



Third Follow-Up Report

Jamaica

October 25, 2010

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JAMAICA: THIRD FOLLOW-UP REPORT

Introduction

1. This report represents an analysis of Jamaica's report to the CFATF Plenary concerning the progress that it has made with regard to correcting the deficiencies that were identified in its third round Mutual Evaluation Report. The third round Mutual Evaluation Report of Jamaica was adopted by the CFATF Council of Ministers in October 2005, in Jamaica. Based on the review of actions taken by Jamaica to meet the recommendations made by the Examiners a recommendation would be made as to whether Jamaica would remain on enhanced follow-up or be placed on regular follow-up.
2. Jamaica received ratings of PC on seven (7) of the sixteen (16) Core and Key Recommendations as follows:

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	PC	LC	LC	PC	PC	PC	LC	LC	PC	LC	PC	LC	LC	LC	PC	LC

3. With regard to the other non-core or key Recommendations, Jamaica was rated partially compliant or non-compliant, as indicated below.

Partially Compliant (PC)	Non-Compliant (NC)
R. 8 (New technologies and non-face-to-face business)	R. 12 (DNFBPs – R. ,6,8-11)
R. 11 (Unusual transactions)	R. 16 (DNFBPs R. 13-15 and 21)
R. 21 (Special attention for higher risk countries)	R. 20 (Other non-financial businesses and professions & secure techniques)
R. 25 (Guidelines and feedback)	R. 24 (DNFBPs regulation, supervision and monitoring)
R. 38 (Mutual legal assistance on confiscation and freezing)	SR. VIII (Non-profit organisations)
SR. VII (Wire transfer rules)	

4. The following table is indented to assist in providing an insight into the level of risk in the main financial sectors in Jamaica.

**Size and Integration of the Jurisdiction's financial sector Jun. 2010
(US\$millions)**

		Banks	Other Credit Institutions*	Securities	Insurance (Life & General)	TOTAL
Number of Institutions	Total #	7	54	32	16 ^a	109
Assets	IN US\$	6,752	2,901	5,834	2,424	17,912
Deposits	Total: in US\$	4,352	1,975	N/A	N/A	6,327
	% deposits held by Non-residents	6.7%	14.0%	N/A	N/A	9.0%
International Links	Foreign owned as a % of sector assets**	95.2%	9.0%	48.9%	86.8%	65.0%
	# of Subsidiaries abroad^b	4	7	3	3	17

Data converted using weighted average selling rate as at 30 Jun. 2010.

N/A - Data not applicable.

* Includes Building Societies, Licensees under the Financial Institutions Act (FIA) and Credit Unions.

** Please note that the minority interest in ownership of financial institutions has been ignored.

^a While there are 17 registered insurance companies, one general insurer has decided to stop writing new business and hence is classified as being in "run-off" mode. This means that the company is not underwriting any new risk and not making any renewals, however it continues to service its existing policyholders until the insurance policies expire and claims have been settled. Therefore the data related to insurance companies relates to the 16 active companies.

^b Information provided pertains to the total number of subsidiaries abroad (and *not* to the number of licensees / registrants having subsidiaries abroad).

* Please include savings and loans institutions, credit unions, financial cooperatives and any other depository and non-depository credit institutions that may not be already included in the first column.
* If any of these categories are not regulated, please indicate so in a footnote and provide an estimate of the figures

CASH SEIZURES FROM OPERATIONS IN APRIL 2010

CURRENCY	AMOUNT \$	EXCHANGE RATE	TOATAL JA \$
Jamaica	19,738,450.00	1	19,738,450.00
United States America	242,966.00	88	21,381,008.00
United Kingdom	1,525.00	134	204,350.00

Canada	1,335.00	87	116,145.00
Hong Kong	201.00	11	221,100.00
China	4,111.00	12	49,332.00
Peru	100.00	31	3,100.00
Cayman	52.00	108	5,616.00
CONVERTED AMT.			41,719,101.00

Statistics for the period April 2010 to present.

CURRENCY	AMOUNT
JAM	44,790,302.00
US	1,078,329.00
CAN	26,860.00
£	2,310.00
HONGKONG	20,410.00
CHINA	12.00
CI	72.00
PERU	100.00

Summary of progress made by Jamaica

3. Since the second follow-up report, the Jamaican Authorities have enacted the Casino Gaming Act, 2010. The position paper on the Regime for Designated Non-Financial Businesses and Professions (DNFBPs) was accepted and approved by Cabinet on June 7, 2010 and in September 2010 the Office of the Prime Minister assumed responsibility for the implementation of the regime. Additionally, the omnibus legislation to enhance the powers of the Bank of Jamaica (BOJ) was approved by Cabinet in August 2010. These developments represent a positive step forward in measures undertaken by the Jamaican Authorities in the first and second quarters of 2010.

International Cooperation

4. With regard to international cooperation, the outstanding extradition request from the United States of America for accused drug trafficker Christopher ‘Dudus’ Coke has been executed and the Authorities have identified and frozen the individual’s assets.

Core Recommendations

Recommendation 1

5. The following statistics¹ (August 2010 updates) reflect Jamaica’s ongoing implementation of the POCA:

- Number of Restraint orders obtained 45

¹ Please see attached the statistics on ‘Seizure of Cash’ by Agency for the period 2007 to August 2010.

▪	Number of ML investigations in progress	23
▪	Number of Civil Recovery (CR) cases in progress	3
▪	Number of CR cases before the Courts	6
▪	Estimated value of property restrained	JA\$289.9 M
▪	Number of cash seizure cases in progress	51
▪	Number of cash seizure cases/money forfeited	171

The funds (USD\$565,160) seized at the Sangster International Airport on December 25, 2008 were ordered forfeited to the Crown following investigations. (See attached matrix or second follow-up report). The Jamaican Authorities are also preparing to charge two (2) persons under the Cybercrimes Act.² In October, a third person who was charged with larceny as a servant and breaches of the Cyber Crimes Act³ plead guilty and was sentenced to a fine and/or six months for breaches of the Cyber Crimes Act.

Recommendation 5

6. With regard to Recommendation 5, there is only partial compliance since financial institutions other than those supervised by the BOJ are not covered (E.C. 5.7.1 ongoing due diligence). However, with regard to the issue of the BOJ's Guidance Notes meeting the OEM standard, (an outstanding issue in the previous follow-up reports), the POCA stipulates that compliance with relevant AML Guidance Notes by the Competent Authority will be specifically taken into account by a Court in determining whether a person is compliant with the AML requirements under the POCA. The Authorities have noted that advice received at the time of the last MEV based on this formulation of the law which was then set out in the MLA, was that the requirement rendered compliance with the Guidance Notes a mandatory one. Since then the language of the POCA was revised to include the requirement that these Notes should be approved by the Minister (i.e. the Minister of National Security who has oversight of the POCA) and gazetted.

The BOJ AML/CFT Guidance (revised 2009) were approved by the Minister in April 2010 and the Authorities have been advised by the Government Printing Office that these Notes have also been gazetted⁴ and that printed copies will be soon be available. The requirements of Recommendation 5 together with the power to issue Guidance Notes

² The persons were found to be in possession of electronic devices that can be used to intercept transactions and to duplicate PINs and other personal information from customers using ABMs.

³ This person was a bank employee who was arrested and charged after using a computer to remove money from a customer's account and wiring the funds to a tertiary institution to finance the program of studies that was being pursued by this individual.

⁴ There has since been one case in which a local commercial bank was brought before the Resident Magistrate Court under the MLA for not filing Threshold Transaction Reports in compliance with directions of the designated authority (which under the MLA was the DPP). The Resident Magistrate upheld the local bank's 'No case' submission in essence agreeing with the position that where the MLA indicated that the designated authority should make directions and the financial institutions are to comply, and non-compliance can give rise to a criminal conviction under that Act, in those circumstances and in absence of evidence to the contrary the RM could only conclude

(i) that Directions used here (in the MLA) would be "law making power" i.e. Regulations; and
(ii) the Designated Authority would accordingly be obliged to follow the provisions as laid down in the Interpretation Act to bring the Directions into effect i.e. to ensure the Directions were gazetted.

under the POCA will be revisited to make a clear determination as to whether the requirements contained in the Guidance Notes should be expressly stated in the law (i.e. Principal Act/ Regulations) or whether the framework relating to the issue of Guidance Notes should be upgraded to meet the FATF OEM criteria.

