The proposed amendments to the MLA should be enacted to ensure compliance with Recommendation 12 with regard to applying Recommendations 5 to 10. In addition, the DNFBBs should also be covered under the CFT regime.
Monitoring transactions and relationships (R.12 & R.16)	The proposed amendments to the MLA should be enacted to ensure compliance with recommendations 12 and 16 with regard to applying Recommendations 11 and 21. In addition, the DNFBBs should also be covered under the CFT regime.
Reporting of suspicious transactions (R.16)	The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBBs to report suspicious transactions. It is recommended that such amendments are effected in order to comply with Recommendation 16 with regard to applying Recommendations 13 and 14.
Internal controls and compliance and audit (R16)	The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBBs to institute measures regarding internal controls, compliance and audit. It is recommended that such amendments are effected in order to be compliant with Recommendation 16 with regard to applying Recommendation 15.
Regulation, supervision and monitoring (R.17, R.24 & R.25)	As indicated by the authorities, the DNFBBs should be brought under the purview of the legal requirements of the AML/ CFT regime. The regulatory authorities/SROs for these should be established, if not already done, and vested with sufficient powers, sanctions, technical and financial resources to enable them to carry out their AML/CFT mandate effectively.
Other non-financial businesses and professions (R.20)	<ul style="list-style-type: none"> Assess the AML/CFT risks posed by non financial businesses and professions other than DNFBBs and consider applying FATF Recommendations 5, 6, 13-15, 17 and 21. Take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.
5. Legal persons and legal arrangements & non-profit organisations	
Legal persons – Access to information on beneficial ownership and control (R.33)	The Registrar of Companies should consider instituting measures to capture information regarding beneficial ownership of a company incorporated company as well as information regarding the nationalities of the beneficial owners.
Legal arrangements – Access to information on beneficial ownership and control (R.34)	Recommendation is fully observed.
Non-profit organisations (SR.VIII)	The authorities should implement the requirements of Special Recommendation VIII taking into consideration the measures set out in the relevant Best Practices Paper.
6. National and international cooperation	
National cooperation and coordination (R.31)	<ul style="list-style-type: none"> The National Anti-Money Laundering Committee should join the FID in the proposed awareness campaign to sensitize the public, financial institutions and the DNFBBs about their roles and responsibilities under the AML/CFT regime.

	<ul style="list-style-type: none"> • The Guidance Notes and Guidelines should be reviewed with the enactment of the POCA, TPA and the FIDA. • A formal means of consultation by the competent authorities with the DNFBBs should be established.
UN Conventions and Security Council Resolutions (R.35 & SR.I)	While the TPA substantially implements the International Convention for the Suppression of the Financing of Terrorism, the deficiencies identified in the report should be rectified by enacting appropriate amendments. . The POCA should be enacted as soon as possible.
Mutual legal assistance (R.32, R.36-38, SR.V)	While mutual legal assistance can be extended for prescribed offences which are widely defined, enactment of POCA will serve to extend and clarify the definition in Jamaica's statutes. The TPA provides for a terrorism offence to be prescribed under MACMA. .Again, POCA needs to be passed with due haste.
Extradition (R.32, R.37, R39 & SR.V)	Once again it is imperative that POCA is passed in order to make international cooperation, in this regard, more effective. POCA, as noted before, sets the table for a full range of mutual legal assistance..
Other forms of cooperation (R.32, R.40 & SR.V)	There are no provisions for spontaneous reporting. Therefore, there should be due provision for spontaneous reporting, by virtue of bilateral and multilateral agreements or arrangements. The proposed legislation to empower the FID to share information with overseas counterparts should be enacted as soon as possible.

Updates to Mutual Evaluation/Detailed Assessment Report

The BOJ GN were revised on June 15, 2005 to require financial institutions to examine the background and purpose of transactions that are complex, unusual or large and to record and keep such findings for competent authorities for at least 5 years. This revision was only applicable to BOJ regulated institutions and FSC regulated institutions were not required to comply.

Table 3: Authorities' Response to the Assessment

Sections and paragraphs referred to	Country's comments
	Jamaica thanks the Mutual Evaluation Team for their efforts and commitment in preparing this Report. They were professional and thorough. As is the case with most reports, we did not necessarily see to eye to eye on every issue, and though these were all rigorously debated, our discussions were conducted in an atmosphere of mutual respect and collegiality.
	<p><u>DEVELOPMENTS WITHIN THE NATIONAL FRAMEWORK THAT IN SOME CASES POST DATED THE MUTUAL EVALUATION DATES AND WHICH DEVELOPMENTS IN JAMAICA'S VIEW SERVE TO INDICATE THE STRONG COMMITMENT OF THE JAMAICAN AUTHORITIES TO COMBAT SERIOUS CRIMES FROM ALL ANGLES AND AVENUES.</u></p>
<p>Section 2.1 para. 89 (page 30)</p> <p>And Section 2.2 @ 2.2.2. Comment on SRII @ para. 97 (page 31)</p>	<p>The Proceeds of Crimes Bill has been tabled in Parliament and is to be reviewed by a Joint Select Committee of Parliament, comprising both sides of the Houses of Parliament. This bi-partisan approach is expected to result in a thorough assessment of the statute with broad consensus emerging at the end of deliberations. As set out in the Report, the POCA is expected to revolutionize Jamaica's framework for addressing serious crimes by introducing an "all crimes approach" and the concept of "criminal lifestyle" along with a regime for civil forfeiture. POCA will also grant to the police and judicial authorities unprecedented powers to pursue and confiscate assets connected to serious crimes. It will also extend AML obligations to a wider category of persons, inclusive of the group of significant non-financial businesses and professions (NFBPs). The use of one unified statute will also resolve current inconsistencies between existing statutes. It is expected that this Bill will be passed into law in 2006.</p>
<p>Section 2.5 @ 2.5.3 – Comment on R.32 (page 41)</p>	<p>The Financial Investigations Division Bill, which will provide a specific statutory basis for Jamaica's FID has been tabled and is also before a Joint Select Committee of Parliament. Passage of this Bill is expected to be the final plank in Jamaica's application for membership with Egmont. It is expected that this Bill will be passed into law in 2006.</p>
<p>Section 2.5 – Comment on R. 26 @ para. 123 (pages 35and 36)</p> <p>And Summary of factors underlying rating for R.13 (page 65) & SRIV (page 66)</p>	<p>The Terrorism Prevention Regulations have been finalized and should shortly be tabled for passage in Parliament. The Statute originally required that such reports under the Terrorism Prevention Act be made to the Director of Public Prosecutions. As recommended by the Team, the Chief Technical Officer of the Financial Investigations Division has been appointed as the Designated Authority under the Terrorism Prevention Act for the receipt of reports required to be made under that Act by reporting entities. The Order making this designation has been gazetted.</p>
<p>Section 2</p>	<p>Additional Update regarding the CFT regime -</p> <p>Jamaica has deposited instruments of accession/ratification, as follows:</p>

