



# Sixth Follow-Up Report

## Jamaica

### April 20, 2012

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## JAMAICA: SIXTH<sup>1</sup> FOLLOW-UP REPORT

### I. 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:

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

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

<b>Partially Compliant (PC)</b>	<b>Non-Compliant (NC)</b>
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)	

<sup>1</sup> Jamaica's fourth follow-up report has been attached as Annex 1 to this report since most of the information pertaining to action taken on the recommendations remained unchanged in the current matrix. The most current information has accordingly, been summarized in the section entitled 'Summary of Progress made by Jamaica'.

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 as at December, 2011**  
(US\$ millions)

		<b>Bank s</b>	<b>Other Credit Institution s*</b>	<b>Securities ^</b>	<b>Insuranc e (Life &amp; General)</b>	<b>TOTA L</b>
<b>Number of institution s</b>	Total #	7	50	32	16 <sup>a</sup>	105
<b>Assets</b>	US\$	7,087	3,164	5,792	2,766	18,809
<b>Deposits</b>	Total: US\$	4,620	2,081	n/a	n/a	6,702
	% of deposits Non-resident	5.7%	13.8%	n/a	n/a	8.2%
<b>Internationa l Links</b>	% of assets Foreign-owned**	95.2 %	8.8%	50.2%	87.5%	65.7%
	#Subsidiarie s abroad <sup>b</sup>	4	7	2	3	16

Data converted using USD weighted average selling rate as at 31 Dec. 2011.  
(J\$86.6008)

n/a - Data not applicable.

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

^ Includes Unit Trust Management Companies.

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

<sup>a</sup> While there are 16 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 15 active companies.

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

## **II. Summary of progress made by Jamaica since October 2011**

5. Since the fifth follow-up report, Jamaica conducted General Elections on December 29, 2011; at which time a new Administration was installed. Consequently, new Ministers

hold the various Government portfolios<sup>2</sup>. The Jamaican Authorities have noted that ‘by practice when there is a change in Administration, proposed amendments to legislation must be reaffirmed in principle by the incoming Government. Accordingly, the relevant Jamaican Authorities are currently in the process of apprising the new Administration of ‘existing AML/CFT requirements, deficiencies to be addressed and the proposed legislative amendments to address those deficiencies.’ This means that the previously drafted legislation and proposed amendments are being reviewed and as a result, there has been no change in compliance with the outstanding Core, Key and other Recommendations (R. 5, 8, 10, 11, 12, 16, 20, 21, 24, 25, 35, SR. IV and SR. VIII) that were rated PC or NC.

6. As noted in the fifth Follow-Up report, the FID had re-submitted its application to Egmont since the passage of the FID Act in March 2010. The onsite visit was undertaken during the period August 29-30, 2011 by representatives from Canada (FINTRAC) and The Bahamas (FIU) which are the sponsoring countries for Jamaica’s Egmont application. Following on this, a representative of the FID attended the Egmont Working Group meeting which was held in the Philippines in January-February 2012. The FID is currently waiting on a formal response from Egmont Group with regard to its application for membership.
7. With regard to R. 4<sup>3</sup>, the Jamaican Authorities have noted that the FSC has submitted the proposed amendments to the Securities Act to the Ministry of Finance in September 2011. The FSC has responded to clarification and verification checks from the Ministry of Finance since the submission and expect that the proposals will be amended by the Cabinet shortly. The Authorities have also noted that the Caribbean Group of Securities Regulators (CGSR) has agreed in principle on a Multilateral MOU within its membership. The CGSR MMOU will be executed shortly and the FSC is also in the process of negotiating the terms of bilateral MOUs with other countries. With regard to R. 10, the Authorities have noted that the FSC is taking steps to amend the Insurance Act by 2012 to ensure that records are maintained for at least five (5) years. With regard to R. 30, it has been noted that the FID by policy undertakes vetting of staff prior to being employed by the organisation.
8. With regard to R. 33, the Companies Office of Jamaica has revised the draft Cabinet submission regarding proposed amendments to the Companies Act, 2004 to include provisions for the capture of information pertaining to beneficial ownership of a company including the nationalities of the beneficial owners. The Cabinet Submission has been submitted to the Attorney General for approval.

#### **Implementation Statistics (Recs. 1 & 3)**

9. The following statistics reflect Jamaica’s ongoing implementation of the POCA and have been updated as of September 2011 to January 2012<sup>4</sup>:

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<sup>2</sup> The new Minister of Finance and Planning is the Hon. Dr. Peter Philips; the new Minister of National Security is Mr. Peter Bunting; the new Minister of Justice is Senator the Hon. Mark Golding and the new Minister of Foreign Affairs and Foreign Trade is Senator the Hon. Arnold J. Nicholson Q.C.

<sup>3</sup> Please note that R. 4, 26, 30, 32 and 33 are rated LC and that Jamaica has provided information on the ongoing developments with regard to these Recommendations.

<sup>4</sup> The figures for January-December 2011 have been attached as Annex 1 to this report.

▪	Number of persons convicted for <sup>5</sup> ML offences	nil
▪	Number of persons charged with <sup>6</sup> ML offences	4
▪	Number of Restraint orders obtained	5
▪	Estimated value of property restrained	\$516,556,040 <sup>7</sup>
▪	Number of ML investigations in progress	11
▪	Number of Civil Recovery (CR) cases in progress	5
▪	Number of CR cases before the Courts	7
▪	Number of cash seizure cases in progress	23
▪	Number of cash seizure cases/money forfeited	14
▪	Disclosure (DO)	14
▪	Total cash seized	\$49,098,751
▪	Value of cash seizure cases forfeited to the Crown	\$21,008,287
▪	Customer Information Order (CIO)	14
▪	Production Orders (PO)	36

10. With regard to the implementation of the POCA by law enforcement authorities in Jamaica, in February 2012, the FID by the use of fourteen (14) restraint orders, froze approximately J\$700M in real estate, motor vehicles, bank accounts, furniture and expensive jewellery. The Jamaican Authorities have noted that one of the orders was executed in relation to a suspected Jamaican drug dealer living overseas; the other thirteen (13) orders involve persons in a lotto scam. In February 2012, the FID also obtained a Civil Recovery Order to seize USD1.35M in cash. A recovery order was also obtained to confiscate two large residential properties and thirteen (13) bank accounts with J\$6.5M, deposits on real estate amount to more than J\$4.5M and a motor vehicle with an estimated value of US\$58,000. These two initiatives involved investigators assigned to the FID acting under Jamaica's Mutual Legal Assistance Treaty (MLAT) as well as legal officers and forensic experts and continues to demonstrate Jamaica's use of international cooperation in its AML/CFT investigations.
11. The Authorities have also noted that in February 2012, thirty (30) persons were arrested and assets<sup>8</sup> seized in connection with lottery scamming activities, bribery and money laundering. The operation was undertaken in Montego Bay by a multi-agency law enforcement team. Jamaica continues to show effective ongoing implementation of R. 1 and 3.