Recommendation 10

7. The Examiners' recommendations are still outstanding. There is no provision in law or regulation with regard to financial institutions being required to keep records for longer periods on the request of a competent authority in specific cases or requiring financial institutions to ensure that all customer transaction record and information are available on a timely basis to domestic competent authorities. There is a broad requirement at Section 33 of the FID Act which does not specifically address the requirements noted for this recommendation. The proposed Omnibus legislation and amendments to the FID Act are however expected to address these issues.

Special Recommendation IV

8. This recommendation remains outstanding. As noted in the second follow-up report, Regulation 15 of the Terrorist Prevention (Reporting Entities) Regulation, 2010 (TPR) did not meet the Examiners' recommendation since the provision appears to be a record keeping requirement for the nominated officer and not a requirement to report STRs that are suspected to be linked or related to or to be used for terrorism, terrorist acts etc. In its review of this Report, the Jamaica Authorities have noted the position on this issue and intend to revisit the CFT laws with a view to satisfying the Examiners' recommendation.

Key Recommendations

Recommendation 35

9. This recommendation remains partially outstanding. However, it should be noted that the Terrorism Prevention (Reporting Entities) Regulations, 2010 was enacted on March 19, 2010.

Other Recommendations

Recommendations 8

10. The requirement has not been met with regard to BOJ licensees because as noted previously BOJ Guidance Notes are not considered to be OEM.

Recommendation 11

11. This Recommendation remains partially outstanding as a result of the status of the BOJ Guidance Notes and Section 94(3) of the POCA does not meet the provision as contemplated by the FATF Recommendations. The Authorities have however stated that the POCA will be revisited with a view to looking at amendments that will satisfy the Examiners' recommendation with regard to Rec. 11 and the power to issue Guidance Notes under the POCA will be revisited as earlier indicated in this report to determine the approach best suited to addressing the FATF Recommendations.

Recommendations 12 and 16

12. The Jamaican Authorities have made notable progress with regard to their DNFBP regime although the Examiners' recommendations still remain outstanding. The Position Paper on the Regime for Designated Non-Financial Businesses and Professions was accepted by Cabinet on June 7, 2010. In September 2010, the Prime Minister assumed responsibility for the implementation of the regime. The Authorities have stated that the next step will involve the convening of a Task Force, which will have the responsibility of recommending the legislative amendments and enhancements to bring the regime into effect. The Task Force will be chaired by the BOJ and also include all the relevant Ministries. The BOJ has detailed the implementation steps as follows:
 - Passage of legislation dealing with Trust and Corporate Services providers
 - Amendments to the Real Estate Board Act; the Public Accountancy Board Act and the Legal Profession Act.
 - Public sensitization initiatives to be undertaken by the FID.
13. The full range of DNFBPs as required by the FATF Recommendations will be covered under the new regime.

Recommendation 20

14. As noted in the previous Report, the Jamaican Authorities have been assessing areas of ML vulnerability. The FID has already determined that the risk of ML posed by pawn brokers is relatively insignificant. Preliminary findings also view the entertainment business and used car dealers as possible vulnerable areas. The Authorities have also noted the DNFBP regime, which will be implemented.

Recommendation 21

15. The recommendation still remains outstanding for the reasons noted in the previous follow-up reports (non OEM status of the BOJ Guidance Notes and of the FSC Guidelines and the fact that no specific provision that the findings in any event be kept to assist competent authorities and auditors.).

Recommendation 24

16. The Casino Gaming Act, 2010 was passed in March 2010 and assented to in May 2010. Pursuant to the Act, casinos will be subject to regulation by the Casino Gaming Commission (the Commission). The functions of the Commission include 'establishing

and implementing measures to ensure responsible casino gaming activities, limit opportunities for crime and disorder in casino gaming activities and to prevent ML and TF activities in relation to casino gaming' (Section 6). Sections 14 and 15 respectively require persons to be licensed by the Commission if they wish to offer casino gaming activities and operators are to meet the fit and proper test. Once granted, the license is subject to review every five (5) years and is not transferable (Sections 20 and 21 respectively). The Act also provides the Commission with disciplinary power and subjects casinos to inspections (Sections 44-46). Disciplinary action includes warnings, variation of a license or variation of the terms of a license or revocation of the license. The enactment of the Casino Act is a positive move towards compliance with the Examiners' recommendation and substantially complies with the Examiners recommendation. Implementation of the Act is needed for full compliance.

Recommendation 25

17. The Examiners' recommendations with respect to DNFBPs have not been met. As noted earlier, the process for the establishment of a DNFBP regime is ongoing. (See discussion above at Rec. 12).

Special Recommendation VIII

18. This Examiners' recommendations remain outstanding since the legislative enhancements are still pending.

III. Conclusion

19. With regard to the Core Recommendations, the recent improvements to Jamaica's AML/CFT regime have not affected compliance with the Examiners' recommendations and consequently Recommendations 5, 10 and SR. IV remain outstanding. The Omni bus legislation being contemplated should however lead to compliance in the future. For the Key Recommendations, there have been no changes from the status of the last report - Recommendation 40 has been complied with while Recommendation 35 remains partially outstanding. With regard to the other Recommendations, progress has been made with regard to Recs. 12, 16, 20 and 24 since the Jamaican Authorities have moved forward with the recommendations on the proposed DNFBP regime. Since this process is still ongoing compliance with the Recommendations has still not been achieved.
20. Based on the aforementioned, it is recommended that Jamaica remain on enhanced follow-up and be required to report back to the May 2011 Plenary at which time if the situation remains unchanged Plenary should give consideration to moving to the next step in the Enhanced follow-up procedures.

Y-T-D CASH SEIZURES UNDER POCA PER AGENCY (2007 to 2010)

TOTALS												
Agency	US\$	JA\$	CAN\$	£	€	Bah\$	TT	Hong Kong	BAR	China	Cay	Peru
FRAUD	1,120,670.00	12,310,713.00	97,420.00	80,240.00	11,700.00	-	3,278.00	20,410.00	-	-	-	-
OCID	2,552,648.06	72,692,512.54	25,090.00	85,870.00	510.00	4,288.00	-		-	12.00	72.00	100.00
CUSTOMS	2,842,328.60	217,000.00	42,270.00	306,420.00	195.00	-	-	10.00	-	-	-	-
NARCO	427,696.00	8,244,750.00	1,100.00	26,395.00	178,000.00	-	-	-	30,840.00	-	-	-
TOTAL	6,943,342.66	93,464,975.54	165,880.00	498,925.00	190,405.00	4,288.00	3,278.00	20,420.00	30,840.00	12.00	72.00	100.00

as @ July 31,2010

Y-T-D CASH SEIZURES UNDER POCA PER YEAR (JAN-DEC)

Breakdown												
2007	US\$	JA\$	CAN\$	£	€	Bah\$	TT	Hong Kong	BAR	China	Cay	Peru
FRAUD	195,421.00	1,134,026.00	74,000.00	7,000.00	-	-	-	-				
OCID	1,943,601.06	11,317,982.54	21,930.00	4,885.00	400.00	4,288.00						
CUSTOMS	645,155.00	110,000.00	11,830.00	233,790.00	-	-	-					
NARCO												
	2,784,177.06	12,562,008.54	107,760.00	245,675.00	400.00	4,288.00	-	-	-	-	-	-
2008												
FRAUD	261,612.12	277,000.00	-	2,500.00	-	-	-	-				
OCID	40,345.00	59,000.00	-	-	-							
CUSTOMS	1,132,741.00	-	-	20,105.00	-	-	-					
NARCO	41,525.00	173,500.00	-	10,345.00	-	-	-	-				

	1,476,223.12	509,500.00	-	32,950.00	-	-	-	-	-	-	-	-
2009												
FRAUD	655,093.88	7,174,900.00	23,400.00	70,700.00	11,700.00	-	3,278.00					
OCID	183,466.00	15,830,486.00	420.00	78,740.00	110.00	-						
CUSTOMS	430,617.60	-	30,440.00	52,525.00	195.00	-		10.00				
NARCO	203,846.00	1,378,550.00	1,100.00	16,050.00	178,000.00	-	-		30,840.00			
	1,473,023.48	24,383,936.00	55,360.00	218,015.00	190,005.00	-	3,278.00	10.00	30,840.00	-	-	-
	as @ July 31,2010											
2010												
FRAUD	8,543.00	3,724,787.00	20.00	40.00								
OCID	385,236.00	45,485,044.00	2,740.00	2,245.00				20,400.00		12.00	72.00	100.00
CUSTOMS	633,815.00	107,000.00										
NARCO	182,325.00	6,692,700.00										
	1,209,919.00	56,009,531.00	2,760.00	2,285.00	-	-	-	20,400.00	-	12.00	72.00	100.00
TOTAL	6,943,342.66	93,464,975.54	165,880.00	498,925.00	190,405.00	4,288.00	3,278.00	20,410.00	30,840.00	12.00	72.00	100.00

