



POTENTIAL IMPLICATIONS OF DECRIMINALISATION, LEGALISATION OR A HYBRID DECRIMINALISATION APPROACH OF CANNABIS ON AML/CFT

DECEMBER 2023





The Caribbean Financial Action Task Force (CFATF) is an organisation of states and territories of the Caribbean basin which have agreed to implement common countermeasures against money laundering and terrorism financing.

For more information on the work of the CFATF, visit www.cfatf-gafic.org

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EXECUTIVE SUMMARY

1. The CFATF Plenary approved the concept note on the potential anti-money laundering and counter-terrorist financing (AML/CFT) implications surrounding the legislating of cannabis usage, aimed at helping member countries understand the AML/CFT risks related to decriminalisation, legalisation, or hybrid approaches to cannabis. The project focuses on understanding the various ways countries have approached this issue, identified risks, and proposed mitigation strategies.
2. The Project Team was led by Bermuda and also consisted of representatives from Bermuda, Anguilla, Antigua and Barbuda, Cayman Islands, Belize, Grenada, Guyana and Trinidad and Tobago. The team aimed to develop guidance for countries considering cannabis policy changes. The report references the research plan and methodology used by the project team, which can be found in Annex 1, along with the questionnaire developed (Annex 2).
3. This report defines key terms, such as decriminalisation (removing criminal sanctions for possession), legalisation (removing all penalties for regulated cannabis use), and hybrid decriminalisation (combining decriminalisation with legalised aspects such as licensing).
4. This report provides an overview of the legal status of cannabis in CFATF member countries. It notes whether cannabis is criminalised, decriminalised, legalised, or follows a hybrid approach.
5. In a regional assessment, the Project Team analysed responses to a questionnaire regarding the risks of money laundering (ML) and terrorist financing (TF) related to cannabis in CFATF member countries. Out of the nine (9) countries that responded, four (4) continue to criminalise cannabis usage, three (3) countries decriminalised possession of small amounts of cannabis and two (2) countries adopted a hybrid approach.
6. In addition to the questionnaire responses, the Project Team considered information from the Experts Meeting and reputable public sources. While most risks were associated with cannabis legalisation, ML risks were also associated with decriminalisation:

i. Increased ML Risk through Predicate Offenses:

Decriminalisation: Risks include an increase in illicit imports due to the growing demand even when import and cultivation are illegal. Antigua and Barbuda experienced increased drug consumption, leading to potential ML through illegal imports.

Legalisation: Risks involve illicit market linkages, such as the parallel cultivation of illegal narcotics and the use of legal drug routes for illicit purposes. In the United States, legal states saw growth in illicit marijuana production, which decreased prices and incentivized large-scale illegal production and distribution.

ii. Increased ML Risk through the Financial Sector:

Legalisation: Risks include using cross-border bank accounts, bank de-risking, and the loss of correspondent banking relationships. The Eastern Caribbean Central Bank highlighted ML risks when transferring funds to jurisdictions where medicinal cannabis is illegal. Cashless ATMs and cryptocurrency are also cited as high-risk transaction methods.

Canada's experience revealed access to banking challenges as financial institutions manages obligations under United States federal laws, pushing licensed activities to smaller, less equipped institutions or cash-based transactions. Ensuring the legitimacy of funds remains a concern, particularly when funds from legal and illegal cannabis activities can be co-mingled.

Suspect Virtual Currency Transactions: Despite traditional methods like bulk cash smuggling and Black-Market Peso Exchange remaining common, virtual currency is increasingly used by international money launderers for cross-border transactions on behalf of transnational criminal organizations (TCOs).

iii. TF Risk:

TF risk due to cannabis law reform appears lower than ML risk. While the United States TF national risk assessment did not specifically reference marijuana, it highlights drug trafficking as a significant source of revenue for terrorists and terrorist organizations. The assessment noted the threat posed by groups like Hizballah, which are involved in various illicit activities, including ML for drug kingpins.

7. This analysis demonstrates that cannabis-related reforms, particularly legalisation, present ML/TF risks arising from cross-border trafficking and corrupt gatekeepers. These findings underscore the importance of conducting comprehensive risk assessments and implementing robust regulatory and supervisory frameworks to mitigate ML/TF risks when decriminalising or legalising cannabis.
8. While general ML risk assessments linked to drug trafficking persists, even in jurisdictions where cannabis has been legalised, the Project Team's research identified significant gaps, most notably, the lack of ML/TF risk assessments specific to actions regarding the regulating or legalising of cannabis use. When small-scale cannabis possession is strictly decriminalised, ML risks may rise due to increased illegal importation to meet domestic demand, while cannabis remains classified as a dangerous/illicit drug based on national laws. For countries legalizing or adopting a hybrid approach, ML risks persist, as cannabis may remain prohibited, leading to illicit manufacturing and sales when demand outpaces supply.
9. Considering the impact of cannabis regulatory systems on the AML regime is crucial due to the industry's susceptibility to ML. Factors include high cash flows, convergence of drug trafficking with other illicit activities, the existence of established trafficking networks, and the availability of ML facilitators all tends towards higher ML/TF risks. Best practices for countries to enhance AML efforts in the cannabis industry include:
 - **ML/TF Risk Assessment:** Require cannabis-related entities to assess their ML/TF risks, develop mitigation systems, and implement proportionate controls.
 - **AML Compliance Requirements:** Set thresholds for customer due diligence (CDD) and transaction monitoring for cannabis-related businesses.
 - **Licensing and Screening:** Implement rigorous screening processes for industry participants and conduct background checks and due diligence on license applicants, managers, and beneficial owners.
 - **Training and Awareness:** Conduct AML training and sensitisation for the cannabis industry and public awareness campaigns, emphasizing reporting obligations and the role in preventing ML. Risk indicators for suspicious transaction reporting should also be developed.

- **Audits and Inspections:** Regularly audit and inspect marijuana-related businesses to ensure compliance with AML regulations, focusing on record-keeping and customer information maintenance.
 - **Cash Handling Controls:** Establish secure cash handling procedures for the industry, including storage, transportation, and deposit measures.
 - **Integration with Financial Institutions:** Encourage financial institutions to collaborate with marijuana-related businesses, bringing transactions into the formal financial sector to facilitate tracking and regulation.
 - **Ring-Fencing:** Create arrangements with correspondent banks to mitigate de-risking concerns, enhancing confidence in the process.
 - **Interagency Collaboration:** Foster collaboration between law enforcement agencies, financial regulators, and marijuana regulatory authorities to share information and coordinate efforts effectively.
 - **Transparency and Reporting:** Publish regular AML reports, including statistics on investigations, prosecutions, and convictions related to AML violations in the marijuana industry. Implement alert triggers for unusual or large cash transactions.
 - **Resources:** Ensure that entities regulating the cannabis industry are adequately resourced.
10. By integrating such AML best practices into the regulatory framework for legalised or decriminalised marijuana, countries can mitigate the potential for money laundering and illicit financial activities while promoting transparency and accountability within the industry.

A. INTRODUCTION

1. In recent times, there has been a global shift in the view held on cannabis usage. Research has been increasing on the medicinal use of cannabis, and the Caribbean and adjoining islands have had a long deep-rooted history in cannabis production and usage for both cultural and religious reasons.
2. As a result, many CFATF members are either considering some level of decriminalisation or legalisation (or a hybrid of both) of cannabis or are actively in the process of making the necessary legislative changes. Consequently, members are faced with the need to understand the challenges, including any implications on the national ML/TF risk profiles and the potential need to take appropriate mitigating actions.
3. To assist CFATF Members regarding the ML/TF implications of legal cannabis usage, the 56th CFATF Plenary approved the *CRTMG Concept Note for the Project: Potential Implications of Decriminalisation, Legalisation or a Hybrid Decriminalisation Approach of Cannabis on AML/CFT*, with a view to assisting members regarding the ML/TF implications surrounding the following topics:
 - a. Understanding the potential suite of measures that may be adopted to effect decriminalisation and whether there are any ML/TF implications.
 - b. Identifying potential ML/TF risks arising from all potential elements of a hybrid decriminalised approach or legalisation, for example importation/exportation, licensing and enforcement, cash-based business models, use of informal/ underground banking services, persons with previous convictions etc.
 - c. Identifying potential mitigation strategies, such as appropriate resourcing within key agencies, assessing the costs associated with regulating and enforcing, and assessing the implications for continued relationships with other countries who either have not adopted or have no intentions of adopting decriminalisation or legalisation.
4. The objective of the project is to improve the ML/TF understanding of how the different forms of decriminalisation and legalisation of cannabis could potentially impact the region, and to provide a framework for Member countries to adopt when assessing and mitigating the ML/TF risks.
5. The Project Team consisted of persons from the following countries:
 - a. **Bermuda (Team Lead)**
 - b. **Anguilla**
 - c. **Antigua and Barbuda**
 - d. **Cayman Islands**
 - e. **Belize**
 - f. **Grenada**
 - g. **Guyana**
 - h. **Trinidad and Tobago**
6. The Concept Note envisaged the development of this guidance document for countries in the region who are either considering or in the process of decriminalisation or legalisation to guide their assessment and mitigation of associated ML/TF risks.
7. The Research Plan used by the Project Team, including the methodology utilised, can be found at Annex 1 of this Report and the questionnaire developed can be found at Annex 2.