### III. Conclusion

12. Jamaica's progress with regard to the implementation of its AML/CFT legislation (the POCA and TPA) as it pertains to R. 1 and 3 continues to be consistent. However, due to the change in Government Administration in December 2011, Jamaica has been unable to advance its legislative agenda with regard to the outstanding deficiencies; most notably with regard to the establishment of an AML/CFT framework for DNFBPs. While it is certain that these matters will move ahead in the future, given the length of time that

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<sup>5</sup> Provided by the Jamaica Constabulary Force (JCF) and the Financial Investigations Division (FID) – see case details mentioned in *International Cooperation*, footnote 4

<sup>6</sup> Provided by the Jamaica Constabulary Force (JCF) and the Financial Investigations Division (FID)

<sup>8</sup> The seized assets were motor vehicles-estimated value approx. J\$50M, cash- approx. J\$1M and household items.

these issues have remained outstanding, and the fact that Jamaica will be evaluated early in the Fourth Round of Mutual Evaluations, it is proposed that Jamaica be placed in the second stage of Enhanced Follow-Up, which is a high level visit to the jurisdiction by a team of CFATF Members and Secretariat Official(s).

## **ANNEX 1**

**The following 2011 figures relate to the period January - December 2011**

▪	Number of persons convicted for ML <sup>9</sup> offences	nil
▪	Number of persons charged with ML <sup>10</sup> offences	12
▪	Number of Restraint orders obtained	10
▪	Estimated value of property restrained	\$683 115 013
▪	Number of ML investigations in progress	31
▪	Number of Civil Recovery (CR) cases in progress	15
▪	Number of CR cases before the Courts	8
▪	Number of cash seizure cases in progress	99
▪	Number of cash seizure cases/money forfeited	37
▪	Production Orders (PO) <sup>11</sup>	36
▪	Disclosure Orders (DO) <sup>12</sup>	17
▪	Total cash seized	\$137 641 588
▪	Value of cash seizure cases forfeited to the Crown	\$47 002 880
▪	Customer Information Orders (CIO) <sup>13</sup>	40

**Note: The dollar values reflected in relation to assets (including cash) seized are JMD**

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<sup>9</sup> Provided by the Jamaica Constabulary Force (JCF) and the Financial Investigations Division (FID)

<sup>10</sup> Provided by the Jamaica Constabulary Force (JCF) and the Financial Investigations Division (FID)

<sup>11</sup> Data up to August 2011 reflects POs served and used in cases. Data from September 2011 onwards reflects only POs served.

<sup>12</sup> Data up to August 2011 reflects DOs served and used in cases. Data from September 2011 onwards reflects only DOs served.

<sup>13</sup> Data up to August 2011 reflects CIOs served and used in cases. Data from September 2011 onwards reflects only CIOs served.

**Matrix with Ratings and Follow Up Action Plan 3rd Round Mutual Evaluation  
Jamaica (Update May 2012 CFATF Plenary)**

<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Jamaica</b>
<b>Legal systems</b>				
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"> <li>• The POCA should be passed with due haste.</li> <li>• The definition of money laundering in the MLA should be extended to incorporate all the predicate offences required by Recommendation 1.</li> </ul>	<p><b>On December 29, 2011, Jamaica's General elections took place and a New Administration has been installed. The new Minister of Finance and Planning is the Hon. Dr. Peter Philips; the new Minister of National Security is Mr. Peter Bunting; the new Minister of Justice is Senator the Hon. Mark Golding, and the new Minister of Foreign Affairs and Foreign Trade is Senator the Hon. Arnold J. Nicholson Q.C. By practice, when there is a change in Administration, proposed amendments to legislation must be reaffirmed in principle by the incoming Government. Jamaica is now in the process of apprising the new Administration of existing AML/CFT requirements, deficiencies to be addressed and the proposed legislative amendments to address these deficiencies.</b></p> <p><u>Legislative Update</u></p> <p>The POCA is to be amended to address deficiencies identified in relation to the following FATF Recommendations-</p> <p>R. 11- Unusual transactions R. 13 – Suspicious Transactions</p> <p>The POCA is also being amended to ensure consistency in definitions of terms used in the POCA with those used in the Financial Investigations Division Act (i.e. FIU Act). The POCA is also being amended to outline the powers that competent authorities designated under the POCA will have in relation to their role of monitoring compliance with the AML requirements under the POCA.</p> <p>The Money Laundering Prevention Regulations under the POCA are also being amended to address deficiencies identified in relation to the following FATF Recommendations –</p>



FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>R. 5 - CDD  R. 8 – Emerging Technology and non-face-to-face business  R. 9 – Third parties and Introducers  R. 10 – Record Keeping</p> <p>The relevant Cabinet Submission is being prepared.</p> <p>The POCA was passed and came into effect in <u>May, 2007</u>.</p> <p>The POCA allows for any crime to constitute a predicate offence for money laundering charges. 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><b>Progress made by law enforcement in enforcement of the POCA is outlined in the statistics below:</b>  <b>In February 2012, the FID, by way of 14 restraint orders, froze approx. J\$700million in real estate, motor vehicles, bank accounts, furniture and expensive jewellery. One of the orders was executed in relation to a suspected Jamaican drug dealer living overseas; the other 13 orders involve persons in the lotto scam.</b></p> <p><b>In February 2012, the FID obtained a Civil Recovery Order to seize US\$1.35 million in cash. A recovery order was also obtained to confiscate two</b></p>

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>large residential properties and 13 bank accounts of J\$6.5million, deposits on real estate amount to more than J\$4.5million, one motor vehicle (estimated value US\$58,000).</p> <p>Both of the foregoing initiatives involved investigators assigned to the FID acting under Jamaica's Mutual Legal Assistance Treaty (MLAT) as well as legal officers and forensic experts.</p> <p>In February 2012 30 persons were arrested and assets (motor vehicles (estimated value approx.. J\$50million), cash (approx.. J\$1million), household items) seized in connection with lottery scamming activities, bribery and money laundering. The operation was undertaken in Montego Bay by a multi-agency law enforcement team.</p> <p><u>September 2011 - January 2012 Updates</u></p> <ul style="list-style-type: none"> <li>• Number of Restraint Orders Obtained 5</li> <li>• Estimated value of property restrained \$516.556M</li> <li>• Number of ML Investigations in progress 11</li> <li>• Number of Civil Recovery cases in progress 5</li> <li>• Number of Civil Recovery cases before the Court 7</li> <li>• Number of Cash Seizure cases in progress 23</li> <li>• Number of Cash Seizure case ordered forfeited to the Crown 14</li> <li>• Total Cash Seized \$49.09M</li> <li>• Value of Cash Seizure cases forfeited to the Crown \$21.01M</li> <li>• Customer Information Order 14</li> <li>• Disclosure Order 14</li> </ul>