	Aug-10											
	US\$	JA\$	CAN\$	£	€							
2010												
FRAUD												
OCID												

CUSTOMS
NARCO
CFU

0 0 0 0 0

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
Legal systems				
1. ML offence	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 of offences in the FATF designated categories of offences.</p>	<ul style="list-style-type: none"> • The POCA should be passed with due haste. • The definition of money laundering in the MLA should be extended to incorporate all the predicate offences required by Recommendation 1. 	<p>The POCA was passed and came into effect in <u>May, 2007</u>.</p> <p><u>The POCA allows for any crime to constitute a predicate offence for money laundering charges.</u></p> <p>Under the POCA money laundering is an act comprising dealings of any kind with criminal property (s. 92). Criminal property means the benefit derived whether wholly, partially, directly or indirectly from any conduct constituting criminal conduct. (s. 91) Criminal conduct means any conduct which in Jamaica constitutes an offence or which if it occurred outside of Jamaica, would constitute an offence if it took place inside Jamaica. (s. 92)</p> <p>Subsequent to the passage of the POCA several persons have been arrested and charged under that Act for, inter alia, money laundering..</p> <p>Progress made by law enforcement in enforcement of the POCA is outlined in the statistics below:</p> <ul style="list-style-type: none"> • Jamaica has five human trafficking cases before the Courts and two at an advanced stage of investigation to go before the Courts⁵. • Number of Customer Information Orders Served 46 • Number of Disclosure Orders Served 39 • Number of Restraint Orders Obtained 42 • Estimated value of property restrained \$89.9M

⁵ The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<ul style="list-style-type: none"> • Persons charged with ML offences 34 • Persons convicted for ML offences 4 • Seizure of Proceeds Statistics for the period April 2009 – April 2010 are provided in an attachment⁶ to this Matrix. <p><u>August 2010 Updates</u></p> <ul style="list-style-type: none"> • Number of Restraint Orders Obtained 45 • Estimated value of property restrained \$289.9M • Number of M L Investigation in progress 23 • Number of Civil Recovery cases in progress 3 • Number of Civil Recovery cases before the Court 6 • Number of Cash Seizure cases before in progress 51 • Number of cash seizure case ordered forfeited to the Crown 171 • Seizure of Cash Statistics for the period 2007-August 2010 by Agency provided in an attachment⁷ to this Matrix. <p>Specific examples of recent international collaboration by local authorities and their international counterparts was the establishment of JOLT in <u>May 2009</u>. This is a joint Task Force involving law enforcement officers from the US, Canada and Jamaica, to tackle lottery scam activities which activities are believed to be responsible for fleecing persons in America of approximately USD30million in 2008. The taskforce is</p>

⁶ The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

⁷ The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>called the Joint Operations Linked to Telemarketing (JOLT) and comprises officers from:</p> <ul style="list-style-type: none"> ➤ US Immigration and Customs Enforcement Division; ➤ US Embassy in Jamaica; ➤ Local Jamaican Authorities including officers from the Jamaica Constabulary Force, Customs, Passport & Immigration Dept.; office of the DPP; officers from the Montego Bay Resident Magistrates Court and officers from the FID. <p>Since JOLT's establishment, the initiatives undertaken include the search and seizure of property and following investigations two persons were charged with conspiracy to defraud and money laundering and ten(10) police officers were recommended for retirement in the public interest for their alleged roles in the lotto scams. J\$100million was also recovered and steps are being taken to have these funds returned to persons fleeced in the lotto scams. The process of repatriation of funds to victims of the lotto scams has commenced.</p> <p>Between <u>June and July 2009</u> the police acting under the POCA confiscated more than J\$300million from persons involved in criminal activities.</p> <p>Specific examples of cases involving action taken for breaches of the Customs Declaration requirements are:</p> <p>➤ In <u>September 2009</u> members of the Jamaica Customs Cargo Imaging Team of the Border Protection Unit seized a total of USD57,850 from a passenger at the Sangster International Airport in Montego Bay after he was searched and found with sums of money that were not disclosed on the</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>Customs Declaration Form. The funds were confiscated pending further investigation.</p> <p>➤Earlier in December 2008 a total of USD565,160 was seized by the Customs Department at the Sangster International Airport on Christmas Day from three passengers who failed to make the requisite declarations to customs officers on duty. The funds were seized under the POCA. Following investigations the funds were ordered forfeited to the Crown.</p> <p>Outstanding Extradition request from the USA for accused Drug Trafficker Christopher “Dudus” Coke has been executed and the local authorities have frozen the identified assets associated with this individual.</p> <p>Jamaica is now looking at charging 2 persons under the <u>Cybercrimes Act</u>. These persons and their vehicle were searched on suspicion and found to be in possession of electronic devices that can be used to intercept transactions and to duplicate PINs and other personal information from customers using ABMs.</p>
2. ML offence—mental element and corporate liability	C	The Recommendation is fully observed		<p>POCA s. 92 and 93 establish the requisite mental element for the ML offence. Person is defined under the Interpretation Act to include bodies corporate.</p> <p>Both the POCA and the TPA make specific reference to the penalties specifically applicable to individuals and those specifically applicable to bodies corporate.</p>
3. Confiscation and provisional measures	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>	<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. 	<p>The POCA was passed and came into effect in May, 2007.</p> <p>With the passage of the POCA, the Money Laundering Act (MLA) and the Drug Offences Forfeiture of Proceeds Act (DOFPA) were effectively repealed and replaced.</p> <p>Section 5 of the POCA treats with the applicable</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
		There is no provision for forfeiture of property of corresponding value with regard to terrorism offences.		<p>forfeiture regime regarding any property used in, or in connection with the commission of an offence for which a defendant has been convicted in either the Supreme Court or Resident Magistrates Court. Section 5 also provides that where a Court is satisfied that a forfeiture order should be made but for the reasons outlined in section 5(5) such an order cannot be made in respect of the property in question, the Court may instead order the defendant to pay to the Crown, an amount equal to the value of the property (i.e. a pecuniary penalty order).</p> <p>As regards intended instrumentalities, section 32 of the POCA permits an application for restraint order to be made to restrain any free property held by the defendant or to restrain any free property held by the recipient of a tainted gift. Restraint order applications can be made where it is believed an alleged offender has benefited from his criminal conduct and a criminal investigation has started in relation to that offence; or proceedings in Jamaica have commenced for that offence and have not been concluded or an application for forfeiture, has been made.</p> <p>This regime similarly applies to TF Offences since such offences would be considered criminal conduct under the POCA.</p> <p>In addition, section 19 of the Criminal Justice (Law Reform) Act provides for the forfeiture of any property used or intended to be used in the commission of <u>any offence</u> upon the accused conviction of an offence punishable on indictment for a term of 2 years or more. Both the ML offences (POCA s. 92 and 93) and the TF offences (TPA s. 3-12) meet this criteria.</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
Preventive measures				
4. Secrecy laws consistent with the Recommendations	LC	The FSC's inability at the time of the mutual evaluation to sign the IOSCO MOU allowing the sharing of information.		The Financial Services Commission (Overseas Regulatory Authority) (Disclosure) Regulations, 2005 which allow for the sharing of regulatory information between the FSC and its overseas counterparts were passed into law in 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.
5. 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</p>	<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. 	<p>The POCA (MLP8) Regulations, 2007 require CDD measures comprising transaction verification procedures to be applied particularly in the circumstances specified in regulation 7(3) which include where there is doubt about the accuracy of any previously obtained evidence of identity. The continuation of the business relationship is prohibited if this requirement cannot be fulfilled by the financial institution. (r.7(2))</p> <p>The POCA (MLP) Regulations, 2007 specifically prohibits financial institutions from maintaining anonymous, fictitious or numbered accounts. (r. 16) (See also BOJ (AML/CFT) Guidance Notes paragraph 93)</p> <p>The POCA (MLP) Regulations, 2007 requires procedures to be in place to ensure that the identities of both principals and agents are obtained, and that the authorizations of agents are obtained in the case of transactions being conducted by a person on behalf of another. (r. 11, 12 and 13)</p> <p>The POCA (MLP) Regulations, 2007 stipulates that measures are satisfactory where in the case of any transaction involving settlements, trusts or other types of legal arrangements, the identity of the settler, legal owner or other person who exercises effective control of the legal arrangement as the case may require, or</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
		<p>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>		<p>the beneficial owner, is established. (r. 13(c)).</p> <p>The POCA (MLP) Regulations, 2007 prohibits the continuation of the business relationship unless customer information is updated at least once every 5 years. (r. 7(1))</p> <p>As regards the FSC, the procedure manuals were updated prior to the mutual evaluation to include modules on AML/CFT testing. The compliance testing reviews of the AML policies and procedures were completed from as far back as 2005 and 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.</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>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
6. 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.	<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. . 	<p>The BOJ (AML/CFT) Guidance Notes paragraph 79 now speak specifically to the additional specific requirement for financial institutions to investigate and determine on the source of funds and wealth of PEPs. Paragraph 46 requires financial institutions to consider making STRs when satisfactory proof or verification of a customer's identity is not obtained, whether or not the transaction is completed. The requirement is also extended to the existing client base for financial institutions.</p> <p>The POCA(MLP)Regulations, 2007 r.7 prohibits continuing a business relationship where the CDD verifications are not satisfactory. (r.7(2) and r. 19 extends the CDD/KYC update requirements to existing customers of the financial institution. (See also paragraph 46 of the BOJ (AML/CFT) Guidance Notes).</p> <p>Paragraphs 73 and 74 of the BOJ (AML/CFT) Guidance Notes specifically require the KYC due diligence measures in relation to legal arrangements including identification of all parties and beneficiaries concerned, source of funds and source of wealth and trust arrangement details to be undertaken.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security. These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm</p> <p>As regards the FSC Guidelines please note that Sections V and W of the FSC Guidelines which fully satisfy all the Recommendation 6 criteria, including that of ascertaining the source of funds and wealth for PEPs were in effect prior to the the 2005 Mutual Evaluation.</p>
7. Correspondent	LC	Financial institutions are not required to ascertain	<ul style="list-style-type: none"> Financial institutions should also be required to 	Paragraph 82 of the BOJ (AML/CFT) Guidance Notes

