

JAMAICA: FOLLOW-UP REPORT



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March 6, 2009

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I. Introduction

1. This report represents an analysis of Jamaica's report back 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. Jamaica was asked to present a follow-up report at the next Plenary in St. Kitts after which it would be determined whether it would be placed on regular or enhanced follow-up. Jamaica was rated partially compliant or non-compliant with 18 Recommendations, as indicated below. Please note that at the time of this Evaluation, SR. IX was not included in the evaluation process and accordingly there is no rating for that subsequent Recommendation.

Partially Compliant (PC)	Non-Compliant (NC)
R. 1 (Money laundering offence)	R. 12 (DNFBPs – R. ,6,8-11)
R. 5 (Customer due diligence)	R. 16 (DNFBPs R. 13-15 and 21)
R. 8 (New technologies and non-face-to-face business)	R. 20 (Other non-financial businesses and professions & secure techniques)
R. 10 (Record keeping)	R. 24 (DNFBPs regulation, supervision and monitoring)
R. 11 (Unusual transactions)	SR. VIII (Non-profit organisations)
R. 13 (Suspicious transaction reporting)	
R. 21 (Special attention for higher risk countries)	
R. 25 (Guidelines and feedback)	
R. 35 (International cooperation - Conventions)	
R. 38 (Mutual legal assistance on confiscation and freezing)	
R. 40 (Other forms of cooperation)	
SR. IV (Suspicious transaction reporting)	
SR. VII (Wire transfer rules)	

II. Summary of progress made by Jamaica

2. At the time of the Mutual Evaluation of Jamaica, there were limitations noted with the regard to the criminalisation of money laundering and the Examiners recommended that the proposed Proceeds of Crime Bill at that time be passed into legislation 'with due haste'. The Proceeds of Crime Act (POCA) was passed and came into effect in May 2007. The Money Laundering Act (MLA) and the Drug Offences Forfeiture of Proceeds Act (DOFPA), which was the legislation in effect during the evaluation, were repealed. The POCA allows for any crime to constitute a predicate offence to money laundering. The Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 are also in effect.

Recommendation 1

3. As stated above, the POCA was enacted into law as recommended by the Examiners. With regard to the definition of money laundering being extended to incorporate all the predicate offences as stipulated by the FATF, the POCA permits any crime to constitute a predicate offence for money laundering. Additionally, section 92 of the POCA provides that money laundering is an act comprising dealings of any kind with criminal property. Both criminal property and criminal conduct are defined by the POCA. Following the enactment of the POCA, several persons have been arrested and charged under the Act for criminal activities including money laundering. The most recent has been the arrest in July 2008 of two of four persons connected with a lottery scam. Jamaica's prosecution of its first human trafficking case resulted in the sentencing on November 11, 2008 of the persons charged who pled guilty and were sentenced to imprisonment for one (1) year.
4. Jamaica has not only enacted the legislation and widened the scope of ML predicates as recommended by the Examiners, but has also implemented the relatively new Act. Since the passage of the POCA, the Act has been implemented as follows:

• ¹ Number of Customer Information Orders Served	20
• Number of Disclosure Orders Served	14
• Number of Restraint Orders Obtained	2
• Estimated value of property restrained	\$25.4m
• Persons charged with ML offences	8 ²
• Persons convicted for ML offences	1(Nov. 07)

Recommendations 5 and 8

5. The POCA (MLP) Regulations, 2007 has adequately dealt with all but one of the recommendations made by the Examiners with regard to meeting the requirements for Rec. 5. The outstanding recommendation deals with the requirement for financial institutions to conduct ongoing due diligence on the business relationship. Regulation 7(1) essentially prohibits the continuation of a business relationship where the customer information has not been updated at least once every five (5) years. It appears that this requirement will cover the need to keep customer updated and relevant (Essential Criterion (E.C.) 5.7.2), for financial institutions both under the provisions of regulation 6 of the POCA (MLP) Regulations and the BOJ AML/CFT Guidance Notes (GN). More specifically, the GN requirements also allow compliance with E.C. 5.7.1. It should be noted that the Guidance Notes provisions are only applicable however to financial institutions that are subject to the BOJ supervision. With regard to all other financial institutions, the requirements of E.C. 5.7.1 do not appear to be covered. Specifically the regulation only requires maintenance of records while the Criterion calls for an enquiry

¹ The above statistics were provided by the Financial Crimes Investigative Unit within the FID of the Ministry of Finance.