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<ul style="list-style-type: none"> <li>• Production Order 36</li> <li>• Number of persons charged with money laundering offenses 4</li> <li>• Number of persons convicted of money laundering offenses - nil</li> </ul> <p>Statistics for the period September 2011 – January 2012 as well as for the calendar period January – December 2011 are provided in an attachment to this Matrix.</p> <p>A former bank employee and alleged accomplice are before the RM court for 8 counts of conspiracy to defraud and one count each of money laundering (in the case of the former employee) and 2 counts of conspiracy to defraud and one count of money laundering in the case of the accomplice. The charges are in relation to a \$2.7million fraud taking place between May and June 2011 at the bank involving illicit access to the accounts of customers of the bank and manipulating the database to transfer funds from customers' accounts to the account of the accomplice. The former bank employee was arrested in June 2011 and the accomplice was arrested at a later date. Both are to return to court in August 2011.</p> <p>In June 2011 an Attorney-at-law was arrested and charged with forgery, uttering false documents and money laundering re: a 2007 incident in which the Attorney and other persons were alleged to have forged documents to fraudulently sell a property.</p> <p>In June 2011, 2 individuals were convicted for Money Laundering. One of the individuals was charged in 2004 for fraud involving telephone cards valuing over J\$50million which were allegedly stolen by one of the individuals. That individual initially plead not guilty</p>

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>but changed the plea in the course of the trial to guilty. The co-accused who is also the mother of the primary accused plead guilty to money laundering regarding receipt of some of the proceeds of the crime. Both individuals were convicted and sentenced in the case of the primary accused, to a fine of J\$3million or 2 years imprisonment and 618 hours of community service. In the case of the co-accused, the sentence was for J\$1.5million or imprisonment for 2 years. The DPP has applied to the court under the POCA for forfeiture of assets including a house valued at \$30million and motor vehicles. A multimillion dollar civil suit has also been filed against the co-accuseds by the office of the DPP/FID</p> <p>In June 2011 a Jamaican man believed to be part of a multimillion dollar international credit card racket was sentenced to 3 years in prison. The man plead and was convicted on the charge of conspiracy to defraud and 3 counts of money laundering. (See more detailed update below under Joint Collaboration)</p> <p>In May 2011 an operator of a used car dealership was charged with (a) 131 counts conspiracy to defraud, (b) 71 counts of obtaining money by false pretences and 3 counts of money laundering. (In relation to the conspiracy to defraud charge the individual was charged with more than 100 counts of conspiracy to defraud a bank of over J\$6million using about 61 fraudulent credit cards to conduct over 131 illegal transactions. The individual was arrested when the bank called in the police at the end of its own investigations. The matter is currently before the Resident Magistrate's court. The individual has since compensated the bank for the amount allegedly swindled and plead guilty to two of the three charges and is awaiting sentencing.</p>

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p><u>August 2011 Updates</u></p> <ul style="list-style-type: none"> <li>• Number of Restraint Orders Obtained 6</li> <li>• Estimated value of property restrained \$742M</li> <li>• Number of M L Investigations in progress 17</li> <li>• Number of Civil Recovery cases in progress 9</li> <li>• Number of Civil Recovery cases before the Court 6</li> <li>• Number of Cash Seizure cases in progress 20</li> <li>• Number of Cash Seizure case ordered forfeited to the Crown 16</li> <li>• Total Cash Seized \$33.9M</li> <li>• Value of Cash Seizure cases forfeited to the Crown \$8.4M</li> <li>• Customer Information Order 26</li> <li>• Disclosure Order 3</li> <li>• Number of persons charged with money laundering offenses 9</li> <li>• Number of persons convicted of money laundering offenses - In Progress</li> </ul> <p>In October 2010 2 persons were charged with -  7 counts of facilitating the offence of human trafficking;  7 counts of conspiracy;  8 counts of human trafficking and  1 count of money laundering and withholding travel documents.</p> <ul style="list-style-type: none"> <li>• Jamaica has five human trafficking cases before the Courts and two at an advanced</li> </ul>

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>stage of investigation to go before the Courts<sup>14</sup>.</p> <ul style="list-style-type: none"> <li>• Number of Customer Information Orders Served 46</li> <li>• Number of Disclosure Orders Served 39</li> <li>• Number of Restraint Orders Obtained 42</li> <li>• Estimated value of property restrained \$89.9M</li> <li>• Persons charged with ML offences 34</li> <li>• Persons convicted for ML offences 4</li> <li>• Seizure of Proceeds Statistics for the period April 2009 – April 2010 are provided in an attachment<sup>15</sup> to this Matrix.</li> </ul> <p><u>August 2010 Updates</u></p> <ul style="list-style-type: none"> <li>• Number of Restraint Orders Obtained 45</li> <li>• Estimated value of property restrained \$289.9M</li> <li>• Number of M L Investigation in progress 23</li> <li>• Number of Civil Recovery cases in progress 3</li> <li>• Number of Civil Recovery cases before the Court 6</li> <li>• Number of Cash Seizure cases before in progress 51</li> <li>• Number of cash seizure case ordered forfeited to the Crown 171</li> <li>• Seizure of Cash Statistics for the period 2007-August 2010 by Agency</li> </ul>

<sup>14</sup> The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

<sup>15</sup> The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

FATF 40+9	Rating	Summary of Factors for Rating	Recommended Actions	Actions Undertaken by Jamaica
				<p>provided in an attachment<sup>16</sup> to this Matrix.</p> <p>Specific examples of recent international collaboration by local authorities and their international counterparts</p> <p>In June 2011 a Jamaican man believed to be part of a multimillion dollar international credit card racket was sentenced to 3 years in prison. Allegations were that he used a fraudulent American credit card to purchase almost J\$2million (USD21, 855.50) worth of appliances from the United States. The man plead and was convicted on the charge of conspiracy to defraud and 3 counts of money laundering. The man was held on May 2, 2011 in a joint operation between members of the OCID of the JCF and the US Dept. of Homeland Security and Immigration and Customs Enforcement.</p> <p>Further joint collaboration between the Jamaican Police and their UK counterparts culminated in the conviction of 3 persons in the British courts in April 2011 for conspiracy to launder money suspected to be the proceeds of drug deals. It is believed that over a six year period these persons funneled approx. 500,000 Pounds Sterling (J\$68million) to Jamaica using family members and associates to send money to Jamaica often 900 pounds sterling (J\$123,000) at a time.</p> <p>🚩 In December 2010 the Anti-Corruption Branch of the Jamaica Constabulary Force (JCF) collaborated with law enforcement agencies in Canada in the investigation of a multi-million dollar, international narcotics drugs operation which resulted in close to</p>

<sup>16</sup> The above data was provided by the Financial Investigation Division of the Ministry of Finance & Public Service