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
banking		whether respondent institutions have been subject to a ML/FT investigation or regulatory action.	ascertain whether respondent institutions have been subject to an ML/FT investigations or regulatory action.	<p>have been revised to expressly require financial institutions to ascertain whether respondent institutions have been subject to ML/FT prosecutions or investigations.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p>
8. 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.	<ul style="list-style-type: none"> 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. 	<p>Prior to the mutual evaluation exercise the FSC Guidelines explicitly addressed measures our licensees and registrants should incorporate within their respective policies and procedures manual to mitigate the risk associated with non-face to face customers. See the section entitled <i>Non Face to Face Customers</i> on page 98 of our Guidelines.</p> <p>Subsequent to the mutual evaluation exercise, the FSC Guidelines have since been revised to include enhanced guidance on the risks associated with technological developments and the possible misuse of these avenues to effect ML/FT schemes. The Guidelines also require FSC regulated financial institutions to have policies in place to prevent the misuse of technological developments for ML/FT schemes. See Part IV – “Internet & Cyber-business” page 144 of these Guidelines.</p> <p>The revised FSC Guidelines are available on the FSC's web site at www.fscjamaica.org/</p> <p>The BOJ AML/CFT Guidance Notes specifically direct licensees to the FATF report on ‘New Payment Methods and How This Can Be Used to Facilitate Money Laundering.’ These Guidance Notes also take into account Jamaica's Electronic Transactions Act which came into effect in April 2007.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security. . These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm .
9. 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.	<ul style="list-style-type: none"> 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. 	<p>The FSC Guidelines were revised to explicitly reflect that:</p> <ol style="list-style-type: none"> Financial institutions should immediately obtain from third party all the necessary information relating to the CDD process; and Ultimate responsibility of CDD obligations resides with the financial institution relying on the introducing institution. (See Section 111, Part V (111) -Cases Requiring Third Party Evidentiary Support, <i>Reliable Introduction</i> pages 101 – 102) <p>The revised FSC Guidelines are available on the FSC's website at www.fscjamaica.org/</p>
10. 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>	<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. 	<p>The POCA (MLP) Regulations, 2007 mandate the retention of both identification records and transaction records by financial institutions for the prescribed period of 5 years commencing from the date on which the relevant financial business was completed or the business relationship terminated whichever is later. (R. 14) In addition to the foregoing, paragraph 46 of the BOJ AML/CFT Guidance Notes also requires financial institutions to ensure that the due diligence checks and reviews and investigations are available to the Competent Authority and the Designated Authority.</p> <p>Paragraphs 3 and 6 of the BOJ (AML/CFT) Guidance Notes that were revised in 2009 now reflect that the Guidance Notes constitute Standards of Best Practices per the deposit-taking statutes, and thus a deposit-taking licensee's failure to comply with the Guidance Notes will be</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>deemed a contravention of the Standards of Best Practices and hence subject to the requisite legal sanctions.</p> <p>As was already indicated to the CFATF, the Banking Act, Financial Institutions Act and BOJ (Building Societies) Regulations already mandate that non-compliance with BOJ SBP9s constitutes the basis for regulatory sanctions. Thus the requirement at paragraph 46 (general requirements for CDD) of the Guidance notes would be an enforceable requirement. Additionally, POCA also stipulates that compliance with relevant AML Guidance Notes by the Competent Authority will be specifically taken into account by a court in determining whether a person is compliant with the AML requirements under POCA. Between May and July 2009 one merchant bank was sanctioned under the FIA for among other, things non-compliance with the BOJ AML/CFT Guidance Notes CDD requirements in relation to beneficial ownership information on corporate customers and the account opening and monitoring process, non-independence of the AML/CFT compliance function; and requirements to keep Boards updated on the AML/CFT efforts of the licensee.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p> <p>The BOJ is also considering an Omnibus statute which will provide the BOJ with regulation-making powers. A draft submission proposing the Omnibus legislation was submitted to the Minister in 2008. In keeping</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>with specific IMF conditionalities, this submission is now being updated to reflect further developments in relation to the best practices in banking supervision; to synchronize requirements applicable to the licensed deposit-taking sector and to incorporate recommendations coming out of the BCP aspects of the FSAP. Other enhancements contemplated include giving the BOJ Regulation-making powers. As agreed with the IMF, the updated draft concept paper was shared with them on March 31, 2010 for their review and input towards meeting the government's commitment for passage before the end of the IMF Programme. In August, 2010 Cabinet approved the recommendations proposing implementation of the Omnibus legislation.</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
11. 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>	<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. 	<p>This issue was definitively addressed from June 2005. The BOJ (AML/CFT) Guidance Notes paragraph 101A specifically addresses this requirement for financial institutions to pay attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, and that they must set forth their finding in writing and that these findings should be kept available for Competent Authorities and auditors for at least five years.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p>
12. DNFBP–R.5, 6, 8-11	NC	DNFBPs are not covered under the existing AML/CFT regime.	<ul style="list-style-type: none"> 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. 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. 	<p>The POCA has provision for the AML requirements there-under to be applied to DNFBPs which persons will be designated by the Minister with responsibility for National Security when the regime for these persons is expected to come into effect. (See also criterion 16 and criterion 20 below)</p> <p>The amendments to the TPA in this regard are still pending.</p>
13. Suspicious transaction 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> <p>Compliance with recently enacted CFT measures yet to be fully implemented.</p>	<ul style="list-style-type: none"> Clarify that the STRs need to be filed irrespective of whether a transaction relates to tax matters. 	<p>Under POCA s. 95 the obligations for suspicious transaction reporting extends to cases where there is a suspicion of a person engaging in money laundering (i.e. the transaction involves criminal property).</p> <p>Paragraph 102 of the BOJ (AML/CFT) Guidance Notes specially indicates that STRs should be filed in cases where the suspicion is that funds are being diverted to avoid the payment of taxes or to otherwise deprive the Government of revenues.</p> <p>The BOJ (AML/CFT) Guidance Notes which have</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p>
14. Protection & no tipping-off	LC	No specific provision to prohibit tipping off when STR or related information is being reported	<ul style="list-style-type: none"> Clarify that the tipping off is prohibited when STR or related information is being reported to the FIU. 	<p>Section 97 of the POCA makes tipping off an offence. The offence of tipping off is created in relation to disclosures made that are likely to prejudice any investigations in respect of disclosures made to the Designated Authority. This includes information relating to an STR or related information.</p> <p>Additionally as regards the issue of "tipping off" paragraph 106 of the BOJ (AML/CFT) Guidance Notes also specifically warns financial institutions against making any unauthorized disclosures about reports made to the Designated Authority. The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p> <p>The FSC's Guidelines, namely section Y. Submitting Reports to the Designated Authority – <i>Confidentiality/Non Disclosure Requirement</i>, from its initial circulation prohibits tipping off when STR or related information is being reported.</p>
15. Internal controls, compliance & 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.	<ul style="list-style-type: none"> The authorities should consider issuing specific CFT guidance for all entities covered by the TPA. 	<p>Specific guidance in relation to CFT has been included in the BOJ (AML/CFT) Guidance Notes from 2004. As regards the FSC AML/CFT Guidelines please note there is a correction to the previous update in this regard. The FSC's Guidelines have since February 2005, been in effect re: the provision of CFT guidance.</p>
16. DNFBP–R.13-15 & 21	NC	DNFBPs are not covered under the existing AML/CFT regime.	<ul style="list-style-type: none"> The proposed amendments to the MLA should be enacted to ensure compliance with recommendations 12 and 16 with regard to applying 	<p>With respect to the Regime for Designated Non Financial Businesses and Professions (DNFBPs), a Position Paper intended to form the basis of</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
			<p>Recommendations 11 and 21. In addition, the DNFBPs should also be covered under the CFT regime.</p> <ul style="list-style-type: none"> • 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. • 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. 	<p>recommendations for the proposed regime was finalized in March 2010 and submitted to the Minister on April 26, 2010 for final approval by Cabinet. The Position Paper has identified and made recommendations on key gate-keeper professions to be covered as a priority under the proposed DNFBP regime viz. accountants, attorneys, real estate brokers & developers, dealers in precious metals and gems.</p> <p>On June 7, 2010 Cabinet accepted and approved the recommendations on the proposed regime and the category of persons to be designated as gatekeepers (i.e. real estate agents, casinos (including internet casinos) lawyers, notaries, other independent legal professionals and accountants, dealers in precious metals and gems, and trust and company service providers).</p> <p>In September 2010 the Office of the Prime Minister assumed responsibility for the implementation of the regime. A Task Force is to be convened and charged with the responsibility of recommending the legislative amendments and enhancements necessary to bring the regime into effect. The Task Force will be chaired by the BOJ and will involve all the Ministries involved (i.e. Ministry of Finance & the Public Service, Ministry of Security, Ministry of Foreign Affairs & Foreign Trade). The BOJ has recommended the steps necessary to implement the regime as follows-</p> <ul style="list-style-type: none"> ✚ Passage of legislation dealing with Trust & Corporate Service Providers; ✚ Amendments to the Real Estate Board Act; the Public Accountancy Board Act and the Legal Professions Act. ✚ Public sensitization initiatives to be undertaken by the FID. <p>In February 2010 meetings with the relevant regulatory bodies (i.e. Real Estate Board and Public Accountancy</p>