B. TERMINOLOGY

8. During the early stages of the project, the Project Team recognised the need to define the parameters of the legal terms given the varying degrees of legalisation across the different jurisdictions. The team found that each jurisdiction's approach to cannabis usage varied and was not always a strict decriminalisation or a full legalisation. To that end, for the purposes of this project, the Project Team has adopted the following terms to guide the project:
- Decriminalisation**- the removal of criminal sanctions for possession of a determined quantity.
 - Legalisation**- the removal of all penalties (whether criminal or civil) for cannabis cultivation, possession and usage within parameters set by the legislature for regulated use.
 - Hybrid Decriminalisation**- includes decriminalising the possession or use of cannabis in small amounts, while also adopting aspects of the legalised approach such as licensing for purposes such as medicinal, recreational use and/or research and development.

C. INTERNATIONAL CONVENTION

9. The Single Convention on Narcotic Drugs, 1961 (the Convention) included cannabis and cannabis resins in Schedule IV. Schedule IV is the most restrictive schedule and includes drugs which are particularly liable to abuse, produce ill effects and are not offset by substantial therapeutic advantage¹. Cannabis and cannabis resin, including extracts and tinctures of cannabis, are also included in Schedule 1 of the Convention which is the least restrictive schedule and represents a substance that is liable to similar abuse or is convertible into a drug². The Convention also defined cannabis and cannabis resin as follows, “Cannabis” means the flowering or fruiting tops of the cannabis plant (excluding the seeds and leaves when not accompanied by the tops) from which the resin has not been extracted, by whatever name they may be designated; and “Cannabis resin” means the separated resin, whether crude or purified, obtained from the cannabis plant³.
10. In 2021, the United Nations removed cannabis and cannabis resin from Schedule IV of the Convention. Schedule IV, being recognised as the most tightly restricted category is reserved for drugs that are particularly liable to abuse and produce ill effects⁴. It should be noted that the United States voted to remove cannabis from Schedule IV of the Convention while retaining it in Schedule I, saying it is “consistent with the science demonstrating that while a safe and effective cannabis-derived therapeutic has been developed, cannabis itself continues to pose significant risks to public health and should continue to be controlled under the international drug control conventions”.⁵
11. Based on the above Convention, this report and the work of the Project Team is limited to cannabis and cannabis resin.⁶

¹ Article 3, Single Convention on Narcotic Drugs, 1961

² Article 3, Single Convention on Narcotic Drugs, 1961

³ Article 1, Single Convention on Narcotic Drugs, 1961

⁴ https://www.unodc.org/documents/commissions/CND/Int_Drug_Control_Conventions/Ebook/The_International_Drug_Control_Conventions_E.pdf

⁵ <https://news.un.org/en/story/2020/12/1079132>

⁶ In 2020, the European Court of Justice held that cannabidiol extracted from the cannabis plant should not be considered a drug under the 1961 United National Single Convention on Narcotic Drugs.

D. CURRENT REGIONAL LANDSCAPE

12. The table below represents a snapshot of the current landscape of CFATF members. Based on the questionnaire, responses were received from nine (9) member countries. Information from open sources were used to determine the landscape of the remaining jurisdictions.

CFATF Member Countries	Criminalised	Decriminalised	Legalised	Hybrid
1. Antigua and Barbuda				
2. Anguilla*				
3. Aruba				
4. The Bahamas				
5. Barbados				
6. Belize*				
7. Bermuda*				
8. The British Virgin Islands*				
9. The Cayman Islands ⁷				
10. Curacao*				
11. Dominica				
12. Grenada				
13. Guyana				
14. Haiti				
15. Jamaica*				
16. Montserrat				
17. St. Kitts and Nevis				
18. St. Lucia*				
19. St. Maarten				
20. St. Vincent and the Grenadines				
21. Suriname*				
22. Turks and Caicos Islands				
23. Trinidad and Tobago*				
24. Venezuela				

* Responded to the questionnaire

https://www.emcdda.europa.eu/news/2020/cannabidiol-cbd-is-not-considered-a-narcotic-drug-under-european-law_en

⁷ The use of cannabis extracts and tinctures of cannabis in the Cayman Islands has been legal for medical or therapeutic purposes (where prescribed by a licensed medical doctor) since 2017. Recreational use of cannabis remains criminalised.

9. **Antigua and Barbuda-** Cannabis usage in Antigua and Barbuda has been decriminalised since 2018, with the country adopting a hybrid approach. Antigua and Barbuda decriminalised the possession of cannabis in amounts not exceeding fifteen (15) grams. The Cannabis Act, 2018 provides for the regulation and control of cannabis for religious use, by documented members of registered religious organizations, to uphold the constitutional rights afforded to each citizen of Antigua and Barbuda; and to provide for the regulation and control of cannabis for medicinal and scientific use within Antigua and Barbuda, to establish the Antigua and Barbuda Medicinal Cannabis Authority whose functions will be described herein, to authorize medical practitioners to recommend medicinal cannabis, to establish scientific research protocol for medicinal cannabis and to establish a licensing structure and complete tracking system for medicinal cannabis businesses⁸. The Medicinal Cannabis Authority was established in 2019 and is responsible for the administration, implementation and management of the Act and was created to regulate and control the licensing of the cultivation, manufacture, processing, extraction, import, export, testing, research, distribution and sale of medicinal cannabis and cannabis for sacramental purposes.
10. **Anguilla-** Cannabis usage in Anguilla remains a criminal offence, however, the jurisdiction is considering decriminalizing cannabis usage in the future.
11. **Aruba-** Cannabis usage in Aruba remains a criminal offence.
12. **The Bahamas-** Cannabis usage in the Bahamas remains a criminal offence. However, in August 2023, the Attorney General announced the introduction of a compendium of legislation to decriminalise cannabis for medicinal, research and religious use⁹.
13. **Barbados-** Cannabis usage in Barbados has been decriminalised since 2019, with Barbados adopting a hybrid approach by legalizing cannabis for medicinal purposes in 2020. The Medicinal Cannabis Industry Act, 2019 was proclaimed in September 2020 and the Medicinal Cannabis Industry Regulations, 2020 were implemented which provided a legal and regulatory framework for the development of the medicinal cannabis industry in Barbados. The Barbados Medicinal Cannabis Licensing Authority can issue various types of licences such as Cultivator Licence, Research and Development Licence, Laboratory Licence, Processor Licence, Retail Distributor Licence, Import Licence, Export Licence and Transport Licence.
14. **Belize-** Cannabis usage in Belize has been decriminalised since 2017. Belize decriminalised the possession of cannabis in amounts not exceeding ten (10) grams under the Misuse of Drugs Act.
15. **Bermuda-** Bermuda decriminalised personal possession of up to seven (7) grams of cannabis in 2017. Additionally, the Supreme Court of Bermuda ruled in favour of allowing the medical use of cannabis in November 2016. In 2019, Bermuda introduced the Medicinal Cannabis Bill which, *inter alia*, creates the Medicinal Cannabis Authority tasked with regulating the cultivation, importation, exportation, manufacturing, research and development and transport of cannabis. Following public consultation a revised and more expansive Cannabis Licensing Bill was tabled in 2020. The Bill failed at Senate and was later reintroduced in 2022. However, the Bill failed to receive royal assent.
16. **The British Virgin Islands-** Cannabis usage in The British Virgin Islands remains a criminal offence.