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				<p>\$1million worth of crack cocaine being found and the arrest of three (3) persons to date.</p> <p>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 called the Joint Operations Linked to Telemarketing (JOLT) and comprises officers from:</p> <ul style="list-style-type: none"> <li>➤ US Immigration and Customs Enforcement Division;</li> <li>➤ US Embassy in Jamaica;</li> <li>➤ Local Jamaican Authorities including officers from the Jamaica Constabulary Force, Customs, Passport &amp; Immigration Dept.; office of the DPP; officers from the Montego Bay Resident Magistrates Court and officers from the FID.</li> </ul> <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>



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				<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 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>On August 30, 2011, this individual entered into a plea agreement and plead guilty to 2 charges (racketeering conspiracy and conspiracy to commit assault with a dangerous weapon in aid of racketeering). He is now awaiting sentencing. The USA will also be seeking to enforce the forfeiture provisions of the Racketeer Influenced and Corrupt Organizations Act (RICO) in relation to the assets of 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>

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				In October 2010 2 persons were charged with - 7 counts of facilitating the offence of human trafficking; 7 counts of conspiracy; 8 counts of human trafficking and 1 count of money laundering and withholding travel documents.
2. ML offence— mental element and corporate liability	C	The Recommendation is fully observed		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.  Both the POCA and the TPA make specific reference to the penalties specifically applicable to individuals and those specifically applicable to bodies corporate.
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> <p>There is no provision for forfeiture of property of corresponding value with regard to terrorism offences.</p>	<ul style="list-style-type: none"> <li>POCA should be enacted with due haste;</li> <li>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.</li> <li>The TPA should be amended to include a provision for forfeiture of property of corresponding value.</li> </ul>	<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 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</p>

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				<p>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>
<b>Preventive measures</b>				
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.		<p><b>The FSC submitted the Proposed Amendments to the Securities Act to the MOF in September 2011. Since then the FSC has responded to clarification and verification checks by the MOF. The FSC anticipates the proposals will be amended by the Cabinet shortly.</b></p> <p>By letter dated October 15, 2010 IOSCO invited the FSC to join the list of IOSCO Members listed in Appendix B of the MMOU. Appendix B has an attachment that lists, with their consent, members who currently are unable to become signatories but who are committed to obtaining the legal authority to sign the MMOU and who have completed the application process. Jamaica is now listed as an "Appendix B" Member.</p> <p>In order to acquire Appendix A (signatory) status, the FSC has proposed amendments to the Securities Act which will put the FSC in the position to sign the</p>

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				<p>MMOU. The proposals have been circulated to the Attorney General and Director of Public Prosecutions for comments. It is envisaged that the Securities Act amendments will be brought into effect before the end of 2012. Comments on the proposals were received from the Attorney General and the office of the Director of Public Prosecutions. The FSC will submit the proposal to the Ministry of Finance by August 31, 2011. It is envisaged that the Securities Act amendments will be brought into effect before the end of 2012.</p> <p><b>Presently the CGSR has agreed in principle on a Multilateral Memorandum of Understanding within its membership. The CGSR MMOU will be executed shortly. The FSC is also in the process of negotiating the terms of bilateral MOUs with other countries.</b></p> <p>In March 2011, the FSC signed a MOU with TCI to share information and collaborate on matters of mutual interest.</p> <p>It should be noted that the FSC's signatory B status does not prevent it from participating in bilateral, regional and other multilateral MOUs with its overseas counterparts.</p> <p>The FSC is a member of regional regulatory associations such as the Caribbean Group of Securities Regulators ("CGSR") and the Caribbean Association Insurance Regulations ("CAIR") which has as a part of their objectives the promotion of cooperation amongst members in information sharing and other enforcement related ventures.</p> <p>Presently the FSC is in the process of negotiating and is close to signing a Multilateral Memorandum of Understanding with other CGSR members. Negotiations are at an advanced stage. The CGSR MMOU should be in effect before the end of February</p>

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				<p>2011. The FSC is also in the process of negotiating the terms of bilateral MOUs with other countries.</p> <p>Additionally, we have also requested and provided assistance and continue to collaborate with other jurisdictions outside the region.</p> <p>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.</p>

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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 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>	<ul style="list-style-type: none"> <li>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;</li> <li>Specific prohibition against the keeping of anonymous accounts or accounts in fictitious names should be enacted;</li> <li>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;</li> <li>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;</li> <li>Financial institutions should be required to conduct ongoing due diligence on the business relationship.</li> </ul>	<p>The POCA (MLP<sup>17</sup>) 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 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</p>

<sup>17</sup> The Proceeds of Crime (Money Laundering Prevention) Regulations, 2007

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				<p>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>

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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"> <li>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. .</li> </ul>	<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 22<sup>nd</sup> April 2010 by the Minister of National Security. These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a></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>



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7. Correspondent banking	LC	Financial institutions are not required to ascertain whether respondent institutions have been subject to a ML/FT investigation or regulatory action.	<ul style="list-style-type: none"> <li>Financial institutions should also be required to ascertain whether respondent institutions have been subject to an ML/FT investigations or regulatory action.</li> </ul>	<p>Paragraph 82 of the BOJ (AML/CFT) Guidance Notes 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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</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"> <li>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.</li> </ul>	<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 &amp; Cyber-business” page 144 of these Guidelines.</p> <p>The revised FSC Guidelines are available on the FSC's web site at <a href="http://www.fscjamaica.org/">www.fscjamaica.org/</a></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>

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				<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 22<sup>nd</sup> April 2010 by the Minister of National Security. .</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</p>
9. Third parties and introducers	LC	<p>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.</p>	<ul style="list-style-type: none"> <li>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.</li> </ul>	<p>The FSC Guidelines were revised to explicitly reflect that:</p> <ol style="list-style-type: none"> <li>Financial institutions should immediately obtain from a third party all the necessary information relating to the CDD process; and</li> <li>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)</li> </ol> <p>The revised FSC Guidelines are available on the FSC's website at <a href="http://www.fscjamaica.org/">www.fscjamaica.org/</a></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"> <li>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.</li> <li>Amend legislation (BOJ Act) to provide statutory basis for guidelines issued by the BOJ and provide for sanctions for non compliance.</li> </ul>	<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>Regulation 12 of the Securities (Conduct of Business) Regulations requires the keeping of detailed records by persons licensed under the Securities Act. Regulation 12(5) requires that documents relating to executed orders or instructions shall be maintained for</p>