	<p><u>International Conventions</u> <u>Date of Deposit</u></p>
<p>Section 3.2.2 Para. 233 (page 54)</p> <p>And Section 3.5.3 Summary of factors underlying rating for SR.VII (page 60)</p>	<p>Convention for the Suppression of the Financing of Terrorism deposited with the U.N. 16th Sept., 2005</p> <p>International Convention against the Taking of Hostages deposited with the U.N.. 9th August, 2005</p> <p>International Convention for the Suppression of Terrorist Bombings, 1977, deposited with the U.N. 9th August, 2005</p> <p>Convention for the Physical Protection of Nuclear Material 1979, deposited with the IAEA 16th August, 2005</p> <p>Convention for the Suppression of Unlawful Acts against The Safety of Maritime Navigation, 1998, deposited with IMO 16th August, 2005</p> <p>Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf deposited with IMO 18th August, 2005</p> <p>Protocol for the Suppression of Unlawful Acts of Violence at Airports serving Civil Aviation Deposited with the ICAO 18th August, 2005</p> <p>Convention for the Marking of Plastic Explosives deposited with the ICAO 18th August, 2005</p> <p><u>Re: Shortfalls identified in the BOJ GN and the FSC GL – (source funds/wealth for PEPS; consideration of making STRS when satisfactory proof of Identification is not obtained; termination of business relationships when satisfactory proof of Identification is not obtained; requiring financial institutions to ascertain AML/CFT status of respondent institutions;</u></p> <p><u>Re: Shortfalls in guidances regarding wire transfers and the requirements of SRVII</u></p> <p>In the financial sector, the AML/CFT Guidance Notes applicable to financial institutions regulated by the BOJ have been fully amended to remove the deficiencies identified in the Report. These amended/upgraded Guidance Notes will be posted on the BOJ web-site and made available to all licensees.</p> <p>The Guidelines applicable to FSC regulated financial institutions are being further amended to meet the deficiencies identified in the Report. It is expected that these amendments will be finalized and in effect during the first quarter of 2006. The point must also be made that the updated and revised FSC Guidelines made effective October 2005, now provide specific guidance on CFT issues.</p>

<p>Section 3.4 – para. 243 Re; R. 4 (page 57)</p> <p>And Section 3.2.3 Summary of factors underlying rating for R. 5 (page 54)</p>	<p>The response above is also relevant to other areas of the report, as identified below, which addressed shortfalls in AML Guidance documents:</p> <p>Section 3.6.3 Summary of factors underlying ratings for R.11 and 21 (page 62)</p> <p>Section 3.7.1 - para. 273 (page 63)</p> <p>Section 3.2.3 Summary of factors underlying rating for R. 5 (page 54)</p> <p>Section 3.4.3 Summary of factors underlying rating for R. 4 (page 57)</p> <p>Section 3.8.3 Summary of factors underlying rating for R.15 & 22 (page 68)</p> <p>Section 3.9.3 Summary of factors underlying rating for R. 18 (page 69)</p> <p>Re: <u>The FSC’s inability to share information with overseas regulators and to sign the IOSCO MOU.</u></p> <p>Re: <u>Compliance testing yet to be completed in the case of FSC regulated Institutions</u></p> <p>The examination of institutions continue in this regard to incorporate assessments of levels of compliance with the laws and the guidance issued by the Supervisory Authorities, with appropriate regulatory action being taken, where necessary.</p> <p>The ability to share information with the Police is already addressed as the FSC may also disclose information to a member of the Police Force who is appointed as an authorized officer under the FSC Act. The FSC may also appoint a member of the FID as an authorized officer to carry out investigations on behalf of the FSC.</p> <p>Importantly the Financial Services Commission Regulations, which allow for the sharing of regulatory Information between the FSC and its overseas counterparts were passed into law since April 2005. These adjustments mean that the FSC’s earlier “inability to sign the IOSCO MOU” (basis of LC rating) had been effectively removed since April 2005. With that issue having been disposed with, Jamaica again posits that this criteria should now be upgraded from LC.</p>
<p>Section 3.5.2 Recommendations and comments for SR. VII (page 59)</p>	<p>A key proposal of the team, i.e. the granting of regulation-making power to the Bank of Jamaica, has been recommended to the Minister of Finance and will be incorporated into the next round of amendments to the statutes governing deposit-taking entities expected to commence in 2006.</p>
<p>Executive Summary Para. 17 (page 9), para. 50 (page 14)</p>	<p>Like the financial regulatory agencies, the Financial Investigations Division (FID) continues its critical work in the collection and dissemination of data received under the Money Laundering laws, as well as carrying out broad-based investigations and prosecutions covering tax issues, fraud and other financial crimes.</p> <p>Following on the success of R v. R. Mendes, the FID and the prosecutorial services expect further success in the 8 money-laundering cases currently before the court. A further 7 cases have been prepared and are before the Director of Public Prosecutions</p>