⁸ <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/110878/138065/F1473748929/ATG110878.pdf>

⁹ <https://opm.gov.bs/bahamas-medical-cannabis-legislation-announced/>

17. **The Cayman Islands-** The use of cannabis extracts and tinctures of cannabis in the Cayman Islands has been legal for medical or therapeutic purposes (where prescribed by a licensed medical doctor) since 2017. Recreational use of cannabis remains criminalised.
18. **Curacao-** Cannabis usage in Curacao remains a criminal offence.
19. **Dominica-** Cannabis usage in Dominica has been decriminalised since 2020. Dominica decriminalised the possession of twenty-eight (28) grams or one (1) ounce or less of cannabis.
20. **Grenada-** Cannabis usage in Grenada remains a criminal offence.
21. **Guyana-** Cannabis usage in Guyana has been decriminalised since 2021. Guyana decriminalised the possession of thirty (30) grams or less of cannabis.
22. **Haiti-** Cannabis usage in Haiti remains a criminal offence.
23. **Jamaica-** Cannabis usage in Jamaica has been decriminalised since 2015, with Jamaica adopting a hybrid approach. Marijuana (defined as Cannabis sativa with THC levels exceeding one percent) remains an illegal drug in Jamaica. The Cannabis Licensing Authority (CLA) was established in 2015 under the Dangerous Drug (Amendment) Act (DDA) with a specific role to establish and regulate Jamaica's legal cannabis and hemp industry. The CLA commenced operations in 2016 and promulgated the Dangerous Drugs (Cannabis Licensing) (Interim) Regulations, 2016¹⁰. The Authority's mandate includes creating regulations to guide the development of an orderly legal cannabis and hemp industry in Jamaica, for the use of the plant and its by-products for Medical, therapeutic and scientific purposes; ensuring that regulations created and activities within the industry are in keeping with Jamaica's international obligations and issuing licenses, permits, and authorization for the handling of cannabis and hemp. The CLA can issue various types of licences including Cultivator's Licence, Processing Licence, Transport Licence, Retail Licence and Research and Development Licence.
24. **Montserrat-** Cannabis usage in Montserrat remains a criminal offence.
25. **St. Kitts and Nevis-** Cannabis usage in St. Kitts and Nevis has been decriminalised since 2019. St. Kitts and Nevis decriminalised the possession of 15 of cannabis and subsequently increased to 56 grams in 2020. The Cannabis Act, 2020 was passed and sought to establish the Medicinal Cannabis Authority to provide for lawful access to medicinal cannabis as an alternative treatment for persons who are suffering from a qualifying medical condition and for a comprehensive licensing scheme to regulate the cultivation, supply, possession, production, and use of medicinal cannabis¹¹. In 2023, the Smoking (Designated Areas) Act, Drugs (Prevention and Abatement of the Misuse and Abuse of Drugs) (Amendment) Act, the Rastafari Rights Recognition Bill, 2023 and the Freedom of Conscience (Cannabis) Act were passed.
26. **St. Lucia-** Cannabis usage in St. Lucia has been decriminalised since 2021. St. Lucia decriminalised the possession of 30 grams or less of cannabis.
27. **St. Maarten-** Cannabis usage in St. Maarten remains a criminal offence.

¹⁰ <https://jis.gov.jm/government/agencies/cannabis-licensing-authority/>

¹¹ <https://www.skni.gov.kn/2023/04/21/cannabis-act-now-fully-activated/>

28. **St. Vincent and the Grenadines-** Cannabis usage in St. Vincent and the Grenadines is solely legal for medicinal purposes. The Medicinal Cannabis Industry Act 2018 (“the MCIA”) provides for the establishment of a Medicinal Cannabis Industry to regulate the cultivation, supply, possession, production and use of cannabis for medicinal purposes; that is, for the treatment of persons with qualifying medical conditions; to provide for the establishment of the Medicinal Cannabis Authority and the Medicinal Cannabis Advisory Council and for matters and purposed incidental thereto¹². The Medicinal Cannabis Authority is a body corporate with an overarching objective to regulate the cultivation, supply, possession, production and use of cannabis for medicinal purposes. Legal usage of cannabis falls under the Medicinal Cannabis Industry (Patient Access to Medicinal Cannabis) Regulations. Under the MCIA, legal access to cannabis for medicinal purposes must be gained via MCA certified physicians. Cannabis is currently approved for the treatment of 20 Qualifying Conditions (QC). A patient must be seen by an MCA authorized physician and diagnosed with a QC. The patient will then be issued a Medical Certificate, a Medicinal Cannabis Identification Card and a prescription for Medicinal Cannabis. The patient may then legally purchase and possess medicinal cannabis from approved pharmacies. Cannabis products must only be received by patients or their caregivers from licensed pharmacies and approved hospitals and health clinics¹³.
29. **Suriname-** Cannabis usage in Suriname remains a criminal offence.
30. **Turks and Caicos Islands-** Cannabis usage in the Turks and Caicos Islands remains a criminal offence.
31. **Trinidad and Tobago-** Cannabis usage in Trinidad and Tobago has been decriminalised since 2019, with a hybrid approach to be adopted through the Cannabis Control Act, 2022 which is yet to be proclaimed. The Dangerous Drugs (Amendment) Act was proclaimed in 2019 and seeks, *inter alia*, to define marijuana comprehensively as cannabis; to decriminalise certain quantities of cannabis and cannabis resin, to prohibit the use of the substance in public spaces, all educational institutions, and places of work. It also seeks to abrogate the present strict prohibition of the administration of the substance to children in medical cases only. In 2022, the Cannabis Control Act was introduced to provide regulatory control of the handling of cannabis for certain purposes, authorize the establishment of the Trinidad and Tobago Cannabis Licensing Authority, and other connected matters. The Act provides a regulatory framework for the control of the handling of religious, medicinal, therapeutic and scientific purposes including the establishment of the Trinidad and Tobago Cannabis Licensing Authority.
32. **Venezuela-** Cannabis usage in Venezuela remains a criminal offence.

E. IDENTIFYING REGIONAL ML/TF RISKS

33. The Project Team utilised the responses from the questionnaire to determine whether any ML/TF risks were identified regionally.

¹² <https://www.investsvg.com/wp-content/uploads/2019/08/Medicinal-Cannabis-Industry-Act-2018.pdf>

¹³ <https://mca.vc/wp-content/uploads/2021/03/Consumer-Information-Cannabis.pdf>

34. Of the nine (9) CFATF member countries that responded to the questionnaire, four (4) indicated that cannabis usage remains criminalised, and they have not undertaken an ML/TF risk assessment to better understand the risks associated with decriminalisation or legalisation.
35. Of the five (5) remaining countries, three (3) have decriminalised the offence of possessing small amounts of cannabis. None have considered the ML/TF risks associated with decriminalisation, although as Bermuda commented “there are no known ML/TF risks associated with the very limited hybrid decriminalisation amendments”. One (1) CFATF member indicated that it was also considering legislation for a hybrid approach but had not yet assessed the ML/TF risks.
36. The two (2) remaining countries, Trinidad and Tobago and Jamaica, adopted a hybrid approach. Neither country has undertaken an ML/TF risk assessment. Trinidad and Tobago indicated that while it had not formally assessed the ML/TF risks, section 30 of the Cannabis Control Act, 2022 provides that anyone applying for a license would be subject to an AML/CFT/CPF Risk Assessment.
37. Given the limited number of CFATF member countries that responded to the questionnaire and the lack of information regarding ML/TF risk assessments, the Project Team sought to consider information from the CFATF Experts’ Meeting held on August 25th, 2023 (the “Experts’ Meeting”), and from the public domain. From these data sources¹⁴, the following categories of ML/TF risks were identified. Only one (1) risk was identified through decriminalisation, with the majority relating to legalisation, to any degree:

i. *Increased ML risk through greater numbers of predicate offences*

Decriminalisation

- Increase in illicit imports (where possession is decriminalised and demand increases, but import and/or cultivation remains illegal).

In the Experts’ Meeting, Antigua and Barbuda described how the decriminalisation of cannabis has increased consumption of the drug. Since there are no official retailers of cannabis in the jurisdiction, demand has been met by illegal importation of cannabis from North America with potential ML implications. Antigua and Barbuda also identified that this has been exacerbated by improved efforts to prohibit the flow of narcotics through the Central American corridor, resulting in an increase in the flow of drugs through the alternate routes offered by the geography of the Eastern Caribbean. This may also have a direct impact on the flow of drugs through Antigua and Barbuda and increase the risk of connected ML.¹⁵

Legalisation

- Illicit market linkages, for example, parallel cultivation of illegal narcotics, increased use of legal drug routes for illicit purposes and increased involvement from serious organised crime).

The United States has seen illicit production continue to grow in states that have legalised marijuana, creating an overall decline in prices for illicit marijuana. This further incentivises drug trafficking organizations (DTOs) operating large-scale grow

¹⁴ Sources are included when used throughout this section. They include documents such as national risk assessments, threats assessments, government websites and academia.

