



# Anti-money laundering and counter-terrorist financing measures

## **Jamaica**

### **Mutual Evaluation Report**

January 2017



CONTENTS

EXECUTIVE SUMMARY .....5

    Key Findings.....5

    Risks and General Situation.....7

    Overall Level of Compliance and Effectiveness.....8

    Terrorist financing and proliferation financing.....8

    Priority Actions.....14

    Effectiveness & Technical Compliance Ratings.....16

MUTUAL EVALUATION REPORT OF JAMAICA .....17

    Preface .....17

CHAPTER 1.    ML/TF RISKS AND CONTEXT.....18

    ML/TF Risks and Scoping of Higher-Risk Issues .....18

    Materiality.....21

    Structural Elements.....23

CHAPTER 2.    NATIONAL AML/CFT POLICIES AND COORDINATION.....29

    Key Findings and Recommended Actions.....29

    Immediate Outcome 1 (Risk, Policy and Coordination).....30

CHAPTER 3.    LEGAL SYSTEM AND OPERATIONAL ISSUES .....37

    Key Findings and Recommended Actions.....37

    Immediate Outcome 6 (Financial intelligence ML/TF).....39

    Immediate Outcome 7 (ML investigation and prosecution) .....46

    Immediate Outcome 8 (Confiscation).....53

CHAPTER 4.    TERRORIST FINANCING AND FINANCING OF PROLIFERATION.....58

    Key Findings and Recommended Actions.....58

    Immediate Outcome 9 (TF investigation and prosecution).....60

    Immediate Outcome 10 (TF preventive measures and financial sanctions) .....62

    Immediate Outcome 11 (PF financial sanctions).....64

CHAPTER 5.    PREVENTIVE MEASURES .....65

    Key Findings and Recommended Actions.....65

    Immediate Outcome 4 (Preventive Measures).....67

CHAPTER 6.    SUPERVISION .....77

    Key Findings and Recommended Actions.....77

    Immediate Outcome 3 (Supervision).....78

CHAPTER 7.    LEGAL PERSONS AND ARRANGEMENTS .....89

    Key Findings and Recommended Actions.....89

    Immediate Outcome 5 (Legal Persons and Arrangements) .....90

CHAPTER 8.    INTERNATIONAL COOPERATION.....94

    Key Findings and Recommended Actions.....94

    Immediate Outcome 2 (International Cooperation).....95

|  |     |
|--|-----|
| TECHNICAL COMPLIANCE ANNEX.....  | 102 |
| Recommendation 1 - Assessing Risks and applying a Risk-Based Approach.....                         | 102 |
| Weighting and Conclusion.....  | 103 |
| Recommendation 2 - National Cooperation and Coordination.....                                      | 104 |
| Weighting and Conclusion.....  | 104 |
| Recommendation 3 - Money laundering offence.....   | 105 |
| Weighting and Conclusion.....  | 106 |
| Recommendation 4 - Confiscation and provisional measures .....                                     | 106 |
| Weighting and conclusion.....  | 107 |
| Recommendation 5 - Terrorist financing offence .....   | 107 |
| Weighting and conclusion.....  | 109 |
| Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing ..... | 109 |
| Weighting and conclusion.....  | 110 |
| Recommendation 7 – Targeted financial sanctions related to proliferation.....                      | 111 |
| Weighting and Conclusion.....  | 112 |
| Recommendation 8 – Non-profit organisations .....  | 112 |
| Weighting and Conclusion.....  | 114 |
| Recommendation 9 – Financial institution secrecy laws .....  | 115 |
| Weighting and Conclusion.....  | 115 |
| Recommendation 10 – Customer due diligence .....   | 116 |
| Weighting and Conclusion.....  | 120 |
| Recommendation 11 – Record-keeping.....  | 120 |
| Weighting and Conclusion.....  | 121 |
| Recommendation 12 – Politically exposed persons.....   | 121 |
| Weighting and conclusions .....  | 122 |
| Recommendation 13 – Correspondent banking.....   | 122 |
| Weighting and Conclusion.....  | 123 |
| Recommendation 14 – Money or value transfer services .....   | 123 |
| Weighting and Conclusion.....  | 124 |
| Recommendation 15 – New technologies.....  | 125 |
| Weighting and conclusion.....  | 125 |
| Recommendation 16 – Wire transfers.....  | 125 |
| Weighting and Conclusion.....  | 127 |
| Recommendation 17 – Reliance on third parties .....  | 128 |
| Weighting and Conclusion.....  | 129 |
| Recommendation 18 – Internal controls and foreign branches and subsidiaries .....                  | 129 |
| Weighting and Conclusion.....  | 130 |
| Recommendation 19 – Higher-risk countries .....  | 131 |
| Weighting and conclusions:.....  | 132 |
| Recommendation 20 – Reporting of suspicious transaction.....                                       | 132 |
| Weighting and conclusion.....  | 132 |
| Recommendation 21 – Tipping-off and confidentiality.....   | 132 |
| Weighting and conclusion.....  | 133 |
| Recommendation 22 – DNFBPs: Customer due diligence .....   | 133 |
| Weighting and conclusion.....  | 136 |
| Recommendation 23 – DNFBPs: Other measures .....   | 136 |
| Weighting and conclusion.....  | 137 |
| Recommendation 24 – Transparency and beneficial ownership of legal persons .....                   | 137 |
| Weighting and conclusion.....  | 141 |

|   |     |
|---|-----|
| Recommendation 25 – Transparency and beneficial ownership of legal arrangements .....       | 141 |
| Weighting and Conclusion.....   | 142 |
| Recommendation 26 – Regulation and supervision of financial institutions.....               | 143 |
| Weighting and Conclusion.....   | 146 |
| Recommendation 27 – Powers of supervisors .....   | 146 |
| Weighting and Conclusion.....   | 147 |
| Recommendation 28 – Regulation and supervision of DNFBPs .....                              | 148 |
| Weighting and conclusion.....   | 149 |
| Recommendation 29 - Financial intelligence units.....                                       | 150 |
| Weighting and conclusion.....   | 151 |
| Recommendation 30 – Responsibilities of law enforcement and investigative authorities ..... | 152 |
| Weighting and conclusion.....   | 153 |
| Recommendation 31 - Powers of law enforcement and investigative authorities .....           | 153 |
| Weighting and conclusion.....   | 155 |
| Recommendation 32 – Cash Couriers.....  | 156 |
| Weighting and conclusion.....   | 157 |
| Recommendation 33 – Statistics .....  | 157 |
| Weighting and Conclusion.....   | 158 |
| Recommendation 34 – Guidance and feedback.....  | 158 |
| Weighting and Conclusion.....   | 159 |
| Recommendation 35 – Sanctions.....  | 159 |
| Weighting and Conclusions .....   | 160 |
| Recommendation 36 – International instruments .....   | 160 |
| Weighting and Conclusion.....   | 161 |
| Recommendation 37 - Mutual legal assistance.....  | 161 |
| Weighting and Conclusion.....   | 162 |
| Recommendation 38 – Mutual legal assistance: freezing and confiscation.....                 | 162 |
| Weighting and conclusions .....   | 163 |
| Recommendation 39 – Extradition .....   | 163 |
| Weighting and conclusion.....   | 164 |
| Recommendation 40 – Other forms of international cooperation.....                           | 164 |
| Summary of Technical Compliance – Key Deficiencies .....                                    | 169 |
| Table of acronymns.....   | 175 |

## EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Jamaica as at the date of the on-site visit (1<sup>st</sup> – 12<sup>th</sup> June, 2015). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Jamaica's AML/CFT system, and provides recommendations on how the system could be strengthened.

### *Key Findings*

- Jamaica does not have a completed National Risk Assessment (NRA), but as a result of the National Security Policy (NSP) and subsequent work done by the National Anti-Money Laundering Committee (NAMLC), there is a reasonable level of understanding of ML/TF risk at the country level and mitigation strategies have been put in place to address those risks. However, greater effort needs to be made to involve all stakeholders.
- Jamaica cooperates with its international law enforcement counterparts, which has resulted in the prosecution and conviction of persons in some instances. Mutual legal assistance and extradition mechanisms are also used.
- In general, there is a high level of cooperation amongst domestic competent authorities, which is facilitated by NAMLC. ML/TF measures are being implemented by the competent authorities some of whom have implemented a risk-based approach.
- Jamaica's AML/CFT supervisory regime for financial institutions is adequate. There is a fairly robust licensing regime in place which deters criminals from holding senior management positions or becoming significant shareholders. The risk based approach (RBA) is still in its embryonic stage.
- The Bank of Jamaica (BOJ) has not yet revised its AML/CFT Guidance Note to incorporate a risk based approach in line with FATF Recommendations and local legislation. The AML/CFT regime does not extend to the microfinance sector which makes it vulnerable to ML/TF abuse.
- The NSP has identified attorneys as facilitators who are considered a high risk of ML/TF. The General Legal Council (GLC) has been established and appears willing to implement a robust system of AML/CFT compliance for attorneys that conduct transactions specified by the FATF Recommendations. However, the current injunction filed by the Jamaica Bar Association (JBA) against the implementation of the law in this regard increases the vulnerability of the sector to ML/TF abuse.
- DNFI/DNFBPs are currently not subject to the Terrorism Prevention Act (TPA) and Regulations made thereunder.
- Jamaica does not have sufficient measures in place to prevent the misuse of legal persons, legal arrangements and micro finance institutions for ML/TF.

- The FIU has been able to execute its mandate to assist with the conduct of financial investigations, and the intelligence analyzed and disseminated by the FIU is used by LEAs and other competent authorities as a basis to conduct joint operations, audits and inspections. However, there should be more statistical data on how the analysis and disseminated STRs support the system of financial investigations.
- Financial intelligence and other relevant information can be directly accessed in real time by various competent authorities to facilitate investigations of predicate offences, trace assets and identify trends and typologies.
- There is insufficient coordination in the Jamaica Resident Magistrate's (RM) Court system with regard to pursuing ML/TF prosecutions. There is a tendency by Clerks not to put these matters forward and settle for the prosecution of the predicate offence or cash forfeiture aspect. Issues such as insufficient training in ML/TF matters, lack of priority of ML/TF cases, incomplete investigations and reticence on the part of the RM to deal with ML/TF matters, which tend to be more complicated, contribute to this situation.
- Jamaica has pursued 'taking the profit out of crime' as a national policy. However, there is a need to assess how consistent confiscation and seizures are in keeping with the country's ML/TF risk.
- In respect to legal persons, sanctions for ML/TF offences while considered proportionate are not effective or dissuasive.
- The mechanisms to deal with terrorism and TF investigations are not effective.
- A TF threat assessment of the NPO sector has not been undertaken. The sector is yet to develop a risk based CFT regime.
- Jamaica has very limited experience in TF investigations and prosecutions and is yet to secure any convictions for the TF offence.
- Jamaica has only recently established a dedicated unit to investigate TF offences in the form of the Counter-Terrorism and Organized Crime Branch (CTOC) within the Jamaica Constabulary Force (JCF), which has affected their level of effectiveness in dealing with TF matters.
- Jamaica has commenced initiatives to formulate procedures to address proliferation financing (PF) risks. However, the measures to deal with PF will have to be developed substantially to meet the UN Security Council Resolutions' (UNSCRs) requirements and FATF's Recommendations.
- There is a delay in communicating all UN designations to FIs. Additionally, there are delays in the implementation of targeted financial sanctions (TFS) for terrorism and PF.
- FIs which are part of financial groups understand ML/TF risks and have implemented preventative measures through the adoption of group compliance programmes, compliance and Internal Audit functions.

## *Risks and General Situation*

2. The NSP, identified narcotics and weapons trafficking, organised crime (both local and transnational), cybercrime (particularly in relation to lotto scams), fraud, extortion, contract killing, kidnapping, money laundering, facilitators who launder proceeds of crime and corruption within the public sector as Tier 1 threats. Local organised crime groups are prevalent in Jamaica, some of which have a wider reach into the Caribbean and North American region. In recent years the focus on criminal proceeds has shifted to the lotto scams being carried out by various Jamaican nationals on persons in other jurisdictions, primarily the United States of America (USA).
3. While the NSP did not focus specifically on the identification of ML/TF risk, the Assessors review of the results of the exercise, as well as discussions with the relevant agencies indicate that there is a reasonable understanding at the country level of the ML risk associated with the identified threats and vulnerabilities to Jamaica's national security. The main channels identified in the NSP most vulnerable to ML associated activities include the banking system and the use of DNFI/DNFBPs as facilitators to launder the proceeds of crime.
4. Additionally, there is a high degree of domestic cooperation among law enforcement agencies, supervisory authorities and other key AML/CFT stakeholders. At present there are minimal efforts in terms of policy and implementation of actions to mitigate the financing of proliferation of weapons of mass destruction. The results of the NRA would help to augment the country's understanding and assessment of ML/TF risks and would enable further prioritising, mitigating policies and actions to be implemented.
5. Terrorism has been identified in the NSP as a Tier 2 risk (low probability: high impact) and focused mainly on narco-terrorism and tourism related terrorism. The threat of terrorism is considered to be relatively low; however, the NSP did not address Jamaica's TF risk. Accordingly, more emphasis needs to be placed on the identification, assessment and mitigation of potential TF risks.
6. The abatement of the implementation of the AML/CFT regime against lawyers significantly affects the effectiveness of the AML/CFT system given the recognized risk of this sector and the fact that they perform the functions of Trust and Company Service Providers (TCSPs), which are currently not specifically designated as DNFI/DNFBPs.
7. There is a licensing regime administered by the BOJ and FSC which is a deterrent to criminals from using financial vehicles as a conduit for ML/TF activities. Fitness and propriety assessments are undertaken. Additionally, there are processes in place e.g. onsite examinations, which facilitate the feedback of deficiencies in AML/CFT policy and mitigation activities and for remedial actions to be taken.
8. The FSC and BOJ (in the case of the deposit taking institutions (DTIs)) have not administered any sanctions but they continue to work with the financial institutions to remedy deficiencies arising from the onsite examinations. However, the BOJ has revoked cambio licenses where there have been breaches of the Operating Directions and/or the AML legislation.
9. Supervisors have issued Guidance to the financial sector and are readily available and responsive to provide feedback on AML/CFT issues. The Bank of Jamaica has not yet revised its AML/CFT Guidance Notes to incorporate recent legislative changes which provide for a risk based approach to AML/CFT.

10. Financial institutions understand AML/CFT risks and have group compliance programmes approved by their board of directors. There is oversight of the compliance function by Audit Committees of the Board. To the extent possible, financial institutions seek to collect beneficial ownership information from customers.

### *Overall Level of Compliance and Effectiveness*

11. A lot of work was done by Jamaica to reform its AML/CFT regime since its Third Round Mutual Evaluation in 2005. Jamaica's ML and TF frameworks have been strengthened with the passage of various pieces of legislation but the issue of PF is yet to be sufficiently addressed, particularly in respect to implementing a reporting regime for FIs and DNFIs/DNFBCPs. Some of the technical deficiencies identified in Jamaica's AML/CFT regime have been corrected, particularly with respect to its law enforcement, national cooperation and coordination, confiscation, targeted financial sanctions, and international cooperation. Initiatives were also implemented with respect to preventive measures and the supervision of FIs, transparency of legal persons and arrangements, as well as preventive measures and sanctions for non-compliance for DNFIs/DNFBCPs.
12. In terms of effectiveness, Jamaica appears to be achieving some results in the collection and use of financial intelligence, and moderate results with respect to its international cooperation regime and its confiscation measures. There are adequate measures which prevent criminals holding or being beneficial owners of financial institutions or DNFIs/DNFBCPs. However, significant improvements are needed in relation to targeted financial sanctions for terrorism, TF and PF, reliance on third parties and transparency in beneficial ownership of legal persons and legal arrangements and other areas as indicated below.

### *Terrorist financing and proliferation financing*

13. Jamaica's CFT regime is still at a very early stage of development. Accordingly, major steps still need to be taken to bring the CFT regime in line with the FATF standards. Of particular concern is the lack of careful consideration of TF in Jamaica's NSP which, could have led to more focus being given to this threat had it been included. As a result of this oversight, law enforcement agencies have concentrated their efforts in pursuing other predicate offences more so than terrorism and TF related matters. However, in order to strengthen Jamaica's ability to address TF concerns, the Counter Terrorism and Organised Crime Branch (CTOC), was established on January 19, 2015 as the lead agency to conduct investigations of terrorism and TF offences. CTOC's investigative techniques, organizational processes and experience with domestic and international co-operation have not been sufficiently tested in practice given the relative newness of the Unit. Jamaica has very limited experience in TF investigations and prosecutions and would benefit from specialised training in this regard. Jamaica has not secured any convictions for the TF offence. This is primarily due to the fact that the occurrence of instances with TF related elements warranting investigation has been rare.
14. There are delays in the implementation of TFS. Action should be taken to reduce the delay in communicating all UN designations to financial institutions. Jamaica has not demonstrated that it has an effective system in this area and fundamental improvements are needed. To date, the Supreme Court approved the designation of a list of entities on the 6<sup>th</sup> June, 2012, 12<sup>th</sup> July, 2013 and the 13<sup>th</sup> March, 2014, pursuant to UNSCR 1267/1989 but Jamaica has not created a legal obligation for supervisors or

competent authorities to monitor DNFI/DNFBPs compliance with their obligations to implement targeted financial sanctions for TF and PF. DNFI/DNFBPs are currently not subject to the TPA. There is a general lack of awareness and knowledge by both the Government agencies and the private sector of the proliferation risks and no guidance has been issued by supervisors to assist with remedying this deficiency. Jamaica is therefore unable to effectively identify and prevent persons and entities from raising, moving and using funds involved in the proliferation of weapons of mass destruction. However, the Authorities have commenced initiatives to formulate procedures to address this risk.

#### *Transparency and beneficial ownership*

15. Jamaica has not conducted a comprehensive assessment of the ML/TF risks associated with legal persons and legal arrangements. Accordingly, there is no information on the degree to which companies, partnerships and trusts are being misused. The Companies Office offers an online search mechanism for the general public to access basic information on companies. There is no requirement in the Companies Act to maintain accurate and up-to-date information on beneficial owners of companies. Furthermore, competent authorities are unable to ensure that information held by trustees in relation to the identity of the settlors, beneficiaries and protectors (if any) or partnerships is kept current and reliable.

#### *International Co-operation*

16. Jamaica has a number of MOUs with foreign counterparts, and has demonstrated that its competent authorities and law enforcement agencies can provide a wide range of assistance related to MLA, extradition and other forms of international co-operation in a timely manner. Jamaica also maintains comprehensive statistics in relation to MLA and extradition matters including those cases that relate to ML.