² Seven (7) persons are currently before the Courts.

as to whether the transactions are consistent with KYC. Accordingly, compliance with E.C. 5.7.1 as it pertains to financial institutions other than those supervised by the BOJ remains outstanding.

6. With regard to Rec. 8, the Examiners recommended that FSC regulated institutions (insurance, unit trust, pensions and securities) be required to have policies and procedures in place to prevent the misuse of technological developments, the FSC Guidelines on Anti-Money Laundering and Counter-Financing of Terrorism has been updated to include a segment on 'Internet & Cyber-business', which provides suggestions to financial service providers that are offering financial services over the Internet and also information on smartcards and E-Cash and their vulnerabilities. Non-face-to-face measures are also provided for in the FSC Guidelines. The Bank of Jamaica Guidance Notes on the Detection and Prevention of Money Laundering and Terrorist Financing Activities have also been revised (March 2007) and provides direction to its licensees on the FATF report on 'New Payment Methods' and how this can be used to facilitate money laundering and terrorist financing.

Recommendation 10

7. The new Money Laundering Prevention Regulations that have been enacted since the Evaluation has satisfied the recommendations of the Examiners with regard to providing that record transactions be kept for a period of at least five years after the transaction and for the keeping of identification records for a period of at least five years after the termination of the business relationship. Specifically, Reg. 14 provides that records be kept for a 'period of five years commencing with the date on which the relevant financial business was completed or the business relationship was terminated whichever occurs later. There however, appears to be no provision in law or regulation with regard to keeping records for a longer period on the request of a competent authority in specific cases or that financial institutions ensure that all customer transaction records and information are available on a timely basis to domestic competent authorities. With regard, to the latter, Jamaica has cited paragraph 46 of the BOJ AML/CFT Guidance Notes, which requires financial institutions to ensure that due diligence checks and reviews are available to the Competent Authority and Designated Authority. However, these Guidance Notes are neither law nor regulation as required for compliance with this Recommendation.
8. It should be noted that the Financial Investigations Division Act, will provide that ("*The CTD may require any person to keep such books, records or things, relating to the functions of the Division*" - See proposed clause 31), the idea being that a person holding records in respect of which the Division is concerned, can be subject to record retention directions by the CTD. Additionally, the Jamaican Authorities have stated that non-compliance with the AML/CFT Guidance Notes will be interpreted by the Supervisory Authority (BOJ) as unsafe/unsound business practices in respect of which Regulatory action under the respective statutes – BA, FIA and BSA can be taken. Institutions have in the past been cited/warned about the importance of compliance.
9. In making a current determination as to whether the BOJ AML/CFT Guidance Notes are to be considered as other enforceable means (OEM) as defined by the FATF, note has

been taken as to paragraph 7 of the Guidance Notes. Paragraph 7 basically provides that the BOJ will consider a breach of the POCA and Regulations and non-adherence to the Guidance Notes to 'constitute unsafe and unsound practices' Paragraph 8 of the Guidance Notes provides further that amendments to the Banking Act the Financial Institutions Act and the Bank of Jamaica (Building Societies) Regulations provides that breaches of the AML/CFT legislation (now the POCA and Regulations, and the Terrorism Prevention Act (TPA) could result in the suspension or revocation of a financial institution's licence

10. Jamaica has submitted the following cases relating to the enforcement of the BOJ Guidance Notes:
 - (a) The Bank has required one of its licensees to provide a Board undertaking to deal with shortfalls in its AML/CFT framework including addressing breaches of the Guidance Notes, notably with regard to retrospective due diligence issues. The Board undertaking also required an audit by external auditors to bring the policies and procedures of the institution in line with the requirements of both the applicable laws and the Guidance Notes.
 - (b) The Bank has also directed institutions to carry out retrospective due diligence exercises which requirement is contained in the Guidance Notes.
 - (c) BOJ has issued specific Directions to licensees requiring that accounts be closed as full information on the account holders was not in place per paragraph 45 of the Guidance Notes – 2 instances.