¹⁵ <https://ondcp.gov.ag/threats/>

sites in these states to sell to customers in markets throughout other parts of the country, where marijuana commands a higher price.¹⁶ Marijuana is often seized in conjunction with other illicit drugs.¹⁷ The US has also seen that unlawful outdoor grows are co-mingled among legitimate crops and natural vegetation.¹⁸

Academia has examined whether cannabis legalisation in Mexico is likely to eliminate the illicit market, deprive violent criminal groups of money, and reduce criminal violence. The Brookings Institution prepared a report¹⁹ which concluded that a reduction in illicit activity would be unlikely following legalisation and identified potential ML risks. These include the potential for criminal groups to attempt to penetrate the legal market, and that more competent and powerful criminal groups may also diversify and switch to other illegal activities such as fentanyl production and trafficking.²⁰

During the Experts' Meeting, the Netherlands also identified issues with illegal market linkages and how criminal organisations exploit this system using ML techniques to legitimize the proceeds of these illegal activities.²¹ A report by the Transform Drug Policy Foundation²² and a country report by the Transnational Institute considers cannabis policy.²³ With decriminalisation, the Netherlands have allowed coffee shops to sell cannabis under certain conditions. Despite being controlled and paying corporate tax, it was noted that the country still has an issue where in some southern border towns, there have been concerns caused by large numbers of visitors from neighbouring countries travelling to the coffee shops. More significantly, the quirks of the system's evolution within an international legal framework that strictly forbids legal production has led to the paradox that while sales are tolerated and *de facto* legalised, the coffee shops are still supplied via an illegal production system – often involving organized criminal groups.

- Increased threat of cross-border trafficking

St. Vincent and the Grenadines' ML and TF National Risk Assessment (NRA) (2020) (summary report)²⁴ identifies its geographical vulnerability as an entry point for illicit drugs into the Caribbean and as a trans-shipment point for further transportation to other Caribbean territories. The growth of cannabis and the reliance on cash to conduct transactions also impacted its ML rating. The risk of trans-shipment of cannabis produced and sold outside the terms of a license was identified as a potential ML risk along with the inherent risk of the growing reliance on cash to conduct transactions.

- Corrupt gatekeepers

¹⁶ [US The DEA National Drug Threat Assessment \(March 2021\), p.51](#)

¹⁷ [US The DEA National Drug Threat Assessment \(March 2021\), p.54](#)

¹⁸ [US The DEA National Drug Threat Assessment \(March 2021\), p.53](#)

¹⁹ <https://www.brookings.edu/articles/will-cannabis-legalisation-reduce-crime-in-mexico-has-it-in-the-us/>

²⁰ Article: "[Will cannabis legalisation reduce crime in Mexico? Has it in the US?](#)" (2021)

²¹ Experts meeting

²² <https://www.unodc.org/documents/ungass2016/Contributions/Civil/Transform-Drug-Policy-Foundation/Cannabis-policy-in-the-Netherlands.pdf>

²³ https://www.tni.org/files/publication-downloads/cr_ned_def.pdf

²⁴ <https://svgfsa.com/wp-content/uploads/2022/01/SVG-NRA-Summary-Report.pdf>

In the United States, the prevalence of marijuana use, demand for potent marijuana products, potential for substantial profit, and perception of little risk, have enticed diverse drug traffickers and criminal organizations to cultivate and distribute illegal marijuana throughout the country.²⁵ This has increased the demand for corrupt gatekeepers to help launder unlawful proceeds. The US ML NRA (2022) cites examples including a real estate professional indicted on ML charges for allegedly purchasing residential real estate on behalf of individuals who sought to acquire properties to cultivate marijuana with funds from China.²⁶

ii. Increased ML risk through the financial sector
Legalisation

- Use of cross-border bank accounts
- Bank de-risking/access to banking and loss of correspondent banking relationships

The Eastern Caribbean Central Bank published a Flagship report setting out challenges in banking proceeds from medicinal cannabis.²⁷ It highlights how the issue of ML arises when attempts are made to transfer funds across borders to jurisdictions where medicinal cannabis is still considered illegal. Heightened risk, whether real or perceived, may increase the risk profile of commercial banks and may have implications for correspondent banking relationships. It advocates an effective risk management framework to manage risk associated with medicinal cannabis customer accounts, including the ring-fencing of funds to ensure that funds are not transferred through correspondent accounts in jurisdictions where activities associated with medicinal cannabis is illegal. Cashless ATMs and cryptocurrency are cited as methods of enabling transactions presenting risk. The report advocates a strong regulatory and supervisory framework to mitigate this.

In the Experts' Meeting, Canada shared its experience of how access to banking challenges have occurred due to the risk of exposure to the US banking sector (where cannabis related activities remain unlawful at federal level). This has encouraged licensed activities to go through smaller institutions which are less equipped to manage risk, or to be cash based which is inherently higher risk. Ring-fencing transactions to avoid such exposure has been attempted to mitigate this, however, overriding concerns have persisted as to the legitimacy of the source of funds.

- Questionable source of funds/Co-mingling of funds

Even where funds derive from legal cannabis activities, there is a risk of co-mingling with funds from illegal activities, which poses a significant risk to financial institutions. For example, being satisfied that "off the truck" seeds are not diverted to the underground market which can result in higher returns.²⁸ In Canada, co-mingling is an example of a concern that remains outside Canadian banks' risk tolerance levels

²⁵ [US The DEA National Drug Threat Assessment \(March 2021\), p.57](#)

²⁶ [DOJ, "Sacramento Real Estate Broker Indicted for International Money Laundering Conspiracy Funding Residential Marijuana Grows with Wires from China," \(Dec. 20, 2018\)](#)

²⁷ <https://cdn.eccb-centralbank.org/documents/2023-02-17-16-31-20-Flagship-Report-on-Medicinal-Cannabis-Publication-Version-1.pdf>

²⁸ Experts meeting

in terms of being satisfied of the legitimacy of proceeds. It is for this reason that there is a preference for financial institutions to deal with well-established vendors and producers of cannabis.

- Suspect virtual currency transactions.

In the United States, the preferred methods to move and launder illicit proceeds are considered to have largely remained the same, such as bulk cash smuggling, Black Market Peso Exchange, and trade-based money laundering (TBML). However, virtual currency is becoming more commonly utilised by international money launderers to transfer proceeds across borders on behalf of TCOs.²⁹

iii. *TF risk*

TF risk arising from reform of cannabis laws appears to be much lower than ML risk. For example, marijuana or cannabis is not specifically referenced in the US TF NRA (2022). However, drug trafficking is referred to as an example of a leading source of revenue for both terrorists and terrorist organizations “writ large”.³⁰ It also refers to the threat posed by Hizballah in conducting and directing a range of military, terrorist, criminal, and other illicit activities globally. It sets out a case example of the US Treasury designating a prominent Hizballah money launderer and his international ML network for moving tens of millions of dollars a month in illicit narcotics proceeds on behalf of drug kingpins such as the Colombian criminal group.³¹

F. COMPARATIVE ANALYSIS- OTHER JURISDICTIONS

Legalisation

Uruguay

38. Initially viewed as an “intellectual experiment” by former president José “Pepe” Mujica, the Uruguay legislature developed working laws and policies to combat the rising abuse of marijuana and other drugs. This approach gave birth to the “Adult Use Cannabis System (AUSC)” established in December 2013, for interested citizens above the age of eighteen (18) years old. With this, Uruguay became the first country to legalise and regulate cannabis production, accessibility, and use. The government of Uruguay depends heavily on the cooperation of its civil society. Thus, its educational programmes raise awareness of the need for community-based prevention/de-risking of its drug problem, enforcing distinct laws, and creating a practical approach to combat the demand for drugs, while boosting supply reduction.
39. For this system to work more efficiently for the government and its war against readily available drugs, the misuse of drugs by citizens who pose a threat to themselves and the community, or those desirous to use cannabis for recreational purposes, the legislature revisited the legal framework which at first criminalized marijuana/cannabis on a broad scale (Law 14. 294, 1974). This means that Uruguay’s success was hinged on developing a functional, yet fluid legislation which sought

²⁹ [US The DEA National Drug Threat Assessment \(March 2021\), p.85](#)

³⁰ [US TF NRA \(2022\), p.5](#)

³¹ [US TF NRA \(2022\), p.10](#)

to amend the laws and principles to address emerging trends (over time), which were seen as a potential threat to the society and social programmes. Hence, the legal framework has been amended with an additional five (5) chapters serving to relay specifications to the unique design and allowances/provisions needed to meet the goals of the AUCS.