	<p>for his ruling as to the presentation of these cases to the court. There are 4 restraint orders in place currently and one order for forfeiture made since the Team’s visit. In October 2005 the FID was also successful in obtaining a Confiscation Order for 3.24 million Pounds Sterling in collaboration with the UK Authorities regarding an individual charged with Drug Offences and Money Laundering in the UK.</p> <p>The FID is also now finalizing its first publication of Typologies utilizing as far as possible, local case studies, and this along with Statistics will be posted on the Ministry of Finance’s website and provided to the financial sector associations.</p> <p>In addition, the FID is progressing on its Risk Assessment of the “gatekeeper” professions and other non-financial institutions (including the vendors of high value consumer items) that should be covered by the AML/CFT regime. The assessment will also assess the robustness of existing regulatory frameworks and outline proposals for implementation. Key areas that will be addressed during this exercise include attorneys-at-law, accountants, real estate dealers, used car dealers and the entertainment industry.</p> <p>The preliminary position at this time is that the size of pawn-broking sector it remains insignificant and at this point, does not pose a ML or FT risk. It is therefore not necessary for these persons to be subject to the AML/CFT regime.</p>
<p>Executive Summary para. 19 (page 9)</p> <p>Section 1.2</p> <p>Section 1.5(b) – para. 79 – Progress since last Mutual Eval.</p>	<p>The Ministry of Justice has also moved to table key legislation that will fundamentally modernize the crime fighting initiatives of Jamaica. These include:</p> <ul style="list-style-type: none"> • The Committal Proceedings Bill, 2005 – the object of this Bill is to abolish the holding of Preliminary Inquiries and replace them with what is in essence a “Paper Committal”. This form of proceedings is expected to greatly reduce the time it takes for preliminary inquiries to take place. It will also reduce the exposure of witnesses before the ‘real’ trial takes place, since there will be a greater reliance on statements and other documents. Consequently, potential witnesses will be afforded further protection from intimidation at this preliminary stage of proceedings. Of course, the accused if he/she wishes, will still be able to question the witness but not in the manner which pertains currently. It should be noted that Paper Committals with some variation are in use in the U.K and elsewhere Caribbean. • The Police Civilian Oversight Authority Act, 2005 – this Act creates a new oversight authority which will operate separately from the Police Public Complaints Authority. This should improve the operational efficiency and accountability of the police force. The Act (which is the number 33rd statute passed for the year 2005) was passed in 2005 and will be brought into effect as soon as the Appointed Day Notice is prepared and gazetted. • The Interception of Communications (Amendment) Act, 2005 – the amendments to the named Act are intended to streamline the process of obtaining warrants to permit ‘wire-tapping’ by the security forces. Under the present legislation, whenever the police wished to monitor a new number being used by a suspect or person under surveillance, they would have to approach the court with a separate application. The increased use of mobile

telephones has resulted in the need for multiple applications. The proposed amendments will make it is possible to add numbers to the Schedule of the Original Order granted by the judge, after which the judge is then notified of the addition thus lending urgency to the manner in which the order is varied. There are other changes but this is the most significant of them. The Bill was passed by the Lower House and is expected to be tabled in the Senate within this term of sitting.

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- **The Larceny (Amendment) Act, 2005** – this Act is intended to deal more appropriately with the offence of Extortion by the adoption of a phraseology found in UK legislation, namely, “making unwarranted demands”. It is thought that this terminology will capture the most common situation where a businessman may receive a request to make a donation to a community sporting team or event, which is in fact a veiled solicitation with the use of menaces. Additionally, there is also a reversal of the burden of proof in that the accused must now show to the satisfaction of the court that the demand they made was Not Unwarranted. This Act came into effect on November 25, 2005.
- **The Law Reform (Notice of Alibi) Bill, 2005** – this bill will require accused persons who wish to rely on Alibi evidence to give notice of such intention and particulars of any proposed witnesses, at a stated time prior to the commencement of trial. The rationale for this amendment is that when the Court is notified of this defence in the middle of the trial (which is what usually happens), the Prosecution often finds it difficult to properly investigate and/or ascertain the identity or validity of defence witnesses. This can give accused persons an unfair advantage.
- **The Criminal Justice (Plea Negotiations and Agreements) Act, 2005** – this Act (which is the number 34th statute passed for the year 2005) was passed in 2005 and will be brought into effect as soon as the Appointed Day Notice is prepared and gazetted.
- **The Criminal Justice (Administration) (Amendment) Act, 2005** – this Act will provide a mechanism to more effectively deal with instances of mentally ill accused persons being lost in the system. Included in the measures proposed are regular reporting and other components which it is expected will allow the Courts to follow the treatment of these persons and their eventual re-appearance before the court to allow for the conclusion of their matters. This Act was passed in Parliament and will be brought into effect as soon as the Appointed Day Notice is prepared and gazetted.

