



# Eleventh Follow-Up Report

## Jamaica

### December 3, 2014

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**JAMAICA: ELEVENTH FOLLOW-UP REPORT: UPDATE AND FULL ANALYSIS**

**I. INTRODUCTION**

1. The third round Mutual Evaluation Report of Jamaica was adopted by the CFATF Council of Ministers in October 2005, in Jamaica. Jamaica’s first follow-up report was tabled in May 2009 at which time Jamaica was placed in enhanced follow-up and required to report back to the November 2009 Plenary. However, Jamaica did not submit a report at that Plenary.<sup>1</sup> Jamaica then reported to the May 2010 Plenary (2<sup>nd</sup> FUR) and Plenary agreed to leave Jamaica in enhanced follow-up and to report back in November 2010 (3<sup>rd</sup> FUR). Jamaica remained in the first stage of enhanced follow-up and reported in May 2011 (4<sup>th</sup> FUR), November 2011 (5<sup>th</sup> FUR) and May 2012 (6<sup>th</sup> FUR). The 6<sup>th</sup> FUR recommended that Jamaica be placed in the second stage of enhanced follow-up, which required an onsite visit. Jamaica’s onsite visit occurred September 12, 2012. Jamaica then reported in November 2012 (7<sup>th</sup> FUR) and Plenary placed Jamaica back in the first phase of enhanced follow-up after noting the progress that had been made by Jamaica following the onsite visit. Jamaica therefore continued to report at every Plenary; in May 2013 (8<sup>th</sup> FUR), November 2013 (9<sup>th</sup> FUR) and May 2014 (10<sup>th</sup> FUR). It should be noted that Plenary agreed with the recommendation in the 9<sup>th</sup> FUR to place Jamaica in regular (expedited) follow-up and following significant progress with regard to AML/CFT supervision of the DNFBP sector, Plenary agreed to place Jamaica in one year regular follow-up (10<sup>th</sup> FUR), with a note that Jamaica was at a stage where it could make an application to exit the follow-up process.
  
2. This report is based on the follow-up removal procedure as stated in the CFATF Mutual Evaluation Procedures (amended to 2012) and as further explained by the decision of the Miami Plenary (May 2014)<sup>2</sup>. The report contains a detailed description of the measures taken by Jamaica to address deficiencies in their Core and Key Recommendations that were rated partially compliant (PC) or non-compliant (NC) in the mutual evaluation report. A brief description and analysis of the non-Core and Key recommendations rated PC/NC is also being presented.
  
3. Jamaica was rated PC or NC on the following Recommendations:

<b>Core Recommendations<sup>3</sup> rated partially compliant (PC)</b>
R.1 (Criminalisation of money laundering)
R. 5 (Customer due diligence)
R. 10 (Record Keeping)
R.13 (Suspicious transaction reports)
SR. IV (Terrorist financing suspicious transaction reports)
<b>Key Recommendation<sup>4</sup> rated PC</b>
R. 40 (International Cooperation)
<b>Other Recommendations rated PC</b>
R. 8 (New technologies and non-face-to-face business)
R.11 (Unusual transactions)

<sup>1</sup> The Jamaican delegation presented a letter from the Honourable Audley Shaw, Minister of Finance and Public Service explaining the absence of a report and provided timelines for the passage of relevant AML/CFT legislation.

<sup>2</sup> See. CFATF-plen-XXXIX-aiiii-annex-i-updated.

<sup>3</sup> The FATF Core Recommendations are: R.1, R.5, R. 10, R. 13 and SR. II and SR. IV.

<sup>4</sup> The FATF Key Recommendations are R. 3, R. 4, R. 23, R. 26, R.35, R.36, R. 40, SR. I, SR. III and SR. V.

R. 21 (Special attention for higher risk countries) R.25 (Guidelines and feedback) R. 38 (Mutual legal assistance on confiscation and freezing) SR. VII (Wire transfers)
Other Recommendations rated non-compliant (NC)
R. 12 (DNFBPs – R. 6, 8-11) R. 16 (DNFBPs – R. 13-15 and 21) R. 20 (Other non-financial businesses and professions and secure techniques) R. 24 (DNFBPs regulation, supervision and monitoring) SR. VIII (Non-profit organisations)

4. The review of Jamaica’s progress towards exiting the follow-up process is a desk-based review and as such is not as detailed and thorough as a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC and as such only part of the AML/CFT system is being reviewed. The analysis consists of looking at the main laws, regulations, guidelines and other materials to verify technical compliance with the FATF Recommendations. The level of effectiveness is taken into account through consideration of data provided by Jamaica. The conclusions in this report do not prejudice the results of any future assessments as they are based on information that was not verified through an onsite process.

## II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

### Core Recommendations:

5. **Recommendation 1:** With regard to the deficiencies (MLA only criminalized based on limited offences and the ML predicate offences did not cover the range of designated categories of offences), the Authorities subsequently enacted the Proceeds of Crime Act (POCA) in 2007. The definition of ML in the POCA captures all dealing with criminal property. In addition to enacting the POCA, Jamaica consistently reflected ongoing implementation of the legislation. As can be seen in the attached annex there were several persons charged and convicted of ML and predicate offences (human trafficking etc.) over the relevant period. R.1 has been addressed and has been brought to a level comparable at a minimum to an LC.
6. **Recommendation 5:** The enactment of the POCA (MLPA) Regulations, 2007 and the subsequent amendment to the Regulations addressed the Examiners’ deficiencies so that R. 5 has been brought to a level that is comparable at a minimum to and LC.
7. **Recommendation 10:** The deficiencies were addressed by the enactment and subsequent amendment to the POCA (MLPA) Regulations. Jamaica also enacted the Banking Services Act (which Act will take effect on the date indicated by Appointed Day Notice; the anticipated date for bringing his statute into effect is June 2015) and passed amendments to the Bank of Jamaica Act (BOJ Act). The revision of the BOJ (AML/CFT) Guidance Notes in 2007 and 2009 were also part of the measures needed to ensure that the Recommendation has been brought up to a level comparable at a minimum to an LC.

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8. **Recommendation 13:** The enactment of the POCA and the revision of the BOJ (AML/CFT) Guidance Notes addressed the shortcomings noted by the Examiners and has raised the Recommendation to a level comparable at a minimum to an LC.
9. **Special Recommendation IV:** The deficiency with regard to this SR related to the lack of specificity to transactions that are suspected of being linked or related to terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The 2011 amendment of the Terrorist Prevention Act (TPA) addressed the deficiency and raised the level of compliance with SR. IV to one comparable to LC at a minimum.

### Key Recommendations:

10. **Recommendation 40:** The enactment of the Financial Investigations Division Act (FIDA) in 2010 addressed the deficiencies noted with regard to spontaneous sharing of information and brought this Recommendation to a level comparable at a minimum to an LC.

### Other Recommendations:

11. Jamaica has also made progress in addressing the deficiencies in its non-core and key Recommendations that were rated PC/NC to the extent that the remaining outstanding Recommendations are all at a substantial level of compliance. However, it should be noted that Jamaica's application for removal from the follow-up process is based on its compliance with the Core and Key Recommendations that were rated PC/NC. Accordingly, this report will not provide a detailed analysis of the other Recommendations. A brief overview of the progress made with these other Recommendations is included in section VI of this report for information purposes only.

### CONCLUSIONS:

12. This report provides an analysis of Jamaica's Core and Key Recommendations that were rated PC/NC in its 2005 Mutual Evaluation Report. The analysis indicates that Jamaica has addressed the deficiencies noted in the Core and Key Recommendations rated PC/NC (R. 1, 5, 10, 13, SR. IV and 40) to a level that is comparable to at least an LC. It is therefore recommended to Plenary that Jamaica should be allowed to exit the third round follow-up process.

## III. OVERVIEW OF JAMAICA'S PROGRESS

### Overview of the main changes since the adoption of the Mutual Evaluation Report (MER)

13. Since the adoption of the MER in 2005, Jamaica has focused on enacting, amending and implementing legislation that would strengthen its AML/CFT framework and address the deficiencies noted by the Examiners in the MER. Jamaica also developed and are continuing to implement a regime for DNFBPs. This regime was developed after careful consideration to the risk of the relevant sectors in Jamaica; significant outreach to and education of the DNFBPs with regard to their role and responsibilities for countering ML and TF. During the High Level Mission to Jamaica in September 2012, Jamaica exhibited a high level of commitment at the political, supervisory, law enforcement and private sector levels. This resulted in a timely delivery of its action plan items, which has led to an enhanced level of progress with regard to AML/CFT. Jamaica has also had a significant level of implementation of its AML/CFT laws including a charge under the Terrorism Prevention Act (TPA).