Recommendation 11 and 13

11. The provision for financial institutions to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic purpose and to put those findings in writing and to keep those findings for a period of at least five (5) years is contained at paragraph 101A of the BOJ AML/CFT Guidance Notes. However, as discussed above these will only satisfy the FATF requirements if the Guidance Notes are considered to be OEM. While it is noted that regulation 2(3) of the POCA (MLP) Regulations states that a court shall take the guidance notes into consideration in determining compliance with the Regulations and that the Attorney General has issued a formal advice that the provision makes compliance therewith mandatory, this is insufficient to make the GN OEM as the licensees should know explicitly what the sanctions for the breach of the GN are. Once it is within the purview of the Court such sanctions will be left to the discretion of the court. The Supervisory Authority should have clear powers to impose sanctions directly on its licensees.
12. Additionally, section 94(3) of the POCA mandates that financial institutions pay attention to all complex, unusual or large business transactions and unusual patterns of transactions whether completed or not. However, this requirement is to be entertained when financial institutions are considering making a disclosure. In other words it has combined the requirement under Rec. 11 with that of Rec. 13 and is not a stand alone requirement as required by the FATF. With regard to regulation 3(6) and (7), which mandates financial institutions to comply with the directions of the Designated Authority and impose a penalty for failure to do so is not sufficient to meet the requirement that financial institutions examine the background and purpose of these types of transactions and keep those findings in writing.

13. Under the POCA, any crime constitutes a predicate offence for money laundering as the offence of money laundering occurs in the event that dealings of any kind with criminal property (i.e. benefit derived from criminal conduct) takes place. (See section 92). (See also paragraph 3 above). Tax evasion is an offence in Jamaica (See section 99 of the Income Tax Act) and any dealings which permit a person to benefit from the act of tax evasion, would, under POCA, constitute a money laundering offence. The BOJ AML/CFT Guidance Notes have since been revised to take account of the POCA. The fact that any crime including tax offences would constitute a predicate offence under the POCA and that there is a definite requirement for the disclosure of suspicious transactions under this Act, it can be construed that STRs can be filed even where the suspicion involved tax matters and so this recommendation has been met.

Recommendation 12 and 16

14. The POCA at section 2(1)(i) provides for the Minister of National Security to declare any person a financial institution who is not listed under the current definition of ‘financial institution’. Additionally, paragraph 1(2) of the Fourth Schedule to the POCA defines a ‘designated non-financial institution’ and also provides for the Minister to designate such institutions. To date there have been no designations by the Minister of National Security. Accordingly, Jamaica has not complied with the Examiners’ recommendations with regard to Recs. 12 and 16. There have also been no amendments to the Terrorist Prevention Act that would include DNFBPs under that regime.

Recommendation 20

15. Since the Mutual Evaluation, the Financial Investigations Division (FID) has begun an assessment of this category of non-bank financial institutions other than DNFBPs. Preliminary findings show that there could be vulnerability in the entertainment industry. Pawnbrokers have been assessed as being relatively insignificant and not posing a ML risk at this time. Jamaica is also currently doing a review of its payment systems with regard to establishing laws that would ‘streamline oversight of the system’. In tandem with this initiative has been the reduction in clearing for cheque payments; the introduction of a Real Gross Time Settlement system and a cheque truncation regime. There has also been the development of electronic payments via ATM or online, which has had an impact on the reliance on cash. Jamaica has complied with the requirements of this Recommendation and we look forward to the results of their assessment.

Recommendation 21

16. The BOJ AML/CFT Guidance Notes at paragraphs 87 and 88 require ‘added care’ to be given when dealing with clients who reside in countries that have weak or non-existent laws to detect and prevent ML and FT; that the start of business with such clients should have the approval of senior management and any STRs originating from those countries must be investigated and reported to the Designated Authority. The FSC Guidelines also at Part X paragraph II, provide that ‘from time to time, the authorities or management may determine that because of a high incidence of money laundering/financing of terrorism is associated with persons from certain countries or

regions, additional precautions are required to safeguard against use of accounts or other facilities by such persons, their immediate relatives, associates and representatives’.

17. The status of the BOJ Guidance Notes as OEM is uncertain, while it appears that the FSC Guidelines (based on a reading of Part D (vii (Purpose of the Guidelines) and Part J (Penalties for Non-Compliance) do not qualify as OEM. Accordingly, based on this first criterion it appears that compliance with the Examiners’ recommendation has not been met. Additionally, there is no measure for the background and purpose of transactions that have no economic or visible lawful purpose to be examined. While Jamaica’s reference to section 94(3) of the POCA is noted, as stated previously this is only a consideration for making a disclosure. Further, there is no specific provision to have those findings placed in writing for the availability of competent authorities.

Recommendation 24

18. Jamaica has not taken any definitive measure to deal with DNFBPs and as a result this recommendation has not been implemented.