**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>Board) were held. A meeting is to be scheduled with Legal Profession on the pending regime.</p> <p>The POCA has provision for the AML requirements there-under to be applied to DNFBPs which persons will be designated by the Minister with responsibility for National Security when the regime for these persons comes into effect.</p> <p>Under the regime to be established for DNFBPs under POCA, DNFBPs will have identical statutory obligations as financial institutions in respect of matters such as the implementation of internal AML regulatory controls and adhering to KYC requirements. Section 100 of the POCA already imposes an obligation to report suspicious activities on persons other than those in a regulated business (i.e. financial services).</p> <p>See also criterion 20 below)</p> <p>It is anticipated that once the DNFBP regime comes into effect under the POCA, similar designations will also be effected under the TPA.</p>
17. Sanctions	LC	The assessment of the implementation of CFT measures was not possible due to recent enactment.		
18. 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	<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. 	<p>The FIA has not been amended as the current provisions requiring registration under the Companies Act (and the physical presence requirements under that Act) are deemed to be sufficient. However it is contemplated that such an amendment could be incorporated under the proposed Omnibus statute. (see response to item 10. above). Currently the oversight of FIA establishments in Jamaica includes the following requirements-</p> <ul style="list-style-type: none"> ➤ Applicants must be a company; FIA (s.3) ➤ The company must be licensed under the FIA (s.3): ➤ A company means a company formed and

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>registered under the Company's Act, 2004 or under the previous law (i.e. the Companies Act of 1967. (s.2 The Companies Act). Under the Companies Act the registered office must be situate in Jamaica. (s.8)</p> <p>Since 2004 the BOJ (AML/CFT) Guidance Notes has <u>specifically prohibited</u> the establishment or maintenance of relationships with Shell banks. (see paragraphs 84 and 82)</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p>
19. 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.	<ul style="list-style-type: none"> Establish a formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc. 	<p>Jamaica, as a member of the World Customs Organization has committed to implementing the WCO Safe Framework of Standards. An important aspect of this is the Customs-to-Customs network arrangements to promote the seamless movement of goods through secure international trade supply chains. These network arrangements will result, inter alia, in the exchange of timely and accurate information that will place Customs administrations in the position of managing risk on a more effective basis including improving the ability of Customs to detect high-risk consignments; enabling Customs administrations to improve their controls along the international trade supply chain; and ensuring more efficient allocation of Customs resources. The Customs-to-Customs network arrangements will strengthen co-operation between Customs administrations and enable administrations to carry out controls earlier in the supply chain, e.g. where the administration of an importing country requests the administration of the exporting country to undertake an examination on its behalf.</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
20. Other DNFBP & secure transaction techniques	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.	<ul style="list-style-type: none"> 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. Take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. 	<p>With respect to the Regime for Designated Non-Financial Businesses and Professions (DNFBPs), a Position Paper intended to form the basis of recommendations for the proposed regime was finalized in March 2010 and submitted to the Minister on April 26, 2010. The Position Paper has identified and made recommendations on key gate-keeper professions to be covered as a priority under the proposed DNFBP regime viz. accountants, attorneys, real estate brokers & developers, dealers in precious metals and gems, and trust and company service providers.</p> <p>On June 7, 2010 Cabinet accepted and approved the recommendations on the proposed regime and the category of persons to be designated as gatekeepers (i.e. real estate agents, casinos (including internet casinos) lawyers, notaries, other independent legal professionals and accountants, dealers in precious metals and gems, and trust and company service providers). In September, 2010 the Office of the Prime Minister assumed responsibility for the implementation of the regime. A Task Force is to be convened and charged with the responsibility of recommending the legislative amendments and enhancements necessary to bring the regime into effect. The Task Force will be chaired by the BOJ and will involve all the Ministries involved (i.e. Ministry of Finance & the Public Service, Ministry of Security, Ministry of Foreign Affairs & Foreign Trade). The BOJ has recommended the steps necessary to implement the regime as follows-</p> <ul style="list-style-type: none">  Passage of legislation dealing with Trust & Corporate Service Providers;  Amendments to the Real Estate Board Act; the Public Accountancy Board Act and the Legal Professions Act.  Public sensitization initiatives to be undertaken by the FID.