40. The Act, which is also referred to as Law 19.172, speaks directly to regulating the production of cannabis, marketing and consumption of cannabis, and education and prevention of the misuse of cannabis.
41. As a fully legal system, the AUCS caters only to local citizens, hence it is not accessible to tourists. Amendments to The Law, formerly Article 3 of Law 14.294, now known as Article 7 of 19.172 stipulate the amount that is allowed, barring adulterants and other psychoactive components and improper use.
42. The tenets allow for marijuana/cannabis to be grown at home by locals, the establishment of cannabis membership clubs, and the involvement of the commercial market, more specifically those who are contracted by the government for the purpose of operating as an acute cannabis dispensary. The Law stipulates the regulation of cannabis only, and not for other drug-related substances.
43. In Uruguay, Law 19.172 was passed on the 20th of December 2013 to regulate the production, marketing and consumption of cannabis, while promoting information, education and prevention of cannabis use. It should be noted that Article 4 of the Law provides that the “law aims to protect the inhabitants of the country from the associated risks in connection with the illegal drug trade through the intervention of the state, attacking the devastating health, social and economic consequences of the problematic use of psychoactive substances, and reduce the incidence of drug trafficking and organized crime”³². However, the Law does not explicitly impose any ML/TF obligations upon persons or organizations.
44. Through the decriminalisation of cannabis in Uruguay, Law 19.172 established the Institute for the Regulation and Control of Cannabis (IRCCA). As such, the IRCCA has the following objectives:
 - To regulate the activities of planting, cultivation, harvesting, production, processing, storage, distribution and sale of cannabis, under the provisions of this law and current legislation.
 - To promote and propose actions to reduce risks and damages associated with problematic cannabis use, according to the policies defined by the National Drug Council and in coordination with national and departmental authorities.
 - To monitor compliance with the provisions that this law places under its mandate.³³
45. According to the 4th Round Mutual Evaluation Report of the Eastern Republic of Uruguay conducted by GAFILAT in 2020, the NRA analysed the threat of drug trafficking and the country decriminalised the local production of cannabis for recreational purposes in an effort to regulate the market. This activity was at an initial stage, so ‘there is currently no risk assessment that could indicate what risks of ML/TF this activity might represent for sectors such as banking finance.’³⁴
46. Additionally, another issue arises in Uruguay in the case of exchange houses whereby customer identification requirements are only carried out for operations greater than USD 3,000. As such, all

³² https://www.tni.org/files/uruguay_marijuana_law_-_eng.docx

³³ [ibid](#)

³⁴ <https://www.fatf-gafi.org/content/dam/fatf-gafi/fsrb-mer/GAFILAT-Mutual-Evaluation-Report-Uruguay-2020.pdf>

other customers are not checked against control lists or reported to the Unit of Financial Information and Analysis (UIAF). Recognizing these risks created by these exchange houses also known as "casas de cambio", Uruguay implemented a series of measures which included passing Law No. 19,574, enacted in 2017. The Act addresses exchange houses, subjecting them to certain AML obligations, requiring exchange houses to undertake enhanced due diligence (EDD) measures when establishing business relations with a customer and encouraging them to adopt a risk-based approach.

47. Financial institutions in Uruguay continue to grapple with challenges when it comes to providing banking services to the cannabis industry due to their interrelated financial ties with the United States. Uruguay heavily relies on international banks to facilitate US-based correspondent banks issued notifications instructing their Uruguayan respondent banks to discontinue their financial services to pharmacies engaged in the sale of cannabis. The basis for this action was rooted from the US federal law and the U.S. Patriot Act.
48. According to the United States federal law, cannabis, or marijuana, is classified as a controlled substance under Schedule I of the Controlled Substances Act. This categorization carries severe penalties and legal consequences. Additionally, the U.S. Patriot Act, as specified in Section 319(b), underscores the necessity of adhering to certain compliance measures when dealing with "an interbank account in the United States with a covered financial institution". These regulatory provisions have far-reaching implications, and they influence the decisions made by international banks, causing challenges in the cannabis industry's access to banking services in Uruguay (Controlled Substances Act, Schedule I).

Canada

49. The Cannabis Act S.C. 2018, c. 16 provides the legal framework which controls the production, distribution, sale and possession of cannabis across Canada, which came into force on October 17, 2018. Under the Act, only federal cannabis licence holders are able to grow cannabis for sale to ensure that all legal cannabis products meet the strict product safety and quality control requirements. Subject to provincial or territorial restrictions, adults who are eighteen (18) years of age or older are legally able to grow, from licensed seed or seedlings, up to four (4) cannabis plants per residence for personal use. To summarize, the implementation of the Cannabis Act is a shared responsibility between federal and provincial and territorial governments. While oversight for manufacturing and production of cannabis for non-medical purposes is a federal responsibility, oversight of distribution and retail sales are under provincial and territorial jurisdiction. Section 2 of the Cannabis Act defines illicit cannabis as cannabis that is or was sold, produced or distributed by a person prohibited from doing so under this Act or any provincial Act or that was imported by a person prohibited from doing so under this Act³⁵.
50. Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act S.C. 2000, c. 17 there is an obligation for persons and entities engaged in a prescribed business, profession or activity to undertake a risk assessment. Section 9.6 (2) of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act S.C. 2000, c. 17 states that, "The program shall include the development and application of policies and procedures for the person or entity to assess, in the course of their activities, the risk of a money laundering offence or a terrorist activity financing offence".³⁶

³⁵ <https://www.canlii.org/en/ca/laws/stat/sc-2018-c-16/latest/sc-2018-c-16.html>

³⁶ <https://laws-lois.justice.gc.ca/eng/acts/p-24.501/fulltext.html>

51. Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) is the main body that conducts the analysis of suspicious transaction reports (STRs) related to illicit cannabis in Canada. In September 2022 FINTRAC produced an operational alert³⁷ in relation to laundering of proceeds from illicit cannabis. FINTRAC analysed approximately five thousand (5,000) STRs, the majority of which involved the suspected sale and distribution of illicit cannabis by way of unlicensed online dispensaries and suspected production of illicit cannabis. FINTRAC also observed several ML methodologies involving the use of virtual currencies, nominees, front companies owned by the distributors and producers of illicit cannabis and the layering of funds between accounts.
52. A list of money laundering indicators concerning Cannabis derived from FINTRAC are as follows:

Indicators of illicit cannabis in relation to online unlicensed dispensaries³⁸

- The client receives an excessive volume of email money transfers from seemingly unrelated third-party individuals.
- Transaction details (contact name, email address, remittance information) make reference to cannabis-related terminology (e.g., splif, poke, kush, shatter, weed, pot, bud, leaf) and/or order numbers.
- Excessive cash deposits and/or merchant credits that do not appear in line with the stated nature of the business.
- Incoming email money transfers are quickly depleted by the purchase of bank drafts and/or cheques to seemingly unrelated third-party individuals and/or cash withdrawals.
- Different accounts are using the same email money transfer contact information to receive funds (e.g., email address) from third-party individuals or entities.
- The Client is receiving incoming email money transfers sent to a series of email addresses and/or phone numbers associated with an online unlicensed dispensary, but depositing the funds into their account which has a different email address or phone number listed on file.
- Online information links the client's contact information to an unlicensed cannabis dispensary.
- An excessive volume of email money transfers occurs in a newly opened personal or business account, or after prolonged account inactivity and does not appear in line with the stated occupation or nature of the business.
- Newly opened business account lacks open-source footprint and has a registered address in a residential area.
- The client receives funds transfers from an entity who is suspected of operating an online unlicensed dispensary, and quickly transfers those funds to the personal account held by the signing authority of the entity.
- Incoming fund transfer from virtual currency dealers into an individual's bank account, refers to cannabis-related terminology (e.g., weed, pot, bud, leaf).
- Client makes excessive purchases at packaging, shipping, and/or mail service businesses. Media or law enforcement information links clients and/or related individuals/entities to illicit cannabis activity and/or other drug trafficking activities.
- Following the closure of the business account of an unlicensed dispensary, a seemingly unrelated third-party individual starts to receive email money transfers from the same unlicensed dispensary operating name or email.

Indicators possibly related to illicit cannabis in relation to the cultivation, processing and preparation³⁹

³⁷ <https://fintrac-canafe.canada.ca/intel/operation/cannabis-eng>

³⁸ <https://fintrac-canafe.canada.ca/intel/operation/cannabis-eng>

³⁹ <https://fintrac-canafe.canada.ca/intel/operation/cannabis-eng>

- The client makes excessive or atypical utility payments (e.g., bill payments made to different hydro accounts, multiple individuals paying off the same hydro account, payment amount exceeds expected amount for personal consumption, or bill payments that appear excessive given stated occupation and/or address).
 - The client conducts large purchases at businesses used by the cannabis industry (i.e., hydroponics store, hardware store, and gardening stores).
 - Cash is used for over-the-counter utility bill payments.
 - Utility bill payments conducted in multiple over-the-counter locations.
 - The client has a listed address in one province but is paying large utility bills in another province.
 - The client provides misleading or falsified documentation concerning cannabis production (i.e., falsified licence certificate for marijuana production).
 - Large purchases towards candy stores or kitchenware stores outside of the expected business activity of the client.
53. In Canada, illicit drug trafficking has been identified and categorised as a “very high money laundering threat”⁴⁰. The largest criminal industry in Canada is illicit drug trafficking which involves cocaine, methamphetamine, heroin, fentanyl, cocaine, and cannabis (post-legalisation). Transnational organised crime groups (OCGs) continue to be the most dangerous and powerful threat actors. As part of their ML operations, OCGs frequently control a number of companies (front / legitimate) and have access to professional money launderers and facilitators.
54. According to the Updated Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2023 by the Department of Finance of Canada, the Anti-Money Laundering and Anti-Terrorist Financing (AML/ATF) Regime in Canada is robust and comprehensive, and it promotes both the stability of the financial system and the protection and security of Canadians.