Recommendations 25

19. In order to provide a proper system of feedback to the financial institutions and the DNFBPs, the Examiners recommended that the Financial Investigations Division Act (FIDA) be enacted. The FID Bill was approved (June 18, 2008) at Legislation Committee for re-tableting in Parliament. Passage of the Bill is expected within the 2008/2009 legislative year. The FID currently provides automatic feedback to entities acknowledging the receipt of reports that they receive. Section 91(1)(g) of the POCA, makes provision for the authorization of a competent authority by the Minister. The competent authority would have responsibility for monitoring ML compliance and issuing guidelines to businesses in the regulated sector.
20. Since the FID Bill has not been enacted and the competent authority has not been authorized by the Minister and no guidelines have been issued to the DNFBP sector, compliance with the Examiners’ recommendations in this regard remain outstanding. The FSC has removed the statement from its guidelines which stated that the guidelines were not mandatory.

Recommendation 35

21. Jamaica has not made the suggested amendments to the Terrorism Prevention Act (TPA). However, the statute and regulations are both being reviewed for upgrade. The POCA has however been enacted (May 2007). The Examiners’ recommendation with regard to the amendments to the TPA thus remains outstanding at this time.

Recommendation 38

22. The enactment of POCA has resulted in compliance with this Recommendation.

Recommendation 40

With regard to the ability to provide spontaneous reporting, the POCA at paragraph 15 of the First Schedule permits the Assets Recovery Agency (also the FID) to provide information that it obtains in connection with any of its functions for ‘investigations and proceedings outside Jamaica, in accordance with the provisions of the Mutual Assistance in (Criminal Matters) Act...’ Disclosures must not contravene the Access to Information Act (Paragraph 15(4)), which refers specifically to Cabinet documents. The reference thereto in the Mutual Assistance (Criminal Matters) Act (MLAT) is to ensure the preservation of this privilege which is entrenched in the laws of Jamaica. Assistance under the MLAT is administered through the Office of the Director of Public Prosecutions (DPP) and the basis of providing assistance there-under is in accordance with the provisions of the MLAT. The FID can currently exchange information with its overseas counterparts under the MLAT but the assistance is effected through the DPP. The MLAT also expressly recognizes informal arrangements that are in place between Jamaica and foreign states (section 3).

23. While this provision allows the exchange of information, it does not appear to be a spontaneous exchange. The FID Bill as discussed earlier should be passed sometime in the 2008/2009 legislative year and is expected to provide for the spontaneous exchange of information between the FID and its international counterparts. Accordingly, the requirement to comply with this Recommendation is still outstanding.

Special Recommendations IV

24. Jamaica has not yet finalized the amendments to the TPA or the Regulations to the TPA. As a result compliance with this recommendation has not been met. Jamaica has advised that the passage of the Regulations under the TPA is expected in the current legislative year of 2008/2009.

Special Recommendation VII

25. The POCA (Money Laundering Prevention) Regulations, 2007 (Regulation 9) requires every regulated business that conducts wire transfers or other electronic funds transfers to keep in its records information on the originator, the recipient and other relevant information. Additionally, the BOJ AML/CFT Guidance Notes provides specific guidance with regard to SR VII on (1) domestic and cross border wire transfers, (2) batch transfers and (3) transfers not accompanied by the complete originator information. These measures allow compliance with the first recommendation made by the Examiners under SR VII. However, no modules for testing compliance have been developed as recommended by the Examiners. Jamaica has however noted that paragraph 92D of the BOJ AML/CFT Guidance Notes indicates that Regulators are required to specifically review whether institutions are in compliance with SRVII. In this regard it should be noted that regular, in-depth annual examinations do continue to incorporate a review of whether licensee’s implementation measures in this regard are appropriate.

Special Recommendation VIII

26. The legislative enhancements necessary to deal with SR VII deficiencies are still pending. Accordingly, this Recommendation has not been complied with.

III. Conclusion

27. Jamaica has enacted both the POCA and the regulations to the POCA since its Mutual Evaluation. Updates have also been made to the BOJ AML/CFT Guidance notes and the FSC Guidelines. Both these legislative and administrative adjustments have led to compliance with some of the Recommendations that were rated PC or NC during the third round of Evaluations. With regard to the core Recommendations, Jamaica has complied with Rec. 1 and 13, while Recs. 5, 10 and SR IV have some outstanding issues. Amendments to the TPA are still necessary to effect compliance with Recs. 12 and 16 and SRs. I, III and IV. The FID Act also needs to be enacted to allow compliance with certain Recommendations (Recs. 25, 35 and 40). The AML/CFT regime for DNFBPs still needs to be established (through Ministerial authorization) and implemented. Measures with regard to non-profit organisations still require enactment.
28. Based on the aforementioned, it is recommended that Jamaica remain on enhanced follow-up and report back to the Plenary in October 2009.