### **The Legal and Regulatory Framework**

14. Jamaica's AML/CFT legal and regulatory framework is based on several pieces of legislation (including regulations) that have been enacted by its Parliament. Guidelines have been issued by the relevant supervisory authorities. These laws and guidance will be discussed in detail in section IV of the report.

## **IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE RECOMMENDATIONS**

### **RECOMMENDATION 1 – PC**

**R.1 (Deficiency 1): 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).**

15. The Money Laundering Act (MLA) was repealed in 2007 when the POCA was enacted. The POCA's enactment dealt not only with R. 1 deficiencies but also deficiencies in other Recommendations (e.g. R. 38). Jamaica followed with swift implementation of the POCA through the arrest, prosecution and conviction of several persons for ML offences. Jamaica also made and continues to make use of the various Orders under the POCA; such as Restraint, Disclosure and Customer Information Orders. The deficiency has been addressed.

**R.1 (Deficiency 2): Predicate offences for money laundering are limited and do not cover the range of offences in the FATF designated categories of offences.**

16. Criminal property is defined at section 91(1) of the POCA as property which 'constitutes a person's benefit derived (whether directly or indirectly) from criminal conduct, irrespective of who carried out or benefited from the conduct'. Section 2 of the POCA defines criminal conduct as 'conduct occurring on or at the appointed day which constitutes an offence in Jamaica or occurs outside of Jamaica and constitutes an offence if the conduct occurs in Jamaica'. Additionally, sections 92 and 93 of the POCA provide for ML offences where a person engages in a transaction that involves criminal property or conceals, disguises, converts or transfers criminal property and acquires, uses and possesses criminal property. The POCA accordingly allows any crime to constitute a predicate offence for ML. The deficiency has been addressed.

### **RECOMMENDATION 1 - OVERALL CONCLUSION**

17. Jamaica through the enactment of the POCA 2007 addressed both deficiencies that were found by the Examiners. In addition to enacting the legislation, Jamaica has had significant levels of implementation of the POCA through ML prosecutions and the confiscation of property. Recommendation 1 now meets a level of compliance that is comparable to a minimum to an LC.

**RECOMMENDATION 5 – PC**

**R.5 (Deficiency 1): No specific law prohibiting the keeping of anonymous accounts or accounts in fictitious names**

18. Pursuant to Reg. 16 of the POC (MLP) Regulations, 2007, a regulated business cannot permit any person to conduct business with it by means of a numbered account, an anonymous account or any account in a fictitious name. The measure fully addresses the deficiency.

**R.5 (Deficiency 2): No undertaking of CDD measures when there is doubt about the veracity or adequacy of previously obtained customer identification data.**

19. Regulation 7(2) of the POC (MLP) Regulations, 2007 provides that there is proper verification where for any business relationship or one-off transaction the regulated business takes measures specified in its transaction verification procedures that will provide satisfactory evidence as to the nature and purpose of the business relationship or one-off transaction. Where such evidence is not provided, the business transaction or one-off relationship will not proceed any further. Pursuant to sub-regulation (3)(d), the circumstances in which sufficient evidence is not provided includes ‘where there is any doubt about the veracity or adequacy of previously obtained evidence of identity.’ The deficiency has been fully addressed.

**R.5 (Deficiency 3): No requirement for financial institutions to verify that any person purporting to act on behalf of the customer is so authorized and identify and verify the identity of that person.**

20. This deficiency is dealt with in Regs. 11, 12 and 13 of the POC (MLP) Regulations, 2007. Specifically Reg. 11 requires that where a person appears to be an agent, (i.e. a person who acts other than a principal), a regulated business must establish the identity of the principal and verify that the agent is acting on behalf of the principal, Reg. 12 pertains to where there are reasonable grounds to believe that the applicant for business is a regulated business or any one-off transaction is carried out with or for a third party pursuant to an introduction by a person who identifies the third party, requires that evidence of the identity of all third parties has to be obtained and recorded under procedures maintained by him. Reg. 13 states what constitutes satisfactory evidence of identity in various circumstances such as in settlement of a trust or other type of legal arrangement where the identity of the settlor, legal owner or other person exercising effective control of the legal arrangement or in the case of a body corporate where evidence of incorporation and the identity of the directors and shareholders if any will be required. The measures specified in the Regulations meet the deficiency.

**R.5 (Deficiency 4): No specific statute for conducting ongoing due diligence on a business relationship.**

21. The POC (MLP) Regulations, 2007 (as amended 2013) at Reg. 7(1)(c)(ii) and (iii) provide that customer information is to be updated at least once every seven (7) years during the course of the business relationship or at more frequent intervals based on a risk profile of the business relationship and wherever there is doubt about the veracity or adequacy of the previously obtained information and the information has not been updated as required then the business relationship shall end. The regulated business is required to perform the risk profile in accordance with the measures under Reg. 7A.

**R.5 (Deficiency 5): No specific requirements for determination of the natural persons that ultimately own or control legal persons or legal arrangements.**

22. With regard to requirements to determine the natural persons that ultimately own or control legal persons, Reg. 13(c)(iii) requires that for a body corporate other than one listed on a stock exchange the identity of each director and shareholder (if any) holding a ten percent (10%) or more interest of the voting rights of the body corporate must be obtained. Moreover, Reg. 13(3) specifies that nothing in Reg. 13 is to be construed as exempting the body corporate, a director or shareholder from the identification procedures provided in the Regulations. Pursuant to Reg. 13(1)(c) of the amended POC (MLP) Regulations 2007, where a transaction involves a settlement, trust or other type of legal arrangement, evidence of identity is satisfactory if it establishes the identity of the settlor, legal owner or any other person who exercises effective control of the legal arrangement and each beneficiary of the legal arrangement including the ultimate beneficial owner of the property concerned in the legal arrangement. Based on the aforementioned, the deficiency has been fully addressed.

**R.5 (Deficiency 6): No requirement for financial institutions to consider making an STR when unable to obtain satisfactory evidence of verification or identity of customers/beneficial owners.**

23. Pursuant to Reg. 7(1)(b) of the POC (MLP) Regulations (as amended 2013), where a regulated business is unable to verify an applicant's identity, the business relationship or one-off transaction, the transaction will be terminated and the regulated business is required to then make an assessment as to whether a disclosure is required in accordance with section 94 of the POCA. Section 94 deals with disclosure where a person has reasonable grounds for knowing or believing that a person has engaged in a ML transaction. This requirement sufficiently deals with the deficiency identified by the Examiners.

**R.5 (Deficiency 7): No requirement for verification of legal status of legal arrangements**

24. The POC (MLP) (Amendment) Regulations 2013, provide at Reg. 13(1)(c)(i)(A) that evidence of identity is satisfactory for a settlement, trust or other type of legal arrangement if it establishes the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement. Additionally, evidence of the identity of each beneficiary under the legal arrangement including the ultimate beneficial owner concerned in the arrangement must be obtained. Regulation 13(1)(c)(i)(B) and 13(1)(c)(iii) also reflect that in the case of transactions involving the aforementioned legal arrangements, evidence of identity is also satisfactory if it discloses the legal status of the arrangement and the provision regulating the power to bind the parties involved. In the case of a body corporate (other than a corporation listed on a stock exchange), evidence of identity is satisfactory if it establishes the identity of each director and shareholder holding 10% or more of the voting rights in the body corporate as well as disclosure of the address of the body corporate and the provisions regulating the power to bind the body corporate and provides evidence of incorporation. These varying requirements to identify the parties to a legal arrangement are sufficient for verification of the legal arrangement. The deficiency has been adequately addressed.

**R.5 (Deficiency 8): No requirement for financial institutions to terminate existing business relationships once the financial institution is not able to obtain satisfactory evidence or**

**verification of the identity of customers/beneficial owners and to consider making an STR in such cases.**

25. This deficiency is addressed at Reg. 7(1)(c) (i) and (ii) of the POC (MLP) Regulations 2007 provide (as noted in part at deficiency #4 above) that there should be review of customer information at least once every seven years or at more frequent intervals as determined by a risk profile of the business relationship and that where there is doubt about the veracity or adequacy of previously obtained customer information data then the business relationship must be terminated and an assessment made as to whether to file a disclosure (STR) under section 94 of the POCA. The risk profile of the business relationship is an assessment of the ML risk to the regulated business as a result of the business relationship. It is clear that these measures allow regulated business to determine the risk of the customer, obtain updated information on the customer and also terminate the relationship where there are doubts about the legitimacy of the information. The deficiency has been satisfied.