Mexico

55. In 2009, the Mexican Government adopted legislation, a new decree amending the General Law on Health and the Federal Penal Code and the Code of Criminal Procedure. The new legislation decriminalised possession amounts for "personal and immediate use" which was defined as up to half a gram of cocaine, five (5) grams of marijuana, fifty (50) milligrams of heroin, forty (40) milligrams of methamphetamine and 0.015 milligrams of LSD that will not be subject to criminal prosecution.
56. In 2015, a landmark decision in the Supreme Court of Mexico was made. This Mexican Supreme Court ruled that four (4) individuals from the Mexican Society for Responsible and Tolerant Personal Use (SMART) would be permitted to grow and consume their own cannabis. This landmark decision paved the way for a new regime with regard to the recreational use of cannabis in Mexico.
57. In 2017, new legislation was introduced to authorize the Health Ministry to create regulations for the use, import and production of pharmaceutical products made from cannabis or marijuana, including tetrahydrocannabinol (THC). The new legislation permitted products with one percent (1%) concentration of THC.

⁴⁰ <https://www.canada.ca/content/dam/fin/programs-programmes/fsp-psf/nira-neri/nira-neri-eng.pdf>

58. Following the 2015 judgment, similar cases emerged. In 2018, the Supreme Court ruled that the law prohibiting the recreational use of cannabis in Mexico was unconstitutional and this created a binding precedent across the country's court system. As such, despite the law prohibiting cannabis, it could no longer be properly enforced, as the ruling was upheld. Importantly, this ruling mandated that the Mexican Government legalise and regulate cannabis within the following ninety (90) days.
59. In 2018, the FATF conducted evaluations which determined that drug trafficking and production proceeds are considered a major source of funds available for ML in Mexico. It was indicated that “Mexico remains a major transit country for cocaine and heroin, and a source country for heroin, marijuana, and methamphetamine destined for the U.S. Main crimes by OCGs are the trafficking of marijuana and synthetic drugs, followed by the trafficking of cocaine and production of marijuana. Major Mexico-based OCGs and their partners are solidifying their dominance of the U.S. wholesale drug trade, among other markets.”⁴¹

Malta

60. In 2021 Malta became the first European Union nation to legalise the cultivation and personal use of cannabis.⁴² The Authority for the Responsible Use of Cannabis (ARUC) is responsible for both the regulations of licenses necessary to own a non-profit organisation for cannabis as well as providing education on various levels.
61. The authority was established by Chapter 628 of the laws of Malta and enacted in 2021. Presently, the Authority is in the phase of establishing an effective and efficient system that ensures the responsible use of cannabis.

Decriminalisation

The Netherlands

62. The Dutch Opium Act is part of the Dutch drug policy framework that includes tolerance for nonconforming lifestyles, risk reduction regarding harmful health and social consequences of drug use and penal measures directed against illicit trafficking in hard drugs.⁴³ The Act makes a distinction between category I drugs (hard drugs) and category II (soft drugs). The Act states that it is an offence to: -
- Take drugs of either category across the borders of the territory of the Netherlands;
 - Prepare, treat, process, sell, supply, provide or transport drugs of either category;
 - Possess drugs of either category; or
 - Manufacture drugs of either category.⁴⁴
63. Since 2003, the Netherlands has allowed the use of medicinal cannabis. However, it is a closed system. The Office of Medicinal Cannabis (OMC) is the government office which is responsible for the production of cannabis for medical and scientific purposes. The OMC is also responsible for implementing the Single Convention on Narcotic Drugs. The OMC also processes applications for exemptions from the Opium Act relating to cannabis and cannabis resin.

⁴¹ <https://www.fatf-gafi.org/content/dam/fatf/documents/reports/mer4/MER-Mexico-2018.pdf>

⁴² <https://www.bbc.com/news/world-europe-59660856>

⁴³ <https://www.ojp.gov/ncjrs/virtual-library/abstracts/drugs-and-drug-policy-netherlands>

⁴⁴ <https://english.cannabisbureau.nl/exemptions-from-the-opium-act>

64. According to the FATF Mutual Evaluation Report of the Netherlands of 2022, the Netherlands estimates that “fraud and drug-related offences account for more than ninety percent (90%) of all Dutch proceeds of crime”. Additionally, the FATF reported that fraud and drug related offences are considered major predicate offences in the Netherlands. It was reported that domestic and international cases indicate that the proceeds of drug trafficking are often laundered through physical cash.⁴⁵
65. Presently, the Netherlands is poised to commence the Controlled Cannabis Supply Chain Experiment, an initiative designed to assess the viability of a decriminalised and regulated cannabis supply framework for licensed coffee shops. Within the framework of this four-year undertaking, up to ten (10) licensed cultivators will be tasked with provisioning at least ten (10) distinct cannabis product varieties to designated coffee shops across ten municipalities. The primary objective of this endeavour is to gauge its impact on various facets of society, including public health, public order, safety, and the incidence of criminal activities within the designated municipalities.
66. It is noteworthy that even entities participating in the Controlled Cannabis Supply Chain Experiment within the Netherlands encounter formidable challenges in establishing banking relationships. This arises from the reluctance of financial institutions to engage with an industry that, from an international legal perspective, remains technically illicit.
67. Furthermore, entities aspiring to partake in the experiment within the Netherlands are subjected to a rigorous vetting process as dictated by the Public Administration Probity Screening Act, often referred to as "Bibob." This assessment involves a comprehensive background check aimed at assessing the potential criminal risks associated with the issuance of permits and other governmental decisions. If these risks are identified, such as the presence of a criminal record or opaque financial structures, the relevant public authority retains the prerogative to either reject or revoke the issuance of a permit.

Hybrid Decriminalisation

United States of America

68. The National Money Laundering Risk Assessment 2018 highlighted that due to state-level decriminalisation, cannabis-related arrests have declined since 2010. However, despite state decriminalisation efforts and the legalisation of some cannabis products, the drug is still prohibited under the federal Controlled Substances Act 1970 and continues to be the most used illicit substance in the United States⁴⁶. Traffickers use methods such as bulk cash smuggling, TBML and transfers between banks and money services businesses.
69. In 2013, the Department of Justice (DOJ) released the Guidance Regarding Marijuana Enforcement which sought to prevent the following:
 - i. The sale of cannabis to minors;
 - ii. Revenue from cannabis sales going to gangs, criminal enterprises and cartels;
 - iii. The sale of cannabis in states where it is legal to states where it is not;
 - iv. Using legal cannabis activity as a cover for illegal or illicit criminal activity;
 - v. The use of firearms or any form of violence in the cannabis production and distribution process;

⁴⁵ <https://www.fatf-gafi.org/content/dam/fatf-gafi/mer/Mutual-Evaluation-Report-Netherlands-2022.pdf.coredownload.inline.pdf>

⁴⁶ <https://scholarworks.wmich.edu/dissertations/3933/>

- vi. Driving under the influence of cannabis or causing public health risks due to the use of cannabis;
 - vii. Growing cannabis on public lands; and
 - viii. Cannabis use or possession on federal property.
70. In 2014, the DOJ released the Guidance Regarding Marijuana Related Financial Crimes, which indicated that any financial institutions providing services to cannabis-related businesses must also not derogate from the limitations listed in the 2013 DOJ's memorandum.⁴⁷
 71. In 2018, the Drug Enforcement Administration removed the FDA-approved drug known as Epidiolex, which contained extractions from the cannabis plant, from the Controlled Substances Act and Congress passed the Agriculture Improvement Act 2018, which removed low-THC hemp from the Controlled Substances Act.
 72. In 2022, the Medical Marijuana and Cannabidiol Act was passed, which created a new registration process for medical research for registered entities, making the accessibility to cannabis more limited and streamlined.
 73. Presently, 23 states within the United States have legalised the use of cannabis (21 U.S.C. § 812). While state laws have indeed decriminalised cannabis within their jurisdictions, it is essential to note that the United States federal law maintains the classification of marijuana, also known as cannabis, as a controlled substance, as per the Controlled Substances Act (21 U.S.C. §§ 801-971). The incongruence between state and federal laws presents a challenging landscape for businesses operating in the cannabis industry.
 74. The financial sector encounters significant challenges in providing banking services to these businesses due to the continued classification of cannabis as a controlled substance under United States federal law. The USA Patriot Act, which plays a pivotal role in regulating financial transactions, has not been amended to accommodate the unique circumstances of the cannabis industry (USA PATRIOT Act, 107th Congress, 115 P.L. 272, H.R. 3162). This incongruity has hindered the cannabis industry's access to banking services, creating hurdles in conducting legitimate financial operations.
 75. Moreover, recent developments by major financial institutions, including Mastercard and Visa, have further complicated the cannabis industry and financial landscape. As of July 2023, both Mastercard and Visa have issued directives to U.S. financial institutions, indicating their cards will no longer be accepted for cannabis transactions (18 U.S.C. §1960). This stance has placed the cannabis industry in a state of uncertainty, adding to the complex regulatory environment in which it operates (18 U.S.C. § 1960).