On the operational front, the **Jamaica Constabulary** has also been hard at work to fight the scourges of crime and violence that threatens Jamaica. The strong response to **Operation Kingfish** has already been outlined in the Report. The success and accomplishments of this programme are in large part due to the efforts of the Jamaican authorities in close co-operation with our partners in the US, UK and Canada. In addition, the long running “Crime-Stop” programme, encourages persons to provide information on criminal activity. This programme encourages participation by

	<p>allowing for information to be provided anonymously and the provision of monetary rewards in respect of information provided that result in an arrest. This programme has yielded consistent success. The Counter-Narcotics and Major Crimes Task Force, the Fraud Squad and the Marine Police have also been escalating the pressure on criminal elements in Jamaica.</p> <ol style="list-style-type: none"> a. The Task Force has overseen since October 2004 the recovery of 123 firearms, 2406 rounds of ammunition, as well as other para military hardware such as radios, bullet proof vests, and uniforms. They have seized over 12 metric tones of cocaine, over 55,000 lbs of marijuana, and destroyed over 7 acres of fully grown plants and seedlings. They have disabled 12 airstrips, seized 39 motor vehicles and 53 boats. There have been 300 boardings of vessels at sea by the Coast Guard. b. The Fraud Squad has from January 2005 opened 235 cases, alleging 455 counts. To date the clear up rate for the year is 60%. The total sums involved amount to approximately J\$59 million and US\$70,535. c. The Marine Police has, since the evaluation, conducted 38 special controls particularly in the Old Harbour area of Clarendon, a suspected site for smuggling to other points in the region. Fifteen staff members have received additional training (Basic Launch Crew Course) with 5 members being added to the Unit. The Marine Police has been instrumental in the seizure of boats in collaboration with the Narcotics Task Force.
<p>Executive Summary para. 19 (page 9)</p> <p>Section 1.2</p> <p>Section 1.5(b) – para. 79 – Progress since last Mutual Eval.</p>	<p>The Office of the DPP has also worked hard at upgrading the skills of its prosecutors. Representatives of that office have followed up on previous training efforts specifically targeted at developing expertise in prosecuting cases under the Proceeds of Crimes model in the United Kingdom. This has been made possible through the UK Government’s Home Office and are critical given the impending passage of the Jamaican statute which is strongly based on the UK model. The last visit by Jamaican prosecutors to the UK was in April to May of 2005 when the focus was on examining the avenues of investigative agency co-ordination and the preparation of POCA cases. The arrangement here is for these officers to in turn provide training to our own law enforcement officials.</p>
<p>CLARIFICATIONS / UPDATES OMITTED FROM THE REPORT</p>	
<p>Executive Summary - paras 14 and 45 (pages 8 and 14) (General Comments on legal Systems)</p>	<p>The comments <u>incorrectly</u> speak to a lack of direct provisions to freeze the assets of listed entities; whereas Paragraph 114 of Section 2.4.1 (page 34) <u>correctly</u> recognizes the provisions for restraint orders and forfeiture of property as contained in section 23–44 of the TPA. <u>The former comment needs to be corrected and reconciled with the latter one.</u></p>
<p>Executive Summary - Paras. 25 and 32</p> <p>Section 3.14.1 – paras. 339 and 341</p>	<p>The MEV refers to pending directions to be issued to Remittance Companies. These Directions in fact came into effect on July 5, 2005. <u>This fact therefore needs to be specifically reflected in the report.</u></p>
<p>Executive Summary Para. 26</p>	<p>This paragraph indicates that there is no direction or requirement for financial institutions to examine the background and purpose of transactions that are complex, unusual or large and to record and keep such finding for competent authorities for at</p>

	<p>least 5 years. <u>It omits the update given to the Evaluators that as regards the BOJ regulated financial institutions, the AML/CFT Guidance Notes were revised in June 2005 to address the requirement (GN 101A).</u></p>
<p>Section 2.6 - para 197 (page 46)</p>	<p>This paragraph makes a comment as regards a recommendation that Jamaica may wish to consider allowing authorities to make an order for the restraint of property prior to charging the individual. <u>Again, we believe that evaluators have to take into account that any judicial action must be based on some criteria/evidence, whether charge or otherwise.</u> The difficulties outlined by the examiner will not be solved unless the authorities have at their disposal the appropriate evidence to satisfy the court.</p>
<p><u>CLARIFICATION REGARDING THE JCF - ENTRY REQUIREMENTS AND CONSTITUTION</u></p>	
<p>Paragraph 12 of the substantive Report (page 16)</p>	<p>Jamaica wishes to make a comment with reference to statements made at this part of the substantive Report relating to the Jamaica Constabulary Force, which reads:</p> <p><i>“ The criteria for recommendations are also very basic with no specifics with regards to high ethical requirements”.</i></p> <p>Advice received from the Jamaica Constabulary Force indicate that the Evaluation Team in fact focused on the broad framework set out in section 18 (1), (2), (3) of the Police Service Regulations of 1961 (Revised). i.e. that the Commission may interview candidates for appointment and shall consider in respect of each candidate:-</p> <ol style="list-style-type: none"> (a) His Educational Qualifications; (b) His General Fitness (c) Any previous employment in the force; or otherwise and (d) Any reports for which the Commission may call from persons appearing to the Commission to have knowledge of the candidate, or any references named by the candidate. <p><u>It appears that the Team did not take into account the provisions of regulation 19 (1) which allows for: “Appointments of one or more than one selection boards, to assist in the selection of candidates for Appointments to the force”.</u></p> <p>This selection board process is quite rigorous and involves successful completion of the Panel review. This Panel is comprised of Two (2) Police Officers not below the rank of Inspector, one of whom is the Commandant of the Jamaica Police Academy or his designate and a member of the Chaplaincy Unit, with Psychology qualifications. The member of the Chaplaincy is specifically tasked to emphasize the importance of the Jamaica Constabulary value system and the upholding of high ethical standards, consistent with the attributes of a good Constable. On successful completion of the Panel interview, an antecedent report procedure is adopted. This entails:</p> <ul style="list-style-type: none"> • Background Checks. • References from Community, Schools, Member of the Clergy. • Criminal Records Office Checks. • Special Branch • Narcotics • Interpol Checks.