**R.5 (Deficiency 9): Compliance testing yet to be completed in the case of FSC regulated institutions.**

26. The Authorities have indicated that the FSC procedure manuals were updated and compliance testing reviews were completed for all FSC regulated entities. This was completed in 2005. Between 2006 and 2013, the FSC (Insurance Division) has conducted fifty-eight (58) examinations of insurance companies and six (6) (three insurers and three intermediaries) were scheduled for the period June to October, 2014. Between 2005 and 2012, the FSC (Securities Division) has conducted fifty-seven (57) on-site examinations of its licensees. During the period April 2012 to June 2013 an additional eleven (11) onsite examinations of the securities sector were conducted. For the period April –March 2014 ten (10) more examinations were conducted. Since the Pensions industry came under the FSC's jurisdiction, the FSC (Pensions Division) has conducted AML/CFT examinations of and has examined eight (8) Pension plans (that is seven (7) retirement schemes and one (1) superannuation fund), four (4) Administrators, five (5) Investment managers and one (1) corporate trustee. The deficiency has been addressed.

**RECOMMENDATION 5 - OVERALL CONCLUSION**

27. Based on the 2013 amendments to the POCA (MLP) Regulations 2007, the outstanding deficiencies noted by the Examiners have been addressed at least to a level comparable at a minimum with an LC.

**RECOMMENDATION 10 – PC**

**R.10 (Deficiency 1): There is no specific legal provisions for transaction record keeping requirements for exchange bureaux and the securities industry.**

28. Pursuant to Section 2(f) and (g) of the POCA, the definition of a financial institution includes a person licensed under the Bank of Jamaica Act to operate an exchange bureau and a person licensed under the Securities Act as a dealer or investment adviser. Regulation 6(1)(a)(ii) of the POCA(MLP) Regulations 2007as amended provides that all regulated businesses (i.e. financial institutions as noted in Schedule 4 of the POCA) shall maintain record keeping procedures in accordance with Reg. 14, which provides that records must be kept for a period of seven (7) years starting from the date on which the relevant financial business was completed or the relationship was terminated whichever is

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later or any period prescribed by the designated authority. Based on the aforementioned, the deficiency has been fully addressed.

**R.10 (Deficiency 2): There is no specific legal provision for transaction records to be kept longer than five years after the completion of the transaction on the instruction of a competent authority in specific cases and upon proper request.**

29. As noted above, pursuant to Reg. 14(5) of the POCA(MLP) Regulations 2007, records can be kept for periods specified by the designated authority. The designated authority needs to give the business concerned notice in writing before the end of the normal record retention period. The deficiency has been fully dealt with.

**R.10 (Deficiency 3): Law 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.**

30. Pursuant to Section 105 of the POCA, a Judge may upon application grant a disclosure order. The disclosure order may be granted with regard to a forfeiture or ML investigation and requires the person to produce or give access to information and material as noted in the order. With regard to access to information, the time period for complying with the order is seven (7) days or a time period for shorter or longer that is set by the Court. Customer information is defined at Reg. 7(5) ) of the POC(MLP) Regulations as including the applicant for businesses' full name, current address, taxpayer registration number or other reference number, date and place of birth (in the case of a natural person) and, where applicable, the information referred to in Reg. 13(1)(c) of the POC(MLP) Regulations. As noted previously, Reg. 13(1)(c) of the amendment Regulations sub-paragraph (i)(A) and (B) speak to information that establishes the identity of the settlor, legal owner or other person who exercises effective control of the legal arrangement and each beneficiary under the legal arrangement (including the ultimate beneficial owners of the property concerned in the arrangement). Regulation 13(1)(c)(i)(B) and 13(1)(c)(iii) speak to information that discloses the legal status of the arrangement and the provision regulating the power to bind the parties involved. In the case of a body corporate (other than a body corporate listed on a stock exchange), the provision refers to information that establishes the identity of each director and shareholder holding 10% or more of the voting rights in the body corporate and which also discloses the address of the body corporate and the provisions regulating the power to bind the body corporate as well as evidence of incorporation
31. Regulation 14 of the POC (MLP) Regulations speaks to access to information being provided to the designated authority or competent authority, while Reg. 14(5) of the amendment Regulations speaks to information being provided to the designated authority within the prescribed period or within such other period indicated in writing by the designated authority. In relation to the competent authority, access to information held by regulated businesses such as banks, securities dealers, cambios etc. can also be pursued under the substantive financial regulatory laws and framework. There are sufficient avenues for relevant information to be obtained by domestic authorities and the time periods for compliance are timely given the nature of the information that is usually being provided. The deficiency is adequately addressed.

**R.10 (Deficiency 4): No provisions in the MLR for transaction record keeping (although contained in the DOFPA)**

32. This deficiency was addressed in the POCA, which replaced the Money Laundering Regulations that was in force when the Mutual Evaluation of Jamaica occurred. See. Immediately above for discussion on the record keeping procedures.

**RECOMMENDATION 10 - OVERALL CONCLUSION**

33. The enactment of the POCA in 2007 and its Regulations has resulted in all but one of the deficiencies being fully addressed. The deficiency pertaining to the lack of a requirement for financial institutions to ensure the timely availability of all customer and transaction records is met to a certain extent by the use of disclosure orders. As noted before, Jamaica has a significant level of implementation of its AML/CFT legislation, which strongly suggests that the receipt of customer and transaction information is not being hampered. The recommendations made by the Examiners have been addressed at least to a level comparable with an LC.

**RECOMMENDATION 13 – PC**

**R.13 (Deficiency 1): 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.**

34. The ML offences are contained in sections 92-93 of the POCA. The offences are based occur where a person conceals, converts, acquires, use or possess criminal property. As noted above in the discussion on R. 1, criminal property is defined at section 91(1) of the POCA as property which ‘constitutes a person’s benefit derived (whether directly or indirectly) from criminal conduct, irrespective of who carried out or benefited from the conduct’. Further, criminal conduct means any conduct which constitutes an offence in Jamaica. Consequently, the requirement to report STRs contained at both section 95 of the POCA and Reg. 15 of the POCA (MLP) Regulations, 2007 cover all predicate offences as required by R. 1. The deficiency has been addressed.

**R.13 (Deficiency 2): 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 that they are linked or related or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.**

35. Pursuant to section 3A of the Terrorism Prevention (Amendment) Act, 2011, all entities are required to report to the designated authority all transactions whether completed or not where the entity has reasonable grounds to suspect that they involve a terrorism offence or are for the benefit of any listed entity or terrorist group. The disclosure should be made as soon as possible but in any event no later than fifteen (15) days after the suspicion arose. A terrorist offence pertains to any offence considered to be ‘terrorist activity’ as defined in section 2 of the TPA and also any offence under sections 4-8 and 10-12 of the TPA. These offences include offences under the various terrorism Conventions and also various terrorist acts carried out by persons or terrorist groups including the financing of terrorism. The deficiency has been addressed by the amendments to the TPA.

**R.13 (Deficiency 3): Compliance with recently enacted CFT measures yet to be fully enacted.**

36. At the time of the 3<sup>rd</sup> Round mutual evaluation, the TPA had only been in force for a few months (June 2005) and consequently there had been no implementation of the CFT measures provided for under the Act. Since then, the TPA was amended in 2011 and more recently in 2013. The Terrorism

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Prevention (Reporting Entities) Regulations was also enacted in 2010. More importantly, in 2011 a person was charged under the TPA. The measures contained in the TPA and its Regulations have been implemented. The deficiency has been addressed.

### **RECOMMENDATION 13 - OVERALL CONCLUSION**

37. The enactment of: the POCA in 2007, the amendments to the POCA, the POCA (MLP) Regulations, 2007 and the subsequent amendments, the TPA in 2005, the amendments to the TPA (2011 and 2013), the Terrorist Prevention (Reporting Entities) Regulations in 2010 have resulted in a comprehensive set of legislation for dealing with the deficiencies that were found by the Examiners. Accordingly, R. 13 has been addressed at least to a level comparable with an LC.

### **SPECIAL RECOMMENDATION IV – PC**

**SR.IV (Deficiency 1): The requirement for the reporting of transactions in the TPA is general and does not specifically refer to transactions where there are reasonable grounds to suspect that they are linked or related to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.**

38. This deficiency is identical to the R. 13-Deficiency 2, which is considered to be addressed by the amendments to the TPA. Accordingly, SR. IV – Deficiency 1 has been sufficiently addressed.