#### *Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)*

17. As noted earlier, Jamaica does not have a completed NRA<sup>1</sup>, but as a result of the NSP and subsequent work done by the NAMLC, there is a reasonable understanding of ML risk at the country level and mitigation strategies have been put in place to address those risks. However, greater effort needs to be made to involve private sector stakeholders
18. Further, a framework as well as coordinating mechanisms to enable the Authorities to combat the financing of terrorism and the proliferation of weapons of mass destruction does not exist. The Authorities are yet to identify, understand and assess TF/PF risks.
19. At the time of the onsite Jamaica was yet to develop a national policy setting out what the overall AML/CFT system is meant to achieve, or how its success should be monitored or measured, making it challenging to determine how well the ML/TF risks are being addressed. Accordingly, national metrics about how well the authorities' efforts are addressing ML/TF risks are limited, and the Authorities were challenged to present convincing evidence about what outcomes their efforts are achieving. Jamaica does not maintain comprehensive statistics on issues related to AML/CFT which hinders the ability of

---

<sup>1</sup> Jamaica completed its NRA s at the end of May 2016, which was subsequent to the onsite mutual evaluation.

Authorities to assess ML/TF risks and to establish evidence-based AML/CFT policies in response to the identified risks.

20. Jamaica's domestic AML/CFT cooperation is moderately effective at both the strategic and operational levels, AML/CFT responsibilities are divided amongst Ministries, led by the Ministries of Finance, National Security and Justice, and other competent authorities while the framework for coordination and cooperation is centred on the NAMLC as well as other committees and task forces. At an operational level, there are several formal, informal and ad hoc cooperation activities taking place. These are coordinated using a combination of committees and task forces. Generally, the objectives and activities of competent authorities are consistent with the ML/TF risks, with the major exception being a lack of focus on addressing risks from DNFIs/DNFBPs.
21. FI's demonstrate a relatively greater awareness and understanding of ML/TF risks than DNFIs/DNFBPs. While Government agencies were fully engaged in the NRA process, the FIs and DNFIs/DNFBPs were not involved. Accordingly, further work is required for FIs and DNFIs/DNFBPs to integrate the NRA findings into their internal risk-based approaches.
22. Additionally, exemptions from requirements for reporting entities and the application of enhanced or simplified measures are based primarily on the FATF Recommendations and not as a result of risk assessments or other efforts to assess ML/TF risks.

*Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)*

23. Jamaica's AML/CFT system demonstrates the use of financial intelligence and other information. The FIU is well functioning and has access to a number of government databases, which assists the FIU in carrying out their analytical and investigative functions. The CTD is able to obtain additional information from the reporting entities under the FIDA and the POC(MLP) Regs. The FIU is empowered under the FIDA to disseminate financial intelligence to a range of law enforcement bodies. The FIU has seen increased demand for its services in the areas of due diligence requests, fit and proper checks and financial profiles. This issue has been addressed with the implementation of a Tasking Form, which is a new mechanism designed to streamline requests for FIU products.
24. The efforts made by the Jamaican Authorities to investigate, prosecute and sanction ML offences and activities are disproportionately low in comparison to the country's ML/TF threats and risk profile. The prosecution and conviction of standalone ML matters have not been pursued to a large extent. In many instances the offence of ML has been a financial component to and charged against a number of predicate offences. Removing the profit from crime was listed as a major objective of the NSP. In response to the growing threats of transnational organized criminal activities of which ML is a part, there has been increased focus towards the disruption of such activity and recovery of criminal proceeds of predicate offences.
25. Confiscation of criminal proceeds, instrumentalities and property of equivalent value is actively being pursued at an operational level in Jamaica. The JCA was successful in making cash seizures at the various ports of entry. Accordingly, the whole system of asset confiscation has shown some success with regard to the value of assets seized and forfeited as a result of intelligence and joint inter-agency operations involving local and foreign law enforcement agencies. Effectiveness would be further enhanced if LEAs increase their efforts to pursue seizures and confiscations arising out of ML related matters.

*Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)*

26. The Jamaican authorities should be commended for taking significant steps in restructuring their law enforcement organisations to establish CTOC, the lead agency for the investigation of terrorism and TF. However, the CFT regime is still at a very early stage of development and the lack of consideration by the Jamaican authorities of TF in the NSP makes it difficult to adequately assess the regime's effectiveness. Law enforcement agencies do not prioritise terrorism and TF related matters and have concentrated their efforts primarily in pursuing other predicate offences. Accordingly, their investigative methods, organizational procedures and experience with co-operation with domestic and foreign counterparts as it pertains to TF has not been sufficiently tested in practice.
27. Despite the general risks identified by the Authorities in the NSP, Jamaica has not undertaken a TF risk review of the NPO sector to identify the features and types of NPOs that are particularly vulnerable to being misused for TF. Consequently, supervision is not focussed on NPOs, which account for a significant portion of the sector that would be at risk and/or NPOs that account for a significant share of the sector's activities.
28. Jamaica has not demonstrated that it has an effective system to ensure that persons and entities involved in the proliferation of weapons of mass destruction are identified, deprived of resources and prevented from raising, moving and using funds or other assets for the financing of proliferation. Persons and entities designated under the respective UNSCRs have not been properly sanctioned in accordance with the Resolutions. Furthermore, FIs and DNFI/DNFBPs are not monitored for compliance with their obligations to implement the UNSCRs. Generally, both the Government agencies and the private sector lack awareness of the proliferation risks and no guidance has been issued to address this issue.

*Preventive Measures (Chapter 5 - IO4; R.9-23)*

29. The AML/CFT regime changed significantly since the Third Round Mutual Evaluation conducted in 2005. Although this regime expanded, there are some DNFI/DNFBPs as well as the microfinance sector yet to be subject to AML/CFT obligations. This notwithstanding, the legal and regulatory framework, the basis of Jamaica's AML/CFT regime, displays a moderate level of technical compliance with the FATF Recommendations. Jamaica received compliant and largely compliant ratings in Recommendations 9, 12, 13, 15, 16 and 20. However, the other applicable Recommendations relevant to this immediate outcome (Recs 10, 11, 14, 17 to 19 and 21 to 23) were rated partially compliant. Accordingly, legislative deficiencies must be addressed to enhance technical compliance and effectiveness with the FATF Recommendations. The RBA to AML/CFT is relatively new since it was introduced in 2013. As a result, the BOJ is yet to issue risk based AML/CFT guidance to its regulated entities.
30. Financial institutions have generally adopted preventive measures. Many of the entities in the financial sector belong to financial groups, which enables a relatively good level of cross-sectorial understanding of ML/TF risks. Further, group members are able to share information which facilitates AML/CFT monitoring on a group basis. In a number of instances, internal audit, compliance and risk management functions are conducted at the group level by the deposit taking institution which is the operating parent company.

31. Financial groups dominate the financial sector and of compliance and AML/CFT risk management functions are implemented on a group basis as well as within the individual financial institutions. While financial institutions have adopted risk-based compliance programmes, greater alignment in mitigating measures is needed with respect to beneficial ownership requirements.
32. An RBA to CDD has been implemented by FIs with respect to dealing with higher risk jurisdictions but specific measures have not been adopted to treat with TFS related to TF. Financial institutions understand and perform their ML/TF reporting obligations and have filed STRs as required.
33. All CDD/EDD, record keeping and oversight requirements instituted for FIs also apply to DNFI/DNFBPs. Although guidelines developed by the various supervisors have not been brought into force, DNFI/DNFBPs have a general sense of what is required of them, and have adopted measures in line with what is required under the regime. However, based on interviews conducted, there appears to be a general lack of understanding in relation to the identification of a BO, versus a shareholder, as well as the application of a RBA based on a review of the applicable guidelines.

*Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)*

34. To a large extent, licensing, registration and other controls implemented by Jamaica, adequately prevent criminals and their associates from entering the financial sector. While some targeted AML/CFT supervision has taken place, the frequency, scope and intensity of such supervision is not sufficiently ML/TF risk based, and requires considerable enhancement, particularly for financial groups. With the establishment of the dedicated AML Unit at the BOJ, such focus has commenced. However, this issue is yet to be addressed by the FSC.
35. The BOJ is the most mature supervisor and has an established supervisory framework for the financial sector. It has demonstrated that supervisory actions have made a positive impact on market entry and compliance with the targeted implementation of AML/CFT controls. This has been accomplished without the need to administer sanctions. The FSC has a risk-based approach, although further progress is required to align its supervisory practices with the relevant international best practices. Supervision is sometimes focused on technical compliance checklists rather than on the effectiveness and robustness of the preventive measures implemented. BOJ and FSC's supervision focuses on high-risk entities which obtain greater supervisory scrutiny. Since 2015, the intensity of the BOJ's onsite examinations varies according to the level of risk posed to the financial sector by a financial group where it consists of a combination of a bank, cambio and credit union, and accordingly a tailored approach based on types and materiality of risk based on the entity's business model is now considered.
36. The onsite examination of money remitters and their agents as a pre-condition to the renewal of annual licensing serves to mitigate many of the risks in that sector. The inherently high-risk status has prompted engagement of the sector on a continuous basis. It is clear that mitigation of ML/TF risk in this subsector has improved over time.
37. The BOJ and FSC have a wide enough range of powers to sanction, including administrative fines for breaches under Bank of Jamaica Act (Cambios and MVTS), Insurance Act, Securities Act and the Banking Act. However, they have no powers to impose administrative fines for AML/CFT breaches, and the sanctions available to Authorities for AML/CFT breaches have not been applied. The only sanctions applied to financial institutions are in the form of letters advising entities of concerns which

should be addressed. In the case of money remitters, the BOJ has revoked licenses and in some instances money remitters have voluntarily surrendered their licenses.

38. It is also a concern that compliance with TFS has not been reviewed or discussed as part of on-site visits, and has not been included as a part of the supervisory work.
39. The skills, experience and expertise of supervisory staff and the number of staff and tools available to supervisors to conduct surveillance and supervision need augmentation to deepen the implementation of risk-based approach to supervision to facilitate the appropriate level of intensity and frequency of supervisory interventions across the financial sector.
40. Supervisory frameworks are still being developed by DNFI/DNFBP supervisors to carry out proper AML regulation on the relevant sub-sectors. Current prudential supervision includes a combination of off-site monitoring and on-site inspections. This supervision appears to be rules-based as all entities go through an annual prudential review regardless of nature, size or complexity of the business they engage in. AML/CFT Guidelines developed by the various supervisors call for a risk-based approach to supervision, but most of these are still in draft form. With the exception of the Real Estate Board, on-site AML inspections have not been conducted by any of the supervisors which would allow supervisors to identify activities being carried out that may result in the imposition of sanctions.
41. An AML/CFT supervisory regime is yet to be established for the microfinance sector.

*Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)*

42. Jamaica has been able to ensure that basic information on the types and forms of legal persons can be publicly accessed. Similarly, the processes for the creation of legal persons are generally available. However, Jamaica has not conducted a comprehensive assessment of the ML/TF risks associated with legal persons and legal arrangements. Therefore it is difficult to assess the degree to which companies, partnerships and trusts are being misused.
43. The competent authorities are able to obtain information on directors and shareholders of companies that is kept on the public register maintained by the Companies Office of Jamaica. However, this does not include up-to-date and accurate information on beneficial owners or persons for whom nominee directors and nominee shareholders act. Further, even though trustees are under a common law obligation to maintain information on trustees, settlors, beneficiaries and protectors (if any), there is no system of monitoring to ensure that they perform such duties.
44. Tax and law enforcement agencies can obtain information in a timely manner from the Companies Office of Jamaica and in respect of legal arrangements to facilitate exchange of information with their counterparts. Notwithstanding the timely access to information, competent authorities are unable to ensure that it is current and accurate.
45. Nonetheless, the Jamaican authorities confirmed that the Companies Act is currently in the process of being amended to allow the Registrar of Companies to compel companies to provide information on beneficial owners.

## *International Cooperation (Chapter 8 - IO2; R. 36-40)*

46. Supervisors, regulators and the FIU cooperate well with their foreign counterparts in MLA and extradition matters and are utilizing international cooperation to enhance their functions and results. There is also good coordination among domestic agencies when investigating ML related matters and pursuing confiscation orders pursuant to MLA requests. Accordingly, the feedback received from countries suggests that assistance is generally provided in a timely manner.
47. There are limitations in providing information on beneficial ownership for legal persons and arrangements as there is no requirement for it to be maintained either under the Companies Act or the Trustee Act.
48. Comprehensive statistics are maintained by the authorities in relation to MLA and extradition matters and are kept by dedicated units established under the Office of the Director of Public Prosecutions (ODPP) – the Mutual Legal Assistance Unit and Extradition Unit, respectively.

### *Priority Actions*

- Jamaica should complete its NRA<sup>2</sup> so it can fully identify, assess, understand and mitigate its ML/TF risks and the results should be shared with financial institutions, DNFIs/DNFBNPs and other relevant stakeholders.
- Upon completion of the NRA, mechanisms should be developed to periodically review the results of this assessment, ensure that all relevant public and private sector stakeholders are sufficiently engaged in the process and that results of these reviews are shared with the private sector (FIs and DNFIs/DNFBNPs).
- Jamaica should identify, and assess, its ML/TF risks associated with its financial, DNFIs/DNFBNPs and NPO sectors, the use of legal persons and arrangements, cross-border activities, tax evasion and PF, and put measures in place to mitigate these risks.
- Jamaica should formulate national policies and strategies related to ML/TF/PF, including processes for monitoring effectiveness based on identified and assessed risks.
- Jamaica should consider establishing a dedicated criminal court to deal exclusively with ML related cases so that they can be disposed of in a timely manner. Jamaica should also ensure that adequate resources and properly trained personnel to prosecute ML offences are provided for.
- Jamaica should ensure that financial intelligence is better utilized for ML and TF investigations.
- Jamaica should extend its AML/CFT regime to include the microfinance sector. A supervisory authority should be identified for the microfinance sector to ensure compliance with AML/CFT requirements.
- Jamaica should focus more on pursuing ML investigations and prosecutions to secure successful convictions as opposed to predicate offences.

---

<sup>2</sup> Jamaica completed its NRA at the end of May 2016, which was subsequent to the onsite mutual evaluation.

- Jamaica's judicial system needs to be assessed and reviewed to ensure that ML/TF offences and related matters are sufficiently prioritised.
- Jamaica should establish policies and mechanisms to implement all UN targeted financial sanctions to combat TF and the financing of proliferation without delay and monitor the reporting of entities for compliance with the targeted financial sanctions.
- Jamaica should take measures to assess the risks of ML/TF posed by the misuse of legal persons and legal arrangements. Jamaica should also take measures to ensure that beneficial ownership information for legal persons is maintained and available. Obligations and associated sanctions should be imposed on trustees in relation to the keeping and maintenance of information on trustees, settlors, beneficiaries and protector (if any).
- Jamaica should impose sanctions that are effective, proportionate and dissuasive against natural and legal persons following convictions for ML offences.
- Jamaica should bring all DNFIs/DNFBPs under the AML/CFT regime and ensure that both supervisors and DNFIs/DNFBPs understand the ML/TF risk posed by this sector.
- Jamaica should ensure proper supervision of DNFIs/DNFBPs based on a risk based approach and ensure all DNFIs/DNFBPs are effectively implementing their AML/CFT obligations and risk mitigating measures.
- The TPA should be extended to all DNFIs/DNFBPs.
- The BOJ and FSC should enhance its supervisory practices to enable the full implementation of consolidated supervision.
- BOJ should issue its risk based AML/CFT Guideline.
- FSC should establish and implement a consolidated supervision framework.
- The FSC should undertake thematic AML/CFT studies by sector and types of institutions to improve understanding of sector risks.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings

|   |  |   |  |   |                                       |
|---|--|---|--|---|---------------------------------------|
| <b>IO.1</b><br>Risk, policy and coordination  | <b>IO.2</b><br>International cooperation | <b>IO.3</b><br>Supervision                    | <b>IO.4</b><br>Preventive measures                           | <b>IO.5</b><br>Legal persons and arrangements | <b>IO.6</b><br>Financial intelligence |
| <b>Mod.</b>                                   | <b>Mod.</b>                              | <b>Mod.</b>                                   | <b>Low</b>   | <b>Low</b>                                    | <b>Mod.</b>                           |
| <b>IO.7</b><br>ML investigation & prosecution | <b>IO.8</b><br>Confiscation              | <b>IO.9</b><br>TF investigation & prosecution | <b>IO.10</b><br>TF preventive measures & financial sanctions | <b>IO.11</b><br>PF financial sanctions        |                                       |
| <b>Low</b>                                    | <b>Sub.</b>                              | <b>Low</b>                                    | <b>Low</b>   | <b>Low</b>                                    |                                       |

### Technical Compliance Ratings

|  |   |  |   |  |   |
|--|---|--|---|--|---|
| <b>R.1-</b> Assessing risk & applying a risk based approach              | <b>R.2-</b> National cooperation and coordination.                | <b>R.3-</b> Money laundering offence         | <b>R.4-</b> Confiscation & provisional measures   | <b>R.5-</b> Terrorist financing offence          | <b>R.6-</b> Targeted financial sanctions related to terrorism and terrorism financing |
| <b>PC</b>  | <b>PC</b>   | <b>LC</b>                                    | <b>LC</b>   | <b>LC</b>  | <b>NC</b>   |
| <b>R.7-</b> Targeted financial sanctions related to proliferation        | <b>R.8-</b> Non-profit organisations (NPOs)                       | <b>R.9-</b> Financial institution secrecy    | <b>R.10-</b> Customer due diligence (CDD)   | <b>R.11-</b> Record keeping                      | <b>R.12-</b> Politically exposed persons (PEPs)                                       |
| <b>PC</b>  | <b>NC</b>   | <b>C</b>                                     | <b>PC</b>   | <b>PC</b>  | <b>PC</b>   |
| <b>R.13-</b> Correspondent banking                                       | <b>R.14-</b> Money or value transfer services (MVTs)              | <b>R.15-</b> New technologies                | <b>R.16-</b> Wire transfer  | <b>R.17-</b> Reliance on third parties           | <b>R.18-</b> Internal controls and foreign branches and subsidiaries                  |
| <b>C</b>   | <b>PC</b>   | <b>C</b>                                     | <b>LC</b>   | <b>PC</b>  | <b>PC</b>   |
| <b>R.19-</b> Higher risk countries                                       | <b>R.20-</b> Reporting of suspicious transactions                 | <b>R.21-</b> Tipping-off and confidentiality | <b>R.22-</b> Designated non-financial businesses and professions (DNFBPs): Customer due diligence | <b>R.23-</b> DNFBPs: Other measures              | <b>R.24-</b> Transparency and beneficial ownership of legal persons                   |
| <b>PC</b>  | <b>C</b>  | <b>PC</b>                                    | <b>PC</b>   | <b>PC</b>  | <b>PC</b>   |
| <b>R.25-</b> Transparency and beneficial ownership of legal arrangements | <b>R.26-</b> Regulation and supervision of financial institutions | <b>R.27-</b> Powers of supervisors           | <b>R.28-</b> Regulation and supervision of DNFBPs   | <b>R.29-</b> Financial intelligence units (FIUs) | <b>R.30-</b> Responsibilities of law enforcement and investigative authorities        |
| <b>PC</b>  | <b>PC</b>   | <b>PC</b>                                    | <b>PC</b>   | <b>LC</b>  | <b>LC</b>   |
| <b>R.31-</b> Powers of law enforcement and investigative authorities     | <b>R.32-</b> Cash couriers  | <b>R.33-</b> Statistics                      | <b>R.34-</b> Guidance and feedback  | <b>R.35-</b> Sanctions                           | <b>R.36-</b> International instruments  |
| <b>LC</b>  | <b>LC</b>   | <b>PC</b>                                    | <b>LC</b>   | <b>PC</b>  | <b>LC</b>   |
| <b>R.37-</b> Mutual legal assistance                                     | <b>R.38-</b> Mutual legal assistance: freezing and confiscation   | <b>R.39-</b> Extradition                     | <b>R.40-</b> Other forms of international cooperation   |  |   |
| <b>C</b>   | <b>LC</b>   | <b>C</b>                                     | <b>PC</b>   |  |   |