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				<p>a period of seven years and shall be kept in a readily accessible location for at least the first two years,.</p> <p>Section 29 of the Insurance Act speaks to the keeping of records of local policies and premiums. However, it does not specify a time frame for the keeping of such records. The FSC <b>taking steps</b> to amend the Insurance Act by 2012 to ensure that books and records are maintained for at least 5 years. It should be noted however, all businesses subject to taxation in Jamaica usually keep records for 7 years in order to facilitate the six year assessment period for tax assessments under section 72(4) of the Income Tax Act as well as compliance with section 89 of the Income Tax Act (the latter does not specify a time-frame).</p> <p>The FSC Guidelines recommend a 5-year timeframe for the keeping of records of identity and transactions. See page 130 (s. AA) of the Guidelines which are available on the FSC's web site at <a href="http://www.fscjamaica.org">www.fscjamaica.org</a>.</p> <p><b>Paragraphs 3 and 6</b> 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 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 SBP<sup>18</sup>s 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</p>

<sup>18</sup> Standards of Best Practice (SBP)

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				<p>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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</p> <p>The BOJ is also considering an Omnibus statute which will provide the BOJ with regulation-making powers.</p> <p>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. 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>

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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"> <li>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.</li> </ul>	<p><b>See note regarding the New Government Administration at R. 1 above.</b></p> <p>See updates re: POCA amendments at R. 1 above.</p> <p>A draft Cabinet Submission is being prepared to amend the POCA to ensure it fully addresses this matter in line with CFATF recommendation</p> <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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</p> <p>Pages 116 -118 (s. X to Y) of the FSC's Guidelines speak to the recognition and treatment of complex and unusual patterns of transactions.</p> <p>Page 130 ( s. AA) of the FSC's Guidelines indicates that records of suspicious transactions should be kept for <u>at least 5</u> years and should not be destroyed unless permission to do so is granted by the FIU/designated authority.</p> <p>The FSC's Guidelines are available on the FSC's web site at <a href="http://www.fscjamaica.org">www.fscjamaica.org</a>.</p>

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12. DNFBP–R.5, 6, 8-11	NC	DNFBPs are not covered under the existing AML/CFT regime.	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	<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><b>See note regarding the New Government Administration at R. 1 above and SRIII below.</b> 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"> <li>Clarify that the STRs need to be filed irrespective of whether a transaction relates to tax matters.</li> </ul>	<p><b>See note regarding the New Government Administration at R. 1 above.</b></p> <p>See updates re: POCA amendments at R.1 above.</p> <p>Under POCA s. 95 which covers banking and non-banking financial institutions, the obligations for suspicious transaction reporting extends to cases where there is a suspicion of a person engaging in money laundering (i.e. the transactions involving criminal property). Property is criminal property if it constitutes a person's benefit from criminal conduct and "criminal conduct" means any conduct which constitutes an offence in Jamaica (including tax infringements).</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 been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</p>
14. Protection & no	LC	No specific provision to prohibit tipping off when STR or related information is being reported	<ul style="list-style-type: none"> <li>Clarify that the tipping off is prohibited when STR or related information is being reported to</li> </ul>	Section 97 of the POCA makes tipping off an offence. The offence of tipping off is created in relation to


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tipping-off			the FIU.	<p>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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank’s web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</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"> <li>The authorities should consider issuing specific CFT guidance for all entities covered by the TPA.</li> </ul>	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.
16. DNFBP–R.13-15 & 21	NC	DNFBPs are not covered under the existing AML/CFT regime.	<ul style="list-style-type: none"> <li>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.</li> <li>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</li> </ul>	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 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.

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			<p>Recommendation 16 with regard to applying Recommendations 13 and 14.</p> <ul style="list-style-type: none"> <li>The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBS 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.</li> </ul>	<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 &amp; the Public Service, Ministry of Security, Ministry of Foreign Affairs &amp; Foreign Trade). The BOJ has recommended the steps necessary to implement the regime as follows-</p> <ul style="list-style-type: none"> <li>Passage of legislation dealing with Trust &amp; Corporate Service Providers;</li> <li>Amendments to the Real Estate Board Act; the Public Accountancy Board Act and the Legal Professions Act.</li> <li>Public sensitization initiatives to be undertaken by the FID.</li> </ul> <p>In February 2010 meetings with the relevant regulatory bodies (i.e. Real Estate Board and Public Accountancy Board) were held. A meeting is to be scheduled with Legal Profession on the pending regime. The Public Accountancy Board is pursuing amendments to its Rules and Regulations. The amendments include a section treating with the matter of Money Laundering (i.e. relevant criminal legislation; client identification; record keeping; recognition of reporting suspicion transactions; tipping off). The PAB is also to look at enhancing its overall regulatory regime with a view to</p>




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				<p>extending its monitoring obligations to include monitoring for compliance with AML/CFT requirements.</p> <p>BOJ has also been meeting (December 2010 and July 2011) with the Legal Profession (i.e. General Legal Council and Jamaica Bar Association Representatives) 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"> <li>Consider making provisions in the FIA prohibiting the establishment of operation of shell institutions.</li> <li>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.</li> </ul>	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

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				<p>requirements-</p> <ul style="list-style-type: none"> <li>➤ Applicants must be a company; FIA (s.3)</li> <li>➤ The company must be licensed under the FIA (s.3):</li> <li>➤ A company means a company formed and 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)</li> </ul> <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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</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"> <li>• Establish a formal system of notifying the Customs authorities of other countries in case of detection of unusual shipments of currency etc.</li> </ul>	<p>See update to SRIX regarding the implementation of the Transportation of Cash Order.</p> <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</p> <p>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</p>

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				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.
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"> <li>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.</li> <li>Take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML.</li> </ul>	<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 &amp; 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, Ministry of Security, Ministry of Foreign Affairs &amp; Foreign Trade). The BOJ has recommended the steps necessary to implement the regime as follows-</p> <p> Passage of legislation dealing with Trust &amp;</p>

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				<p>Corporate Service Providers;</p> <ul style="list-style-type: none"> <li>✚ Amendments to the Real Estate Board Act; the Public Accountancy Board Act and the Legal Professions Act.</li> <li>✚ Public sensitization initiatives to be undertaken by the FID.</li> </ul> <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-</p>

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				<p>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 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"> <li>➤ Reduction in clearing periods for cheque payments;</li> <li>➤ Implementation of a Real Gross Time Settlement System (RTGS) scheduled to take effect in 2008; and eventually</li> <li>➤ Cheque truncation regime;</li> </ul> <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> <p>In December 2010 the Payment, Settlement and Clearing Act was passed. This Act will among other things address</p> <ul style="list-style-type: none"> <li>✚ The finality of payments, and</li> </ul>

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				 The effect of insolvency on payments in the system .
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"> <li>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.</li> </ul>	<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> <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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>. 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:</p>

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				<p>Transaction Monitoring - <i>II. Recognition Of Suspicious Customers / Transactions</i></p> <p>Please see also pages 146 to 148 of the FSC's Guidelines which point to high risk and non-cooperating countries. On page 117 of the Guidelines there is mention of the regional risks associated with financial crimes which may give rise to suspicion.</p>