**SR.IV (Deficiency 2): Compliance with recently enacted CFT measures yet to be fully enacted.**

39. This deficiency is identical to the R. 13-Deficiency 3, which is considered to be addressed by the enactments of the TPA and its Regulations. Accordingly, SR. IV – Deficiency 2 has been sufficiently addressed.

### **SPECIAL RECOMMENDATION IV - OVERALL CONCLUSION**

40. As noted above, the two deficiencies for SR. IV are identical to two of the deficiencies for R. 13. The R. 13 deficiencies were determined to be sufficiently addressed and therefore SR. IV is also sufficiently addressed at least to a level comparable with an LC.

## **V. DETAILED ANALYSIS OF COMPLIANCE WITH THE KEY RECOMMENDATIONS**

### **RECOMMENDATION 40 – PC**

**R. 40 (Deficiency 1): The FID does not legally have the power to share information with overseas counterparts.**

41. The Financial Investigation Division Act (FIDA) was enacted on March 26, 2010. Pursuant to section 12 of the FIDA, the Chief Technical Director of the FID with the approval of the Minister, may enter into a contract, MOU or other agreement with a foreign financial intelligence department for the

purpose of exchanging information that is relevant to the investigation and prosecution of financial crime. A foreign intelligence department, is defined at section 2 of the FIDA as a body in another country that performs functions similar to the FID. Section 12(7) also allows the Minister with the recommendation of the Chief Technical Director to enter into agreements with foreign FIUs for the investigation and prosecution of financial crime. The deficiency has been fully addressed.

**R. 40 (Deficiency 2): Spontaneous reporting by virtue of bilateral or multilateral agreements or arrangements is absent.**

42. As noted above, section 12 of the FIDA allows the FID to exchange information with foreign FIUs. The information can be exchanged through contract, MOU or other types of agreements. The Chief Technical Director can also exchange information that is necessary for a foreign intelligence department to exercise its regulating functions; including the conduct of civil, criminal, administrative investigations and proceedings to enforce law, regulation or rules that are administered by the department. During the November 2013 CFATF Plenary, MOUs were signed between the FID and seven CFATF members. MOUs have also been executed with Columbia and Trinidad, and one is being pursued with St. Kitts and Nevis. The deficiency has been fully met.

**RECOMMENDATION 40 - OVERALL CONCLUSION**

43. The FIDA provides for the investigation of financial crimes and related matters both in Jamaica and elsewhere. As noted above it makes provision for the exchange of information with foreign counterparts; including spontaneous reporting by virtue of agreements. Based on the measures provided in the FIDA, R. 40 has been addressed at least to a level that is comparable with LC.

**VI. OVERVIEW OF MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED PC/NC**

44. Jamaica has taken the following measures to address the other Recommendations that were rated PC/NC. The information in this section is presented for information purposes only and is not to be taken into consideration for Jamaica's application to exit the follow-up process.

**PREVENTATIVE MEASURES - FINANCIAL INSTITUTIONS**

*Recommendations 8, 11, 21, 25 and SR. VII were all rated PC.*

45. Jamaica achieved compliance with R. 8 through the enactment of the POCA (MLP) Regulations, which required regulated businesses to assess the ML risk that could arise from its products and business practices and also to mitigate those risks if they choose to continue with the products and business practices. With regard to R. 11, the POCA was amended to require regulated businesses to keep records in writing of all complex, unusual large transactions; whether or not completed and also to have the recorded findings available to either the designated authority or a supervisory authority upon request. Regulation 7A of the amended POCA Regulations addressed the issues with R. 21 by providing categories of high risk relationships and transactions and the procedures that should be adopted to deal with those situations. The FID implemented a system of feedback to reporting entities pursuant to Reg. 17(5) of the POCA(MLP) Regulations. The FID has also provided training on this issue to the reporting entities. These measures assisted with an increased level of compliance with R.

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25. SR.VII was greatly enhanced by the enactment of the Charities Act, 2013, which established the Charities Authority to deal with the registration etc. of Charities.

### **DNFBPs AND OTHER NON-FINANCIAL BUSINESSES**

*Recommendations 12, 16, 20 and 24 were all rated NC, while R. 25 was rated PC.*

46. The longstanding hindrance to complying with the Recommendations pertaining to DNFBPs was the non-establishment of an AML/CFT framework for DNFBPs. In 2013, Jamaica designated attorneys, public accountants, real estate dealers, casinos and gaming operators as Designated Non-Financial Businesses and as such these DNFBPs are subject to the framework for AML supervision that has been included at section 91 A of the amended POCA, record keeping and internal controls under regulations 5 and 14 of the Proceeds of Crime (Money Laundering) Regulations respectively and suspicious transaction reporting pursuant to section 94 of the POCA. The designated competent authorities for the DNFBPs have either finalized or are in the course of finalizing their respective AML/CFT guidance notes, compliance manuals and policies. For Accountants and Attorneys, the respective regulatory bodies will introduce a declaration mechanism to identify which professionals undertake the services specified in the FATF Recommendations. The submission of completed declarations by all Attorneys and Accountants are now requirements for the continued issuing of practicing certificates to these professionals. At this time not all DNFBPs listed in the FATF are covered by the AML/CFT framework, however the Jamaican Authorities are of the view that they have those that are currently most important. For example, even though TCSPs are not currently covered, the International Financial Services framework is being established, and of the limited trust and company services offered in Jamaica, these services are provided by Accountants and Attorneys or licensed financial institutions to the extent that trusts are established in the course of the provision of those financial services.

### **MUTUAL LEGAL ASSISTANCE**

*Recommendation 38 was rated PC*

47. The enactment of the POCA 2007 rectified the deficiency that the Examiners found. The limitation of the predicate offences for ML and TF affected the types of mutual legal assistance requests that could be dealt with. As noted in the discussion on R. 1 deficiency above, the POCA 2007 dealt with this issue.

ANNEX**Statistics for Money Laundering Matters and Cash Seizure Applications under the Proceeds of Crime Act since 2007**

<b>Parishes</b>	<b>Total Number of Prosecutions for Money Laundering</b>	<b>Matters Completed</b>	<b>Matters Pending</b>	<b>Total Number of Convictions</b>	<b>Total Amount of Assets Confiscated</b>	<b>Cash Seizure</b>
St. Mary	nil	nil	nil	nil	nil	J\$825,550 US\$300,409.99 CA\$20.00
Westmoreland	10	7	3	nil	nil	nil
St. James	29	10	19	1	nil	J\$3,807,300 US\$1,019,085 Can\$92,040 £65,520
St. Catherine	nil	nil	nil	nil	nil	nil
Hanover	2	nil	2	nil		nil
Clarendon	nil	nil	nil	nil	nil	Can\$8,720 J\$2,403,300.00
St. Thomas	1	nil	1	nil	nil	J\$864,684.14
Kingston (Corporate Area Resident Magistrate's Court)	116	54	52 ( <i>*the court's office was unable to determine the status of the other 10 matters</i> )	12	-	-
St. Andrew (Corporate Area Civil Court)	nil	nil	nil	nil	nil	J\$3,707,719.00 US\$118,473

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						(Please note that these figures are only for 2010. It is suggested that these figures be obtained from the FID/Asset Recovery Agency or other relevant departments (Customs, police, etc)
St. Elizabeth	nil	nil	nil	nil	nil	US\$235 J\$1,333,550 £172,600.2
Manchester	nil	nil	nil	nil	nil	All cash seized returned to accused (There are 3 matters pending)
Trelawny	1	1	nil	nil	nil	There were 10 cases where the cash was forfeited to the Crown. No figures were submitted as to the amounts involved.
Portland	1	nil	1	nil	nil	There were 2 matters and in both cases the cash was returned to the accused.
St. Ann	1	nil	1	nil	nil	J\$166,050.00
<b>Totals</b>	<b>161</b>	<b>72</b>	<b>79</b>	<b>13</b>	<b>nil</b>	<b>J\$13,108,153.14</b> <b>US\$1,438,202.99</b> <b>Can\$100,780</b> <b>£23,120.2</b>



## Report and Submission to CFATF for Removal from Follow-up Process

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FATF 40+9	Rating	Recommended Actions	Actions Undertaken by Jamaica	Remaining Actions to be Taken (if any)
<b>Legal systems</b>				
1. ML offence	PC	<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>The POCA was enacted in 2007.</p> <p>The definition of money laundering captures all dealing with criminal property. Criminal property is property which constitutes a person's benefit derived (whether directly or indirectly) from criminal conduct, irrespective of who carried out the or benefitted from the conduct (s. 91(1))</p> <p>Criminal conduct is defined at section 2 to mean conduct occurring on or at the appointed day which constitutes an offence in Jamaica or occurs outside of Jamaica and constitutes an offence if the conduct occurs in Jamaica</p>	No further action is required.
2. ML offence—mental element and corporate liability	C			
3. Confiscation and provisional measures	LC	<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 enacted in 2007.</p> <p>The POCA contains provisions at section 5(2)(c) for the forfeiture of <u>property used in or in connection</u> with the offence (being any offence resulting in a conviction before the court). This would extend to TF offences as well.</p> <p>Under POCA section 33, the court may issue a restraint order restraining a person from dealing with <u>any</u> realizable property ((being any free property held by the person or any gift made by him. Free property means that it is not subject to a forfeiture order).</p> <p>Under POCA s.5(5) the court may, on conviction, choose to order the defendant to pay a pecuniary penalty (amounting to the value of the property, or the benefit derived from the criminal conduct). This under ss. (6) can then be enforceable against any other free property of the defendant (which amounts to property of corresponding value).</p>	No further action is necessary.