## MUTUAL EVALUATION REPORT OF JAMAICA

### *Preface*

1. This report summarises the AML/CFT measures in place in Jamaica as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Jamaica's AML/CFT system, and recommends how the system could be strengthened.
2. This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by Jamaica, and information obtained by the evaluation team during its on-site visit to Jamaica from June 1-12, 2015.
3. The evaluation was conducted by an assessment team consisting of: Ms. Dawne Spicer, Mission Leader, (CFATF Secretariat); Mrs. Diana Firth, Co-Mission Leader/Observer (CFATF Secretariat); Ms. Heidi-Lynn Sutton, Legal Expert (St. Kitts and Nevis); Mrs. Joanne Hamid, Financial Expert (Trinidad and Tobago); Ms. Alva McCall, Financial Expert (Virgin Islands) and Mrs Wendy Farrington, Law Enforcement Expert (The Bahamas). The responsible Secretariat Staff are: Ms. Dawne Spicer, Mrs. Diana Firth, Mr. Roger Hernandez, Mr. Jefferson Clarke, Ms. Ana Folgar, and Ms. Carmen Solano. The report was reviewed by Mr. Jarzinho Giel (Aruba); Ms. Kristen Alma and Mr. Matthew Shannon (Canada), Ms. Jennifer Clarke-Murrell (Barbados) and the FATF Secretariat.
4. Jamaica previously underwent a CFATF Mutual Evaluation in 2005, conducted according to the 2004 FATF Methodology. The 2005 evaluation and follow-up reports to November 2014 have been published and are available at [cfatf-gafic.org](http://cfatf-gafic.org). For the sake of brevity, on those topics where there has not been any material change in the situation of Jamaica or in the requirements of the FATF Recommendations, this evaluation does not repeat the analysis conducted in the previous evaluation, but includes a cross-reference to the detailed analysis in the previous report as relevant.
5. Jamaica's 2005 Mutual Evaluation concluded that the country was compliant with three (3) Recommendations; largely compliant with twenty-seven (27); partially compliant with thirteen (13); and non-compliant with five (5). Jamaica was rated compliant or largely compliant with nine (9) of the sixteen (16) Core and Key Recommendations. At the time of Jamaica's mutual evaluation it was not evaluated on SR. IX. Jamaica started the 3<sup>rd</sup> round follow-up process in May 2009, at which time the country was placed in enhanced follow-up. Jamaica exited the follow-up process at the November 2014 Plenary on the basis of having achieved a level of compliance at least equivalent to an 'LC' in all the Core and Key Recommendations that were rated PC/NC.

## CHAPTER 1. ML/TF RISKS AND CONTEXT

6. Jamaica is the fifth-largest island in the Caribbean, with a population of 2.9 million as of July 2014. The official language is English and the official currency is the Jamaican Dollar (JMD) although US currency is also accepted. The BOJ however, imposed a number of restrictions to ensure that the local foreign exchange market is operating properly. Currently, only deposit-taking institutions (DTIs) are authorised to buy, sell, borrow or lend foreign currency or foreign currency instruments in Jamaica in accordance with section 22A(1) of the Bank of Jamaica Act (BOJ Act). Further, only authorised dealers such as insurance companies, cooperative societies, exchange bureaus, approved money transfer and remittance agents, etc. may acquire foreign assets (Section 22B of the BOJ Act). Accordingly, when a transaction involves any currency other than the JMD, section 22A(3) of the BOJ Act stipulates that it must be made to or by an authorised dealer. It is important to note that these dealers are required to be prudentially regulated by the BOJ. Generally, where parties to a contract agree to transact in a foreign currency, the Courts in Jamaica will render judgments to accommodate the foreign currency denominated and ensure that the appropriate exchange rate is available to facilitate the proper calculation of awards. The Assessors therefore, observed that the use of US currency in Jamaica was subject to adequate controls by the BOJ and did not pose any significant ML/TF risk. The Jamaican economy is heavily dependent on services, which accounts for more than 70% of GDP. The country continues to derive most of its foreign exchange from tourism, remittances, and bauxite/alumina. Remittances and tourism each account for 30% of GDP, while bauxite/alumina exports make up roughly 5% of GDP. The bauxite/alumina sector was most affected by the global downturn while the tourism industry and remittance flow remained resilient. Jamaica's economy faces many challenges to growth: large-scale unemployment and underemployment, a debt-to-GDP ratio of about 130%, and high crime and corruption, which is being addressed by the Government through, amongst other measures, the creation of specialized agencies against corruption and major organized crime.

### *ML/TF Risks and Scoping of Higher-Risk Issues*

#### *Overview of ML/TF Risks*

7. Jamaica outlined in its National Security policy (NSP) to some extent the range of money laundering (ML) and terrorist financing (TF) risks faced by the jurisdiction. With a country having one of the highest per capita levels of homicide and violent crime in the world, factors affecting such activities were identified as imports of illegal firearms and ammunition, gangs, the supply and trans-shipment of illegal narcotics, corruption, and fraud including Ponzi schemes and lottery scams.
8. Accordingly, ML, crime, corruption and violence were classified in the NSP as Tier 1 (High Impact/High Probability) threats to Jamaica, while terrorism (with particular regard to the tourism industry) was classified as a Tier 2 Threat (High Impact/Low probability). It should be noted that TF was not specifically identified as a threat in the NSP.
9. In order to address these, the NSP listed six key reform areas the jurisdiction should pursue in order to counter the threats of these criminal activities. They are:
  - Remove the profit from crime;
  - Reform the justice system;
  - Policing by consent;

- Adopt a coherent anti-gang strategy;
  - Focus on at-risk individuals and communities; and
  - Strengthen systems of governance.
10. In response to the risks outlined above, the Jamaican authorities have recently re-structured and revised their internal processes and have established a number of special units to focus primarily on the detection, investigation and prosecution of ML and TF. The measures taken are as follows: - the merger of the JCF's Anti-Corruption Branch and the Major Organized Crime Task Force into one agency referred to as the Major Organized Crime Agency (MOCA); the merger of the JCF's Flying Squad and the Organized Crime Investigations Division (OCID) into one branch called the Counter-Terrorism and Organized Crime Branch (C-TOC); and for the Narcotics Division of the JCF to focus on the core area of drug interdiction.
  11. The Authorities demonstrated some areas where national policies and activities were addressing ML risk. For example, lottery scamming was identified as a prevalent criminal activity and legislation was enacted to address this issue. Fraud and corruption were also identified and are being disrupted through arrests and recovery of proceeds through forfeiture. There are dedicated agencies such as the JCF-Fraud Investigations Unit, the Revenue Protection Division (RPD), the Corruption Prevention Commission, and the Contractor General's Office which deal with the investigation of these matters.

### *Country's risk assessment & Scoping of Higher Risk Issues*

12. At the time of the onsite, Jamaica did not have a completed NRA and consequently were not in a position to share any high level findings of the NRA. However, the Jamaican Authorities were able to discuss with the Assessors the methodology that was used to develop and implement the first stages of their NRA which was similar to that used for the development of the NSP, with the exception that the focus of the NRA was on ML/TF issues.
13. A Steering Group (SG) established at the Permanent Secretary level which reports to Cabinet, is directing the NRA process. Three technical working groups which consist of technical officers, put forward weekly presentations on matters deemed significant:
  - a. Financial and Regulatory: (looks at the financial sector). The Group comprises BOJ, FSC, MOF and FID.
  - b. Investigations and Prosecutions: (looks at threats and vulnerabilities in the investigation and prosecution of money laundering and terrorism financing). The group comprises FID, JCF, MNS, MOJ and DPP.
  - c. Transnational crimes, Terrorism Financing and Proliferation (looks at the threats and vulnerabilities in this area). This group comprises the MFAFT, DPP (MLAT), FID, MOF, FSC, JCF, PICA and JCA.
14. Technical officers highlight operational issues found in their respective agencies and submit their assessments to their respective working groups to determine whether their analysis is correct. If issues are found they are asked to go back and review information presented. Each working group then submits their

assessments to the SG to decide what the major issues are, with the focus being on the identification of threats and vulnerabilities.

15. While there is buy-in amongst the public sector stakeholder agencies involved, private sector stakeholders were not part of the NRA process. Jamaica explained that this is due to the sensitive nature of the exercise and has instead, used knowledge of these institutions to determine industry risk. Jamaica has also indicated that given the embryonic state of the AML/CFT regime for the DNFI/DNFPB sector it would not benefit from being included in the NRA.
16. A significant deficiency identified during the NRA process was the gaps in data capture and the recognition of the need to establish formalised systems to facilitate the keeping of statistics and qualitative data on financial intelligence, investigations, prosecutions and forfeiture and other relevant information for AML/CFT. While some of this information is already collected by some agencies, this needs to be strengthened to improve collection, reliability and access to statistics to better inform policy and to measure achievements.
17. During the on-site visit, the Assessment team gave increased focus to the threats and vulnerabilities outlined below. They represent not only areas of high ML/TF risks but those that were of significant interest or concern to the Assessment Team based on materials publicly available and that were provided in preparation for the on-site visit.

### *Threats*

#### **Criminal activities:**

18. **Terrorism and Terrorist financing:** There are reports of alleged involvement by Caribbean nationals in the terrorist group ISIL. As noted in the 2013 NSP, Jamaica is at risk for terrorist acts, given its position as a major tourist and cruise ship destination. The focus of the Assessors was on determining whether the procedures in place for identifying and prosecuting terrorism and TF related matters are adequate and whether the NPO sector is sufficiently seized of its vulnerability.
19. **Trafficking of small and light weapons:** Gang related and other organised crimes (lotto scams) and narcotics (drug trafficking).
20. **Tax evasion:** This threat is in light of the fact that Jamaica is a cash intensive economy. Assessors focused on the level of awareness of the threshold reporting requirements, the quality of the reports filed with the FID and whether the Authorities had identified ways in which persons had circumvented the reporting requirement as a way to facilitate ML.
21. **Corruption:** The international perception of corruption in Jamaica is indicated by the Transparency International's ranking – number 83 in 2013 (69 in 2015). The NSP identified corruption as a Tier 1 threat in light of this incidence among elected public officials, public work contracts being awarded to criminals and corruption in State institutions. Assessors reviewed how Authorities are addressing the issue of corruption and whether the systems in place have been effective in identifying and minimising occurrences of corruption.

## Vulnerabilities

22. **DNFIs/DNFBBPs:** The DNFI/DNFBBP regime in Jamaica is fairly new. DNFIs/DNFBBPs are not subject to the TF framework. Jamaica's range of DNFIs/DNFBBPs does not include dealers in precious metals and stones. TCSP services can be provided by accountants and attorneys who are covered under the AML framework; however, attorneys are unable to be supervised due to the injunction presently in place in relation to an on-going Court matter. The 2013 NSP identified lawyers as facilitators to organised crime for their role in establishing businesses for individuals connected to organised crime and executing other business transactions. Given the relative newness of Jamaica's DNFIs/DNFBBPs regime, and the sector not being subject to the TPA, Assessors focused on reviewing the structures the designated supervisors have implemented to determine their level of understanding and readiness to supervise these sectors for AML compliance.
23. **Remittances:** To ascertain the type of controls that are in place to ensure that this sector is not used to facilitate ML. The Assessors therefore focused on whether proper controls are in place to minimise misuse of such services.
24. **Microfinance Institutions:** Microfinance institutions in Jamaica are not regulated. However, the Minister of Finance provides exemptions from the provisions of the Moneylending Act in relation to interest rates on loan contracts and other such arrangements. The institutions which generally apply for an exemption are those that desire to seek funding from the Development Bank of Jamaica. The aggregate capital base of twenty-six (26) institutions which have exemptions is JMD 11.4 billion dollars; and one company accounts for 70% of the sector. Accordingly, the total size of the sector is unknown since only a portion of the sector apply and receive exemptions. Authorities indicated that the Ministry of Finance and Planning (MOFP) is developing a Micro-Credit Act which is expected to deal with the licensing of operators and which will also lead the way for the sector to be designated under the POCA and the TPA.<sup>3</sup> The Assessors focused on the role these microfinance institutions play in Jamaica's economy and whether the non-regulation of this sector makes it susceptible to misuse for ML purposes.

## Materiality

25. Jamaica's financial sector is dominated by the deposit taking institutions (DTIs) which comprise a mix of domestic and foreign groups. The asset sizes of the DTIs, insurance and securities sectors are illustrated in the table below

**Table 1.**

| Type of Institution                          | Asset size         |
|--|--------------------|
| Deposit Taking Institutions (March 31, 2015) | US\$10,163 Million |
| Securities Sector (December 31, 2014)        | US\$ 4.76 Billion  |
| Insurance Sector (March 31, 2015)            | US\$ 2.85 Billion  |

26. Cambio transactions account for one third of the foreign exchange market activity. The Table below shows trading volumes and market shares for 2014 and 2015.

<sup>3</sup> For other references on the subject, please see: [http://www.jamaicaobserver.com/business/Jamaica-hurt-by-lack-of-regulation-microfinance-report\\_15271506](http://www.jamaicaobserver.com/business/Jamaica-hurt-by-lack-of-regulation-microfinance-report_15271506), <http://www.microcapital.org/microcapital-brief-jamaica-microfinancing-association-jamfa-executive-director-raymond-gabidon-says-loan-shark-accusation-is-unfair/>

**Table 2.**

|      | Trading Volume<br>(US\$ Mn) |          | Market Share<br>% |       |
|------|-----------------------------|----------|-------------------|-------|
|      | Purchases                   | Sales    | Purchases         | Sales |
| 2014 | 4,121.97                    | 4,116.13 | 45.82             | 47.03 |
| 2015 | 4,007.49                    | 4,009.12 | 43.77             | 42.63 |

27. Money remitters' flows represent 14% of GDP. The Table below shows inflow and outflows of remittances for 2014 and 2015.

**Table 3.**

| Remittances<br>(US\$ Mn)  |                    |         |         |       |
|---------------------------|--------------------|---------|---------|-------|
|                           | January to October |         | Change  |       |
|                           | US\$ Mn            |         | US\$ Mn | %     |
|                           | 2014               | 2015    |         |       |
| Remittance Inflows        |                    |         |         |       |
| Remittance Companies      | 1,531.4            | 1,603.1 | 71.7    | 4.7   |
| Other Remittances         | 249.9              | 240.8   | ( 9.1)  | (3.6) |
| Total Remittance Inflows  | 1,781.3            | 1,843.9 | 62.6    | 3.5   |
| Total Remittance Outflows | 187.0              | 190.7   | 3.7     | 2.0   |
| Net Remittances           | 1,594.3            | 1,653.2 | 58.9    | 3.7   |

28. The DNFI/DNFBPs sector in Jamaica consists primarily of lawyers and real estate agents. There are a small number of accountants who qualify as DNFI/DNFBPs based on the services they perform, and a number of gaming lounges have been captured under the POCA. There is no independent TCSP regime in Jamaica although legislation has been drafted to specifically regulate persons who provide international corporate and trust services. Company formation services are currently provided by lawyers and accountants. With lawyers being identified as a Tier 1 threat in the NSP and given the large size of the

legal profession, this sector was considered to be sufficiently important in determining effectiveness, particularly given the ability of lawyers to act as TCSPs, as well as the current injunction against the enforcement of the AML/CFT regime, when considered against their recognition as a Tier 1 threat. Accountants and real estate agents were also identified as facilitators to organised crime.

### *Structural Elements*

29. The key structural elements for effective AML/CFT controls appear to be present to some extent in Jamaica. Political and institutional stability and accountability and rule of law are present. The World Bank's Worldwide Governance Indicators<sup>4</sup> have also recorded improvement in accountability, political stability, rule of law and the absence of violence/terrorism, and control of corruption in Jamaica between 2003 and 2013. However, based on the indicators the perception of government effectiveness and regulatory quality has decreased. Jamaica has an independent judicial system headed by the Chief Justice. At the Resident Magistrate's (RM) level, there seems to be a lack of training with regard to ML/TF matters that is impacting the effectiveness of the judicial system in addressing such matters.

### *Background and other Contextual Factors*

30. Combatting corruption has also been a priority for the government of Jamaica. In response to this Tier 1 threat, a number of measures were taken to mitigate against this threat. The Office of the Contractor General(OCG) (established under the Contractor General's Act); Corruption Prevention Commission (established under the Corruption (Prevention) Act), and the Revenue Protection Division (established under the Revenue Administration Act) were established to identify, investigate and make recommendations for prosecution of all acts of corruption emanating from and within both the private and public sector in Jamaica. The Revenue Protection Division has been working closely with other LEAs namely, the JCF, JDF, JCA and FID and together they have conducted four major joint investigations involving fraud and corruption during 2014. The investigations resulted in the seizures of high-end vehicles valued in excess of JA\$80 Million (approximately US\$650,400) and the arrest of eight persons for breaches of The Law Reform (Fraudulent Transactions Act) and the Cyber Crimes Act. Additionally, based on the level of corruption identified, Jamaica treats its domestic PEPs as high risk. Although this treatment is contrary to the FATF Methodology, it appears appropriate in this case given the context.
31. Another contextual factor relevant to the AML/CFT regime is that the Authorities noted that the lack of human and financial resources severely hamper the ability for ML and TF cases to be investigated and prosecuted in the RM's Court in a timely manner. Furthermore, the current structure of the Court system severely restricts the number of ML cases that are brought to trial.
32. In recent years, the microfinance segment of the financial sector has seen increased growth that appears to have outpaced the growth in the majority of other sectors in the economy. There are an increasing number of entities that appear to be offering a wide array of micro-finance services to the public. However, there is currently no regulation or oversight framework in place to monitor this sector.

### *Overview of AML/CFT strategy*

---

<sup>4</sup> Worldwide Governance Indicators – Country Data Report for Jamaica 1996-2013.

33. Jamaica's current AML/CFT strategy is limited to the policy objectives found in its NSP which speaks to dismantling criminal organisations, disrupting their operations, sequestering their assets, severing their political connections, and degrading their ability to commit serious crimes. The NSP further indicates that these objectives are to be achieved by removing the profit from crime, reforming the justice system, policing by consent, adopting a coherent anti-gang strategy, focusing on at-risk individuals and communities, and strengthening its systems of governance.
34. The Government of Jamaica during the onsite assessment, however, indicated its commitment to implement the FATF Standards and noted that it had made swift amendments to several pieces of legislation in an effort to achieve this goal. The inclusion of real estate dealers, lawyers and accountants as designated non-financial institutions (DNFIs/DNFBPs) under the AML/CFT framework; the enactment of the Criminal Justice Suppression of Criminals Act to deal with organized crime and gangs; the establishment of the MOCA as an agency that is independent of the police (legislation expected by 2016); and the use of restraint mechanisms as in the Christopher "Dudus" Coke case where US\$200M in cash and property was restrained, were all noted as examples of this commitment. The Government also noted that the threat of TF is taken seriously and this position was exemplified by the formation of CTOC, which is a Police unit that is dedicated to dealing with TF. In the absence of a national AML/CFT strategy, such actions have gone some way towards addressing some of Jamaica's potential AML/CFT risks.