<p>R. 5 - 8 (page 54)</p>	<p>modules on AML/CFT testing.</p> <p>The compliance testing reviews of the AML policies and procedures have also now been completed for all FSC regulated entities in the insurance and securities industries, and regulatory action taken in the form of directions to the regulated entities. (See Attachment)</p> <p>The FSC updated Guidelines, effective October, 2005, have also included the recommendations of the assessors, and these issues are addressed at Section V, 111 (Page 100-101).</p> <p>As regards Recommendation 6 (PEPS) we must also point out that Sections V and W of the FSC Guidelines in effect at the time of the Mutual Evaluation, together fully satisfy all the Recommendation 6 criteria, including that of ascertaining the source of funds and wealth for PEPS.</p> <p>At section V. KNOW YOUR CUSTOMER (VERIFICATION) – IV Methods of Verification – Individuals, the Guidelines mandate financial institutions regulated by the FSC, to ascertain as part of the minimum information required, the source of funds of each potential customer.</p> <p>Section W. Politically Exposed Persons of the Guidelines then goes further to direct that where financial institutions determine that a potential customer is a PEP, enhanced due diligence or additional measures and information is required, including ascertaining the customer's source of wealth.</p> <p><u>This approach fulfills both the source of funds and the source of wealth requirements in relation to PEPS for those entities in the non-bank sector.</u></p> <p>The Customer Due Diligence Recommendation is a detailed one that requires many of the Essential criteria to be codified into law. In Jamaica's case many of the requirements are in fact operational in nature and are particularly effective. The Jamaican authorities have sought to have the best of both worlds by having the courts take account of the Guidance on a mandatory basis. It is the view of the Jamaican Authorities that if the above points were taken into account, the country would have complied with most of the Essential Criteria under this Recommendation and would have a strong case for the upgrade of this criteria to Largely Compliant.</p>
<p>Section 3.2.3 Summary of factors underlying rating for R. 8 (page 55)</p>	<p>The rating of PC was assigned because the assessors did not see where FSC licensees were under a requirement to take measures to guard against AML/CFT risks arising from emerging technology and from non-face to face relationships or transactions. <u>Certainly this finding as regards the issue of non face-to-face technology conflicts with the narrative at paragraph 231 of the Report which acknowledges the existence of specific guidance to FSC licensees on conducting business over the internet. In addition, pages 82, 84 and 124 of the FSC's GL, provide specific guidance on payment by postal, telephonic or electronic arrangements.</u> Further, additional information about the risk of emerging technology has now been provided at the Section on Internet and Cyberbusinesses, (see Pages 143 – 144) in the updated and revised Guidelines. These further changes were effected in October, 2005.</p> <p>The Authorities make the point that if the Examiners were of the view that the FSC</p>

	<p>Notes provided inadequate guidance at the time of the Evaluation, then that should be clearly stated so that the narrative and the findings are reconciled. <u>We would however wish to point out that the guidance and implementation of the FATF recommendations were done in a manner which the authorities deemed to be ‘appropriate’ in the circumstances, as required by FATF Recommendations. If therefore the Supervisor is satisfied that the guidance in this regard is adequate and is not aware of any evidence (actual or perceived) to the contrary, then (barring ‘glaring’ indications that suggest otherwise), we posit that this should surely be taken into account during the course of the assessment.</u></p>
<p>Section 3.5.3 Summary of factors underlying rating for R. 10 (page 60)</p>	<p>The Jamaican Authorities would also like to raise briefly a wider issue relative to Recommendation 10 on Record-Keeping.</p> <p>Essential Criteria 10.1 requires that financial institutions should be under a requirement to ensure that all customer and transaction records and information are available on a timely basis to domestic authorities upon appropriate authority. This can be contrasted against the Essential Criteria 10.2 and 10.3, which require maintenance of transaction and identification records for a period of 5 years after completion of a transaction or terminating a business relationship as the case may be. It is Jamaica’s submission that compliance with EC 10.2. and 10.3 together with provisions that relate to law enforcement’s ability to access these documents (under penalty of law) amount to compliance with EC 10.1. In essence, if an entity keeps its records for 5 years after the relevant date, and complies with an order produced by the designated authority (under penalty of law), that institution is also effectively complying with a requirement to ensure that all customer and transaction records and information are available on a timely basis to the authorities. The Jamaican Authorities are of the view Team’s interpretation of FATF’s Recommendations in this regard does not assist in the assessment of the effectiveness of the national system.</p>
<p>Section 3.6.3 Summary of factors underlying rating for R. 11 Unusual Transactions (page 62)</p>	<p>Re: Monitoring of transactions and relationships</p> <p>This requirement is not one that is required to be set out in law. The current law states that the institutions should pay special attention to these types of transactions. In June 2005 the BOJ’s AML/CFTGN were revised to expressly indicate the requirement to check the background and purpose of <u>all</u> complex and unusual etc. transactions (see GN 101A). These GN were also amended to expressly indicate that “<i>pay attention to</i>” includes background checks and transaction purpose, requires the findings to be placed in writing and retained for the 5 year period or longer if so requested by the DA and must be available to the competent authority. (See GN 101A). <u>Jamaica posits that the foregoing changes address, within the allowed time period, the shortfalls highlighted as the basis for the rating of PC, thus leading to the inevitable conclusion that the rating should be upgraded.</u></p> <p>Again this is to some extent a case of potential “<i>belt and braces</i>” requirements of the FATF Recommendations creating some conflict. If a financial institution is required to maintain <u>all</u> of its transaction records <u>and</u> it is additionally under a requirement to pay special attention to unusual transactions under pain of law, <u>and</u> is under a requirement to report suspicious transactions, the natural inference to us is that the preservation of</p>