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<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Jamaica</b>	<b>Remaining Actions to be Taken (if any)</b>
<b>Preventive measures</b>				
4. Secrecy laws consistent with the Recommendations	LC		<p>The Securities (Amendment) Act was passed in December 2013. Included among the amendments are provisions extending the FSC's information sharing capacity. (s. 68F collaboration with overseas Regulatory Authorities).</p> <p>The Bank of Jamaica Act was consequentially amended upon the passage of the Banking Services Act in June 2014<sup>5</sup>. Section 34D(1)(c) expressly allows for disclosures to law enforcement authorities. In addition, section 34BB established a statutory Financial Regulatory Committee for regulatory information sharing.</p>	No further action required.

<sup>5</sup> The Banking (Services) Act 2014 has been passed into law but will become effective on the issue of an Appointed Day Notice by the Minister

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FATF 40+9	Rating	Recommended Actions	Actions Undertaken by Jamaica	Remaining Actions to be Taken (if any)
5. Customer due diligence	PC	<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>6</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 r. 13(c) 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.</p> <p>The POCA (MLP) Regulations, 2007 r. 7(1) prohibits the continuation of the business relationship unless customer information is updated at least once every 7 years or at such more frequent intervals as warranted by the risk profile of the business relationship.</p>	No further action required.

<sup>6</sup> The Proceeds of Crime (Money Laundering Prevention) Regulations, 2007

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<p>6. Politically exposed persons</p>	<p>LC</p>	<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 POCA Regulations (r. 7(2)) now explicitly names PEPs as a category of high risk business relationship or transaction type. The regulation (r. 7(5)) also speaks to the required enhanced due diligence required when dealing with high risk categories, including verification of source of funds or wealth by the applicant for business and all parties concerned in the transaction or relationship.</p> <p>Regulation 7(1)(b) specifies that where a regulated business is unable to verify the applicant’s identity (which includes an agent), the business relationship or one-off transaction shall not proceed any further and the regulated business shall consider whether the a disclosure is required under section 94 of the Act (suspicious transaction reporting).</p> <p>Regulation specifies 13 that in dealing with bodies corporate, a regulated business should establish the identity of each director and shareholder (over 10%) the address of the body corporate, the provisions relating to the power to bind the body corporate and the evidence of incorporation.</p> <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>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>No additional action required.</p>
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<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Jamaica</b>	<b>Remaining Actions to be Taken (if any)</b>
			<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 2005 Mutual Evaluation.</p>	
<p>7. Correspondent banking</p>	<p>LC</p>	<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 has 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>No further action required.</p>

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FATF 40+9	Rating	Recommended Actions	Actions Undertaken by Jamaica	Remaining Actions to be Taken (if any)
8. New technologies & non face-to-face business	PC	<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>The POC(ML)R r.6(1)(a)(iv) now specifically requires all businesses in the regulated sector (including FSC licensees) to have procedures to assess the ML risks arising from doing business through developing technologies applied or used in products offered by or through such businesses.</p> <p>In addition POC(ML)R r. 7A requires businesses in the regulated sector (including FSC licensees) to establish risk profiles relating to all of its business relationships and transaction with a view to determining whether they are high risk. The regulation specifies certain types of high risk cases, which include cases where the applicant for business is not resident in Jamaica.</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> <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>	No further action required.

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9. Third parties and introducers	LC	<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.</li> <li></li> </ol> <p>(See Section 111, Part V (111) -Cases Requiring Third Party Evidentiary Support, <i>Reliable Introduction</i> pages 101 – 102)</p> <p>The revised FSC Guidelines are available on the FSC's website at <a href="http://www.fscjamaica.org/">www.fscjamaica.org/</a></p>	No further action required

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10. Recordkeeping	PC	<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 Amendments to the POCA (ML) Regulations, 2007, regulation 14 have extended the record retention period from five years to seven years commencing from the date on which the relevant financial business was completed or the business relationship terminated whichever is later. In addition the designated authority may specify the retention of records for a longer period by notice in writing.</p> <p>Regulation 14 (4) requires that the records should be maintained in a manner that and form that facilitates the reconstruction of transactions.</p> <p>Under the Banking Services Act section 132, the Bank of Jamaica (through its Supervisory Committee) may issue Supervisory Rules in relation to money laundering terrorism financing and proliferation of weapons of mass destruction.</p> <p>The BOJ Act (section 34F(6)) was similarly amended consequentially by the passage of the Banking Services Act (10<sup>th</sup> Schedule) to allow the Bank to issue Supervisory Rules in relation to money laundering, terrorism financing and proliferation of weapons of mass destruction to govern entities supervised by the BOJ but not falling under the Banking Services act</p> <p>A breach of these rules constitutes grounds for the issue of statutory directions. Breach of such directions amount to an offence.</p> <p>The Banking Services Act will take effect on the date indicated by Appointed Day Notice. The anticipated date for bringing his statute into effect is June 2015.</p>	<p>BOJ Guidance Notes will be converted to Supervisory Rules Status.</p>

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11. Unusual transactions	PC	<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>POCA s. 94(4) requires that, a business in the regulated sector shall, in relation to each customer –</p> <p>(a) make and retain for a period of not less than seven years or such longer period as the supervisory authority shall in writing direct, a record of all –</p> <p>(i) complex, unusual or large business transactions carried out by that customer with the business; and</p> <p>(ii) unusual patterns of transactions, whether completed or not, which appear to the person to be inconsistent with the normal transactions carried out by that customer with the business; and</p> <p>(b) pay special attention to all business relationships and transactions with any customer resident or domiciled in a territory specified in a list of applicable territories published by notice in the Gazette by a supervisory authority for the purposes of this paragraph, so as to ensure that the background and purpose of all such relationships and transactions are examined and the findings thereon set out in writing –</p> <p>(i) in accordance with procedures set out in regulations made under this Part; and</p> <p>(ii) made available, upon request, to the designated authority, a supervisory authority or the competent authority concerned, as the case may require."</p>	No further action required.

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12. DNFBP–R.5, 6, 8-11	NC	<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 Minister has issued Ministerial Orders pursuant to paragraph 1(2)(b) of the Fourth schedule to the POCA designating the following professions as Designated Non-Financial Institutions (and thereby making them subject to the obligations in the law relating to businesses in the regulated sector (per paragraph 1(1)(b) of the Fourth Schedule):</p> <ol style="list-style-type: none"> <li>a. Attorney at laws carrying out the activities specified by the FATF;</li> <li>b. Accountants carrying out the activities specified by the FATF;</li> <li>c. Casinos licensed under the Casino Gaming Act;</li> <li>d. Persons licensed to operate gaming lounges containing 20 or more gaming machines;</li> <li>e. Real Estate dealers;</li> </ol> <p>These Orders took effect on April 1, 2014 for all of the professions, save and except for the Attorneys. The regime for Attorneys became effective on June 1 2014.</p> <p>As a consequence, these professions are now obliged to meet AML obligations under the POCA and POCMLR.</p>	<p>The Competent Authorities in the DNFI sectors are developing their regulatory frameworks with the issue of Guidance Notes and inspection/enforcement regime. In this regard, the US Treasury Department Office of Technical Assistance is providing assistance.</p>

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13. Suspicious transaction reporting	PC	<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>Under POCA s. 95 the obligations for suspicious transaction reporting extends to cases where there is a suspicion of a person engaging in money laundering (i.e. the 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.</p> <p>Examples of these offences include:</p> <ol style="list-style-type: none"> <li>a. Income Tax Act s. 99 (making false declarations);</li> <li>b. Income tax act s. 99(4) (responsible officer of employer failing to make deductions)</li> <li>c. Customs Act s. 240 (all offences under the Act to prosecuted in a summary manner);</li> <li>d. Customs act s. 242 (Alternate sentencing of imprisonment available where fine not paid);</li> <li>e. Customs Act s. 243 (Imprisonment in cases of conviction for second offence);</li> <li>f. Transfer Tax act s. 41 (Penalties for false statements or returns);</li> <li>g. Transfer Tax s. 42 (General penalty where offences do not specify a penalty)</li> </ol> <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>	No further action required.