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>Jamaica is also in the process of passing legislation regarding the establishment of Casino Gaming Activities in Jamaica. At the request of the Government, the Bank of Jamaica reviewed and made recommendations on matters to be dealt with in the draft Bill, particularly in relation to ensuring that provisions explicitly addressing AML requirements are in place and ensuring that breaches of such requirements will constitute an offence. The likelihood of designation as a DNFBP was also pointed out and recommendations made that the regulatory regime include a regulator with the legal powers to enforce AML requirements and provide guidance on AML compliance and requirements.</p> <p>The Casino Gaming Act was passed in March 2010 and assented to by the Governor General in May 2010. (See criterion 24 for more fulsome discussion on this legislation.)</p> <p>Re: Businesses other than DNFBPs - between 2005 and 2009 an initial preliminary assessment was conducted by the FID. Preliminary findings at that time reflected that possible areas of ML vulnerability could include persons in the entertainment business and used car dealers. Further research will have to be conducted by the FID to properly assess the potential ML risks posed by both these sectors. Initial review however suggests that cheque payments would already be captured under the legal obligations imposed on the banking system to carry out appropriate due diligence on individuals/entities as well as under their record-keeping obligations. It is possible that cash payments might be dealt with via a specific cash reporting requirement which would serve to address the perceived risk in such cases. In that regard it would seem that amendments would have to be made to the POCA Money Laundering Regulations to facilitate this. The area of pawnbrokers was assessed by FID as being relatively insignificant and not posing an ML</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>threat at this time.</p> <p>The RTGS (Jamclear) was launched on February 27, 2009.</p> <p>Jamaica is currently reviewing its Payment Systems architecture with a view to establishing laws to specifically streamline the oversight of the system and ensure legal certainty among participants under circumstances such as insolvency. Ancillary to this initiative are the following:</p> <ul style="list-style-type: none"> ➤ Reduction in clearing periods for cheque payments; ➤ Implementation of a Real Gross Time Settlement System (RTGS) scheduled to take effect in 2008; and eventually ➤ Cheque truncation regime; <p>The payment system has also seen the development of electronic payments via bank related electronic media (ATM cards internet and telephone banking) which has impacted the heavy reliance on cash in Jamaica. This initiative is however wholly private sector driven, with the Minister ensuring through the issue of the Banking (Banking Electronic Money) Order, 2006 that the underlying arrangements for such mediums of payment remain with institutions that are subject to licensing and AML requirements.</p>
21. 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.	<ul style="list-style-type: none"> • 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. 	<p>The BOJ (AML/CFT) Guidance Notes caution financial institutions against initiating relationships or undertaking transactions with persons resident in countries that do not sufficiently apply the FATF requirements. Additionally, the Guidance Notes require financial institutions to ensure that relationships with clients in high risk countries are subject to prior approval by senior management. Also, transactions that are suspicious in nature should be subject to investigations and the findings made available to the Designated Authority. Such transactions must also be reported to the Designated Authority (see paragraphs 87 and 88).</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>Generally the findings in relation to transactions that generate suspicion are to be available to the Competent Authority and the Auditors of the financial institution (see paragraph 101A).</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p> <p>The FSC's Guidelines require licensees and registrants to recognize and assess those transactions from countries or regions with high incidents of money laundering whose background and purpose have no apparent economic or visible lawful purpose. Additionally, where these transactions have been determined to be suspicious then a report to the Designated Authority should be made. See Part X: Transaction Monitoring - II. <i>Recognition Of Suspicious Customers / Transactions</i></p>
22. Foreign branches & subsidiaries	LC	<p>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.</p> <p>Need for supervisory authorities to test compliance with requirements of Recommendation 22 to assess effective implementation.</p>	<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. 	<p>The BOJ (AML/CFT) Guidance Notes mandate financial institutions to take a consolidated approach to AML/CFT compliance with regards to branches and subsidiaries including assessments of the AML/CFT regimes applicable in the jurisdictions in which the branches and subsidiaries are located, with a view to determining the AML/CFT risks posed to the Parent company or Head Office. (See paragraphs 3, 4 and 5). These requirements have been in effect since 2004. Additionally, where overseas branches and subsidiaries are unable to comply with the applicable AML/CFT requirements the local Head Office or Parent company must advise the Competent Authority of this inability. (See paragraph 5A).</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p> <p>The FSC's Guidelines, from February 2005, had in place similar requirements as those outlined above for its regulated entities and their overseas branches and subsidiaries. See Part BB - V. <i>RECOGNISED FOREIGN REGULATED INSTITUTIONS</i> page 146.</p> <p>These requirements as regards the overseas branches are also mandated under POCA via the POCA MLP) Regulations, 2007 r. 18 and are now mandated under the TP (Reporting Entities) Regulation, regulation 18). The TP (Reporting Entities) Regulations were passed into law on March 19, 2010.</p>
23. 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.	<ul style="list-style-type: none"> Harmonize the definition of financial institutions in the MLA and the TPA with that given in the AML/CFT Assessment Methodology. Introduce and implement consolidated supervision. 	<p>Under the POCA, the facility exists for persons to be designated financial institutions for the purposes of the POCA. (see s. 2) Under Jamaica's laws, the services categorized at items 1; 4; 5; 7; 8 (in so far as this constitutes activities requiring licensing under the Securities Act) and 9; 11; 12 and 13 of the AML/CFT Assessment Methodology, are services that require licensing in order to be legitimately undertaken in Jamaica and which services are captured in the current definition of financial institutions. (In other words, 9 of the 13 service categories listed in the said methodology are already subsumed under the definition of financial institutions in the POCA)</p> <p>As regards the services at 2; 3; 6 and 10 of the AML/CFT Methodology, the relevant assessments are to be undertaken by the Jamaican authorities to determine the AML vulnerabilities that may exist and the applicable AML/CFT requirements that should be accordingly imposed.</p> <p>As regards the matter of consolidated supervision, the Banking Act, Financial Institutions Act (sections 29C-</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>F) and Building Societies Act (sections 75C-F) already contain provisions that comprise the fundamental requirements for a consolidated supervisory regime. Using these provisions, the BOJ has worked with its licensees to require, enable and implement the relevant corporate restructurings necessary to ensure that the resulting group structures within which the licensees fall, are capable of being supervised on a consolidated basis.</p> <p>The Omnibus statute will also seek to improve on the powers currently in the law.</p> <p>An updated concept paper is being finalized in this regard. A draft submission proposing the Omnibus legislation was submitted to the Minister in 2008. In keeping with specific IMF conditionalities, this submission is now being updated to reflect further developments in relation to the best practices in banking supervision; to synchronize requirements applicable to the licensed deposit-taking sector and to incorporate recommendations coming out of the BCP aspects of the FSAP. As agreed with the IMF, the updated draft concept paper was shared with them on March 31, 2010 for their review and input towards meeting the government's commitment for passage before the end of the IMF Programme.</p> <p>In August, 2010 Cabinet approved the recommendations proposing the implementation of the Omnibus legislation.</p>
24. 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.	<ul style="list-style-type: none"> 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. 	<p>The POCA has provision for the AML requirements there-under to be applied to DNFBPs, which persons will be designated by the Minister with responsibility for National Security when the regime for these persons comes into effect.</p> <p>The Casino Gaming Act was passed in March 2010 and assented to by the Governor General in May 2010. Under that Act Casinos will be subject to regulation by the Casino Gaming Commission whose functions include establishing and implementing measures to ensure responsible casino gaming activities, limit opportunities for</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>crime and disorder in casino gaming activities and to prevent money laundering and financing of terrorist activities in relation to casino gaming. (See Section 6) Persons wishing to offer casino gaming activities must first be licensed by the Commission to do so and the proposed operators of the casino must meet the statutory fit and proper criteria. (Sections 14 and 15) Persons wishing to be employed with a casino operation must be personally licensed by the Commission to do so. (Part V – Sections 30 – 37) The licences are subject to review every 5 years (Section 20) and the licenses are not transferable (Section 21). The Commission has the power to take disciplinary action against a casino that has contravened the Act or regulations thereunder or directions issued under the Act; a term or condition of the licence or any Act or regulations relating to money laundering or the financing of terrorist activities. (Section 2791)(b)). Disciplinary action under the Act means any one or more of the following-</p> <ul style="list-style-type: none"> (a) warnings, reprimands, censures or admonishments; (b) revocation or suspension of a licence; or (c) variation of the terms of a licence <p>Casinos are subject to inspection by the Commission or the authorized designates of the Commission (Sections 44- 46)</p> <p>Offences under the Act include-</p> <ul style="list-style-type: none"> ✚ Obstructing inspectors and authorized officers from carrying out their duties; ✚ Making false or misleading statements in relation to applications for licences or renewals of licences; ✚ Operating in contravention of the Act,