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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"> <li>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.</li> <li>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.</li> </ul>	<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 requirements under the POCA were approved on 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</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	<p>Lack of proper consolidated supervision; Exclusion of some financial institutions from the purview of MLA. Non completion of CDD assessments for money remittance agents.</p>	<ul style="list-style-type: none"> <li>Harmonize the definition of financial institutions in the MLA and the TPA with that given in the AML/CFT Assessment Methodology.</li> <li>Introduce and implement consolidated supervision.</li> </ul>	<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</p>



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				<p>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-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</p>

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				<p>before the end of the IMF Programme.</p> <p>In August, 2010 Cabinet approved the recommendations proposing the implementation of the Omnibus legislation. Drafting instructions have been issued to the office of the Chief Parliamentary Counsel.</p> <p>It is also on the FSC's legislative schedule as part of the IMF/MEFP programme that the FSC should amend the Financial Services Commission Act to close gaps in the power of the FSC to conduct consolidated supervision in line with the above mentioned Omnibus Banking Bill. The FSC is mandated by policy makers to have this matter completed before the end of 2012.</p> <p>It is useful to note that section 27 of the Insurance Act currently empowers the FSC to obtain group accounts including the consolidating balance sheet and consolidated profit and loss accounts. Each subsidiary or other associated company in the group shall, within ninety days of the end of its financial year, submit to the Commission an audited balance sheet and profit and loss account in respect of all business transacted by it in that year, and signed by not less than two of its directors.</p> <p>This existing power is critical in the AML/CFT effort not only for prudential supervision, but in identifying red flags for financial crimes, for detecting financial crimes and constructing paper trails.</p> <p>The FSC is seeking to have the Securities Act amended to give the Commission similar powers in relation to the Securities Industry.</p> <p>The Insurance Act also currently allows the Commission to direct the disposal or winding-up of a subsidiary in the event that the consolidated or individual accounts indicate the likelihood of insolvency of the subsidiary .</p> <p>Section 76 (l) of the Securities Act empowers the FSC to prescribe reports that it may require from companies that are members of a group.</p>

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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"> <li>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.</li> </ul>	<p><b>See note regarding the New Government Administration at R. 1 above.</b></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>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 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"> <li>(a) warnings, reprimands, censures or admonishments;</li> <li>(b) revocation or suspension of a licence; or</li> <li>(c) variation of the terms of a licence</li> </ul>

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				<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"> <li> Obstructing inspectors and authorized officers from carrying out their duties;</li> <li> Making false or misleading statements in relation to applications for licences or renewals of licences;</li> <li> Operating in contravention of the Act, regulations thereunder or a licence.</li> </ul> <p>See also comments at criterion 16 and criterion 20 above.</p>
25. Guidelines & Feedback	PC	<p>Insufficient mechanism for providing feedback to the financial institution and DNFBPs on a systematic basis. No guidelines for the DNFBPs;</p>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Issue guidelines for the DNFBPs after bringing them under the AML/CFT regime.</li> <li>• The FSC should remove the statement advising that use of the FSC GL is not mandatory.</li> </ul>	<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. 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</p>

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				<p>response being issued in acknowledgement of the receipt of reports being made to that authority as required by regulation 17 (5) of the Proceeds of Crime (Money Laundering Prevention) Regulations.</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 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> <p>Inorder to comply with the FATF recommendation for certain requirements to be legally enforceable efforts are underway to</p>

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				give the key areas of the Guidelines legal effect, thus making specified areas required by laws, regulation or other enforceable means. This is hoped to be completed during the 2012 calendar year.
<b>Institutional and other measures</b>				
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"> <li>The proposed FIDA which will put the FIU on a statutory footing should be enacted as soon as possible.</li> </ul>	<p><b>See note regarding the New Government Administration at R. 1 above. Jamaica has a new (acting) Chief Technical Director of the FID.</b></p> <p><b>A representative of the FIU (FID) attended the Egmont Working Group meeting held in the Philippines in January-February, 2012. The FID is awaiting formal response from the Egmont Group regarding membership its membership application.</b></p> <p>Since the passage of the FID Act, the FID's application for Egmont membership was re-submitted. The on-site visit was undertaken between August 29-30, 2011 by representatives from Canada (FINTRAC) and the Bahamas (FIU), which countries are the sponsors for Jamaica. The on-site visit is the 5<sup>th</sup> step in the application process.</p> <p>Jamaica has a new Chief Technical Director of the FID.</p> <p>The FID Act was passed on March 26, 2010. 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>

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				The FID contributed typology cases for the CFATF's Typology Working Group meeting held in Panama in July 2009.
27. Law enforcement authorities	LC	The TPA became operative in Jamaica on the 6 <sup>th</sup> 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"> <li>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.</li> </ul>	<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</p>		<p>POCA does contain a wider variety of powers for the Designated Authority. These include:</p> <ul style="list-style-type: none"> <li>a) Search and Seizure Warrants</li> <li>b) Disclosure Orders</li> <li>c) Ancillary Orders</li> <li>d) Customer Information Orders</li> <li>e) Account Monitoring Orders</li> </ul> <p>The perceived shortfalls as regards the Monitoring Orders and particularly applications for renewal of such Orders, have been corrected.</p> <p><b>See note regarding the New Government Administration at R. 1 above.</b></p> <p>The POCA is also being amended to outline the powers</p>

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		powers particularly with respect to AML matters, and no doubt monitoring other orders compelling the production of records, will be used more frequently.		that competent authorities designated under the POCA will have in relation to their role of monitoring compliance with the AML requirements under the POCA.



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29. Supervisors	LC	FSC currently developing assessment techniques in the AML/CFT area. Examination of insurance companies started in a limited manner.	<ul style="list-style-type: none"> <li>FSC should implement a comprehensive system of AML/CFT onsite examination to test compliance of its licensees.</li> </ul>	<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>Subsequent to the review, AML/CFT examinations of the registrants in the insurance sector have been conducted. Between 2006 and 2010, the FSC (Insurance Division) has conducted 34 examinations of insurance companies and 6 are scheduled for the period June to October 2011.</p> <p>Between 2005 and 2011, the FSC (Securities Division) has conducted 47 examinations and 10 are scheduled to be concluded by March 2012.</p> <p>Since the Pensions industry came under the FSC's jurisdiction, the FSC (Pensions Division) has conducted 2 AML/CFT examinations and has examined 3 Pension plans, 2 Administrators, 3 Investment managers and 1 corporate trustee.</p>
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</p>	<ul style="list-style-type: none"> <li>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.</li> <li>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.</li> </ul>	<p>The Ministry of Justice in collaboration with a team of international donor partners hosted a 3 day training conference in Montego Bay on the matter of establishing and strengthen Drug Treatment Courts in the Caribbean region. The target market for this conference included judges, prosecutors, defence attorneys, treatment providers and police officers across the island. The objective of establishing Drug Treatment Courts (ongoing pilot project in Jamaica) is to provide an avenue of dealing with non-violent offenders charged with possession of drugs, the idea being to give such persons the option of receiving treatment instead of incarceration. The conference which was held under the theme 'Establishing and Consolidating Drug Treatment Courts in the Caribbean: A Team Effort' was organized under the recently launched Caribbean DTC project, an initiative</p>