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14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> <li>Clarify that the tipping off is prohibited when STR or related information is being reported to the FIU.</li> </ul>	<p>Section 97 of the POCA makes tipping off an offence. The offence of tipping off is created in relation to disclosures made that are likely to prejudice any investigations in respect of disclosures made to the Designated Authority. This includes information relating to an STR or related information.</p> <p>Additionally as regards the issue of “tipping off” paragraph 106 of the BOJ (AML/CFT) Guidance Notes also specifically warns financial institutions against making any unauthorized disclosures about reports made to the Designated Authority. The BOJ (AML/CFT) Guidance Notes which have been revised in 2009 to reflect the enhanced AML/CFT requirements under the POCA were approved on 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>	No further action required
15. Internal controls, compliance & audit	LC	<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, these have since February 2005, been in effect re: the provision of CFT guidance.	No further action necessary

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<p>16. DNFBP–R.13-15 &amp; 21</p>	<p>NC</p>	<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 Recommendation 16 with regard to applying Recommendations 13 and 14.</li> <li>• The authorities informed that amendments to the MLA were proposed that will create statutory requirement for the DNFBPs to institute measures regarding internal controls, compliance and audit. It is recommended that such amendments are effected in order to be compliant with Recommendation 16 with regard to applying Recommendation 15.</li> </ul>	<p>The Minister has issued Ministerial Orders pursuant to paragraph 1(2)(b) of the Fourth Schedule to the POCA designating the following professions as Designated Non-Financial Institutions (and thereby making them subject to the obligations in the law relating to businesses in the regulated sector (per paragraph 1(1)(b) of the Fourth Schedule):</p> <ol style="list-style-type: none"> <li>a. Attorney at laws carrying out the activities specified by the FATF;</li> <li>b. Accountants carrying out the activities specified by the FATF;</li> <li>c. Casinos licensed under the Casino Gaming Act;</li> <li>d. Persons licensed to operate gaming lounges containing 20 or more gaming machines;</li> <li>e. Real Estate Dealers;</li> </ol> <p>These Orders took effect on April 1, 2014 for all of the professions, save and except for the Attorneys. The regime for Attorneys became effective on June 1 2014.</p> <p>The effect of these Orders require these professions to be compliant with the obligations applicable to the businesses in the regulated sector ( which also includes financial institutions) as regards:</p> <ol style="list-style-type: none"> <li>a. Suspicious transaction reporting;</li> <li>b. Record-keeping;</li> <li>c. Customer due diligence and verification;</li> <li>d. Staff training and screening;</li> <li>e. Appointment of compliance officers;</li> <li>f. Establishing policies and procedures for assessing and dealing with different risk situations;</li> <li>g. Establishing internal reporting procedures;</li> <li>h. Establishing arrangements for independent audit;</li> <li>i. Ensuring equivalent standards across the group, branches and subsidiaries.</li> </ol> <p>POCA s. 101A established a prohibition on cash transactions above a J\$1,000,000.00 for any person other than a permitted person (Banks and cambios). The Government is completing its assessment of the effect of this rule on any proposed regime for dealers in precious metals. It is felt that this rule would obviate application of the key CDD obligation applicable to jewellers. The risk would further be mitigated as jewellers would be subject to record-keeping obligations for 7 years under</p>	<p>The authorities propose that DNFBPs be brought under the TPA by mid to end 2015.</p>
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			<p>the tax laws as well as the general suspicious reporting obligation that applies to all persons who come across a prohibited transaction in the course of their business activities (per POCA s. 100).</p> <p>The TPA regime has not been implemented for DNFBPs as yet as these professions are being given time to adapt to the AML regime under POCA prior to imposing the CFT regime under the TPA on these professions.</p>	
17. Sanctions	LC			
18. Shell banks	LC	<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>	<p>The licensing regime under the FIA does not allow for the establishment or operation of shell banks. The detailed licensing regime for deposit taking entities specifies the requirements for principal place of business in Jamaica, details of shareholders, directors and principal office, details of numbers of employees, business plans and financial data. These and other requirements can be found at: (<a href="http://www.boj.org.jm/pdf/Guide_to_Licensing_of_Deposit-Taking_Entities_in_Jamaica.pdf">http://www.boj.org.jm/pdf/Guide_to_Licensing_of_Deposit-Taking_Entities_in_Jamaica.pdf</a>)</p> <p>S. 11 of the Banking Services Act (which repeals the Financial Institutions Act) prohibits the establishment of or dealings with shell banks.</p> <p>Since 2004 the BOJ (AML/CFT) Guidance Notes has <u>specifically prohibited</u> the establishment or maintenance of relationships with Shell banks or entities that facilitate 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 <b>22<sup>nd</sup> April 2010</b> 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>	No further action necessary.

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19. Other forms of reporting	LC	<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 Customs-to-Customs network arrangements to promote the seamless movement of goods through secure international trade supply chains. These network arrangements will result, inter alia, in the exchange of timely and accurate information that will place Customs administrations in the position of managing risk on a more effective basis including improving the ability of Customs to detect high-risk consignments; enabling Customs administrations to improve their controls along the international trade supply chain; and ensuring more efficient allocation of Customs resources. The Customs-to-Customs network arrangements will strengthen co-operation between Customs administrations and enable administrations to carry out controls earlier in the supply chain, e.g. where the administration of an importing country requests the administration of the exporting country to undertake an examination on its behalf.</p>	No further action necessary.

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20. Other DNFBP & secure transaction techniques	NC	<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. This informed the legislative reforms that led to the designation of the Designated Non-Financial Institutions in 2014.</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 The area of pawnbrokers was assessed by FID as being relatively insignificant and not posing an ML threat at this time.</p> <p>In December 2010 the Payment, Settlement and Clearing Act was passed. This Act addresses among other things address the finality of payments, and the Bank of Jamaica's mandate to supervise participants in the payment systems.</p> <p>Guidelines issued pursuant to the Act for parties who wish to operate Retail Payment Systems have also been issued and a licensing regime is currently underway.</p> <p>The RTGS (Jamclear) was launched on February 27, 2009, which introduces real time gross settlement for large transactions.</p>	Further work will be done as a part of the National Risk Assessment exercise with respect to other types of entities that should be brought under the AML/TF framework.

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<p>21. Special attention for higher risk countries</p>	<p>PC</p>	<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>POCA s. 94(4)(b) incorporates an express requirement for businesses in the regulated sector to pay attention to all business relationships and transactions with any customer resident or domiciled in a territory specified in a list of applicable territories published by Notice in the Gazette by a supervisory authority. The section also requires that findings must be set out in writing and made available on request, to the designated authority, a supervisory authority or the competent authority concerned, as the case may require.</p> <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>.</p> <p>The FSC’s Guidelines require licensees and registrants to recognize and assess those transactions from countries or regions with high incidents of money laundering whose background and purpose have no apparent economic or visible lawful purpose. Additionally, where these transactions have been determined to be suspicious then a report to the Designated Authority should be made. See Part X: Transaction Monitoring - II. <i>Recognition Of Suspicious Customers / Transactions</i></p>	<p>No further action necessary.</p>
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			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.	