Portugal

76. In 2001, Law 30/2000 was passed in Portugal which decriminalised the possession and consumption of all drugs, including cannabis. This was done as a manner of targeting drug use, which was a major social issue, with a focus on treatment rather than incarceration of drug users.

⁴⁷ <https://www.justice.gov/sites/default/files/usao-wdwa/legacy/2014/02/14/DAG%20Memo%20-%20Guidance%20Regarding%20Marijuana%20Related%20Financial%20Crimes%202%2014%2014%20%282%29.pdf>

Cannabis is therefore decriminalised in Portugal, however, the possession of more than 20 grams of cannabis or the sale of cannabis, is illegal. Medical marijuana was legalised in 2018 as per Law 33/2018 and remains to be the only legal method of using cannabis.

77. The medical marijuana industry is controlled by a government agency known as ‘Infarmed’. They are responsible for disseminating licences for the cultivation and distribution of cannabis in Portugal. They follow the legal stipulations provided by legislation which are as follows:
- Decree-Law 15/93 provided the legal framework for the trafficking and consumption of narcotics, including cannabis;
 - Law 33/2018 and Decree-Law 8/2019 which were passed respectively to regulate the use of cannabis products for medical use;
 - Ordinance 44-A/2019 which regulates the pricing of substances derived from the cannabis plant for medicinal purposes;
 - Ordinance 83/2021 stipulates the requirements and steps for granting authorisation for persons or businesses to be involved in any part of the cultivation, production or distribution process of the cannabis plant for medical purposes.

G. RECOMMENDATIONS/ BEST PRACTICES

78. The Project Team, in conducting its research recognised that ML/TF risk assessments specific to actions to regulate/ legalise cannabis usage are not widely conducted. However, ML risk assessments in relation to drug trafficking, even in jurisdictions which have legalised cannabis use, include the ML risk associated with the proceeds from cannabis and still consider the ML threat posed by trafficking (for example Canada).
79. The Project Team found that for countries that have chosen the option to strictly decriminalise cannabis possession in small amounts, the ML risks may increase as illegal importation may increase to meet domestic demand, as cannabis continues to be classified as a drug based on the respective national legislation. For countries that have sought to either legalise or adopt a hybrid approach, ML risks continue to exist given that cannabis may still be classified as a prohibited drug and can only be utilised in regulated situations. In regulating the use of cannabis, the avenues for illegal cannabis manufacturing and sale exist where persons are engaging in the activity without being licenced and where demand exceeds supply.
80. In light of the above, when considering the decriminalisation, legalisation or a hybrid decriminalised system for cannabis, it is essential to also consider the potential effect these systems may have on AML regulations. The cannabis industry is susceptible to ML due to, *inter alia*, its high cash flow, the convergence of drug trafficking activities with other illicit activities along similar trafficking routes, the existence of established trafficking networks and complicit law enforcement officers and the availability of professional money laundering facilitators for hire. The following are some best practices a country could consider in conjunction with AML stakeholders:
- ML/TF Risk Assessment:** Require cannabis-related entities to assess its ML/TF risk relative to its specific activity within the industry. Require entities to develop and implement systems to mitigate ML/TF risks identified proportionate to the risks etc.

- ii. **AML Compliance Requirements:** Countries should implement thresholds for triggering the application of customer due diligence (CDD) and transaction monitoring for cannabis-related businesses.
 - iii. **Licensing and Screening:** Implement strict screening processes for individuals and entities involved in the marijuana industry. Screening checks should include a risk matrix to identify a person who falls within the industry risk appetite. Further, background checks and due diligence should be conducted on applicants for licenses, managers and beneficial owners (BOs) to ensure they meet a fit and proper criterion.
 - iv. **Training and Awareness:** AML training should be conducted for the cannabis industry so that they have a thorough understanding of their reporting obligations. At the same time, public awareness should be undertaken to educate the public, including cannabis business owners, about the importance of AML regulations and their role in preventing money laundering and illicit financial activities. FIUs should develop risk indicators to assist in filing suspicious transaction reports.
 - v. **Audits and Inspections:** Regular audits and inspections of marijuana-related businesses to verify their compliance with AML regulations and to deter illicit financial activities can be conducted. Such audits focus on ensuring stringent record-keeping requirements, including maintaining transaction records and customer information to help investigators trace financial flows if suspicious activities are identified.
 - vi. **Cash Handling Controls:** Controls and safeguards for cash handling, as the marijuana industry often deals with significant amounts of cash. This includes secure storage, transportation, and deposit procedures.
 - vii. **Integration with Financial Institutions:** Financial institutions should work with marijuana-related businesses and provide banking services. This can help bring transactions into the formal financial sector, making it easier to track and regulate.
 - viii. **Ring-Fencing-** Ring-fencing may assist in mitigating de-risking concerns due to a carefully crafted arrangement with correspondent banks which has sufficient confidence in the process.
 - ix. **Inter-agency Collaboration:** Collaboration between law enforcement agencies, financial regulators, and the marijuana regulatory authority to share information and co-ordinate efforts effectively.
 - x. **Transparency and Reporting:** Publish regular reports on AML efforts, including statistics on investigations, prosecutions, and convictions related to AML violations in the marijuana industry. Unusual or large cash transactions should trigger alerts for further investigation.
 - xi. **Resources:** Countries should ensure that entities engaging in regulating the cannabis industry should be properly resourced.
81. By incorporating these AML best practices into the regulatory framework for legalised or decriminalised marijuana, countries can help minimize the potential for money laundering and illicit financial activities while ensuring transparency and accountability within the industry.

H. OTHER TOPICS

82. In conducting its research, the Project Team noted the following areas for future consideration for research by CRTMG:
- i. ***Correspondent Banking Relationships***- the Project Team noted that given the differences in the legislative framework for cannabis, the issue of correspondent banking relationships is significant as countries which continue to criminalize cannabis, may prevent correspondent banking relationships with jurisdictions that have legalised cannabis use. This would result in banks de-risking countries, with a further ripple effect of financial institutions denying cannabis-related business from engaging with the financial institution.
 - ii. ***International Cooperation***- the Project Team noted that the difference in the legislative framework for cannabis usage can also affect the international cooperation rendered by jurisdictions. The Project Team noted that this is still a developing area, but formed the view that informal international cooperation may still occur but questions the extent to which formal cooperation may be used where countries have differing levels of criminality for cannabis usage.

CARIBBEAN FINANCIAL ACTION TASK FORCE



CRTMG PROJECT: Potential Implications of Decriminalisation, Legalisation or A Hybrid Decriminalisation Approach of Cannabis on AML/CFT

Research Plan

June 23rd, 2023

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CRTMG Project: Potential Implications of Decriminalisation, Legalisation or a Hybrid Decriminalisation Approach of Cannabis on AML/CFT”

Background

The 56th CFATF Plenary approved the CRTMG Concept Note for the Project: *Potential Implications of Decriminalisation, Legalisation or a Hybrid Decriminalisation Approach of Cannabis on AML/CFT*, with a view to assisting members regarding the ML/TF implications surrounding the following topics:

1. Understanding the potential suite of measures that may be adopted to effect strict decriminalisation and whether there are any ML/TF implications.
2. Identifying potential ML/TF risks arising from all potential elements of a hybrid decriminalised approach or legalisation, for example importation/exportation, licensing and enforcement, cash-based business models if banks cannot service cannabis businesses, persons with previous convictions etc.
3. Identifying potential mitigation strategies, such as appropriate resourcing within key agencies, assessing the costs associated with regulating and enforcing, and assessing the implications for continued relationships with other countries who either have not adopted or have no intentions of adopting decriminalisation or legalisation.

Project Objective

To improve the ML/TF understanding of how the different forms of decriminalisation and legalisation of cannabis could potentially impact the region, and to provide a framework for Member countries to adopt when assessing and mitigating the ML/TF risks.

Deliverable

Develop a guidance document for countries in the region who are either considering or in the process of decriminalisation or legalisation to guide their assessment and mitigation of associated ML/TF risks. If sensitive information about risk indicators are indicated, a confidential version of the document will also be produced.