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		<p>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>		<p>coordinated by the Organisation of American States through the Inter-American Drug Abuse Control Commission.</p> <p>The FSC has a Senior Director who is ACAMS Certified (i.e. Association of Certified Money Laundering Specialists) and at least one other will begin the certification process in the current year.</p> <p>In April and June 2010, two representatives from the FSC participated in Central Banking Publications, course: How to Implement a Risk-based Framework to AML and CFT. The course provided practical scenarios and advise that regulators and supervisors can use to prepare for, undertake and respond to an evaluation. It also provided hands-on experience in how these evaluations are conducted, and what supervisors need to understand about the evaluation process. The course also provided advice as to how regulators can best interact with the financial market so as to earn their cooperation and achieve the most positive outcome from the external examination.</p> <p>In November 2010, the FSC hosted its fourth Annual AML/CFT Conference themed: "Understanding and Executing for Compliance with the AML/CFT Regime: A Global Perspective". The objective of this program was to (a) increase participants' awareness and understanding of the requirements for the AML/CFT regime in light of current regulatory requirements and international dictates; and (b) sensitize participants to the importance of compliance with the AML/CFT laws. Invitations were extended to all stakeholders who have a critical role to play in the successful implementation and execution of a country's AML/CFT program, namely, regulators, law enforcement officers, banking and non-banking financial institutions, Politically Exposed Persons (PEPs) and certain non-financial businesses and professionals, for example, lawyers, accountants, realtors, who are commonly referred to as Designated Non-Financial Businesses and Professionals</p>

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				<p>(DNFBPs), as well as car dealers.</p> <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> <ul style="list-style-type: none"> <li>Types of fraud;</li> <li>Introduction to forensics;</li> <li>Conducting forensic audits;</li> <li>Fraud deterrence;</li> <li>Fraud detection /examination;</li> <li>Conducting forensic audits(tools &amp; techniques) and</li> <li>Interviewing/interrogation skills.</li> </ul>

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				<p>In March 2009, the FSC hosted its third annual 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"> <li>(i) Computer forensic training with open source tools;</li> <li>(ii) Examining mobile devices;</li> <li>(iii) Investigating internet crime;</li> <li>(iv) Investigating e-mail crime;</li> <li>(v) Trademark and copyright infringement</li> <li>(vi) Recovery deleted files and partitions</li> <li>(viii) Use of evidence in criminal trials</li> </ul> <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"> <li>(i) Better equip investigators to conduct financial investigations under the various Proceeds of Crime legislation in the region;</li> <li>(ii) Strengthen the capabilities of drug law</li> </ul>

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				<p>enforcement in respect of the techniques to be used to make them more effective in their general operations.</p> <p>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.</p> <p><b>The FID by policy undertakes vetting of staff prior to being employed to the organization.</b></p>
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"> <li>• 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.</li> <li>• The Guidance Notes and Guidelines should be reviewed with the enactment of the POCA, TPA and the FIDA.</li> <li>• A formal means of consultation by the competent authorities with the DNFBPs should be established.</li> </ul>	<p>Following the Plenary in May 2011, meetings were held between the BOJ and the stakeholders in Jamaica’s AML/CFT regime (i.e. Ministries of Finance; National Security (including the Jamaica Constabulary Force); Justice (DPP); Foreign Affairs &amp; Foreign Trade and the Financial Services Commission. These meetings are will be convened periodically on an on-going basis to facilitate inter-agency discussion and planning sessions to address emerging and long standing AML issues that need to be addressed as well as to implement the Strategic Implementation Plan (SIP).</p> <p>The FID (through representation by the Chief Technical Director and his 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>

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				<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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</p>
			•	
32. Statistics	LC	<p>Statistics are maintained with regard to the AML legislation and include STRs, forfeiture, ML cases, mutual legal assistance, international requests for co-operation and extradition. Jamaica has recently undertaken a complete review of its AML/CFT regime having recognised that some weaknesses existed, particularly with respect to the legislative framework in the case of AML and the lack of a legislative framework in the case of CFT. To this end, the TPA became operative in Jamaica on the 6th June 2005, subsequent to the on-site mutual evaluation and various other legislative initiatives are underway such as POCA. Many of the statistics are now being produced by the FID relating to 32.2. However, other agencies or bodies have similar responsibilities regarding the forfeiture of property or the investigation of offences and these figures are not consolidated. This deficiency has been recognised and as the FID develops and the legislative framework put in place it is intended that they will become the centralized body responsible for recording all of the statistics required. This will allow for the production of more complete statistics on all the required areas. The lack of consolidated statistics is a minor shortcoming which is being addressed.</p>	<ul style="list-style-type: none"> <li>Statistics regarding the forfeiture of property or the investigation of offences should be consolidated with the FID as the centralized body responsible for the recording all of the statistics required.</li> <li>Statistics related to FT issues should be maintained.</li> <li>Bring DNFBSs under AML/CFT regime and maintain statistics on their compliance.</li> </ul>	<p><b>As the collection of statistics from external agencies continues, FID is undertaking to implement the appropriate Information Technology (IT) capabilities to support these activities, including the collection, analysis and dissemination of such information when required.</b></p> <p><b>The establishment of the Statistical Unit is still in progress with the identification and acquisition of key personnel and other requisite resources being pursued to have it fully operational.</b></p> <p>A Statistical Unit is being created to coordinate the collection and dissemination of statistics. Two of four modules of an integrated statistical system have been developed and implemented. Data entry activities are on-going with established timelines to complete that process for historical records simultaneously with real time activities.</p> <p>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.</p> <p>The POCA has provision for the AML requirements</p>

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				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.
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"> <li>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.</li> </ul>	<p><b>The Companies Office of Jamaica revised the draft Cabinet Submission regarding proposed amendments to the Companies Act 2004 to include provisions for the capture of information pertaining to beneficial ownership of a company including the nationalities of the beneficial owners. The Cabinet Submission has been submitted to the Attorney General for approval.</b></p> <p>The Companies Office of Jamaica completed the list of proposed amendments to the Companies Act 2004. A draft Cabinet Submission with the amendments was submitted to the portfolio Ministry on March 31, 2011. In June 2011 a Table showing each provision requiring amendment, the rationale for the particular amendment and any proposed wording for the amendment was submitted to the portfolio Ministry. The COJ did not propose any amendments to the provisions relating to the capture of information regarding beneficial ownership of a company and/or nationalities of the beneficial owners.</p> <p>The Companies Office of Jamaica is presently preparing a list of amendments to be made to the Companies Act 2004 for submission to its portfolio Ministry for onward transmission to Cabinet for approval. Included in that list will be the amendments to facilitate the capture of information relating to beneficial ownership as well as the nationalities of beneficial owners. It is projected that the list will be forwarded to the Ministry on or before March 31, 2011.</p> <p>The Companies Office of Jamaica has completed its research and will make representations to the political</p>

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				<p>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. .		
<b>International Cooperation</b>				
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"> <li>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. .</li> <li>The POCA should be enacted as soon as possible.</li> </ul>	<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"> <li>While mutual legal assistance can be extended for prescribed offences which are widely defined, enactment of POCA will serve to extend and clarify the definition in Jamaica's statutes. The TPA provides for a terrorism offence to be prescribed under MACMA. Again, POCA needs to be passed with due</li> </ul>	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 from Jamaica to Canada.