### *Overview of the legal & institutional framework*

#### ***Legal System***

35. Jamaica is a common law jurisdiction based on English common law. It has a constitutional monarchy with a parliamentary system of government. Justice is administered by the Court system consisting of five basic tiers, namely: the Supreme Court, Court of Appeal, Circuit Court, Resident Magistrate's Court<sup>5</sup>, and Court of Petty Sessions. The Judicial Committee of the Privy Council, which sits in England, is the final Court of Appeal for Jamaica. Jamaica is also a party to the Original Jurisdiction of the Caribbean Court of Justice, which has exclusive jurisdiction on the interpretation and application of the Revised Treaty of Chaguaramas Establishing the Caribbean Community. The Supreme Court is the highest first instance Court and is a Superior Court of record with unlimited jurisdiction. It has jurisdiction in civil, criminal, family, commercial, succession and admiralty cases and decides applications for redress of breaches of fundamental rights and freedom provisions of the Constitution. Within the Supreme Court, there are Specialized Courts such as the Gun Court, Revenue Court and the Commercial Court. The hierarchy of laws in Jamaica is as follows:-
  - the Constitution of Jamaica;
  - statutes and treaties; and
  - Common law and customs.
36. Jamaica is divided into the following Parishes: Clarendon, Hanover, Kingston, Manchester, Portland, Saint Andrew, Saint Ann, Saint Catherine, Saint Elizabeth, Saint James, Saint Mary, Saint Thomas, Trelawny,

---

<sup>5</sup> Resident Magistrate's Courts are now called Parish Courts.

and Westmoreland. This is relevant in that ML and TF investigations are dealt with primarily at the Resident Magistrate's Court in each parish.

37. The responsibilities for Jamaica's AML/CFT policies are divided between the Ministry of National Security, Ministry of Finance, Ministry of Justice, Ministry of Foreign Affairs and the Units and Departments within those Ministries. Accordingly, the competent authorities and agencies responsible for the formulation and implementation of national AML/CFT policies are:-

- **Ministry of Finance and Planning (MOFP)** –responsible for developing policies to facilitate sustainable growth in the national economy and effective regulation of the country's financial institutions. The MOFP is a member of NAMLC.
- **Bank of Jamaica (BOJ)** - the prudential regulator for deposit taking institutions (banks, merchant banks, building societies) as well as cambios and money remitters. It is the Competent Authority for these entities as well as credit unions. The BOJ is a member of NAMLC.
- **Financial Services Commission (FSC)** - the supervisory/competent authority for insurance companies, insurance intermediaries, private pension schemes including registered trustees, licensed administrators and investment managers of private pension plans and security dealers and investment advisers. The FSC is a member of NAMLC.
- **Ministry of National Security (MNS)** – responsible for the administration of the Extradition Act and the Sharing of Forfeited Property Act. Certain functions are shared with the Attorney General. The MNS is also responsible for the Jamaica Constabulary Force (JCF), the Department of Correctional Services and the Ministerial home for the Jamaica Defence Force (JDF). The MNS is a member of NAMLC and is intrinsically involved in the review of the NSP.
- **Ministry of Justice (MOJ)** – Responsible for making and addressing requests for assistance between countries through the Mutual Assistance (Criminal Matters) Act. In practice, this function is executed through the Office of the DPP. The MOJ also works closely with the MNS on several matters and is the lead administrator of justice in Jamaica and therefore administers legislation, delivers justice services, and provides support and analysis on justice issues. The MOJ is a member of NAMLC.
- **Ministry of Foreign Affairs and Foreign Trade** - circulates the UN Security lists of terrorist and terrorist organisations to the government agencies for onward dissemination to financial institutions and designated non-financial institutions (DNFIs/DNFBPs). This Ministry is a member of NAMLC.
- **Attorney General's Chambers (AGC)** – provides advice on matters concerning the external affairs of the Government of Jamaica, including issues of ML drug trafficking, and the review of MOUs and international treaties.
- **Governor-General in Council/Supreme Court** - responsible for the designation of countries to which the Judgments (Foreign) (Reciprocal Enforcement) Act can be applied and for ensuring that foreign judgments are duly registered. The Governor-General in Council is a member of NAMLC.
- **Financial Investigation Division (FID)** – investigates ML, corruption and other financial crimes, manages and maintains assets seized and forfeited, and has the power to grant consent to financial

institutions to perform acts prohibited under the POCA. The FID is a member of NAMLC and the CTD chairs the NAMLC.

- **Jamaica Constabulary Force (JCF)** - responsible for the maintenance of law and order, the prevention and detection of crime, the investigation of alleged crimes, the protection of life and property, and the enforcement of all criminal laws. The JCF is a member of the NAMLC.
- **Major Organised Crime and Anti-Corruption Agency (MOCA)** – responsible for investigations into major organized crime, police corruption, public sector corruption, and economic and financial crime. In executing its mandate MOCA works closely with the MNS, JCF, JDF, FID, TAJ, JCA and PICA.
- **Counter Terrorism and Organised Crime Investigation Branch (CTOC)** – a specialised unit within the JCF responsible for investigations relating to counter-terrorism, transnational crime, fraud, gang activity and human trafficking.
- **Tax Administration Jamaica (TAJ)** – acts as the country’s revenue collecting agency. It investigates tax crimes and works alongside law enforcement agencies in the investigation of other crimes.
- **Charities Authority** - within the Department of Friendly Societies and Cooperatives; is responsible for the registration and examination of NPOs.
- **Office of the Director of Public Prosecutions (ODPP)** – Responsible for the handling of criminal prosecutions including those related to ML/TF. Prosecutes offences in the High Court and is the designated authority for matters of TF, MLA and extradition. ODPP is also responsible for delisting entities under the TPA. The ODPP is a member of the NAMLC.
- **Supreme Court of Jamaica (SCJ)** - has original jurisdiction in criminal, civil and constitutional cases including the prosecution of ML cases which are done primarily at the Circuit Court level.
- **Jamaica Customs Agency (JCA)** – is responsible for enforcing import and export restrictions and prohibitions, including ML. The JCA is a member of NAMLC.
- **Contractor General Office (CGO)** – monitors the conditions under which each Government contract is awarded and makes a determination as to whether there is any impropriety with regard to the process. The CGO reports directly to Parliament and tables reports on investigations on the award of contracts.
- **Corruption Prevention Commission (CPC)** – Manages the statutory declaration of public officials and conducts investigations derived from these declarations and on their own initiative on corruption issues. It is also responsible for reviewing and investigating matters relating to corruption of public servants, including those employed overseas.
- **Revenue Protection Division (RPD)** – carries out investigations and prosecutions in relation to corruption and fraud under the Revenue Administration Act; institutes programmes for the detection of fraud against the laws relating to revenue and provides assistance to other Revenue Departments in the planning and conduct of investigations in relation to offences against the laws relating to revenue.

38. Jamaica also has established a National Anti-money Laundering Committee (NAMLC) to address AML/CFT policy and implementation issues. NAMLC is a multi-agency committee that deals with legislative reform and other institutional measures on AML/CFT.

*Overview of the financial sector and DNFBS*

39. The financial sector in Jamaica consists of the following institutions:

**Table 4: Financial Sector**

|   |                                      |
|---|--------------------------------------|
| <b>TOTAL DEPOSIT TAKING INSTITUTIONS</b>                | <b>48</b>                            |
| Commercial Banks  | 6                                    |
| Merchant Banks  | 2                                    |
| Building Societies                                      | 3                                    |
| Credit Unions   | 37                                   |
| <b>TOTAL CAMBIOS AND REMITTANCE SERVICE PROVIDERS</b>   | <b>74</b>                            |
| Cambios   | 66 (operating through 159 locations) |
| Remittance Service Providers                            | 8 (operating through 402 locations)  |
| <b>TOTAL SECURITIES FIRMS</b>                           | <b>51</b>                            |
| Securities Firms (Licenced Dealers/Investment Advisers) | 51                                   |
| <b>INSURANCE SECTOR</b>                                 | <b>145</b>                           |
| Insurance Companies                                     | 19                                   |
| Insurance Intermediaries                                | 126                                  |

40. The DNFI/DNFBS sectors in Jamaica comprise the following:

**Table 5:**

| DNFIs/DNFBS Sector                         | Designated Supervisor                    | Number of Entities Licensed | Number of Entities Qualifying for AML/CFT supervision |  |
|--|--|-----------------------------|---|--|
| Casinos                                    | Casino Gaming Commission                 | 0                           | 0   |  |
| Other Gaming (gaming lounges) <sup>6</sup> | Betting, Gaming and Lotteries Commission | 16                          | 16  | Gaming lounges are entities with 20 or more machines |

<sup>6</sup> Gaming lounges are entities with 20 or more machines

|  |   |   |         |  |
|--|---|---|---------|--|
| Real Estate Agents                                 | Real Estate Board                                       | 304 – dealers<br>495 - salesmen                     | 799     |  |
| Lawyers  | General Legal Council                                   | 1789 – private                                      | unknown |  |
| Notaries   |   | 61 licensed (49 active)                             |         |  |
| TCSPs  |   | 865   |         |  |
| Accountants  | Public Accountants Board                                | 270 – registered accountants including 168 auditors | 4       |  |
| Dealers in precious metals and stones <sup>7</sup> | Only subject to the cash transaction prohibition regime | 50 firms with a total of 100 branches               | -       |  |

41. DNFI/DNFBPs, like FIs, are required to be aware of their ML risk and establish programmes to mitigate such risk. DNFI/DNFBPs are not subject to the TPA; however, established guidance notes cover TF to some degree. All CDD/EDD, record keeping and oversight requirements instituted for FIs also apply to DNFI/DNFBPs, including the need to assess clients' risk and identify beneficial ownership.

#### *Overview of preventive measures*

42. The BOJ and FSC have issued AML/CFT Guidelines to the FIs, which fall under their respective regulatory purview. During the Third Round Mutual Evaluation, these Guidelines were considered Other Enforceable Means. In 2015, the FSC updated its Guideline to reflect legislative changes over the last two years. The BOJ is in the process of updating and reissuing its Guidelines to reflect a RBA to AML/CFT. Each designated DNFI/DNFBP supervisor has drafted AML/CFT Guidelines for their respective sectors; however, many are yet to be effected. These Guidelines require the relevant DNFI/DNFBPs to adopt a RBA when taking on new clients and managing existing clients. The level of coverage on CFT matters in these guidelines varies, with the GLC's guidelines being the most in-depth.

#### *Overview of legal persons and arrangements*

43. Jamaica has four types of legal persons that can be established or created: (i) companies limited by shares, (ii) companies limited by guarantee, (iii) mutual fund companies, and (iv) unlimited companies. Those companies can be further categorised as either private or public companies or foreign/overseas companies and local companies. All companies are required to be registered by filing Articles of Incorporation to the Registrar. Where a foreign company is involved there must be information on the local agent. Foreign companies can register either as a local or foreign company and certified copies of the Articles of Incorporation must be received from the foreign jurisdiction. Where the foreign registry will not provide the copies, the Jamaican registry will accept a notarized certified copy.

<sup>7</sup> Although dealers in precious metals and stones have been included in this Table, they are not considered DNFI/DNFBPs under Jamaica's system.

44. With regard to offshore companies, the Companies Registry of Jamaica is responsible for registering companies. There is no legislation in place as yet in this regard. Limited Partnerships in Jamaica may be established and registered under The Partnership (Limited) Act 1853. The names of the general and special partners are required to be filed with the Public Record Office and are published in the *Gazette*, which is the official publication of the Government of Jamaica. Trusts can be established in Jamaica under the Trustee Act. Whereas the Act contains provisions in relation to the rights, responsibilities, powers and duties of trustees, it does not require trustees to obtain and hold adequate and accurate information on the identity of the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising control. However, the duty to maintain this information is derived from common law principles. Notwithstanding, Competent Authorities are unable to ensure that current information is maintained in respect of legal arrangements.

#### *Overview of supervisory arrangements*

45. The Competent Authorities (CAs) for the financial sector are the BOJ and the FSC with respect to AML/CFT. The DTIs, cambios and money remitters fall under the BOJ's purview and the insurance companies, insurance intermediaries and securities companies under the purview of the FSC.
46. The POCA and TPA provide AML/CFT mandates for the BOJ and FSC to monitor compliance with AML/CFT obligations, issue guidelines and conduct examinations.

## **CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION**

### ***Key Findings and Recommended Actions***

#### ***Key Findings***

- Jamaica has not yet completed its National Risk Assessment (NRA). However, based on its National Security Policy (NSP) and work done by its National Anti-Money Laundering Committee (NAMLC), there is a reasonable understanding at a country level of national ML/TF risks and mitigation strategies have been implemented to address the identified risks. However, Jamaica has yet to develop a comprehensive process to identify, understand, assess and mitigate its main ML and TF risks.
- The framework for national coordination through NAMLC works well.
- Dealers in precious metals and stones (DPMSs) are excluded from the AML/CFT regime based on the prohibition on cash transactions exceeding JAM\$1M (US\$8,645), which falls below the FATF cash transaction threshold.
- There are no measures in place to address the risk of legal persons and legal arrangements as mechanisms to facilitate ML. This issue was not addressed in the NSP.
- Jamaica is able to demonstrate efforts of improved co-operation among the domestic authorities which has resulted in joint investigations and information sharing.

### ***Recommended Actions***

- Jamaica should complete its NRA process so that it can fully identify, assess, understand and mitigate its ML/TF risks, and ensure that all relevant public and private sector stakeholders are sufficiently engaged in the process.
- Upon completion of the NRA, results should be shared with the private sector (FIs and DNFIs/DNFBPs).
- Jamaica should establish policies and implement measures to counter PF
- The AML/CFT regime should be extended to include all DNFIs/DNFBPs as recommended by FATF Recommendations as well as any other type of business which may pose an AML/CFT threat as identified by the completed NRA.
- Jamaica should formulate national policies and strategies related to ML/TF including processes for monitoring effectiveness.
- Jamaica should improve its efforts to address ML risks associated with those criminal activities identified in their NSP as Tier 1 and Tier 2 threats.
- Jamaica should identify and assess its ML/TF risks associated with its financial, DNFIs/DNFBPs and NPO sectors, the use of legal persons and arrangements, cross-border activities, tax evasion and PF, and put measures in place to mitigate these risks.

### ***Immediate Outcome 1 (Risk, Policy and Coordination)***

#### *Country's understanding of its ML/TF risks*

47. Jamaica has yet to complete its NRA for ML and TF, but has prepared an NSP which identified risk in a broader context. The scope of the NSP focused on threats to the national security of Jamaica and is therefore limited for the purposes of this mutual evaluation.
48. As previously noted, the NSP identifies ML as a Tier 1 (high probability, high impact) threat and terrorism as a Tier 2 (low probability, high impact) threat. It has also identified the predicate offences of murder, organised crime, corruption and fraud as Tier 1 threats, as well as recognised DNFIs/DNFBPs (accountants, lawyers and real estate dealers) as facilitators of ML. Jamaica's AML/CFT regime, however, does not encompass all FATF recognised DNFIs/DNFBPs.
49. The Authorities have indicated that the NRA will complement the NSP which assesses the overarching risks to and vulnerabilities of Jamaica's security and contains key recommendations in the area of ML and other financial crimes. The NSP has been useful in identifying the overarching vulnerabilities within Jamaica, but due to its limited scope it has not been able to identify TF risk or other key risk areas within the financial sector (e.g. the use of legal persons, legal arrangements and DNFIs/DNFBPs as mechanisms to facilitate ML, the TF risk associated with NPOs; cross-border activities; tax evasion; and the financing of proliferation of weapons of mass destruction.
50. The level of understanding of risk varies and risk assessments have been carried out in the absence of any involvement by the private sector i.e. FIs and DNFIs/DNFBPs. Assessors are of the view that the NRA exercise would be better served if an independent assessment of each area of responsibility had been

conducted. Further it would have been more beneficial to include the private sector to allow for proper identification of sector risk through dialogue with these entities.

51. However, the law enforcement agencies and financial sector supervisors appear to have a general understanding of some areas of the risk posed. Jamaica appears to be focusing its efforts on risk mitigation in relation to the predicate offences of narcotics and weapons trafficking, local organised crime, cybercrime (particularly in relation to lotto scams) and fraud as well as ML, although in many instances it appeared that emphasis was being placed on the offence itself rather than pursuing the money trail.
52. The BOJ and FSC have adopted a RBA to supervision and heavy focus has been placed on the FIs sector with respect to identification and mitigation of ML/TF risk. This increased awareness of the need to adequately monitor and supervise FIs has helped to ensure that there are satisfactory compliance programmes in place in these institutions.
53. DNFIs/DNFBPs supervisors are in the process of establishing their supervisory regimes and have performed outreach to the various sub-sectors in an effort to help them understand their risks, and have a relative level of success in this regard. Some sectors such as the jewellers, which do not fall under the DNFIs/DNFBPs regime, but which are subject to cash transaction restrictions, did not appear to fully understand the need for the risk mitigation measures that are currently in place.

#### *National policies to address identified ML/TF risks*

54. Law enforcement and prosecutorial agencies appear to have a reasonable understanding of the risks which have an impact on their area of interest that were identified in the NSP. For instance, there has been to some extent, a focus on financial crime detection and investigation as the JCF has taken steps to ensure that critical areas relating to ML and TF are sufficiently addressed. Through internal reviews at a policy level, and in response to the growing threat of transnational organised crime the JCF has undergone organisational changes by establishing MOCA to investigate and prosecute major transnational criminals and to forfeit their assets. The JCF has also ensured that several of its members receive advanced training in AML/CFT locally, regionally and internationally. The JCF also established CTOC, which is the main agency authorised to investigate TF activities. While this is commendable, Assessors are unable to assess the effectiveness of this recent development. As members of NAMLC, the JCF and ODPP were able to contribute to discussions which led to amendments to the POCA and POCA Regulations, the TPA and TPA Regulations, FIDA, etc. This is discussed in more detail below. However, despite these initiatives, there is still a strong focus on investigating and prosecuting predicate offences as opposed ML offences, which is disproportionate to Jamaica's ML threats.
55. The Financial Sector Supervisors, the BOJ and FSC include an assessment of AML/CFT measures as part of its onsite examinations of their regulated entities. The BOJ has established a dedicated AML Unit to focus and better serve its AML/CFT supervision. The Commissioner of Cooperatives which is responsible for the supervision of Charities is yet to adopt a risk based approach to supervision.