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica regulations thereunder or a licence.
				See also comments at criterion 16 and criterion 20 above.
25. Guidelines & Feedback	PC	Insufficient mechanism for providing feedback to the financial institution and DNFBPs on a systematic basis. No guidelines for the DNFBPs;	<ul style="list-style-type: none"> • 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. • 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. 	<p>The FID Act was passed on March 26, 2010.</p> <p>The FID Bill was re-tabled and placed before a new Joint Select Committee of Parliament which was convened in July 2009. The Joint Select Committee (JSC) completed its deliberations on the FID Bill on 2 March 2010 as scheduled and the Report of the JSC and the Appendix thereto listing the proposed amendments to the Bill were tabled in Parliament on Wednesday 10 March, 2010. On Tuesday March 16, 2010 the Bill was approved in the Lower House with twenty-eight amendments proposed by the report of the Joint Select Committee. The Bill is scheduled to be debated in the Senate on March 26, 2010, the debate will be facilitated by a specially reconvened session of the Senate after Parliament breaks on 25 March, 2010.</p> <p>The FID Act was passed on March 26, 2010.</p> <p>The FID currently has implemented a system of feedback to reporting entities which sees an automatic response being issued in acknowledgement of the receipt of reports being made to that authority.</p> <p>Additionally POCA has introduced a mandatory feedback system under the “appropriate consent” regime which mandates feedback by the Designated Authority (FID) to reporting persons/entities, which feedback must specifically consent or refuse to provide consent to the reporting person/entity doing an act that is prohibited under the POCA such as proceeding with a transaction that appears suspicious. The feedback period is 7 calendar days. (see sections 99 and 91 of the POCA)</p> <p>The Fourth Schedule to the POCA makes provision for</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>the AML requirements there-under to be applied to DNFBPs which persons will be designated by the Minister with responsibility for National Security. These entities will upon designation, become a part of the regulated sector and will have to meet similar AML obligations as financial institutions.</p> <p>The POCA also contemplates the appointment of the Competent Authority which will have responsibility for monitoring AML compliance under the POCA. (See s. 91(1)(g))</p> <p>The FSC AML/CFT Guidelines were duly adjusted from 2005 to remove the erroneous statement that the use of the FSC Guidelines is not mandatory. The matter was raised at paragraph 238 of the MEV and the FSC is quoted therein as referring to this inclusion of the above statement as erroneous and that the FSC would ensure this statement was removed from the Guide Lines.</p>
Institutional and other measures				
26. The FIU	LC	<p>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.</p>	<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. 	<p>The FID Act was passed on March 26, 2010.</p> <p>The FIDA was re-tabled and placed before a new Joint Select Committee of Parliament which was convened in July 2009. The Joint Select Committee (JSC) completed its deliberations on the FID Bill on 2 March 2010 as scheduled and the Report of the JSC and the Appendix thereto listing the proposed amendments to the Bill were tabled in Parliament. On Tuesday March 16, 2010 the Bill was passed in the Lower House with twenty-eight amendments proposed by the report of the Joint Select Committee, and passed in the Upper House on March 26, 2010. The FID Act was passed on March 26, 2010.</p> <p>The FID contributed typology cases for the CFATF's Typology Working Group meeting held in Panama in July 2009.</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
27. 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.	<ul style="list-style-type: none"> 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. 	<p>In April 2008 CARICOM Heads of Government agreed to taking a regional approach to fighting crime. Areas highlighted were that of intelligence and information sharing among member states and possibly the rapid deployment of a regional joint force.</p> <p>Additionally, there was consensus to sign a Maritime and Airspace Security Cooperation Agreement and a CARICOM Arrest Treaty.</p> <p>The regional grouping also agreed to, among other things –</p> <p>(i) Develop a regional database to serve a policy on illegal firearms;</p> <p>(ii) The establishment of counter-kidnapping units.</p> <p>The requisite designation of the Chief Technical Director of the FID was effected in March 2006.</p>
28. Powers of competent authorities	LC	<p>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.</p> <p>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.</p>		<p>POCA does contain a wider variety of powers for the Designated Authority. These include:</p> <p>a) Search and Seizure Warrants b) Disclosure Orders c) Ancillary Orders d) Customer Information Orders e) Account Monitoring Orders</p> <p>The perceived shortfalls as regards the Monitoring Orders and particularly applications for renewal of such Orders, have been corrected.</p>
29. Supervisors	LC	FSC currently developing assessment techniques in the AML/CFT area. Examination of insurance companies	<ul style="list-style-type: none"> FSC should implement a comprehensive system of AML/CFT onsite examination to test 	As regards the FSC, the procedure manuals were updated prior to the mutual evaluation to include

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
		started in a limited manner.	compliance of its licensees.	<p>modules on AML/CFT testing. The compliance testing reviews of the AML policies and procedures were completed from as far back as 2005 and 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.</p> <p>Subsequent to the review, AML/CFT examinations of the registrants in the insurance sector have been conducted.</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
30. 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>	<ul style="list-style-type: none"> • 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. 	<p>Twenty-one members of the security forces and Office of Disaster Preparedness and Emergency Management (ODPEM) undertook a two week training course on Critical Incident and Management which was organized and funded by the United States Government. The course took place in early October 2009. Jamaica is the fifth country to benefit from the course which exposed officers to, among other things, trends in terrorism, decision-making, critical incident planning, policy, coordination, command, control and tactical response.</p> <p>The GOJ will be acquiring seven mobile forensic units to allow for speedier collecting of samples at crime scenes as part of ongoing upgrading of Police evidence gathering capabilities. The GOJ is also looking at acquiring Mini- laboratories to be positioned around the island and to be used for forensic crime scene investigation.</p> <p>Fifty-eight police officers received forensic training under the Constabulary's Modernization Programme. The forensic training certification was provided by the US-based International Crime Scene Investigators Association.</p> <p>In July 2009 the University of Technology in conjunction with the JIM School of Advanced Management introduced a 36 hour training seminar on Fraud and Forensic Accounting. Among the persons the course targeted were law enforcement officers, Attorneys, investigators and Researchers. The course content included :</p> <p>Types of fraud; Introduction to forensics; Conducting forensic audits; Fraud deterrence; Fraud detection /examination; Conducting forensic audits(tools & techniques) and Interviewing/interrogation skills.</p> <p>In March 2009, the FSC hosted its third annual</p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>Financial Crime Mitigation Workshop themed: Financial Crime: Identification, Mitigation and Reporting. The workshop focused on issues such as: Identification of types of fraud; Trends in financial crimes; Coordinating efforts of financial regulators and law enforcement and Mitigation strategies.</p> <p>The University of Technology in Jamaica also introduced a summer course on Forensic computing in July 2008. The course targeted Police and military personnel; E-business security personnel, Risk managers; System administrators; IT managers and Government agencies and personnel. The course content included the following –</p> <ul style="list-style-type: none"> (i) Computer forensic training with open source tools; (ii) Examining mobile devices; (iii) Investigating internet crime; (iv) Investigating e-mail crime; (v) Trademark and copyright infringement (vi) Recovery deleted files and partitions (viii) Use of evidence in criminal trials <p>In March 2008 the Caribbean Regional Drug Law Enforcement Training Centre in Jamaica completed a training course for financial investigators from Jamaica and other Caribbean countries. The course was designed to –</p> <ul style="list-style-type: none"> (i) Better equip investigators to conduct financial investigations under the various Proceeds of Crime legislation in the region; (ii) Strengthen the capabilities of drug law enforcement in respect of the techniques to be used to make them more effective

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				in their general operations. The FID in particular is actively seeking the expansion of its personnel resources to alleviate pressures on existing resources as a result of the passage of the POCA. This is critical given matters such as the “appropriate consent” regime and its significantly increased obligations and responsibilities in relation to asset management and reporting and statistics/typology related publications.
31. 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 approach to this task will allow input from all interested parties.</p>	<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 DNFBPs about their roles and responsibilities under the AML/CFT regime. 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 DNFBPs should be established. 	<p>The FID (through representation by the Chief Technical Director and her two delegates) is a member of the National AML Committee. It is also contemplated that once the services identified pursuant to the DNFBPs assessment initiative have been recommended for designation, more targeted public awareness initiatives and discrete consultations will be undertaken at that time to ensure the appropriate sensitization of the respective service sectors and the general public as to the requirements of the regime to be imposed. Nonetheless, public awareness raising initiatives have already been undertaken by the regulatory agencies through media campaigns and public seminars.</p> <p>The BOJ (AML/CFT) Guidance Notes and the FSC AML/CFT Guidelines were revised in 2005 to take account of the passage of the TPA in 2005.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank’s web site at www.boj.org.jm.</p>
			•	
32. Statistics	LC	Statistics are maintained with regard to the AML legislation and include STRs, forfeiture, ML cases, mutual legal assistance, international requests for co-	<ul style="list-style-type: none"> Statistics regarding the forfeiture of property or the investigation of offences should be consolidated with the FID as the centralized 	Some statistics are being produced. It is expected that the system will be streamlined with the passage of the FIDA which took place on March 26, 2010 .

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
		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.	<p>body responsible for the recording all of the statistics required.</p> <ul style="list-style-type: none"> Statistics related to FT issues should be maintained. Bring DNFBPs under AML/CFT regime and maintain statistics on their compliance. 	The POCA has provision for the AML requirements there-under to be applied to DNFBPs which persons will be designated by the Minister with responsibility for National Security when the regime for these persons comes into effect.