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			haste.	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"> <li>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..</li> </ul>	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"> <li>See Recommendation 36.</li> </ul>	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"> <li>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.</li> <li>The proposed legislation to empower the FID to share information with overseas counterparts should be enacted as soon as possible.</li> </ul>	<p>The FID signed its first MOU with a foreign FIU on November 19, 2010.</p> <p>The FID Act was passed on March 26, 2010. 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>

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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;"
<b>9 Special Recommendations</b>				
SR.I Implement UN instruments	LC	<p>Terrorist offences are not predicate offences for ML;</p> <p>No provision to directly freeze the assets of listed entities in the TPA;</p> <p>No provision to allow for the confiscation of property of corresponding value in the TPA.</p> <p>Assessment of the implementation of the TPA is not possible because of the recent enactment of the legislation.</p>	<ul style="list-style-type: none"> <li>• See Recommendation 35.</li> </ul>	<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 &amp; 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"> <li>• The POCA should be passed as soon as possible.</li> </ul>	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	<p>Due to its recent enactment there are no results to effectively assess the implementation of the TPA.</p> <p>No provision to directly freeze the assets of listed entities in the TPA.</p> <p>No provision to allow for the forfeiture of property of corresponding value in the TPA.</p>	<ul style="list-style-type: none"> <li>• The TPA should have a direct provision to freeze the assets of listed entities.</li> <li>• The TPA should have provision to allow for forfeiture of property of corresponding value.</li> </ul>	<p><b>On December 29, 2011, Jamaica's General elections took place and a New Administration has been installed. The new Minister of Finance and Planning is the Hon. Dr. Peter Phillips; the new Minister of National Security is Mr. Peter Bunting; the new Minister of Justice is Senator the Hon. Mark Golding, and the new Minister of Foreign Affairs and Foreign Trade is Senator the Hon. Arnold J. Nicholson Q.C. By practice, when there is a change in Administration, proposed amendments to legislation must be reaffirmed in principle by the incoming Government. Jamaica is now in the process of apprising the new Administration of existing AML/CFT requirements, deficiencies to be addressed and the proposed legislative amendments to address these deficiencies.</b></p> <p>In March 2011 the TPA was amended to reflect a freezing provision more consistent with the requirement of FATF in relation to the freezing of the assets of listed entities.</p> <p>Further amendments are being prepared for the TPA to, among other things, expressly allow for the confiscation (forfeiture) mechanisms to be applicable to property of corresponding value. Proceeding with this amendment will depend on whether the legal advice given to the Ministry clearly indicates that this amendment is constitutional. Cabinet <b>will be</b> asked to approve these amendments and the relevant bill is to be drafted. <b>The Cabinet Submission is being finalized and should be before the Cabinet by end of March 2012 for approval.</b></p> <p>The TPA will be amended to:</p> <ul style="list-style-type: none"> <li>○ reflect a freezing provision more consistent with the requirement of FATF in relation to the freezing of the assets of</li> </ul>

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				<p>listed entities.</p> <ul style="list-style-type: none"> <li>expressly allow for the confiscation (forfeiture) mechanisms to be applicable to property of corresponding value.</li> </ul> <p>Cabinet has approved these amendments and the relevant bill is being drafted.</p> <p>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)</p>
SR.IV Suspicious transaction reporting	PC	<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"> <li>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.</li> </ul>	<p>The TPA will be amended to include a reporting requirement where there are reasonable grounds to suspect that a transaction may be linked or related to or are to be used for terrorist acts. Cabinet has approved these amendments and the relevant bill is being drafted.</p> <p>The Terrorism Prevention (Reporting Entities) Regulations under the TPA are also being amended to address deficiencies identified in relation to the following FATF Recommendations –</p> <p>R. 5 - CDD R. 8 – Emerging Technology and non-face-to-face business R. 9 – Third parties and Introducers R. 10 – Record Keeping</p> <p>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</p>

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				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"> <li>• See Recommendation 36.</li> </ul>	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	<p>Financial institutions are not required to include full originator information in the message or the payment form accompanying cross border wire transfers;</p> <p>There is no specific instruction that for domestic wire transfers the ordering financial institution should either comply with the requirement for cross border transfers or include in the message or payment form the originator's account 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>	<ul style="list-style-type: none"> <li>• 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.</li> <li>• Develop modules for testing compliance with Special Recommendation VII.</li> </ul>	<p>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 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"> <li>❶ Domestic &amp; cross border transfers;</li> <li>❶ Batch wire transfers, and</li> <li>❶ Wire transfers not accompanied</li> </ul>

<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Summary of Factors for Rating</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Jamaica</b>
		<p>There are no measures in place to effectively monitor the compliance of financial institutions with Special Recommendation VII</p> <p>Existing instructions do not ensure that the requirements of Recommendation 17 also apply in relation to the obligations under Special Recommendation VII</p>		<p>by complete originator information</p> <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 22<sup>nd</sup> April 2010 by the Minister of National Security.</p> <p>These revised Guidance Notes are available on the Bank's web site at <a href="http://www.boj.org.jm">www.boj.org.jm</a>.</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"> <li>The authorities should implement the requirements of Special Recommendation VIII taking into consideration the measures set out in the relevant Best Practices Paper.</li> </ul>	These enhancements are still pending.
SR.IX Cash Couriers				<p>The Ministry of National Security ("the Ministry") has implemented a Transportation of Cash Order pursuant to section 101(2) of the Proceeds of Crime Act. This Order is applicable to persons leaving or entering Jamaica whose declarations reflect that they have in their possession cash amounting to or exceeding the equivalent of USD10,000.00. The order targets all persons entering or leaving Jamaica which description includes travelers; shippers or mailers and persons in charge of conveyance. Cash means – all notes and coins in any currency including bearer negotiable instruments such as postal orders, cheques including traveller's cheques money orders, bearer bonds and bearer shares.</p> <p>The Transportation of Cash Order was gazetted in July 2010 and the Ministry has circulated the Order to stakeholders to facilitate smooth implementation of the form. Sensitization sessions and public education programmes will also be pursued to facilitate the smooth implementation of this Order.</p>