#### *National Anti-Money Laundering Committee (NAMLC)*

56. NAMLC is the mechanism for national cooperation within Jamaica and its members comprise representatives from the Ministry of Finance and Planning, BOJ, FID, FSC, the Chambers of the Attorney

General, ODP, Jamaica Constabulary Force (JCF), Jamaica Defence Force (JDF), Ministry of National Security, Customs and the MOJ. The Committee is chaired by the CTD of the FID. NAMLC considers national policy and legislative matters. It is an integral Committee which facilitates feedback and consultation resulting in development of mitigating measures and policies to strengthen the AML/CFT regime in Jamaica, to enable compliance with FATF Recommendations.

57. There are several co-ordination mechanisms including committees and task forces utilised by the Government ministries and agencies especially amongst agencies that are part of NAMLC, to assist the development of the AML/CFT framework. This results in regular dialogue among the agencies especially on operational matters. NAMLC focuses on issues relating to law reforms and institutional measures to implement the FATF Recommendations. Some of the activities which engaged its attention include:
  - a) Amendments to POCA and the POCA(ML) Regulations;
  - b) Amendments to the TPA and the TP(RE) Regulations;
  - c) Contribution to the development of the Charities Act;
  - d) Amendments to the FIDA resulting in the FID's admission to the Egmont Group of FIUs;
  - e) Passage of the UNSCRI Act;
  - f) Implementation of measures to bring certain DNFI/DNFBPs under the AML Framework;
  - g) Contribution to the development of the Casino Gaming Act;
  - h) Accessing training and technical assistance opportunities for member entities including the regulators of the DNFI/DNFBP; and
  - i) Industry engagement with businesses in the regulated sector through presentations and meetings.
58. The result of these reforms has been a strengthening of Jamaica's AML/CFT regime, although some reforms have not been fully implemented across all sectors, thereby limiting the level of effectiveness.
59. NAMLC also acts as the coordinating body which has developed the NRA on ML and TF to complement the existing NSP. However, as the NRA is yet to be completed the outcomes from the assessment have not yet influenced national AML/CFT policies, and Jamaican Authorities were not in a position to share any preliminary findings with Assessors. Notwithstanding, the results of the NSP have, to some extent influenced a number of national AML/CFT policies as discussed above. Additionally, NAMLC and the other relevant authorities were able to identify the ML, and to some extent TF risks, relevant to Jamaica generally and to their agencies specifically, but in some instances appeared to have difficulty addressing the means by which these risks could be mitigated.
60. Measures have been adopted to mitigate the main risks identified in the NSP, for example, through the introduction of the Law Reform (Fraudulent Transactions)(Special Provisions) Act, 2013, which makes provision for offences relating to lottery scams, advanced fee fraud and other fraudulent transactions; the establishment of MOCA and CTOC, both of which have a focus on financial crime, corruption, ML and TF, and the establishment of a dedicated unit within MOCA with oversight of lottery scam investigations. However, the focus of these agencies has been in relation to the identification, investigation and prosecution of predicate offences as opposed to offences relating to ML and TF. In addition, having recognised lawyers, accountants and real estate agents as facilitators of ML these sectors were brought under Jamaica's AML regime.
61. The NSP has identified terrorism as a Tier 2 risk, however, Jamaica has not identified its TF risk, and national policies and activities are yet to be implemented to address risks associated with TF. In addition,

there have been no terrorism or TF related investigations, prosecutions or convictions. The Assessors are of the view that while the risks identified in the NSP have been adequately addressed, measures should be taken to identify TF, and other ML risks not identified in the NSP.

62. Based on risks identified in the NSP, the Authorities, to a reasonable extent, have identified, assessed and mitigated ML risks but are yet to fully address TF and PF risks.

#### *Exemptions, enhanced and simplified measures*

63. The Authorities have implemented a threshold transaction limit where CDD requirements do not apply unless the nature of the transaction gives rise to a suspicion of ML/TF. The applicable limit is US\$250 or less or its equivalent in any other currency. This *de minimis* transaction level of US\$250 in the POCA and TPA Regs was established based on discussions among the Authorities who were of the view that transactions below this amount did not account for a significant level of STRs received, rather than primarily on a proven low risk of ML and TF. Although the relevant Minister is empowered to vary this amount and prescribe amounts in respect of different categories of regulated businesses, the Authorities have indicated that such variations will only take place after a technical assessment of the risks relating to the particular circumstances. Assessors are of the view that although they did not receive any information which suggests that this limit is inappropriate, the exemption should be based on a recognised level of low risk in such transactions and not whether STRs have been filed.
64. Persons are prohibited from dealing in cash transactions above JA\$1 million (US\$8, 645). Assessors note that although no information was received which suggests that this limit is inappropriate; no indication was given that the prohibition was as a result of a consideration of the risks arising from conducting large cash transactions.
65. The Authorities have established a threshold transaction reporting regime for specific sectors. The cash transaction reporting limits of US\$5000 (JA\$578,350) for money remitters, US\$8,000 (JA\$925,360) for cambios, and US\$15,000 (JA\$1,735,050) for other financial institutions were not derived on the basis of ML/TF risks. Assessors did not receive any information which suggests that these limits are inappropriate.
66. The POCA and TPA Regulations require FIs and DNFIs/DNFPPs to establish risk profiles for their business relationships. Enhanced due diligence (EDD) is required for politically exposed persons (PEPs), persons not ordinarily resident in Jamaica, trustees and companies having nominee shareholders or shares held in bearer form. The legislation allows for other categories of persons to be included as determined by a Supervisory Authority and specified by notice published in the Gazette. However, Jamaica has not identified any other categories of persons that would be subject to EDD measures and Assessors are of the view that the current categorisation is sufficiently comprehensive.

#### *Objectives and activities of competent authorities*

67. The NSP has provided a fairly good basis for competent authorities to prioritize their policies and activities to mitigate key risks. Examples include the expansion of the AML/CFT framework to apply to some categories of DNFIs/DNFPPs, the regulation of NPOs, and enhanced focus on LEAs with responsibility for ML and TF investigations.

68. The objectives and activities of most of the competent authorities are generally consistent with the ML/TF risks and moderate improvement is needed in some areas to address the ML risks. Assessors are of the view, however, that greater focus needs to be placed on identifying and addressing TF risks. On the preventive front, regulation of financial institutions is aligned to ML/TF risks. The establishment of a dedicated AML/CFT Unit at the BOJ was designed to enable supervisory focus to be greater aligned through sector and entity-type risk analysis. Supervision of the DNFIs/DNFBPs sector is in the embryonic stage but supervisors have a general sense of the ML risks associated with their licensees. This understanding is not the same in relation to TF.
69. Current supervisory practice does not adequately align with the risks in the NPO sector since a TF risk assessment has not been undertaken. Such assessment will inform the intensity of required supervision for the sector. Currently, registration is voluntary and does not take into account any potential TF risk.
70. Also, there is yet to be a specific national AML/CFT policy or strategy for the Authorities to align their objectives and activities with respect to microfinance lending institutions.

#### *National coordination and cooperation*

71. In addition to NAMLC, there are other structures in place for the sharing of information between relevant supervisory and law enforcement agencies through the development of inter-agency MOUs and other inter-agency working groups and strategic meetings which have aided in effective exchange of information and policy development at a national level.
72. There are domestic MOUs in place between the following agencies for the co-ordination and sharing of information:
  - Financial Investigations Division (FID) and the Tax Administration of Jamaica (July 29, 2013)
  - FID & Jamaica Customs Agency (July 30, 2013)
  - FID & Jamaica Constabulary Force (July 17, 2013)
  - FID & Office of the Director of Public Prosecution (Nov 14, 2013)
  - JCA and Tax Administration Jamaica
  - JCA and Port Authority of Jamaica (April 2004)
  - JCA and Postmaster General
  - JCA and Transnational Crime and Narcotics
  - JCF and Passport and Immigration Agency
73. The MOU between the ODPP and the Financial Investigations Division (FID) facilitates exchange of information and mutual co-operation in the investigation, prosecution and forfeiture of the proceeds of ML and other financial crimes. The MOU also establishes a formal working relationship for the purposes of exercising their respective functions as enforcing authorities under the POCA.

74. Additionally, the MOU between the FID and the JCF has resulted in the embedding of the JCF's Constabulary Financial Unit (CFU) within the FID. The resulting CFU exercises police powers in investigating financial crimes in tandem with the FID's forensic examiners.
75. The absence of MOUs among agencies, however, has not restricted collaboration with law enforcement agencies on proactive information gathering exercises. Arrangements for the sharing of information amongst law enforcement agencies generally appear to work well, as the number of joint operations and task forces have increased, for example operations like the Joint Operation Linked to Telemarketing, Anti-Lottery Scam Task Force, and Major Organised Crime Task Force which was subsequently converted to the Major Organized Crime Agency (MOCA).
76. Further, coordination mechanisms established by the JCF facilitated the assignment of JCF CFU liaison officers to each Parish as well as to the RM's Courts.
77. Exchange of information occurs through regularly scheduled strategic and operational meetings including:
  - a. Quarterly Narcotics Review Committee (chaired by the MNS)
  - b. Monthly Anti-corruption and Ethics Committee meetings with the JCA
  - c. Monthly strategic meetings between FID and MOCA;
  - d. Weekly case management meetings with FID attended by MOCA, Narcotics Division and CTOC;
  - e. Weekly intelligence meetings with FID, JCF National Intelligence Bureau and JDF Military Intelligence, and
  - f. Monthly CTOC Gangs Task Force which focuses on illegal firearms trade, criminal gangs and their connection to the drugs for guns trade. FID provides support in tracing assets, preparing financial profiles and analysis of documents uplifted from search operations.
78. Additionally, there is widespread cooperation between FID and the private sector and other agencies on operational matters.
79. It is evident that efforts have been made to improve cooperation and coordination amongst domestic agencies and that there is an attempt to focus on ML and TF risks emanating from the commission of serious crimes. However, as outlined in other sections of this report, law enforcement agencies appear to be focused mainly on investigating predicate offences as opposed to pursuing standalone ML offences or launching parallel investigations related to ML.

### *Supervisory Coordination Mechanisms*

80. The FRC, established through a Memorandum of Understanding, is chaired by the Governor of the BOJ and comprises the Ministry of Finance and Planning, BOJ, FSC as well as the Jamaica Deposit Insurance Corporation. It facilitates the sharing of supervisory information among the supervisory authorities including information on ML and TF. There is clearly room for improvement in the level of engagement between these authorities. Further, the Competent Authorities meet on an ad hoc basis with FID to discuss emerging matters of concern involving the FIs and on-going investigations.
81. Designated non-financial supervisors are also legislatively empowered to share information; however, arrangements are limited as few channels for formal information exchange have been established. However,

the Betting Gaming and Lotteries Commission (BGLC) has signed an MOU with OCID (now CTOC) and is working with the TAJ to establish an MOU to ensure smooth collection of taxes. There is also informal cooperation amongst DNFIs/DNFBP supervisors focused on assisting with the development of relevant AML/CFT guidelines. The coordinating mechanisms are yet to be fully tested as the supervisory regimes for DNFIs/DNFBPs are relatively new. The level of effectiveness of these mechanisms, therefore, could not be determined.

82. The national framework for interagency cooperation and coordination is comprehensive but demonstrating that it is focussed on combatting ML/TF rather than predicate crimes is a challenge. At the investigative level, the establishment of CTOC and MOCA, along with the work of the CFU and other agencies has aided in placing greater focus on ML/TF matters. The level of cooperation and coordination amongst investigative agencies is generally good. However, the primary focus of many of these agencies still appears to be in relation to the underlying predicate offences. At the prosecutorial level, particularly at the RM's Court level, joint prosecutions are sometimes conducted, but as previously noted; greater focus appears to be placed on pursuing predicate offences rather than on ML/TF offences. Further, statistical data provided in relation to investigations, prosecutions and convictions was inconsistent and incomplete. The jurisdiction was therefore unable to demonstrate the extent to which it mitigated its ML/TF risk.
83. The NRA exercise has reinforced the implementation of interagency cooperation, however, there are no coordination and cooperation mechanisms identified to combat the financing of proliferation of weapons of mass destruction. Assessors therefore concluded that Jamaica was not achieving a high level of effectiveness with regard to its efforts in dealing with PF.

#### *Private sector's awareness of risks*

84. Discussions with the private sector, FIs and DNFIs/DNFBPs confirm that they did not participate in the NRA. This was because the Steering Group (formed to deal with the development of a NRA) was of the view that sufficient information was available to analyse the sector without their direct participation and so it was not necessary. The Authorities determined that the DNFIs/DNFBPs sector would not benefit from being included in the NRA, outside of its consideration of these entities as part of the wider private sector in relation to the threats and vulnerabilities posed in the investigation and prosecution of ML and TF. FIs and DNFIs/DNFBPs, therefore, have not been advised of the NRA process beyond the general sensitization conducted to inform of the existence of the exercise. The Assessors view this as a shortcoming of the NRA exercise since FIs and DNFIs/DNFBPs would not have the benefit of being able to incorporate issues relating to country level ML/TF risks into their AML/CFT risk management programmes. The Assessors are of the view that this approach deprives the private sector of an opportunity to improve or deepen its knowledge and understanding of the ML/TF risks facing Jamaica.
85. Notwithstanding, Assessors found that the FIs have a better understanding of ML/TF risks when compared to the DNFIs/DNFBPs. Many of these FIs are members of financial groups domiciled in Jamaica, which have group AML/CFT policies, compliance and internal audit functions. Based on interviews conducted, DNFIs/DNFBPs, however, do seem to have some awareness of their exposure to ML/TF and the risk associated with the activities that they carry out, with accountants and real estate agents appearing to have a greater understanding of their ML/TF risk than the other sectors.

### *Overall Conclusions on Immediate Outcome 1*

86. While the NSP has identified overarching threats, vulnerabilities and risks, it has not identified TF, PF and other risks as well as structures/mechanisms which may facilitate ML/TF. Consequently, TF risks for the NPO sector, ML/TF risks presented by legal and legal arrangements as well as the financing of the proliferation of weapons of mass destruction have not been addressed.
87. There is a concern that even though LEAs have undergone structural changes to enable them to pursue ML/TF offences, those initiatives have for the most part concluded in convictions in relation to predicate offences and confiscation proceedings at the cost of securing successful ML/TF sentences. Therefore, Jamaica must deepen its understanding of its ML/TF risks which will enable it to better implement policies to combat ML/TF. Information on the country's understanding of ML/TF risks needs to be communicated to the private sector. The identification of low or high risk or *de minimis* thresholds should be driven by the identification of ML/TF risk. While cooperation is strong in relation to operational matters, Jamaica should maintain more comprehensive, accurate and reliable statistics to effectively demonstrate its disruption of ML/TF. Additionally, Jamaica's proliferation financing regime needs to be significantly enhanced.
88. **The rating for Immediate Outcome 1 is a moderate level of effectiveness.**

## **CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES**

### *Key Findings and Recommended Actions*

#### **Key Findings**

- Financial intelligence and other relevant information can be directly accessed in real time by various competent authorities to facilitate investigations of predicate offences, trace assets and identify trends and typologies.
- Financial intelligence analysed and disseminated by the FIU is used by LEAs and other competent authorities as a basis to conduct joint operations, audits and inspections.
- LEAs use of financial intelligence disseminated by the FIU is limited in the advancement of ML investigations. Emphasis is placed on disruption of criminal activity and the forfeiture aspect in investigations as opposed to ML.
- Competent authorities ensure that the information they collect and disseminate is adequately secured and kept confidential.
- The CFU's work is hampered by insufficient manpower resources and funding.
- ML prosecutions are not sufficiently pursued and prioritised. Jamaica does not place sufficient focus on attaching ML charges to predicate offences relating to Tier 1 threats, e.g. organized crime and corruption.
- There is insufficient coordination in Jamaica's Resident Magistrate's (RM) Court system with regard to pursuing ML/TF prosecutions. There is a tendency by Clerks not to put these matters forward and settle for the prosecution of the predicate offence or cash forfeiture aspect. Issues such as insufficient training in ML/TF

matters, lack of priority of ML/TF cases, incomplete investigations and reticence on the part of the RM to deal with ML/TF matters, which tend to be more complicated, contribute to this situation.

- Jamaica has pursued ‘taking the profit out of crime’ as a national policy. However, there is a need to assess how consistent confiscation and seizures are, in keeping with the country’s ML/TF risk.
- ML is not investigated in conjunction with predicate offences such as cash smuggling, which is an increasing threat.
- Jamaica is unable to demonstrate that it has imposed sanctions that are effective, proportionate and dissuasive against natural and legal persons who have been convicted of ML offences.

### ***Recommended Actions***

#### ***Immediate Outcome 6***

- Financial intelligence needs to be better utilized for ML and TF investigations.
- Jamaica should undertake an assessment of its analytical process to determine how financial intelligence can be better utilized in ML investigations to address concerns with regard to the low number of investigations, compared to the number of reports (STRs) received. The same should be considered for CBRs as there appears to be no investigations resulting from the analysis of CBRs.
- Jamaica should increase the resources of the CFU in the form of manpower and overall funding to allow for the investigation of a larger number of reports, which could then increase ML/TF investigations.

#### ***Immediate Outcome 7***

- Ensure continuous training for law enforcement officers responsible for investigating ML.
- LEAs should pursue ML more proactively to ensure that ML cases are successfully completed through to conviction and sanctioning.
- Jamaica should consider establishing a dedicated criminal court to deal exclusively with ML related cases so that they can be disposed of in a timely manner and to ensure that dedicated resources and properly trained personnel to prosecute ML offences are adequately provided for.
- A system wide evaluation of the prosecutorial process should be undertaken to address the risk associated with ML. This should include basic and advanced training for relevant persons within the judicial system on effective prosecutions and on the application of the AML/CFT framework in reference to its application and prosecution.
- The Authorities should expand their focus to ensure that ML is identified and investigated with regard to predicate offences including cash smuggling, which appears to be prevalent.
- The lack of resources invested in the prosecutorial system should be addressed; along with the development of a proper case management system to enhance its investigative and prosecutorial systems.
- Jamaica should impose sanctions that are effective, proportionate and dissuasive against natural and legal persons following conviction of ML offences.
- Jamaica should continue the implementation of the JSAT programme to ensure that the necessary statistics are obtained to assist Authorities in determining the effectiveness of their efforts.

### **Immediate Outcome 8**

- Jamaica should continue to pursue and prioritise confiscation efforts so that they are consistent with identified ML/TF risks.