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<p>22. Foreign branches &amp; subsidiaries</p>	<p>LC</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 POC(ML)R regulation 18 requires regulated businesses to ensure that branches and subsidiaries outside of Jamaica adopt standards that are no less stringent to those applicable in Jamaica.</p> <p>Regulation 18(2) also requires that regulated business must advise their competent authorities in any case where the relevant laws do not allow subsidiaries or branches to meet the standards required by the Jamaican laws.</p> <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>	<p>No further action necessary</p>
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<p>23. Regulation, supervision and monitoring</p>	<p>LC</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>On the issue of harmonizing the definitions of financial institutions with those contained in the FATF methodology, the inclusion of the entire listing depends on the assessment of the authorities as to whether there are businesses of that nature operating in the jurisdiction and the level of risks they present.</p> <p>On the issue of consolidated supervision, the Banking Act, the Building Societies Act and the Financial Institutions Act all contained provisions for the consolidated supervision of financial groups containing a deposit taking institution. Key provisions include those relating to the powers to direct restructuring of groups to ensure that the group only conducts regulated financial business under a financial holding company, provisions for gathering information from any member of the group, powers to issue directions for the management and control of risks arising from inter-group relations.</p> <p>These provisions have been retained and enhanced in the Banking Services Bill with new provisions relating to the obligations and regulation of financial holding companies (see Part XV). In addition there has been an expansion of the information sharing and co-operation powers of the Bank with overseas counterparts under the Banking Services Act.</p> <p>The Securities (Amendment) Act 2013 also introduced additional measures for consolidated supervision of groups that do not contain a deposit taking entity. Provisions include access to the books and requesting of information from any company within the group (s. 68D)</p> <p>That Act also expanded the scope of the FSC's information sharing power to include regulatory co-operation (s. 68F)</p>	<p>The National Risk Assessment exercise that is underway will consider the issue as to whether the range of financial institutions covered under POCA and the TPA should be extended.</p> <p>The Bank will effect necessary regulations to detail the regime for consolidated supervision in 2015.</p>

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<p>24. DNFBP - regulation, supervision and monitoring</p>	<p>NC</p>	<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>The General Legal Council, the Public Accountancy Board, the Casino Gaming Commission, the Betting Gaming and Lotteries Commission and the Real Estate Board have been designated as Competent Authorities under POCA with responsibilities to monitor compliance with respect to their respective licensees.</p> <p>In addition the 2013 amendments to POCA section 91A contained significant new powers for Competent Authorities, namely:</p> <ul style="list-style-type: none"> <li>(a) powers to carry out inspection and verification exercises (including by using a third party);</li> <li>(b) powers to issue directions as may be necessary to ensure compliance with the statutory requirements.</li> <li>(c) powers to examine and take copies of documents relating to the operation of that business;</li> <li>(e) power to share information on findings from regulator to regulator or the FID (not including protected information) and subject to the necessary terms and conditions imposed by the Competent Authority to prevent unlawful disclosure and to avoid compromising investigations.</li> <li>(f) Impose a requirement (if none exists) for registration of persons with such particulars that may be prescribed. This is seen as necessary because different professionals carry out different types of business, some of which attract AML obligations and others that don't. A registration requirement is necessary to determine at the onset, who is covered by the regime and who is not.</li> </ul> <p>Breach of the directions referred to at (b) constitute an offence.</p>	<p>Competent Authorities for DNFBPs in Jamaica are continuing to refine their regulatory regimes and developing their capacity, expertise and knowledge of AML/CFT issues with the assistance of Jamaica's international partners.</p>

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25. Guidelines & Feedback	PC	<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>Under section 5(2)(c) the FID may in consultation with the Competent Authority issue guidance to financial institutions or designated non-financial institutions regarding their obligations under the FID Act or any other enactment.</p> <p>The FID has issued an advisory to financial institutions in March 2014 covering key reporting requirements and procedures under the POCA and the TPA. The FID has issued for consultation Guidance for the DNFBP sectors.</p> <p>The FID currently has implemented a system of feedback to reporting entities which sees an automatic response being issued in acknowledgement of the receipt of reports being made to that authority as required by regulation 17 (5) of the Proceeds of Crime (Money Laundering Prevention) Regulations.</p> <p>In addition the FID provides operational feedback through the consent regime contained in the POCA section 100, 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>In addition, the FID provides feedback to reporting entities through regular meetings with and presentations to industry groups and competent authorities.</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>	No further action necessary.

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<b>Institutional and other measures</b>				
26. The FIU	LC	<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>The FIDA Act was passed in July, 2010 with additional amendments passed in 2013.</p> <p>The FID's website is now in place <a href="http://www.fid.gov.jm">www.fid.gov.jm</a>. FID has commenced the publication of its key data and trends. This can now be viewed at <a href="http://www.fid.gov.jm">www.fid.gov.jm</a>. During the November 2013 CFATF Plenary, MOUs were signed between the FID and seven CFATF members.</p> <p>The TPA was also amended in 2013 to clarify that the FID was the appropriate designated authority for reports under the TPA.</p> <p>The FIDA was also amended in 2011 at section 12(7) to clarify that the powers of the Minister to enter into information exchange agreements requires the recommendation of the Chief Technical Director.</p> <p>Jamaica was admitted to the Egmont Group of FIUs in June 2014.</p>	No further action necessary
27. Law enforcement authorities	LC	<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>The requisite designation of the Chief Technical Director of the FID was effected in March 2006.</p>	No further action necessary
28. Powers of competent authorities	LC		<p>POCA does contain a wider variety of powers for the Designated Authority. These include:</p> <ol 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> <li>f) Restraint Orders</li> </ol> <p>FIDA also contains similar powers that are specific to the FID.</p>	No further action necessary

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29. Supervisors	LC	<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.</p> <p>Between 2006 and 2013 the FSC (Insurance Division) has conducted 45 examinations of insurance companies and 6 are scheduled for the period June to October 2014.</p> <p>Between 2005 and 2012, the FSC (Securities Division) has conducted 57 on-site examinations of its licensees. Between the period April 2012 to June 2013 an additional 11 onsite examinations of the securities sector have been conducted.</p> <p>Between 2005 and 2011, the FSC (Securities Division) has conducted 47 examinations and 10 are scheduled to be concluded by March 2012. The 10 examinations that were scheduled for the period April 2011 – March 2012 were conducted and concluded by March 2012. For the period April 2012 to March 2013, nine (9) examinations were conducted and during the period April – December 2013 seven (7) more examinations were completed.</p> <p>Since the Pensions industry came under the FSC’s jurisdiction, the FSC (Pensions Division) has conducted AML/CFT examinations of and has examined 8 Pension plans (that is 7 retirement schemes and 1 superannuation fund), 4 Administrators, 5 Investment managers and 1 corporate trustee.</p>	No further action necessary. Regulatory agencies continue to develop and refine their examination methodologies.

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<p>30. Resources, integrity and training</p>	<p>LC</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>All Jamaican agencies involved in the fight against money laundering and the financing of terrorism continually reassess their funding and resources to ensure effectiveness. This is done by processes involving recruitment as well as specialized training.</p> <p>Below are examples of these initiatives:</p> <p>The FID has acquired the GOAML Software, which is expected to greatly enhance the Division’s ability to analyze and detect trends and typologies emanating from the range of reports currently being received by the Division. The software has been acquired and the FID staff is currently testing the software with the vendors.</p> <ol style="list-style-type: none"> <li>1. Increased staff-             <ol style="list-style-type: none"> <li>a. 2 financial analysts</li> <li>b. 1 Data analyst</li> <li>c. Increased complement of law enforcement officers</li> <li>d. Increased IT staff</li> <li>e. 2 legal officers</li> </ol> </li> <li>2. Acquisition of software such as the AML software- assist with receipt and analysis of reports(TTR, STR, TPA, cross border)</li> <li>3. Increased use of MOU- both with foreign FIUs and local agencies.</li> </ol> <p>The FSC continues to facilitate training for licensees and registrants at least once per annum. In 2013 and 2014, training was also held in collaboration with ACCA Caribbean to strengthen the awareness and compliance of the accounting professionals. The FSC continues to use the government’s local radio and television programmes to air broadcasts on AML/CFT to sensitize the general public of certain AML/CFT requirements. In addition, the FSC continues to dedicate resources to plenary participation and is committed to facilitating the resources to allow the persons trained in the organization by CFATF to assist in conducting examinations of other jurisdictions.</p> <p>In term of the JCF, 35 Organized Crime Investigatory Division (OCID) police Officers have been embedded at the FID of which 23 were appointed Authorised Financial Investigators (AFI’s) pursuant to s. 2 of POCA.</p>	<p>The issue of adequacy of resources is something that is continually under review by the Jamaican authorities.</p>
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			<p>The OCID AFI's have been exposed to training in basic and advance financial investigations in Jamaica and some overseas. Their main function is to investigate financial crimes.</p> <p>The JCF also sits on the NAMLC and assists in public education, training and awareness.</p> <p>The Competent Authorities for the DNFBP sectors (lawyers, accountants, casinos and gaming and real estate sectors) are also currently re-examining their resources and are receiving specialized training from the US Treasury's OTA in the area of DNFBP supervision</p>	
31. National co-operation	LC	<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>The NAMLC meets quarterly. Members including the FID, BOJ, FSC and DPP collaborate on public education and awareness. Examples include presentations for the FID's annual conference, presentations at conferences for the Bankers Associations Conference, the Urban Development Corporation, Institute of Chartered Accountants in 2013 and the Real Estate Board and the Jamaica Co-operative Credit Union League in 2014</p> <p>Both the BOJ and FSC Guidance Notes incorporate the POCA and TPA. The General Legal Council has also issued its own Guidance Notes as well.</p> <p>Currently the Chair of NAML has made arrangements with DNFBP Competent Authorities to assist them in implementing their framework, including the retaining of expert consultants and technical assistance from Jamaica's AML partners.</p>	<p>The NAMLC continues to meet regularly to address continuing issues in the AML/CFT arena.</p> <p>Members of NAMLC actively contribute to national sensitization on AML and CFT issues</p>