	<p>the documentation relating to these transactions is a given, particularly where the institution would be subject to prosecution unless it can prove that it had reasonable grounds for not carrying out its obligations. It would seem that the institution could only do this by maintaining records. It follows rationally that in order for an institution to determine that a transaction is not consistent with transactions normally executed by a particular customer, the financial institution would, as a matter of course be checking the background and purpose of the transaction in question in order to determine for itself whether or not the transaction is suspicious.</p>
<p>Section 3.7.3 Summary of factors underlying rating for R. 11 Suspicious Transaction Reporting (page 65)</p>	<p>R13 requires countries to ensure that their financial institutions are required to report funds that are suspected to be the proceeds of criminal activity or related to terrorist financing. The methodology outlines 3 essential criteria and to this end Jamaica has taken action to:</p> <ol style="list-style-type: none"> 1. ensure that financial institutions are required to report funds suspected to constitute or be related to money laundering (s. 6B) which under the MLA means the use etc. of property derived from the commission of a specified offence which includes the offence of fraud or offences involving dishonesty or corruption. EC 13.1; 2. ensure that unusual, complex, transactions are reported under the TPA. On our interpretation, suspicious transactions constitute a subset of transactions that can be described as either unusual, complex or large transactions. As such, the obligation to report unusual, complex or large transactions places a wider obligation on Jamaican reporting entities. In recognition of this it is Jamaica's intention to provide more specific direction as regards the reporting obligations of reporting entities to expressly indicate that the reporting requirement in this regard, extends, among other things, to reporting on property suspected of being linked to terrorist financing. The specific direction will be in the form of Regulations under the TPA. EC13.2 ; 3. ensure that all transactions that are suspected to be related to money laundering (s. 6B MLA) or that seem unusual, etc. (s.15 TPA) are to be reported regardless of the amount. EC13.3 <p>By virtue of the definition of specified offences under the MLA, the reporting obligations thereunder are applicable to tax matters.</p> <p>Jamaica must also raise an issue on the Recommendations/Methodology. For the most part, this Recommendation is considered to be the fundamental requirement relating to suspicious transaction reporting. However there are a number of circumstances in which institutions are required by FATF to "...consider making a report..." (that fall outside of this Recommendation) These circumstances are discussed in Recommendations 5 (Customer Due Diligence) and 21 (high risk countries). The criteria under these Recommendations (i.e. R. 5 and R. 21) do not mandate the obligation to consider making a report to be put in law. <u>It is Jamaica's submission that Recommendation 13 has to be linked somehow to these other</u></p>

	<p><u>requirements. It cannot be that one type of transaction reporting requires suspicion of an offence and another type of reporting does not, in the first case non-compliance being punishable by the criminal law, in the other, not necessarily so.</u></p>
<p>Section 4.6 – para. 363 (page 83)</p>	<p>The Jamaican authorities have noted the following comment at paragraph 363:</p> <p><i>“While the banking and financial system in Jamaica is fairly well developed by regional standards, our interviews with a cross section of people indicated a high incidence of cash in the society; the estimates given by the interviewees varied from 30 to 50% of the total payments. While the authorities attributed this to cultural factors, such high reliance on cash as a means of payment presents significant vulnerabilities from the AML/CFT point of view.</i></p> <p><i>While the authorities are aware of this fact, initiatives to reduce the incidence of cash in the economy have been largely market determined with the establishment of the Automated Clearing House and the shared electronic transaction switching network administered by JETS Limited (which administers ABM and Point of Sale transactions). The Government is however seeking to promulgate an Electronic Transactions Act, which will also encourage consumers to conduct transactions electronically.”</i></p> <p>The first point we would wish to make is that the first two sentences evidence the reliance placed by the Examiners on information that we consider to be, at best <u>anecdotal information</u>.</p> <p>In considering the Examiner’s comments we conducted a targeted comparison of the currency growth statistics in Jamaica’s economy as against the economies of five other jurisdictions (Canada, Barbados, Trinidad and Tobago, New Zealand and the United Kingdom for the period 1997 – 2004). The results of this survey reflected that of these territories Jamaica had the lowest rate of percentage increase in real currency growth. Whilst this survey is by no means conclusive of the fact of the level of currency usage in these territories, it does represent one of the indicative measures that would provide some level of guidance to the relevant authorities on the issue of currency usage levels in a particular jurisdiction. This survey at a minimum, is indicative of the position that the level of cash used in Jamaica is not outside of the normal rate of usage internationally.</p> <p>The second point we wish to make is that we also believe that the FATF needs to issue further Guidance for Evaluators and countries on this issue. Not only are the concepts as to the acceptable levels of cash within a society unclear and imprecise, but additionally what steps should a government take to reduce these?</p> <p>Certainly, we accept that national authorities need to have the necessary systems and architecture in place to encourage and facilitate the use of cheques, as against cash, in the settlement of commercial transactions. In that regard Jamaica already has in place, through its Central Bank, a national payments system which does just that. Indeed, because of the significantly increased use of cheques to carry out commercial transactions, the volume of cheque instruments passing through the clearing system</p>