### ***Immediate Outcome 6 (Financial intelligence ML/TF)***

#### **Background and Context**

#### *Use of financial intelligence and other information to develop evidence and trace criminal proceeds*

89. The main competent authority authorised to conduct analysis and financial investigations for ML and related predicate offences and TF is the FID. It is the Designated Authority as per the POCA, the TPA and the United Nations Security Council Resolutions Implementation Act (UNSCRIA), to receive financial transaction reports which are also used in investigations to develop evidence and trace criminal proceeds.
90. Financial transaction reports including, Suspicious Transaction Reports (STRs), Threshold Transactions Reports (TTRs), Cross Border Reports (CBRs) and Listed Entities Reports (LERs) are the main sources of financial intelligence and are all submitted to the FID by regulated entities. These reports are analysed by the Financial Intelligence Unit (FIU), which is set up as a separate unit within the FID. The FID is a hybrid unit that has both administrative and law enforcement duties. The FIU although structured within the FID is headed by a Director and, operates independently as it relates to the receipt, analysis, obtaining and dissemination of information received from FIs or other persons in Jamaica. The FIDA includes obligations for secrecy of FIU information and sets out penalties for unauthorized disclosures. The Act ensures that once the FIU receives information, it cannot be disclosed without proper authority and ensures that only the FIU has access to the FIU data.
91. The FID and other LEAs have direct access to a wide range of public and non-public databases which are used to assist with financial investigations in identifying bank accounts and connected persons of targets as well as to trace assets. Such databases include those used to maintain information on motor vehicles, drivers' licenses, real estate, property tax, stamp duty and transfer tax, taxpayer registration, business registration and income tax. In particular, the FID, C-TOC and the CPC have direct access to the Companies Office of Jamaica's website and can obtain basic information on companies including directors and shareholders. Through established MOUs, the FIU Director and designated profile officers are able to access databases held at the National Land Agency, Jamaica Customs Authority, Inland Revenue, FINCRIME, FINTRAN and World Check.
92. The FID also has the ability to access additional information from regulated entities as well as other persons and FIs to support its analysis. The FID exercises its powers when undertaking analytical or investigative functions by using measures detailed at section 3(6) of the POCA (MLP) Regulations and section 5(1)(b) of the FIDA which permit the CTD to direct a FI to provide additional information relating to ML, associated predicate offences and TF. Part 111 of the FIDA reflects the FID's powers to obtain information through production and inspection orders. Although there are no measures detailed, the FIU also uses this and all other information accessible, for the undertaking of its operational and strategic analysis.

93. Furthermore, there have also been circumstances where FIs use the intelligence provided by the FID to conduct their own investigations. Access to this information is achieved through the FID's Request for Consent (RFC) process. Reporting entities having knowledge or reasonable grounds to believe that funds involved in a transaction are criminal property, must obtain the appropriate consent from the FIU before executing that transaction or otherwise decline to proceed with the transaction. Failing this, the FI may be liable for a prohibited act as defined as a ML offence under sections 92 and 93 of the POCA. While the FIU acknowledges that this may lead to exposure of the entity, it is considered a useful investigative tool as information obtained during this process generates law enforcement intelligence that requires further investigation or potential restraint.
94. On the other hand, statistics provided have shown that the use of financial intelligence through the RFC process has generally not been applied to ML/TF. For the period 2011 to 2013 consent case disclosures contributed to some 26.85% of cases submitted to the CFU for investigation. Seventy percent of consent request were said to have been in relation to the 'Lottery Scam' cases, however, the number of ML investigations initiated from these cases are unknown.
95. LEAs including the JCF (which comprises MOCA, CFU, Fraud Squad and CTOC) and other authorities such as the RPD, CPC, JCA, and TAJ use the FIU's analysis in their investigations to identify and trace assets with regard to ML, and other proceeds generating offences. The FID has detailed SOPs to ensure the security of information exchanged, which works well. Additionally, the JCF, JCA, TAJ and RPD have their own policies to ensure the confidentiality of their information. Sanitised examples provided, as well as feedback from these agencies and authorities demonstrate that FIU products have been both of high quality and useful. Through the analysis conducted, the FID has been able to develop certain typologies and trends in criminal activity in relation to lottery scams, money remittances, cybercrime and identity theft, bulk cash smuggling and investment in real estate. The FID informed Assessors that it is working with the Real Estate Board to ensure that investors purchasing property in Jamaica have not been convicted overseas and that their funds are not associated with ML.
96. In relation to other competent authorities, financial intelligence is shared between multiple agencies and aids in the execution of joint audits and other inspections. The RPD conducts joint inspections with the JCA and works closely with MOCA and the FID. The TAJ has an MOU in place with the FID and conducts joint audits with MOCA, FID, RPD and the JCA. Joint operations are also carried out between MOCA, RPD, CTOC, PICA and the JCA.
97. By way of example, the CPC demonstrated that it uses financial intelligence to create risk profiles on public servants to aid in its investigations into corruption allegations. Information on the financial affairs of public servants such as assets owned, salary, funds held in financial institutions, stocks, insurance policies with cash value and ownership of companies, etc. that have been extracted from statutory declarations are keyed into the CPC's database to ascertain whether there is a possibility of illicit enrichment. This information is also used during the targeting stage of corruption investigations and to facilitate the tracing of assets.
98. Further, to address the rising occurrence of cash smuggling, the JCA collects intelligence from PICA and its ASYCUDA customs management system and makes use of these disclosures to create risk profiles of passengers and to determine travel patterns. Through the adoption of this process, the JCA has been able to secure several seizures and make court applications for forfeiture of the seized cash. Jamaica has therefore

been able to show that financial intelligence and other relevant information are being used by competent authorities to develop trends and typologies in criminal activity, identify targets and trace assets but the financial intelligence is not used to pursue ML investigations.

*STRs and other reports received and or requested by competent authorities*

99. As stated above, the FID receives Suspicious Transaction Reports (STRs), Threshold Transactions Reports (TTRs), Cross Border Reports (CBRs) and Listed Entities Reports (LERs).
100. Regulation 3(1) of the Proceeds of Crime (Money Laundering Prevention) Regulations (POC(MLP) Regs.) requires a FI to make a report (TTRs) to the FID, either on its own initiative or in response to a request made to the FID, in relation to any cash transaction involving the prescribed amounts, in US dollars or its equivalent in any other currency. The prescribed amounts are:
  1. Money transfer and remittance agent or agency-US\$5,000.00 or more;
  2. Cambio or exchange bureau-US\$8,000.00 or more; and
  3. Financial institutions- US\$15,000.00 or more.
101. Additionally, STRs are received by the FID via hard copy (paper), encrypted and hash coded XML reports received on CD/ DVD, and PDF reports received on CD/ DVD. Paper based information is entered into FINTRAN, by the Data Analysts. Reports received on CD/DVD are uploaded to FINTRAN by the IT Unit and validated on completion. Each report is assigned an ID number and whenever an STR is entered, the information from that report can be linked to other reports in the database to develop a comprehensive analytical report.
102. The FIU’s statistics show, that between 2009 and 2014, STRs accounted for 63.60% of disclosures reported to the FIU while 36.38% were TTRs and 0.02% represented Cross Border Reports (CBRs). The table outlines the number and types of reports received from various financial institutions for the years 2011-2014.

**Table 6: Suspicious, Threshold & Cross Border Transaction Reports Received**

| Year         | Suspicious       | Threshold      | Cross Border | Total            |
|--------------|------------------|----------------|--------------|------------------|
| 2009         | 116,670          | 124,838        |              | 241,508          |
| 2010         | 249,130          | 113,435        |              | 362,565          |
| 2011         | 320,146          | 116,550        | 48           | 436,746          |
| 2012         | 308,468          | 125,446        | 128          | 434,042          |
| 2013         | 196,138          | 134,888        | 118          | 331,144          |
| 2014         | 193,829          | 176,694        | 124          | 370,647          |
|              |                  |                |              |                  |
| <b>Total</b> | <b>1,384,381</b> | <b>791,851</b> | <b>418</b>   | <b>2,176,650</b> |

103. STRs are required to be submitted to the FID within 15 days after the information comes to the attention of the nominated officer of the reporting entity. The FIUs Financial Analyst Unit is staffed with trained and

experienced financial and database analysts who demonstrate the ability to conduct thorough and comprehensive analysis. The number of reports submitted is high because of reporting requirements, which require all transactions above the specified threshold to be filed as noted above. However, the existing practice is that all STRs are analysed by the FIU. Cases identified by the Senior Analyst to fit the criteria of a sensitive nature either during the data entry process or through the initial research and analysis take priority. STRs to which suspicion can be substantiated are forwarded to the investigating authority on completion of the analysis. Otherwise reports are filed with no further action. In cases where a disclosure consist of multiple targets and contains information drawn from several reports analytical techniques as well as a selection of training and skills, are used to identify criminal activities and develop leads for investigation of such matters.

104. The CFU is the investigating authority for ML/TF and other financial crimes. For the period 2009- 2014, the FIU disseminated a total of 458 reports (which represents 3% of all reports received) to the CFU for investigation (see table below). Out of the total reports submitted there were 179 cases which resulted in ML investigations and 4 ML convictions. A number of these cases are still on-going. Reports of incomplete investigations suggest that the CFU has difficulty in achieving effectiveness in investigating and prosecuting ML and as such improvements are needed. Having insufficient resources such as man power and funding has hampered the CFU’s ability to process a larger quantity of reports.

**Table 7: Disclosures to the CFU – 2009-2014**

| <b>Year</b>  | <b>New Cases</b> | <b>Notes To File</b> | <b>Consent Cases</b> | <b>Total</b> |
|--------------|------------------|----------------------|----------------------|--------------|
| 2009         | 54               | 29                   |                      | 83           |
| 2010         | 22               | 21                   |                      | 43           |
| 2011         | 28               | 13                   |                      | 41           |
| 2012         | 33               | 28                   | 26                   | 87           |
| 2013         | 50               | 17                   | 21                   | 88           |
| 2014         | 44               | 12                   | 60                   | 116          |
|              |                  |                      |                      |              |
| <b>Total</b> | <b>231</b>       | <b>120</b>           | <b>107</b>           | <b>458</b>   |

105. LEAs confirmed that the FIU reports provide vital relevant and accurate information which support their investigations particularly in the creation of financial profiles for ML and other predicate offences. The investigations have revealed the factual circumstances surrounding a transaction or series of transactions, the legality or otherwise suspicious nature of the transaction, the relevant source of funds, the associated predicate offence and the likelihood that the transaction involves the proceeds of crime or TF. The table below provides the statistics on ML investigations arising out of financial intelligence.

**Table 8. CFUs ML Investigations arising out financial intelligence 2012-2014**

| <b>Activity</b> | <b>Number</b> |
|-----------------|---------------|
| ML Charges      | 23            |
| ML Convictions  | 4             |

|                                |     |
|--------------------------------|-----|
| Criminal Forfeiture/Conviction | 4   |
| ML Ongoing Investigations      | 156 |

106. ML investigations are usually generated upon receipt of a financial disclosure from the FIU, which as previously stated, is the main source of preliminary information. The FIT team must follow investigative procedures in dealing with disclosures and whether such disclosures are new or arise from consent cases that are received from the FIU. Each case disclosure generally consists of multiple targets and may contain information drawn from several reports which are sometimes filed by different FIs.
107. FIU dissemination to the CFU between 2012 and 2013 related to four main categories of offences, namely: lottery scam, ML, drug trafficking and fraud all of which are associated with Jamaica's high risk areas (see table 9 below). The CFU along with forensic examiners are able to utilize forensic accounting and strategic financial analysis techniques to identify criminal activity in each disclosure and develop the data needed for investigation. Lottery scam, fraud and drug trafficking are considered to be the most common predicates of proceeds generating offences and as such, much attention has been placed towards the disruption and recovery of the proceeds of those crimes.

**Table 9: Criminal activities in disclosures submitted to CFU 2012-2013**

| Criminal Activities | 2012 | 2013 |
|---------------------|------|------|
| Lottery Scam        | 23   | 30   |
| Money Laundering    | 13   | 7    |
| Drug Trafficking    | 8    | 18   |
| Other Fraud         | 8    | 5    |

108. While less emphasis has been placed in on the use of financial intelligence in investigating ML/TF, LEAs use of financial data has shown an increase in support of its predicate offence investigations as well as joint investigations and those carried out by special task forces. As civil recovery is aligned with a number of these investigations, this information is used to develop evidence to identify and trace criminal proceeds relating to predicate offences and as well as forfeiture and civil recovery investigations which are strongly pursued. The Jamaican Lottery Scam Operation which included: Joint Operation Linked to Telemarketing (JOLT), Anti-Lottery Scam Task Force and MOCA, was a successful operation, which resulted in a 20 year prison sentence of a Jamaican national. Also, in another matter, a Jamaican Certified Public Accountant was sentenced to 78 months in prison and ordered to pay millions in restitution on tax fraud charges. Examples of these cases are outlined in IO.7 and IO.8.
109. TF related disclosures have been very low but as a result of one financial disclosure, there was one investigation conducted on suspected TF activities involving a Jamaican National. However, there was insufficient evidence to pursue the matter. Accordingly, the Assessors are of the view that there is a lack of exposure of law enforcement and prosecution to TF issues and methodologies.
110. Every regulated entity is required to submit an LER to the designated authority once in every four calendar months, or in response to a request made to it by the designated authority, whether or not it is in possession

or control of any property owned or controlled by or on behalf of a listed entity. A listed entity is a person on a Listed Entity Order which has been approved by a Judge of the Supreme Court and published by the DPP in a national newspaper. The LERs received by the FID were all nil reports with a total compliance rate by all FIs as at December 2013 at 48.22%. See. Para. 249.

111. The JCA collects cross border cash and BNI declarations which are provided to the FID/ FIU on a weekly basis. The FIU provides secure data storage for these forms as well as supporting documents and all other information collected from the forms. Cash smuggling was cited as a major problem at airports. Between 2011 and 2014, (41) cases of cash smuggling were investigated by the JCAs Investigation's Unit. In keeping with the statutory mandate outlined in sections 91(h) and 101(2) of the POCA, the FIU work along with the JCA in supplying Customs Officers with information on request to assist with processing a traveller. The JCA's partnership with the FID facilitates easy information collection and provides supporting documents from PICA, JDF, TAJ and PCJ which are inputted into its database and aid in the development of passenger profiles. The FIU provides secure data storage for these forms, supporting documents and all other information collected from the forms.

*Extent to which FIU analysis and dissemination supports operational needs of competent authorities*

112. FIU's analysis and dissemination do support the operational needs of competent authorities to some extent and through discussions with some LEAs, this has been confirmed. Feedback from LEAs has shown that FIU products add value to their investigations and enables them to achieve their policy objective to 'take the profit out of crime'.
113. The information collected by the FIU is inputted and maintained in its database which appears to be modern and comprehensive. It has direct and indirect access to a wide range of intelligence, financial and law enforcement information. The database has the ability to capture and retain relevant information such as information used to prepare financial profiles. Such financial profiles are obtained on a request basis by specialized law enforcement units mainly, CFU, CTOC, MOCA and the Fraud Squad and are used by these LEAs to identify, investigate and prosecute financial crimes as well as conduct investigations relating to other predicate offences.
114. The use of financial intelligence from the FIU has significantly supported investigations involving cases of cash detention and also in the context of its contribution to joint operations with other agencies, which led to a significant amount of asset tracing and confiscations. Measures available to authorized officers of the FID, JCA and JCF for civil recovery and cash seizures under the POCA have led to a number of confiscations of property and substantial amounts of monies. Examples of these cases are illustrated in IO8.
115. Furthermore, the FIU has a strong relationship with the BOJ as they interact with each other on a daily basis. The FIU conducts fit and proper assessments on the FSC's and BOJ's behalf. It is therefore able to provide useful feedback in relation to weaknesses of FIs, such as the improper filing of reports by insurance brokers and those in the securities industry. However, these competent authorities are engaged in the provision of guidance to FIs to enhance financial intelligence reporting. The FIs have maintained that they have a good relationship with the FIU and the FIU has been involved in various industry training on suspicious transaction reporting and also provide feedback to FIs on the quality of reports filed. Letters

have been sent to FIs on the content and quality of reports submitted and requests for additional information were made. Other competent authorities assist the FIU in improving the level of financial intelligence reporting by FIs. In particular, the BOJ is authorised to issue regulatory policies, notifications and guidance while the FSC can issue delinquent letters pursuant to the TPA following onsite examinations.

### *Cooperation and exchange of information/financial intelligence*

116. The FIU and other competent authorities in Jamaica namely: JCF (MOCA), ODPP, TAJ, Credit Info Jamaica and JCA, have signed MOUs which allows for cooperation and exchange of information using secure channels. The FIU has detailed SOPs for security and integrity of data and as such, efforts are made to improve cooperation and coordination for exchange of information amongst domestic agencies. The MOUs between the FIU and LEAs generally appear to work well and allows for real time operational exchange of information which takes place through regularly scheduled strategic and operational meetings. This resource has positively affected the increased number of joint operations and task forces in an attempt to focus on ML and TF risks. CFU officers are able to work in tandem with FID forensic examiners in investigating financial crimes. Additionally, the MOU between the FID and ODPP facilitates exchange of information and mutual cooperation in investigation, prosecution and forfeiture of proceeds of ML and other financial crimes and establishes formal working relationships within their respective functions.
117. Measures are also in place to rapidly provide the widest international cooperation through the exchange of information. Disclosures and exchange of other information to foreign FIUs are made through the Egmont Secure Web in a timely manner. The FID requires that foreign FIUs undertake to maintain the confidentiality of the information shared. Assessors were advised that the average response period to an Egmont request was (11) eleven working days or less.
118. There has been a demand from the BOJ and FSC as well as for government fit and proper checks. These checks are requested for persons seeking to enter the financial industry as well as government agencies who make requests for background and due diligence checks on persons with whom the government is planning to contract with. Statistical data has shown that for the period 2012 to 2014, 5,302, such requests were received. However, the FIU was able to facilitate only 29% of these requests which has resulted in a backlog. To address this issue, the FIU recently implemented a new Tasking Form Procedure to respond to these requests in a timely manner; however, due to the short period for which it has been implemented, the effectiveness of this provision cannot be ascertained at this time.
119. The FIUs disseminated STRs appear to have provided limited support to ML investigations as there has been no marked increase in the LEA's ability to secure more ML charges, prosecutions and convictions. To some degree, the difficulty lies between law enforcement and prosecutors who are experiencing a combination of under staffing, backlog, heavy caseloads and management of other offences which are more clearly made out than that of the ML offence. Also, there is no framework for centralized data collection particularly at the Resident Magistrate's Court level (same is more clearly outlined in IO7) and as such the authorities noted that reporting has been needs driven.

### *Protection and Confidentiality of Information*

120. The FID maintains that confidentiality is crucial to its intelligence gathering operations and the FIDA places all employees of the FID under a legal obligation to keep information they receive confidential. Parties to

whom information is disclosed are also subject to appropriate legal restrictions on unauthorised disclosures. The FID and competent authorities employ a number of operational measures to safeguard the information they exchange or use, namely: - the inclusion of confidentiality clauses in all correspondence between the FID and competent authorities; correspondence to particular pre-designated offers of regulated entities; use of a dedicated fax machine and official emails and face-to-face meetings for discussions on sensitive matters or developing issues.

121. Particularly in relation to the FID, data protection and confidentiality is achieved through the limiting of physical access to the FIU staff only and through its use computer software firewalls and a secured website for electronic reporting. The computer software's active directory has been designed so that only FIU staff members who are authorised are allowed to access it; therefore information cannot be accessed outside a particular staff member's level. The levels of access to the software are strictly enforced and are as follows: - a) data entry staff are allowed to enter and view information; b) Analysts can enter, view and edit information, and c) Senior Analysts have all the access rights described above in addition to the ability to change edit the information that is put by the analyst. The internet is not enabled on the FIU's database network and is on a completely separate network. The FIU staff informed Assessors that they have not observed any attempt to access the software. Accordingly, it appears as though the FIU and competent authorities have adequate measures in place to protect the confidentiality of information they disseminate and utilise.