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32. Statistics	LC	<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 DNFBPs under AML/CFT regime and maintain statistics on their compliance.</li> </ul>	<p>The FID has developed a monthly statistical report since 2013. These reports contain information on all of the FID's activities including reports received analyzed and disseminated as well as applications for investigatory order, restraint orders, and forfeiture.</p> <p>In addition the FID has prepared its annual report as mandated by the Financial Institutions Act for the years 2013 and 2014 and has presented same to the Minister for tabling in Parliament.</p> <p>In addition, the FID has acquired the GOAML Software which is expected to significantly enhance the FID's ability to process and analyze the data provided to it by reporting institutions. This will also increase the level of statistical analysis that may be performed on the data and allow for more effective identification of money laundering trends and typologies.</p> <p>These reports may be viewed on the FID's website <a href="http://www.fid.gov.jm">www.fid.gov.jm</a>.</p>	No further action required
33. Legal persons–beneficial owners	LC	<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>The Office of the Registrar of Companies had prepared a Cabinet Submission to treat with the issue of the capture of beneficial ownership information by the Office of the Registrar.</p> <p>The Cabinet has approved the submission and the Office of the Chief Parliamentary Counsel is preparing the draft Bill.</p>	The Companies Act is to be amended to deal with the issue of the capture of information on beneficial owners.
34. Legal arrangements – beneficial owners	C			
<b>International Cooperation</b>				

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35. Conventions	PC	<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>In relation to the deficiencies identified (at paragraph 393) the following applies:</p> <ol style="list-style-type: none"> <li>a. Terrorism offences are now predicate offences under POCA by virtue of the all crimes approach;</li> <li>b. The provisions to freeze the assets of listed entities arise by virtue of the prohibitions on persons dealing with assets owned or controlled by listed entities.</li> <li>c. Confiscation of property of a corresponding value is now permissible under TPA s. 28(5A)</li> </ol> <p>In 2013, the TPA was also amended to place the obligation to receive reports under the TPA squarely within the remit of the FID.</p> <p>The amendments to the First Schedule also implement into Jamaican law the outstanding obligations under UN Security Council Resolution 1373. These include:</p> <ol style="list-style-type: none"> <li>i. The Convention on the Physical Protection of Nuclear Material (2005);</li> <li>ii. The Protocol to the Convention for the Suppression of the Unlawful Acts Against the Safety of Maritime Navigation (2005);</li> <li>iii. The Protocol to the Protocol for the Suppression for the Unlawful Acts Against the Safety of Fixed Platforms (2005); and</li> <li>iv. The Convention for the Suppression of Acts of Nuclear Terrorism.</li> </ol> <p>The amendments establish that the offences set out in the agreements can be prosecuted as terrorist offences under the TPA.</p>	No further action required
36. Mutual Legal Assistance (MLA)	LC	<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 haste.</li> </ul>	The POCA was passed and came into effect in May 2007 and the TPA was passed in April 2005.	No further action required.

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FATF 40+9	Rating	Recommended Actions	Actions Undertaken by Jamaica	Remaining Actions to be Taken (if any)
37. Dual criminality	LC	<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.	No further action required.
38. MLA on confiscation and freezing	PC	<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)	No further action required.
39. Extradition	C			
40. Other forms of co-operation	PC	<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 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 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;"</p> <p>Both the Banking Services act and the Securities (Amendment) Act now allow for greater latitude for information sharing and co-operation by the BOJ and the FSC.</p>	No further action required.
<b>9 Special Recommendations</b>				

POST-PLENARY FINAL

<p>SR.I Implement UN instruments</p>	<p>LC</p>	<ul style="list-style-type: none"> <li>• See Recommendation 35.</li> </ul>	<p>In November 2013, Jamaica passed the UN Security Council Resolution Implementation Act which legislation will allow Jamaica to comply with its non-terrorist prevention related economic sanctions obligations to the UN. This Act will assist with Jamaica’s compliance with the new R7 of the FATF revised 40 Recommendations 2012.</p> <p>Amendments to the TPA were also passed in October 2013 and a copy of the legislation was provided to the Secretariat. These amendments serve to effect further amendments (refer to SRIII (confiscation) and SRIV (discussions on CDD/KYC enhancements) and to the related Regulations under this Act. The amendments also allow for Jamaica’s ratification of The International Convention for the Suppression of Acts of Nuclear Terrorism of September 4, 2005; and to allow for Jamaica’s accession to the 2005 amendment to the Convention on the Physical Protection of Nuclear Material, and the October 14, 2005 amendment to the Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, and to the October 14, 2005 Protocol to the Convention for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms.</p> <p>Under the POCA, money laundering is an act comprising dealings of any kind with criminal property (s. 92). Criminal property means the benefit derived whether wholly, partially, directly or indirectly from any conduct constituting criminal conduct. (s. 91) Criminal conduct means any conduct which in Jamaica constitutes an offence or which if it occurred outside of Jamaica, would constitute an offence if it took place inside Jamaica. (s. 92) 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>No further action required.</p>
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			Additionally, restraint orders under the TPA may be made against persons who are convicted of or charged with terrorism offences.	
SR.II Criminalize terrorist financing	LC	<ul style="list-style-type: none"> <li>The POCA should be passed as soon as possible.</li> </ul>	<p>The POCA was passed and came into effect in May 2007. Under the POCA all serious crimes including terrorist financing can now form the basis for money laundering charges.</p> <p>The TPA also criminalizes terrorism financing pursuant to sections 4 – 8 of the TPA.</p>	No further action required.
SR.III Freeze and confiscate terrorist assets	LC	<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>The provisions under the TPA make it an offence for financial institutions to provide any financial services in relation to listed persons or to deal with any assets owned by such 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> <p>The TPA amendments section 28(5A) include provisions that expressly allow for the confiscation (forfeiture) mechanisms to be applicable to property of corresponding value.</p>	No further action necessary
SR.IV Suspicious transaction reporting	PC	<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 Terrorism Prevention (Amendment) Act 2011 amends section 16 of the TPA, 2005 by inserting a new subsection 3A, which— expressly incorporates a provision imposing STR obligations to funds suspected to be linked or related to terrorism financing.</p> <p>Section 16 of the TPA imposes the obligation of reporting entities implement internal reporting procedures to promptly report all complex, unusual or large transactions and unusual patterns of transactions which have no apparent economic or obviously lawful purpose to the nominated officer for the purpose of considering whether a report should be made under section 16.</p>	No further action required
SR.V International cooperation	LC	<ul style="list-style-type: none"> <li>See Recommendation 36.</li> </ul>	POCA was passed and came into effect in May 2007.	No further action required

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**JAMAICA (November 2014)**

<b>FATF 40+9</b>	<b>Rat- ing</b>	<b>Recommended Actions</b>	<b>Actions Undertaken by Jamaica</b>	<b>Remaining Actions to be Taken (if any)</b>
SR.VI AML requirements for money and value transfer services	LC		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.	No further action required

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FATF 40+9	Rating	Recommended Actions	Actions Undertaken by Jamaica	Remaining Actions to be Taken (if any)
SR.VII Wire transfer rules	PC	<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.</p> <p>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>In 2013, this regulation was amended to include the obligation to obtain the national identification number, customer identification number and date and place of birth of the person placing the order for the transfer.</p> <p>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>● Domestic &amp; cross border transfers;</li> <li>● Batch wire transfers, and</li> <li>● Wire transfers not accompanied by complete originator information</li> </ul> <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>. These Guidance Notes were gazetted April 16, 2010.</p>	No further action required

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SR.VIII Nonprofit organizations	NC	<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>	<p>The Charities Act was passed in December 2013.</p> <p>The FATF Best Practices paper was also sent to the Registrar of Charities for his consideration and for dissemination to the industry.</p>	<p>Further outreach is planned for this sector once the initial licensing phase of implementing the Act is substantially completed.</p>
SR.IX Cash Couriers			<p>The Transportation of Cash Order which came into effect in July 2010 was fully implemented for incoming passengers and discussions are underway with relevant agencies regarding operational changes for outgoing passengers.</p> <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.</p>	<p>No further action required</p>