	<p>grew tremendously, leading the Central Bank from the early 1990s to necessarily introduce two clearings per day, with one dedicated to large value items. At this point of our development, the Central Bank is engaged in a project that when complete, will introduce a cutting edge Real Time Gross Settlement System (RTGS).</p> <p>That said, we believe it would also have to be accepted that most of the other initiatives to reduce the use of cash would normally come from the private sector. This is very much in evidence in our banking system and growing rapidly in the form of credit and debit cards, facilities for internet banking and bill payment, telephone banking and bill payments, stored value cards and point of sales machines, to name a few.</p> <p>The question must therefore be asked: Is a country non-compliant because these other measures taken are driven mainly by the private sector? Such a position would hardly be rational as our knowledge of this issue across jurisdictions worldwide is that such initiatives are always driven by the private sector. It can also be argued that a country's determination as to cash levels are borne of larger considerations than money laundering. <u>We submit that these matters have to be considered again by the FATF and CFATF.</u></p>
<p>Section 3.8 – para. 297 (page 67) R. 22 Foreign Branches and Subsidiaries</p>	<p>EC 22.2 (not asterisked) requires that financial institutions should be required to advise their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures in the overseas jurisdiction because the laws do not permit this. Both the BOJ AML/CFT GN and the FSC AML/CFT GL provide for this. In fact the GN goes further to indicate that as far as possible local financial institutions <u>must</u> ensure that their overseas branches and subsidiaries apply the requirements of the Jamaican law where the AML/CFT requirements in the overseas jurisdiction fall short of the requirements obtaining in Jamaica. (See GN 3-5; See GL page 126).</p> <p>Additionally, the authorisation of the Supervisors to allow for such expansion abroad would have been predicated, among other things, upon the Supervisor's full assessment of the state of the laws relating to money laundering and terrorism financing in that country. The need to be advised of an inability to comply would therefore not, in reality, arise unless there were an incongruous situation whereby a country first had an appropriate framework and for some reason later adjusted this to an inappropriate framework. Notwithstanding the non-mandatory nature of this criteria, Jamaica intends to expressly address this issue in the pending POCA (ML) Regulations and the Regulations under the TPA regarding the obligations of reporting entities.</p>
<p>Section 2.6.3 - Summary of factors underlying rating for R. 28 Powers of Competent Authorities (page 47)</p>	<p>R. 28 requires countries' competent authorities responsible for ML/FT and other investigations to be able to compel the production of, or search persons or premises for and seize and obtain transaction records etc. To this end competent authorities should also be able to take witness statements for use and prosecution in ML/FT and other predicate offences. <u>Jamaica's position is that this recommendation is fully addressed since Jamaica's DOFPA and TPA contain express provisions in which the relevant authorities have the ability to obtain information by way of production orders and search warrants. Under these statutes, law enforcement can also obtain restraint orders for property considered to be tainted or used etc. for the commission of a</u></p>

	<p>prescribed offence or a terrorist offence. <u>Jamaica’s position in this regard is therefore is that a rating of C should be assigned.</u></p>
<p>Section 5.1 Summary of factors underlying rating for R. 33 Legal Persons- Beneficial Owners (page 83)</p>	<p>Jamaica was stated to be Largely Compliant with this requirement (page 83), however the lacking element appeared to be “...<i>information relating to the beneficial ownership of a company is not captured</i>”. The view of the Assessors appears to be that at the Companies Registry, that office must make full enquiries as regards the beneficial ownership of a company seeking to register in the jurisdiction. Jamaica questions how this would work in practice? How much due diligence is required at this stage by the Companies Registry? How does the registry keep track of additional transactions during the life of the company, e.g. transfers of shares to other companies? What about publicly listed companies? We are aware that these issues make corporate vehicles particularly susceptible to money laundering and the financing of terrorism. However the FATF and CFATF should consider the implementation issues arising here and provide additional guidance, bearing in mind the fact that the registration of companies may be significantly crippled if the requirement is not appropriately qualified. It should also be recalled that these necessary extensive due diligence processes are carried out when institutions are carrying out financial transactions with the financial institutions as well as when any of these institutions or individuals are applying to enter the sector. In fully developed systems, due diligence is also done as regards transactions with gatekeepers and charities. Additionally, pages 80-81 of the FSC Guidelines, speak to this issue on the ascertaining of information on beneficial owners. <u>Jamaica is of the view that it is fully compliant with R 33.</u></p>
<p>Section 6.3.3 Summary of factors underlying rating for R. 38 Mutual Legal Assistance on confiscation and freezing (page 95)</p>	<p>R. 38 requires countries to ensure that there should be authority to provide mutual assistance to other countries, and make arrangements for coordinating seizure and confiscation proceedings including the sharing of forfeited assets. The shortfall indicated with this recommendation was that: “<i>Laws and procedures to provide response to mutual legal assistance requests are limited to the definition of ML, FT and other predicate offences which do not cover all serious offences as required in Recommendation 1</i>”.</p> <p>Jamaica would wish to point out that this finding is incorrect because the Mutual Legal Assistance (Criminal matters) Act provides that a broad range of assistance may be provided in cases relating to “...<i>investigations and proceedings in relation to a criminal matter</i>” (per section 15(2) of the Act). A criminal matter is defined as <u>including</u> a criminal matter relating to-</p> <ul style="list-style-type: none"> (a) revenue; (b) the forfeiture or confiscation of property in respect of a prescribed offence; (c) the imposition or recovery of a pecuniary penalty in respect of a prescribed offence; (d) the restraining of dealings in property or the freezing of assets that may be forfeited or confiscated, or that may be needed to satisfy a pecuniary penalty imposed in respect of a prescribed offence; <p>This definition is not therefore exhaustive. However, within the definition there appear to be limitations as regards the forfeiture, confiscation, pecuniary penalties, restraint and freezing of assets, insofar as these powers appear to be exercisable in the context of prescribed offences, which is a limited category. Thus, from Jamaica’s perspective the Evaluators’ comments in relation to R. 38 have to be limited to the issues of confiscation and freezing. Mutual Legal Assistance is available for <u>all crimes</u>, save and</p>

except in the case of proceedings for freezing, confiscation and forfeiture, where these actions are reserved for prescribed offences under this Act.