#### *Overall Conclusions on Immediate Outcome 6*

122. Jamaica demonstrates some characteristics of an effective system in the use of financial intelligence and other information for investigations. The competent authorities are able to collect and use various types of financial intelligence and other information to aid in the conduct of financial investigations. There is direct access by the FID to a wide variety of databases which facilitates real time sharing of information. The competent authorities, more specifically the FID, appear to be well structured and functioning.
123. The LEAs work in close cooperation with each other. Special task forces and joint operations have demonstrated that the use of FIU's financial intelligence and other information from FIU resources have resulted in the conduct of analysis, financial investigations, disruption of some criminal activity, the tracing of assets and the recovery of criminal proceeds. However, LEAs need to place much greater focus in using financial intelligence to support ML investigations so as to increase the number of ML criminal charges and prosecutions arising out of financial intelligence.
124. **The rating for immediate outcome 6 is a moderate level of effectiveness.**

#### *Immediate Outcome 7 (ML investigation and prosecution)*

125. The 2013 NSP identified ML as a Tier 1 Risk (High Impact/High Probability) and transnational organized crime as a high risk threat to Jamaica's security.
126. The JCF is the national Police Force of Jamaica. The Constabulary Financial Unit, which is embedded in the FID (CFU), is the main JCF Unit with responsibility for investigating financial crimes. Transnational organized crimes expose a defendant to criminal lifetime proceedings. Such matters have been identified

as growing threats to Jamaica's AML/ CFT risk. In response to the threats of transnational organized crime, the JCF, at a policy level took additional measures to ensure that critical areas relating to ML and TF were appropriately addressed from a law enforcement perspective and within the framework of AML/CFT. Removing the profit out of crime, which was recognized in the NSP as a major reform area, is one of Jamaica's key policy objectives.

127. Internal reviews at a policy level brought about a shift in focus towards financial crimes resulting in the establishment of the Major Organized Crime Agency (MOCA) along with the Counter Terrorism and Organized Crime Unit (CTOC). These entities along with the CFU are authorized to investigate ML and TF. The Units are staffed with investigators who are highly trained to the Advanced Financial Investigators level, five of whom have attained international recognized accreditation as Accredited Financial Investigators. Additional measures taken included the implementation of a communication forensic and cybercrimes unit (CFCU) within CTOC, to investigate and prosecute mobile and data related crimes such as cyber laundering and cyber extortions. There has also been increased training and exposure for officers as a result of partnering locally with the Caribbean Regional Law Enforcement Training Centre (REDTRAC) as well as international agencies such as United States Homeland Security Investigations. As a result of these agencies' partnership with the JCF, Project JOLT to eradicate lottery scams and provided basic and advanced training in financial investigations, intelligence gathering and AML/CFT. While Jamaican authorities anticipate that this collaborative effort will assist in increasing the number of ML convictions, at the time of the onsite this had not occurred.

#### *ML identification and investigation*

128. Law enforcement authorities have the power to access relevant information to investigate and prosecute ML. The FIU is the mechanism through which financial intelligence and other information is shared. Agencies, in close cooperation with the FIU, use financial information as the main source as well as human sources, undercover operations and other tools, to coordinate and conduct successful investigations. The JCF and CFU at a policy level are required to investigate ML cases once there is a suspicion of illicit assets. However, while this is done as a combined effort with predicate offences, these investigations more often result in a prosecution of the predicate offence or recovery of property, as opposed to an ML prosecution.
129. A major part of the FID's activities has been to disrupt illicit flows and to deprive persons of the proceeds of crime. Cash seizure and civil recovery provision under the POCA are used as an adjunct to ML and predicate offence investigations. The FIU's ability to collect and request additional information from local and foreign counterparts also supports the process of investigation. During the period January 2014 to March 2015, ninety six (96) ML cases were reported to the CFU. Fifty six (56) are under investigation and forty (40) were completed. Twenty five (25) persons were charged with ML offences under sections 92(1)(a), 92(b) and 93(1) of the POCA. However statistics revealed there were only three (3) ML convictions within that period. These cases also resulted in cash seizures totalling US\$1,077,169 or JA\$49,630,251.
130. Joint operations across agencies, including task forces, are also common in Jamaica and account for a number of investigations and prosecutions. There are numerous cases which as a result of collaborative efforts between the JCF and the FID, yielded positive results in the detection and disruption of criminal activity in financial investigations. In 2014, four major operations were conducted. As a result of these

investigations, fifteen high end motor vehicles valuing in excess of JA\$80 million were seized. Eight persons were arrested for breaches of the Customs Act, the Cybercrimes Act, the Law Reform (Fraudulent Transaction) (Special Measures) Act, Tax Evasion, Fraud and Corruption. One person was sentenced to three years in prison on forty-four counts of Obtaining Money by False Pretense. The focus however, has been on the disruption of other proceeds generating offences, and in very few cases has priority been given to pursuing ML investigations or prosecutions in these operations.

**Case:**

MOCA in a joint operation with the North Dakota office of the Federal Bureau of Investigations (FBI) and the United States Postal Inspection Service (USPIS) was able to bring charges against a Jamaican national in reference to conspiracy to commit international ML. The defendant who is referred to as the “Jamaican Lottery Fraud Defendant”, along with his co-conspirators impersonated several trusted institutions to fleece unsuspecting individuals of millions of dollars. A member of MOCA, who assisted with the investigation, gave testimony during the trial about the modus operandi of the case and the harmful effects of lottery scamming to Jamaica. The Jamaican Lottery Scam Task Force conducted various operations whereby major raids lead to the arrest of some four hundred persons locally suspected of being involved in the scam. During the raids, lead sheets, note books, electronic items (such as computers and cellular phones), debit cards and substantial amounts of monies were seized. Officers from the Task Force while conducting their investigation were also able to identify perpetrators using phone, mail, and other media resources. The ‘Jamaican Lottery Fraud Defendant’, sold ‘lead list’ to Jamaican Lottery Fraud Scammers, which provided them with names, telephone numbers and personal information on potential victims. Upon being contacted by the co-conspirators, the victims were told that they had won cash and prizes consisting of millions of dollars and luxury vehicles and the victims were required to send large amounts of monies to pay for non-existent taxes, fees and insurance. The Jamaican authorities discovered that the scammers got victims in the United States, to load monies onto the debit cards which were later withdrawn in Jamaica. Scammers also used their family members to collect monies in the United States. There were a number of persons from the United States and Jamaica charged in this case. Jamaican Authorities also played a major role in the extradition process of 17 persons (Jamaican and Americans). The Jamaican Lottery Fraud Defendant faces up to 40 years in prison and millions of dollars in fines, restitution and criminal forfeiture.

131. MOCA, which is the key agency dedicated to the repression of organized crime, is an intelligence led investigation unit, that acts in accordance with applicable legislation, which includes the POCA, the Law Reform (Fraudulent Transaction) (Special Provisions) Act commonly referred to as the Anti-Lottery Scamming Law and the Criminal Justice Suppression of Criminal Organization) Act, also known as the Anti-Gang Law. Legislation is currently being enacted to make the agency an entirely independent entity fully empowered to carry out its mandate. This is a positive feature in keeping with the Government’s commitment to address the threat of major organised crime and corruption.

132. With respect to the JCF's Fraud Squad, for the period January 2012 to May 2015 it conducted some 1,382 fraud investigations. Fifty nine percent (59%) of these matters (which involved JA\$2,849,310,284.56 or US\$5,146,681.78 cash) were placed before the court and completed. While the results of these investigations are significant, the Assessors are of the view that had parallel ML investigations been pursued along with these cases, there may have been a greater impact on the overall number of ML prosecutions and convictions.

*Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies.*

133. As previously noted, the NSP identified ML and other transnational organized crimes as a Tier 1 risk and transnational organized crimes as a high risk threats to Jamaica's security. Transnational organized crimes such as ML, drug trafficking, weapons and ammunition trafficking, lottery scams, cybercrimes, gangs, corruption and fraud are all major offences generating illicit proceeds. Accordingly, they account for the majority of investigations involving predicate and other related offences. The focus of MOCA is to identify and disrupt all major criminal networks, those who facilitate their illicit activities and those involved in public corruption. The Unit has specific investigation objectives and is divided into four investigative departments: Organized Crime, Economic Crime, Public Sector Corruption and Police Corruption, which are coordinated through investigations and form the core of its operation. MOCA has also engaged with foreign LEAs into conducting investigations in transnational organized crimes.
134. The activities of MOCA have had some effect in the disruption of organized crime, during the period January 2014 to March 2015. MOCA conducted a total of 347 joint operations with the FID, CTOC, RPD and JCF (including the Anti-Lottery Scam Task Force). These operations led to the arrest of 688 persons for various proceeds generation offences. Charges were brought against 411 of these persons. Included in this were two (2) standalone ML charges. The majority of these cases are still before the Courts. There were 26 convictions in 2014, and 38 convictions in 2015 for matters specifically relating to lottery scams. However, results have shown that the disruption measures have not been entirely effective as there were no successful ML prosecutions reported.

*Prosecution of different types of ML cases*

135. While LEAs have made good use of financial intelligence especially in joint operation investigations there still remain challenges in following through with ML investigations on standalone ML matters, third party laundering, self-laundering and laundering in relation to both domestic and foreign predicates. As previously noted, the majority of ML cases are investigated in conjunction with a predicate offence, the outcome of which was mainly prosecution of the predicate offence, as well as the recovery and confiscation of the proceeds of criminal property associated with those matters. This has contributed to ML prosecution becoming an area of less concentration.
136. Resident Magistrate's Courts are tasked with hearing most, ML offences and other offences under the POCA. There are provisions made in the POCA for these matters to be prosecuted in the High Court before a jury. However, this seldom occurs. Currently, there is one ML matter at the High Court level. The trial is scheduled for November 2016.

137. The NSP has suggested that a dedicated criminal court be established to deal exclusively with these types of cases as the complexity and technical nature suggest that a jury trial is not the most effective means for proceedings. Assessors agree that this would help to decrease the time to trial, as well as provide for dedicated resources and properly trained personnel in prosecuting ML offences.
138. It is important to note, that while there have been some ML convictions, the Authorities expressed that in many instances where ML is linked to a predicate offence, the Clerks of Court choose to proceed against the accused for the predicate offence. Such decisions are made either because the accused is offered a plea to the lesser offence, or because the lesser offence is more clearly made out than the ML offence. Deficiencies within the prosecutorial system such as insufficient resources (specialized and legal), lack of training and complexities involved in ML matters have created a substantial backlog which has become a burden on the Magistrate’s Courts and prosecutors. Assessors were also made aware of a few high profile ML cases which, for various reasons, have not yielded success.
139. There are also limitations in maintaining ML prosecution statistics. There is no framework for centralized data collection particularly at the RM Court level, therefore reporting has been needs driven and the number of ML prosecutions and convictions is difficult to compile. This is evidenced by the table below, which was provided by Jamaica to show the level of ML prosecutions and convictions in the various Parishes. However, there is no timeline for this information, which would allow the Assessors to determine the level of effectiveness of the system.

**Table 10: Money laundering prosecutions and convictions by Parishes in the Resident Magistrate’s Courts**

| Parishes                                | Total Number of Prosecutions for Money Laundering | Matters Completed | Matters Pending   | Total Number of Convictions |
|---|---|-------------------|---|-----------------------------|
| St. Mary                                | nil   | nil               | nil   | nil                         |
| Westmoreland                            | 10  | 7                 | 3   | nil                         |
| St. James                               | 29  | 10                | 19  | 1                           |
| St. Catherine                           | nil   | nil               | nil   | nil                         |
| Hanover                                 | 2   | nil               | 2   | nil                         |
| Clarendon                               | nil   | nil               | nil   | nil                         |
| St. Thomas                              | 1   | nil               | 1   | nil                         |
| Kingston (Corporate Area)               | 116   | 54                | 52 (*the court’s office was unable to determine the status of the other 10 matters) | 12                          |
| St. Andrew (Corporate Area Civil Court) | nil   | nil               | nil   | nil                         |
| St. Elizabeth                           | nil   | nil               | nil   | nil                         |
| Manchester                              | nil   | nil               | nil   | nil                         |
| Trelawny                                | 1   | 1                 | nil   | nil                         |
| Portland                                | 1   | nil               | 1   | nil                         |
| St. Ann                                 | 1   | nil               | 1   | nil                         |
| <b>Totals</b>                           | <b>161</b>  | <b>72</b>         | <b>79</b>   | <b>13</b>                   |

140. The Authorities advised that in an effort to improve the statistical management of the Courts, the Ministry of Justice is making a concerted effort to implement an automated Case Management System. This activity is being funded through the Justice Security Accountability and Transparency Programme (JSAT). One of the goals under the programme is to improve the processes and capacities within the justice and security sectors to facilitate reduced case backlogs, reduce corruption and increase prosecutorial capacity, particularly relating to organized crimes, including ML. It would appear that a system wide evaluation of the prosecutorial process (which would require cooperation and coordination with the investigating authority) would be appropriate to address the risk associated with ML as it is critical in assessing the effectiveness thereof.

**Case:**

In April 2014, JCF officers acting on intelligence were conducting an operation when they stopped a vehicle occupied by two foreign males. A search of the vehicle led to the discovery of a bag found in their possession, containing some US\$532,214 and JA\$1,322,286 which was subsequently seized. On completion of the investigation, the men were charged with ML and the matter taken to HWT RM Court. The ARA made an application for forfeiture pursuant to section 79 of the POCA for forfeiture of seized cash. The Crown withdrew the Possession of Criminal Property matter and offered no evidence. The cash was also the subject of the seizure regime and was successfully forfeited. This supports the call for more AML/ CFT education on the part of the Criminal Justice System.

*Effectiveness, proportionality and dissuasiveness of sanctions*

141. Sanctions for ML offences are described in Section 98 of the POCA. The Authorities have applied a range of sanctions for ML offences to natural persons. In a Magistrates Court, a person who commits a ML offence on conviction shall face a penalty of a fine not exceeding JA\$3million or imprisonment for a term not exceeding five years or to both such fine and imprisonment. In the case of a body corporate, to a fine not exceeding JA\$5 million. The fines appear to be sufficiently dissuasive, however it is not known to what extent fines are imposed in practice.

*Application of other Criminal Measures*

142. Investigating authorities are utilizing measures to impose pecuniary penalties such as seizure and confiscation of assets to persons convicted of ML and other high risk proceeds generating offences who benefit from criminal activity. These measures are set out in section 5 of the POCA.
143. The application of pecuniary penalties is showing success especially in new cases. However investigating authorities continue to experience difficulties in effectively pursuing ML charges in a number of these cases. A key example of this is due to the fact that there are individuals charged with serious crimes generating proceeds, who are owners of legitimate businesses. The concern is that although civil recovery is aligned with ML investigations, these businesses have been entrenched into the financial system for such

lengthy periods, thus making it difficult to separate illegitimate proceeds. In addition to lottery scams other areas of identified risk such as fraud, drug trafficking and public sector corruption have affected a lot of predicate offences; therefore the task of tracing funds and proving ML in such instances becomes difficult and lengthy.

144. While there are challenges in prosecuting ML, Jamaica has had some successes generally with respect to prosecutions. To date, the main outputs have been an increasing number of convictions of predicate offences involving proceeds generating offences. As a result of these investigations during the period 2011 to 2015, cash in the amount of US\$1.3 million as well as a number of real estate properties and vehicles were confiscated following the outcomes of Court decisions in matters of application by the ARA for civil recovery.

**Case:**

The ARA filed proceedings pursuant to Section 57 of the POCA against the defendant seeking Civil Recovery of property believed to be the proceeds of unlawful conduct. The matter involved four defendants all Jamaican nationals. They include two adult males, and two adult females (their mother and the girlfriend of one of the adult males). The two adult males reside in a foreign country and believed to be involved in the cocaine trade. One of the males has five previous convictions in the foreign country, four of which are drug related offences while the other was charged with ML. Both males engaged in conduct that is unlawful both in Jamaica and overseas. The evidence indicated that the two males had been sending proceeds from their illicit activities to the females. The claim for civil recovery resulted from a search warrant obtained pursuant to the Dangerous Drug Act, and executed on the mother's residence in the parish of St. Catherine. During the search, US\$1,350,300 was found in a freezer wrapped in foil and newspaper amongst frozen meat. This led to seizure of the cash and other assets in her possession. The mother was unable to demonstrate to the Court that the monies and assets found in her possession were legitimately obtained. The cash found in the freezer along with other cash (approx. US\$2,965,750 paid for the purchase of two properties) several bank accounts and three motor vehicles were subsequently forfeited. Proceedings were heard in 2012.

*Overall Conclusions on Immediate Outcome 7*

145. Overall, Jamaica demonstrates limited characteristics of an effective system in its ability to successfully investigate and prosecute ML. ML has been identified but as a standalone offence, it is not regularly pursued. Rather it is investigated in conjunction with a predicate offence, the outcomes of which are mainly prosecution of the predicate offence or cash forfeiture. However, while the overall level of ML convictions have been limited, there have been some successful cases within that limited number, although had parallel ML investigations been pursued along with other cases, there may have been a greater impact on the overall number of ML prosecutions and convictions.

146. The cases on investigations that were provided by the Authorities demonstrate their ability to conduct financial investigations. In joint investigations where associated predicate offences occurred. However, the focus has been towards the disruption of criminal activity and recovery from other major proceeds generating offences rather than the pursuit of convictions for ML offences.
147. While the activities of MOCA have had some effect in the disruption of organized crime, these disruption measures have not been entirely effective and challenges still exist in following through with ML investigations and prosecutions on standalone ML matters, third party laundering, self-laundering and laundering in relation to both domestic and foreign predicates.

Pecuniary penalties are applied and fines appear to be sufficiently dissuasive; however, Assessors were unable to determine to what extent fines are recovered in practice. Statistical reporting appears to be needs driven as there is no framework for centralized data collection, particularly at the RM Court level. This makes it difficult to compile any meaningful data on the number of ML prosecutions and convictions.

148. Improvements are needed in the areas of training and resources, and Jamaica would benefit from a proper case management system to enhance its investigative and prosecutorial systems.
149. **The rating for Immediate Outcome 7 is low.**

### *Immediate Outcome 8 (Confiscation)*

150. As part of the process of dealing with what Jamaica has determined to be its Tier 1 threats (ML, corruption, drug and human trafficking, lottery scam), Jamaica has determined that there are six key steps to addressing these threats. The first, which is relevant to IO.8, is removing the profit from crime and as such there has been a focus on seizing and confiscation/forfeiting the proceeds of crime. The main instruments used to achieve this goal are: - cash seizures, civil recoveries, and post-conviction forfeitures as provided for under section 5 of POCA. The FID actively pursues the recovery of proceeds of criminal conduct through close collaboration with other LEAs, external agencies, international partners and prosecutors.