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rat- ing	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
33. 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.	<ul style="list-style-type: none"> 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. 	<p>The Companies Office of Jamaica has completed its research and will make representations to the political directorate as to how the Companies Act 2004 can be amended to capture information relating to beneficial ownership of a company as well as the nationalities of beneficial owners.</p> <p>The Companies Office of Jamaica is presently undertaking research into how the Companies Act 2004 can be amended to capture information relating to beneficial ownership of a company, as well as information on the nationalities of beneficial owners.</p>
34. Legal arrangements – beneficial owners	C	The Recommendation is fully observed. .		
International Cooperation				
35. 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. .	<ul style="list-style-type: none"> 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. 	<p>The POCA was passed and came into effect in May 2007.</p> <p>An amendment to the Terrorism Prevention Act to allow for the penalties reflected in the proposed Terrorism Prevention (Reporting Entities) Regulations, 2010 - This amendment to the Terrorism Prevention Act was passed in the Lower House on Wednesday 10 March, 2010 and passed in the Senate on March 12, 2010. (Under Jamaica's laws penalties set out within Regulations are restricted to the maximum permitted under the Interpretation Act unless the Principal Act to the Regulations expressly provides otherwise.)</p> <p>The Terrorism Prevention (Reporting Entities) Regulations, 2010 were subsequently passed on March 19, 2010.</p>
36. Mutual legal assistance (MLA)	LC	Assessment of full implementation of TPA with regard to mutual legal assistance is not possible because of recent enactment	<ul style="list-style-type: none"> 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 	In July 2008, under the MLAT between Jamaica and Canada the Government of Jamaica received CDN \$200,000 /JMD1.5million as part of proceeds from the forfeited account of an incarcerated Canadian drug dealer who was involved in the trafficking of narcotics

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
Jamaica (Update for October 2010 CFATF Plenary)**

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
			offence to be prescribed under MACMA. Again, POCA needs to be passed with due haste.	from Jamaica to Canada. The POCA was passed and came into effect in May 2007.
37. 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.	<ul style="list-style-type: none"> 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.. 	The POCA was passed and came into effect in May 2007.
38. MLA 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.	<ul style="list-style-type: none"> See Recommendation 36. 	The POCA was passed and came into effect in May 2007, thereby addressing this shortfall under the former MLA regime. (See section 92 of the POCA)
39. Extradition	C	The Recommendation is fully observed		
40. Other forms of co-operation	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.	<ul style="list-style-type: none"> 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. 	<p>The FID Act was passed on March 26, 2010.</p> <p>The FID Bill was re-tabled and placed before a new Joint Select Committee of Parliament which was convened in July 2009. The Joint Select Committee (JSC) completed its deliberations on the FID Bill on 2 March 2010 as scheduled and the Report of the JSC and the Appendix thereto listing the proposed amendments to the Bill were tabled in Parliament on Wednesday 10 March, 2010. On Tuesday March 16, 2010 the Bill was passed in the Lower House with twenty-eight amendments proposed by the report of the Joint Select Committee and passed in the Upper House on March 26, 2010.</p> <p>The FID Act was passed on March 26, 2010.</p> <p>The FIDA allows for the spontaneous exchange of information between the FID and its international FIU counterparts. (see Section 12)</p> <p>It should also be noted that the POCA provides for the spontaneous sharing of information by the ARA which is the FID in Jamaica, under paragraph 15 of the First Schedule to the Act which provides that "<i>Information</i></p>

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation
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				<i>obtained by the Agency in connection with the exercise of any of its functions may be disclosed by the Agency if the disclosure is for the purposes of...</i> any criminal or civil investigation or proceedings being started or that may be started or carried on in Jamaica (a), (b); and "... (g) investigations or proceedings outside Jamaica, in accordance with the provisions of the Mutual Assistance (Criminal Matters) Act;"
9 Special Recommendations				
SR.I Implement 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.	<ul style="list-style-type: none"> • See Recommendation 35. 	<p>Under the POCA, money laundering is an act comprising dealings of any kind with criminal property (s. 92). Criminal property means the benefit derived whether wholly, partially, directly or indirectly from any conduct constituting criminal conduct. (s. 91) Criminal conduct means any conduct which in Jamaica constitutes an offence or which if it occurred outside of Jamaica, would constitute an offence if it took place inside Jamaica. (s. 92) Hence all offences under Jamaican law would constitute money laundering predicates, including those offences under the Terrorism Prevention Act</p> <p>It should also be noted that under the POCA, terrorist financing is one of the offences in respect of which the court can, on conviction, apply the principle of "criminal lifestyle" which carries specific forfeiture provisions that will allow for forfeiture to be applied, if the circumstances permit, either in specie, or by pecuniary penalty orders (i.e. order for the payment of money) (see sections 5 & 6 of POCA).</p> <p>Additionally, restraint orders under the TPA may be made against persons who are convicted of or charged with terrorism offences.</p>
SR.II Criminalize	LC	Terrorist financing offences are not predicate offences for money laundering.	<ul style="list-style-type: none"> • The POCA should be passed as soon as possible. 	The POCA was passed and came into effect in May 2007. Under the POCA all serious crimes including

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terrorist financing		Due to its recent enactment, there are no results to assess the effectiveness of implementation of the TPA.		terrorist financing can now form the basis for money laundering charges.
SR.III Freeze and confiscate 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.	<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 provisions under the TPA make it an offence for financial institutions to provide any financial services in relation to listed persons. (See sections 4-6 of the TPA). A person convicted of a terrorist financing offence is liable to have his assets forfeited pursuant to the criminal lifestyle regime. (See sections 5 and 6 of the POCA)
SR.IV Suspicious transaction reporting	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	<ul style="list-style-type: none"> 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. 	The Terrorism Prevention (Reporting Entities) Regulations, 2010 were passed on March 19, 2010. These Regulations, among other things, clarify that the obligation to report transactions that are unusual etc. include the obligation to make STRs. Section 16 of the TPA imposes the obligation to promptly report all complex, unusual or large transactions and unusual patterns of transactions which have no apparent economic or obviously lawful purpose. Under the Regulations, the reporting obligation is clarified in regulation 15 as a mandate that an entity's reporting procedures shall ensure that reporting processes cover circumstances in which a complex, unusual or large transaction or an unusual pattern of transactions, having no apparent economic or obviously lawful purpose or gives rise to a suspicion that the transaction (whether completed or not) involves funds that may be related to the commission of a relevant terrorism offence.
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.	<ul style="list-style-type: none"> See Recommendation 36. 	It should also be noted that the POCA was passed and came into effect in May 2007.
SR.VI AML requirements for money and value transfer services	LC	Regulatory regime for remittance companies to come into effect by July 2005.		The regulatory regime for remittance companies came into effect in July 2005. Such entities now fall under the direct supervision of the Bank of Jamaica.
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	<ul style="list-style-type: none"> 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. 	It should be noted that the POCA replaced the Money Laundering (Change of Name and Amendment) Bill. Under the POCA (MLP) Regulations, 2007, regulation 9 addresses the obligations of financial institutions when conducting wire transfers. These obligations include ensuring that the records reflect accurate

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		<p>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> <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>	<ul style="list-style-type: none"> Develop modules for testing compliance with Special Recommendation VII. 	<p>information such as correct name, address, account number or other reference number of the account holder, originator of the transfer and the recipient of the wired funds.</p> <p>Similar requirements are now in place under the TP (Reporting Entities Regulations which were passed into law on March 19, 2010. (See regulation 9)</p> <p>Additionally, the BOJ AML/CFT Guidance Notes in paragraphs 92 (revision effected in June 2005) and 92A-92D(revision effected March 2007) provide the following enhanced guidance on SRVII as follows:</p> <ul style="list-style-type: none"> ❶ Domestic & cross border transfers; ❶ Batch wire transfers, and ❶ Wire transfers not accompanied by complete originator information <p>The Guidance also points out to financial institutions that compliance in this regard will continue to form a part of the BOJ's AML/CFT examinations. It should be noted that the incorporation of this focus in the AML/CFT examinations by the BOJ took effect in 2004.</p> <p>The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22nd April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at www.boj.org.jm.</p>
SR.VIII Nonprofit organizations	NC	Terrorism legislation does not cover non-profit organisations and inadequate system for regulating non profit organisations.	<ul style="list-style-type: none"> The authorities should implement the requirements of Special Recommendation VIII taking into consideration the measures set out in the relevant Best Practices Paper. 	These enhancements are still pending.
SR.IX Cash Couriers				