The 2004 methodology outlines 4 essential criteria. To this end Jamaica has:

- Ensured that there is sufficient provision in the law to facilitate requests for mutual assistance under the MACMA, and the Sharing of Forfeited Assets Act including the carrying out of search and seizure; the service of documents; the restraining of dealings in property, or the freezing of assets that may be forfeited or that may be needed to satisfy orders which are similar to pecuniary penalty orders imposed in respect of a prescribed offence; (EC 38.1& 38.2 & 38.3)
- Ensured that as of 2003, the forfeited proceeds of drug related activities is placed in a special fund to be used specifically for law enforcement programmes, justice related projects, debt servicing related to the acquisition of capital equipment for the Ministry of National Security, the Ministry of Justice and respective departments, and education and health projects related to the criminal justice system; (see para 419 above) (EC 38.4)
- Participated in the sharing of forfeited assets under the Sharing of Forfeited Assets Act, Jamaica on 2 occasions with the Canadian authorities and with the U.S. Government. (see para 417 above) (EC38.5)

Jamaica's position therefore is that a rating of LC should be assigned.

ANNEX 1

LIST OF ABBREVIATIONS

ABBREVIATION	FULL NAME
AML	Anti-money laundering
BA	Banking Act
BIS	Bank for International Settlement
BGLC	Betting, Gaming and Lotteries Commission
BOJ	Bank of Jamaica
BOJA	Bank of Jamaica Act
CA	Customs Act
CALP	Caribbean Anti-Money Laundering Programme
CARTAC	Caribbean Regional Technical Assistance Centre
CDD	Customer due diligence
CEMLA	Centre for Latin American Monetary Studies
CFATF	Caribbean Financial Action Task Force
CFT	Combating the financing of Terrorism
DOFPA	Drug Offences (Forfeiture of Proceeds) Act
DNFPBs	Designated non- financial businesses and professions
DPP	Director of Public Prosecutions
EA	Extradition Act
FATF	Financial Action Task Force
FIs	Financial institutions
FIA	Financial Institutions Act
FID	Financial Investigations Division
FIDA	Financial Investigations Division Act
FIU	Financial Intelligence Unit
FRC	Financial Regulatory Council
FRD	Financial Regulation Division
FSC	Financial Services Commission
FSCA	Financial Services Commission Act
FT	Financing of terrorism
GL	Guidelines
GN	Guidance Notes
IA	Insurance Act
IAIS	International Association of Insurance Supervisors
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
ISCF	Island Special Constabulary Force

JAMPRO	Jamaica Promotions Corporation
JCF	Jamaica Constabulary Force
JDF	Jamaica Defence Force
JDIC	Jamaica Deposit Insurance Corporation
KYC	Know your customer
MACMA	Mutual Assistance (Criminal Matters) Act
ML	Money laundering
MLA	Money Laundering Act
MLAT	Mutual Legal Assistance Treaty
MLR	Money Laundering Regulations
MOU	Memorandum of Understanding
MVT	Money value transfer
NVOCC	Non-vessel operating common carrier
PEPs	Politically exposed persons
POCA	Proceeds of Crime Act
REDTRAC	Caribbean Regional Drug Law Enforcement Training Centre
SA	Security Act
SROs	Self regulatory organisations
STRs	Suspicious transactions reports
TPA	Terrorism Prevention Act
TTRs	Threshold transaction reports
WB	World Bank

Annex 2

DETAILS OF INTERVIEWEES MET DURING THE ON-SITE MISSION

Development and Amendment of Legislative Framework
The Minister of Finance and Planning The Minister of National Security Minister of Foreign Affairs and Foreign Trade Minister of Justice Financial Secretary and Chairman of the National Anti-money Laundering Committee Solicitor General Permanent Secretaries of Ministries of National Security/ Foreign Affairs & Foreign Trade/ Justice
Administrative and Implementation Agencies
Office of the Director of Public Prosecutions The Financial Investigations Division –(Responsible for, inter alia, the collection and analysis of Suspicious Transaction Reports (STRs), Threshold Reports and for money laundering investigations leading to prosecutions) The Commissioner of Police and Senior Officers of the Jamaica Constabulary Force – particularly with the Fraud Squad and Narcotics Units and any other Unit with responsibility for financial crimes The Chief of Staff of the Jamaica Defence Force and Senior Officers of the Coast Guards Division The Ministry of Finance – the Customs/ Revenue Protection Divisions Immigration Citizenship and Passport Division of the Ministry of National Security – (Responsible for Immigration and Border Controls) The Bank of Jamaica – (Supervisory responsibility for deposit-taking institutions (commercial and merchant banks, building societies and credit unions; as well as remittance agents and agencies and cambios. The Financial Services Commission - (supervisory responsibility for non-deposit-taking financial intermediaries such as securities dealers, insurance companies, mutual fund, unit trusts, pension funds. Registrar of Companies Betting, Gaming and Lotteries Commission (BGLC) Public Accountancy Board
Private/Corporate Entities and Intermediaries
Bank of Nova Scotia National Commercial Bank Jamaica National Building Society Capital & Credit Merchant Bank Ltd. –

Jamaica Cooperative Credit Union League (JCCUL)
C&WJ Employees Co-op. Credit Union
Cambios - Mint Investments Ltd. and Alliance Investment Management Ltd
Remittance Company - Grace Kennedy Remittance Services Ltd.
Insurance Sector – BCIC (General Insurance) and Guardian Life (Life Insurance)
Securities Sector – Jamaica Money Market Brokers (JMMB)

Private Sector Associations (Non Financial)

The Bankers Association – President and Deputy
Private Sector Organization of Jamaica (PSOJ) – President and Deputy
General Legal Council
Bar Association
Institute of Chartered Accountants of Jamaica (ICAJ)