Methodology

The Project Team will be adopting the following methodology in conducting its research and development of the guidance document:

1. *Desk based review*- A review of existing reports from international bodies, academia, as well as country reports will be done.
2. *Questionnaire*- Questionnaires will be sent to all member countries requesting information on whether the country has implemented or will be implementing any legislative measures regarding cannabis usage as well as any ML/TF risks which have been identified and mitigating measures adopted.
3. *Meeting*- An Experts Meeting will be held with Financial, Legal and Law Enforcement (i.e., operational working groups) experts involved in formulating policies, procedures, generating statistics, analysing risks, trends, case studies. Requests would be made to have meetings with experts from countries such as Canada and Uruguay which have also legalised both medicinal and recreational cannabis to understand the implications on for e.g., the banking sector and how those concerns were addressed.

The Project Team will conduct its initial desk-based review based on following thematic areas:

- Legal Reform.

- Regulatory landscape.
- Law Enforcement and Prosecution experience.
- Banking Sector.

Questionnaires were developed by the Project Team and distributed to CFATF members on June 1st, 2023. The responses to these questionnaires will supplement the initial desk-based review to provide an overview of the cannabis landscape across CFATF Membership. An Experts Meeting will be held subsequently to gather best practices from countries which have been through the process, as well as to supplement any gaps identified in the questionnaires.

Potential Areas to be addressed in the guidance document:

1. Background to Project

- Relevance.
- What are we seeking to address?

2. Introduction and Defining of Different Terms

- Decriminalisation.
- Legalisation.
- Hybrid Model.

3. Current landscape

- Based on questionnaires and other research, this section will provide details on the models used.
- When was legislation passed, how was it passed, what is the framework in which territories are operating?
- Look at the regulatory landscape (what AML/CFT measures were considered/implemented to ensure the integrity of the financial system and to prevent related illicit financial activity?).
- Law Enforcement/Prosecution experience (how does marijuana decriminalisation/legalisation etc. affect crime rates and law enforcement efforts?).
- Customs (possibly both law enforcement and regulation).
- Banking (correspondent banking).

4. Identifying ML/TF Risks (Local/Regional)

- Questionnaires.
- Experts meeting.
- Cases of interest (Issues with distinguishing what is CBD projects vs cannabis; decriminalisation, hybrid models).
- How are these risks defined? (for export producing countries vs non-export producing countries, producers and suppliers).

5. Comparative analysis to determine what can be learned from other jurisdictions that have implemented cannabis related policies.

- Canada.
- Uruguay.
- Trinidad and Tobago.

- Jamaica.
- Belize.
- United States.

6. Recommendations/ Best practices

7. Other topics

- For e.g., training needed.

Administrative matters regarding the guidance document

The guidance document should be no more than 50 pages and should focus heavily on the ML/TF risks associated with cannabis usage.



CFATF Risks, Trends and Methods Group (CRTMG)

The CRTMG is currently working on a project titled “Potential Implications of a Hybrid Decriminalised Approach or Legalisation of Cannabis on AML/CFT.” The following questions are geared towards determining the progress of the region, the infrastructure in place and steps taken in regions that have adopted similar approaches, identifying practically the attendant risks and the mitigation of same and looking at the general future of the region in this area. We would be grateful if you answer all questions, and we are open to submissions of any additional relevant material.

** required*

Contact Person: *

Position/Title: *

Contact Number: *

Email address: *

Country: *

- Anguilla
- Antigua & Barbuda
- Aruba
- Barbados
- Belize
- Bermuda
- Cayman Islands
- Curaçao
- Dominica
- Grenada
- Guyana
- Haiti
- Jamaica
- Montserrat
- Saint Kitts & Nevis
- Saint Lucia
- Saint Vincent and The Grenadines
- Sint Maarten
- Suriname
- The Bahamas
- Trinidad and Tobago
- Turks and Caicos Islands
- Venezuela

- Virgin Islands

GENERAL

1. Has your country decriminalised, legalised or taken a hybrid decriminalisation⁴⁸ approach to cannabis?
 - Yes
 - No (*please skip to question 4 below*)
2. If yes, please indicate the approach taken by your country.
 - Decriminalisation
 - Legalisation
 - Hybrid decriminalisation
 - Other: _____
3. Please (i) provide a point of contact for your country with specific knowledge on the cannabis reform undertaken in your country; and (ii) please email cfatf-rtmg@cfatf.org any policy documents describing the efforts undertaken by your country.

4. If no, please indicate if your country is contemplating or in the process of decriminalising, legalising or taking a hybrid decriminalisation approach to cannabis. Please also state the approach being proposed. (*There are no other questions to be completed, please submit this form to cfatf-rtmg@cfatf.org*)

LEGAL REFORM

5. How long did this process take to become law (from approval of the policy to passage of the legislation)?
 - 0 – 12 months
 - 12 – 18 months

⁴⁸For the purposes of this questionnaire, decriminalisation is the removal of criminal sanctions for determined cannabis-related activities and subjecting those activities to civil or no sanction, whereas legalisation refers to the removal of all penalties (whether criminal or civil) for cannabis use and possession within set parameters by the legislature for regulated use. A hybrid decriminalised approach includes decriminalising the possession or use of marijuana in small amounts, while also adopting aspects of the legalised approach such as licensing, etc.

- 18– 24 months
 - 24 months or longer
6. Was decriminalisation, legalisation or the hybrid approach implemented all at once or in stages?
- All at once
 - In stages
7. How was decriminalisation, legalisation or the hybrid approach implemented? Check all that applies.
- Amending existing legislation
 - Drafting new legislation
 - Other: _____
8. What process(es) was/were adopted to inform the approach taken. Check all that applies.
- Referendum
 - Focus groups
 - Town hall meetings
 - Other: _____
9. What were the primary motivating factors to decriminalising, legalising or taking a hybrid approach to cannabis?
- _____
- _____
- _____
- _____
- _____
- _____
10. What were the objections taken to decriminalising, legalising or taking a hybrid approach to cannabis?
- _____
- _____
- _____
- _____
- _____
- _____
11. Once implemented, how was the information on decriminalisation or legalisation or the hybrid approach disseminated to the public. Check all that applies.
- Media (print, digital etc)

- Other: _____

- Yes

- No

If no, why were no amnesties put in place?

[illegible]

ML/TF RISK

- Yes

- No

[illegible]

-
16. What were the ML/TF risks associated with decriminalisation, legalisation or a hybrid decriminalisation in your country?

17. What have been the steps taken to mitigate against the ML/TF risks?

GOVERNANCE STRUCTURE

18. Has a separate agency been created to deal with matters of decriminalisation, legalisation or the hybrid approach?

- Yes
- No

19. What type of agency?

20. How was this agency created?

- Through legislation
- Through expanding the powers of a current entity

- Other: _____

IMPACT ON FINANCIAL INSTITUTIONS (FIs) AND DESIGNATED NON-FINANCIAL BUSINESSES (DNFBPs)

21. Have FIs or DNFBPs conducted any ML/TF risk assessments in relation to the impact of decriminalisation, legalisation, or a hybrid decriminalisation approach?

- Yes
- No

22. If yes, please provide further information to cfatf-rtmg@cfatf.org on the assessments e.g. copies of the assessment, information on entities consulted, methodology used, outcomes of the risk assessment, etc.

23. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate whether any enhanced measures have been adopted by FIs and DNFBPs in relation to business relationships with entities involved in the cannabis industry. Check all that applies.

- Enhanced CDD measures
- Enhanced reporting requirements
- Enhanced monitoring
- Other: _____

24. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, has any guidance been provided to FIs and DNFBPs by AML/CFT Supervisors or any other body?

- Yes
- No

25. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate if FI's AML/CFT Supervisors or FIs themselves have reported/experienced effects on the Correspondent Banking Relationships (CBR).

PRACTICAL IMPACT OF DECRIMINALISATION, LEGALISATION OR HYBRID APPROACH

26. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate all that now applies in your country.

- Increase in government revenue.
- Increase in employment opportunities.
- Increase in drug prosecutions.
- Decrease in drug prosecutions.
- Increase in money-laundering prosecutions.
- Other: _____

27. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate any enhanced measures that have been adopted by your country in relation to business relationships with entities involved in the cannabis industry.

- Enhanced CDD measures
- Enhanced reporting requirements
- Enhanced monitoring
- Other: _____

28. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate the effect(s), if any, on your country generally engaging in relationships with another country that has a dissimilar approach to cannabis,

- Decreased import/export
- Loss of customers
- Other: _____

29. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, please indicate the effect(s), if any, on cannabis-based businesses on your country engaging or seeking to engage in relationships with FIs in another country that has a dissimilar approach to cannabis.

-
-
30. Consequent on the decriminalisation, legalisation or hybrid approach to cannabis, is there an impact on the legal basis upon which your country can provide international cooperation relative to foreign cannabis related offences that are no longer domestic crimes? If yes, please elaborate.

31. What, if anything, has been the effect of decriminalisation, legalisation or hybrid approach to cannabis on the illicit trafficking of narcotic drugs as a predicate offence for ML?