### *Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective*

151. Confiscation of criminal proceeds, instrumentalities and property of equivalent value is being pursued in Jamaica. Special task forces and joint operations between various agencies have as their objective the confiscation of criminal proceeds. The FID acts as asset manager pursuant to its role as the Asset Recovery Agency (ARA) under the POCA. Civil recovery and cash seizures also meet the criteria for confiscation under the Act. This supports a strong legal framework given that a criminal conviction is not necessary.
152. Jamaica has increased their efforts in pursuing and confiscating proceeds of crime and has noted that another action point towards achieving their policy objective of taking the profit out of crime is automatic asset forfeiture on being found guilty of crimes such as major fraud, extortion, trafficking, embezzlement and ML, This includes funds associated with the actual trial, as well as personal assets that cannot be proven to be clean. Section 5 of the POCA allows for the measurement of a criminal's benefit and the assessment of a pecuniary penalty which can be satisfied from the defendants free assets.

153. The FID offers technical and specialist support to aid in the investigation and prosecution of financial crimes conducted by the JCA. The FID uses restraint orders as an effective means of ensuring that suspects are unable to deal with property or funds until there is a final determination relating to the assets in question. Because of measures that are in place, recovery action has had success especially in relation to matters where no criminal conviction has taken place. Focus on the proceeds of crime arising from and in connection with other predicate offences such as drug trafficking, corruption, lottery scam and other fraud is clearly demonstrated as efforts have increased in these identified high risk areas.

*Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad*

154. The ARA is empowered under section 3 of the POCA to recover proceeds of unlawful conduct and has been specifically trained in the areas of technical, investigative, forensic and legal skills training to aid in pursuing recoverable property. A major part of its activities is to disrupt illicit flows and to deprive persons of their proceeds of crimes. This involves the use of cash seizure provisions under the POCA that allow for cash seizure in certain specified circumstances. Both cash seizures and civil recoveries are pursued simultaneously to ML investigations.
155. The following tables capture both cash seizures and forfeitures as a result of investigations from financial disclosures between 2011 and 2014. The Authorities have explained that a direct correlation should not be drawn between the two tables because the forfeitures for the presented years represent final orders that may relate to cash seizures that occurred in previous years. Despite this lack of correlation, the tables are evidence of the fact that the competent authorities are pursuing cash seizures and forfeitures.

**Table 11: Seizures (Source FID)**

| Year | JAD        | USD       | CAD    | GBP    | EUR     |
|------|------------|-----------|--------|--------|---------|
| 2011 | 32,093,182 | 1,050,728 | 25,010 | 13,150 | 16,250  |
| 2012 | 45,139,587 | 1,404,383 | 7,125  | 14,485 | 313,635 |
| 2013 | 35,675,870 | 773,022   | 61,444 | 5,656  | 57,110  |
| 2014 | 20,384,875 | 1,282,820 | 29,400 | 10,100 | 9,500   |

**Table 12: Summary of Cash Forfeitures (source FID)**

| Year | JAD       | USD      | CAD    | GBP    | EUR     |
|------|-----------|----------|--------|--------|---------|
| 2011 | 4,433,093 | 471,154. | -      | 6,500  | -       |
| 2012 | 2,113,500 | 92,732   | -      | 9,020  | -       |
| 2013 | 3,128,401 | 506,023  | 8,600  | -      | -       |
| 2014 | 1,554,012 | 458,869  | 38,690 | 17,600 | 313,520 |

156. Additionally, between 2011 and 2015, following the outcomes of Court decisions in matters of application by the ARA for civil recovery, (15) fifteen real estate properties were forfeited. At the time of the onsite,

there were 90 real estate properties restrained by the FID as well as 116 motor vehicles held as a result of confiscation actions.

**Case:**

Recently a matter between The Commissioner of Customs and a local businessman was heard in the RM's Court. The businessman was found leaving the Island with US\$ 221,000. The cash was seized by Customs Officers. The businessman pleaded guilty to charges proffered under section 103 of the Customs Act but fought proceedings initiated pursuant to section 79 of the POCA. Prior to the seizure of funds, the businessman contended in the filing of his tax returns that his business was barely afloat and as such the taxes owed were small. The Resident Magistrate ruled in favour of the Commissioner of Customs and the cash was seized was forfeited. The issue of tax evasion played a pivotal role in establishing that the cash seized was recoverable property.

157. Asset recovery also takes place through investigation and close collaboration with other law enforcement agencies as well as external agencies. International cooperation has been carried out by the JCA and FID, with international partners and prosecutors. To this end, sharing arrangements with the United States and the United Kingdom have been implemented. Further, the FID has carried out confiscation measures in several cases where the predicate offences have occurred abroad.

**Case:**

In 2015, a Jamaican American Certified Public Accountant was sentenced to 78 months in prison followed by three years of supervised release as well as ordered to pay restitution in the amount of USD \$3,684,921, for using her Tax Preparation Business to facilitate an Income Tax Refund Fraud Scheme. According to court documents, the defendant who operated her business in Miami, prepared client's tax returns and provided them a copy showing a refund amount and an amount payable to the IRS. Without the client's knowledge and authorization, the figures on the return were changed and a tax return showing a higher refund amount was filed with the IRS. The client's bank account received the refund amount reflected on the copy they received from the defendant and the remainder of the tax refund from 71% of clients was deposited into an account controlled by the defendant. The client's had no knowledge of the refund falsification and splitting.

Court documents states that the defendant prepared approximately 557 U.S. Individual Income Tax Returns for tax years 2010 through 2013 for her clients. From January 2011 through September 2014, the defendant deposited US\$3,405,479 into accounts she controlled and diverted checks totaling US\$222,676 from her IRS account. An additional US\$56,766 in IRS payments from clients, who were informed by the defendant that they were paying their own tax liability, was applied to an associate's tax account. The FID conducted a parallel investigation along with US authorities and was able on its own accord to trace and later restrained JA\$107 million held by the defendant in two separate Jamaican financial institutions whilst proceedings were underway in the U.S. These funds were used to effect restitution to victims.

*Confiscation regarding falsely/not declared or disclosed cross border movements of currency and BNIs.*

158. The JCA among others are responsible for controlling the cash and other BNIs within the Customs area. Along with the JCF, authorized officers of the JCA and the FID (at the port of entry or departure) can seize cash in pursuance of the POCA, 2007. The RPD, which has the responsibility of investigating all revenue fraud, is also empowered to carry out seizure under the Revenue Administration Act.
159. Travellers carrying more than US\$10,000 in currency or its equivalent, must submit a declaration form to the JCA. All CBRs are submitted to the FID who is the designated authority.
160. Confiscation of assets is carried out by cash seizures and forfeitures, civil recoveries and forfeitures, post-conviction forfeiture (payment in lieu of benefit upon criminal conviction) and seizure of cross border transportation of large amounts of cash or BNI exceeding US\$10,000 or equivalent in any other form or currency. The JCA uses various methods such as x-ray, intelligence and physical examination to detect movement of undeclared currency and BNIs. If a carrier is found with undeclared currency or BNIs the same is seized and can further result in an investigation. Based on the outcome of the investigation if it is established that the source of funds are related to criminal activities an application for forfeiture will be submitted to the Courts. Seizure trends have shown that packages with undeclared currency are frequently detected via express mail packages moving through the JCA's Central Sorting Office and courier services at the cargo warehouse.
161. Detention of cash in most cases is executed under the POCA. The Customs Officers are guided by a SOP: POCA Proceeding for Customs Officers on the line at NMIA & SIA (Circular #73 Vol. 2/13). This step by step guideline fosters transparency and uniformity in the handling of cash detentions. Cases of detention of cash on the ports are handed over to the Investigation Unit (within Customs) based on the guidelines set out in the SOP. The Investigation Unit conducts further probes into the details of the case and takes Court action as the investigations dictate.
162. Jamaica Customs Agency (JCA) has made cash seizures at the various ports of entries (Seaport, Airport, and Postal). For the period 2012 to August 2014, cash of the following denominations was detained/ seized: CA\$73,770, GBP335, 385 and US\$1,853,590. The larger cash seizures with an approximate range of US\$10,000 and above have occurred at both international airports. Detections are made in the passenger terminal / baggage hall and also in the cargo facilities (Courier services).
163. The Investigative Unit processed a total of 41 cases under the POCA for the period 2011 to 2014, with 16 of these cases resulting in US\$640,953 being forfeited to the Crown. Two (2) cases resulted in denial of forfeiture by the Crown, while 18 cases are still ongoing before the Courts; 5 of these cases resulted in monies being restored however breach of process was administered under the Customs Act (monetary fine). No information was provided as to how many of these cases were related to ML.

**Case:**

In 2011, a female traveler arrived in Jamaica at the Norman Manley International Airport from another Caribbean country. Her Customs declaration form stated that she was not carrying cash in excess of US\$10,000. Her bags were scanned and US\$69,900 was discovered secreted at the bottom of one of her bags. She denied knowledge of the cash to the Customs Officer. A further sum of US\$1,200 was found in her handbag. The total sum of US\$71,100 was detained pursuant to section 79 of the POCA. An application for forfeiture was made by the Commissioner of Customs in the RM's Court. The female traveler applied for the release of the said sum; however that application was denied. The learned Resident Magistrate ruled that the entire sum be forfeited.

**Case:**

In 2012, a male traveler of Jamaican origin who is also a citizen of another country entered Jamaica having boarded a flight from the country where he now resides. On arrival he advised the Customs Officer that he was not travelling with cash in excess of US\$10,000 and handed over his Custom/Immigration form which declared that fact. Immediately after the Customs Officer requested an examination of his luggage, the man said that he had £8,000 and told her that he would give her something if she did not check his bags. The search of the bag revealed some £8,000 along with another £3,000 which was found in his laptop case. A search of his person revealed an additional £3,000 which was found in a parcel in the crotch of his shorts. The traveller gave conflicting explanations as to the source of the cash which was subsequently seized. An application for forfeiture was subsequently made under section 79 of the POCA. The Resident Magistrate ruled that the cash was recoverable property and granted the application for forfeiture. The traveler appealed against the order for forfeiture; however, the appeal was dismissed and the decision of the Resident Magistrate affirmed.

*Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.*

164. In addition to successful cash seizures, the investigations unit within the JCA the Border Protection Unit, confiscated more that JA\$250 million (approximately USD2 million) worth of counterfeit goods at the Island's ports of entry between January 2014 and April 2015. Containers bearing various counterfeit products were intercepted following intelligence and joint inter-agency operations, involving local and overseas law enforcement entities.
165. Recovery of assets is also currently being pursued by a process of investigation and close collaboration between law enforcement agencies. At the time of the onsite, there were 204 motor vehicles which were subject to confiscation. Non-declared cash has been a major focus and Jamaica has had some degree of success with cash seizures as well as confiscation of the proceeds and instrumentalities of crime as shown through the investigation and prosecution process. The JCA as previously noted has been successful in obtaining cash seizures at the various ports of entry (Seaport, Airport and Postal).
166. While there have been a number of successful cases of confiscation of the proceeds and instrumentalities of crime as shown through the investigation and prosecution process, it is still difficult to assess how consistent the confiscation results are with the ML/TF risks. This is due to the fact that while crimes such as smuggling, lottery scams and fraud were recognized by Jamaica in the NSP as Tier 1 (high probability/high impact), they were not assessed in the context of ML/TF risk specifically.

### *Overall Conclusions on Immediate Outcome 8*

167. While Jamaica has a policy that promotes the seizure and confiscation of assets and have had success in that regard, the focus has not been on ML/TF related matters.
168. Competent authorities such as the ARA have used the cash seizure provisions to prevent the flight or dissipation of assets, while the FID uses restraint orders to ensure that property and other assets remain available for confiscation. The JCA has the power to detect and seize currency and BNIs where there is false or undeclared cash or BNIs found at the borders. However, the sanctions that can be imposed by the JCA in this regard do not appear to be effective, proportionate or dissuasive.
169. The competent authorities have cooperated with their international counterparts, more specifically as noted in a case above, the FID conducted a parallel investigation to trace assets in conjunction with their foreign counterparts, with the funds eventually being used to effect restitution to victims.
170. Overall Jamaica demonstrates characteristics of an effective system for confiscating the proceeds and instrumentalities of crime. This judgment is mainly based on the qualitative information provided, including but not limited to the case studies described above. Jamaica has determined that the first step to address the main criminal threats is removing the profit from crime and there has therefore been a focus on seizing and confiscating/forfeiting the proceeds of crime. The measures detailed for the recovery of assets is being put to good use as demonstrated in matters concerning civil recovery and cash seizures and in particular where there were criminal conviction. Given the cash based nature of Jamaica's economy and the identified risk in relation to such, the Assessors are of the view that identified recovery measures resulting in the volume of cash seizures reported has been an effective mechanism in Jamaica's fight against ML and TF. It was also noted that the FID has provisional measures under the POCA and the FIDA and uses restraint orders as an effective means of ensuring that suspects are unable to deal with property or funds until there is a final determination relating to the assets in question.
171. **The rating for Immediate Outcome 8 is substantial.**

## **CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION**

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- Jamaica has very limited experience in TF investigations and prosecutions and have yet to secure any convictions for the TF offence.
- Jamaica has only recently established a dedicated unit to investigate TF offences in the CTOC within the JCF.
- Jamaica has very limited exposure to PF. Although the Authorities have not addressed issues of proliferation in great detail at this time, they have commenced initiatives to formulate procedures to address this risk.

- There are delays in the implementation of TFS, since the communication of all UN designations to financial institutions is not timely.
- The mechanisms to deal with terrorism and TF investigations are not effective and need to be strengthened.
- DNFIs/DNFBPs are not subject to the counter terrorism regime.
- The measures to deal with proliferation financing (PF) are not sufficiently developed in order to meet the (UNSCR) requirements as required by the FATF Recommendations.
- The registration of Charities is not risk based since it is not targeted towards NPOs which are particularly at risk for TF misuse.

### ***Recommended Actions***

#### **Immediate Outcome 9**

- Jamaica should undertake a comprehensive NRA so that they can sufficiently identify and understand the risks posed by terrorism and TF.
- Jamaica should review the TPA to provide for more effective, proportionate and dissuasive sanctions against legal persons.
- Jamaica should develop appropriate procedures and guidelines to investigate and prosecute TF offences and conduct ongoing specialised training in relation to the identification, investigation and prosecution of TF.
- Jamaica should ensure that efforts and information sharing are co-ordinated amongst law enforcement and intelligence agencies involved in combating terrorism and TF.

#### **Immediate Outcome10**

- Jamaica should implement Regulations to give effect to all aspects of TFS pursuant to UNSCR1267 and its successor resolutions and UNSCR1373 without delay.
- Jamaica should identify and assess its TF risks and take appropriate and proportionate actions to mitigate those risks, including measures that prevent the raising and transferring of funds through NPOs and other entities or methods which are at high risk of being misused by terrorists.
- The Charities Authority should within the shortest time possible:
  - conduct fitness and propriety tests on all directors and officer of all registered charities
  - adopt a risk based approach (materiality and risk) for the conduct of AML/CFT onsite examinations of charities.
- Jamaica should assess the NPO sector to identify the characteristics and features of NPOs that are vulnerable to TF abuse and implement appropriate countermeasures.
- Make DNFBPs/DNFBPs subject to the Terrorism Prevention Act, 2005 (TPA).
- Ensure NPOs understand their TF risks.

### **Immediate Outcome 11**

- Jamaica should undertake steps to remove the inordinate delays in enacting all UNSCR designations into their domestic laws to implement sanctions for PF without delay.
- Jamaica should prepare and promulgate Regulations under the UNSCRIA to provide for the reporting procedures and obligations for FIs and DNFI/DNFBPs under the Act.
- Jamaica should prepare and issue guidance to the FIs and DNFI/DNFBPs so that they are aware of and understand PF and be consistent with the FATF Guidance on the Implementation of Financial Provisions of United Nations Security Council Resolutions to Counter the Proliferation of Weapons of Mass Destruction.
- Jamaica should ensure that FIs and DNFI/DNFBPs are effectively monitored for compliance with UNSCRIA Regulations.

### ***Immediate Outcome 9 (TF investigation and prosecution)***

172. The main legal basis for the criminalisation of TF is the TPA as amended in 2011 and 2013 and the Terrorism Prevention (Reporting Entities) Regulations, 2010. The TPA, 2005 criminalises the offence of TF and the recently established CTOC is responsible for the investigation of terrorism, TF and related threats. It is a special branch under the JCF and is the lead agency that receives related TF intelligence. However, a majority of intelligence is sourced from the FID and FIU. TFS related to PF are contained in regulations promulgated pursuant to the United Nations Security Council Implementation Act, 2013 (UNSCIA). To date, the Jamaican authorities have issued the UN Security Council Resolution (Implementation) Regulations which implemented UNSCR 1718 (2006) and 1874 (2009) with respect to North Korea.

### ***Prosecution/conviction of types of TF activity consistent with the country's risk-profile***

173. Whilst the Jamaican authorities have determined that terrorism (with particular regard to the tourism industry) is a Tier 2 threat (high impact, low probability) in accordance with its NSP, it has yet to conduct a full assessment on the impact that TF has on the jurisdiction. The Authorities noted that the impending NRA will address that issue. The threat of terrorism however, is considered to have the potential to cause great harm to Jamaica and therefore its inter-ministry and agency-approach in assessing and mitigating its impact is acknowledged.
174. The Jamaican authorities were unable to demonstrate their ability to successfully investigate, prosecute and convict persons of any of the TF offences (including collection, movement and use of the funds) as offences with TF related elements have been rare. Accordingly, there are limited statistics available on the number of TF investigations, prosecutions or convictions.
175. The Jamaican authorities cited a number of factors that contributed to the lack of TF prosecutions and successful convictions.
- Lack of specialized training in relation to the identification, investigation and prosecution of transnational crime, terrorism and TF and inadequate resources to facilitate such training.

- Inadequate co-ordination and information sharing among law enforcement and intelligence agencies involved in combating TF (although the Jamaican authorities informed Assessors that these mechanisms have been improving in more recent times).
- Need for the development of a National Plan of Action for terrorist events/activities with input from the ODPP.

#### *TF identification and investigation*

176. The FID/FIU, is the agency that receives reports under the TPA both with respect to STRs and those transactions reported by entities where they believe that they are in possession of property owned or controlled by a listed entity (designated as terrorist entities by the UNSC). Investigations are the responsibility of CTOC. Intelligence arising out of a disclosure led Jamaican authorities to conduct one investigation on suspected TF activities of a Jamaican National.

#### *TF investigation integrated with -and supportive of- national strategies*

177. CTOC was established on the 19<sup>th</sup> January, 2015 as a result of the JCF's response to the recommendations outlined in the NSP. Its main responsibility is to investigate terrorism, TF and related threats and it is the lead agency in relation to TF related matters. There have been few reports made with respect to TF and as such as noted earlier, there was only one investigation of suspected TF.
178. By way of statistics, in 2013 the FID received one TF related STR; while in 2014 it did not receive any. The Jamaican authorities stated that these figures are a true reflection of the low risk that TF currently poses to Jamaica. However, they have continued to monitor this risk given the fact that terrorist activity has increased regionally and internationally.
179. TF intelligence may also be received by the FID/FIU from Egmont and MOU disseminations, international partner reporting (including those with a presence in Jamaica) or via anonymous sources, e.g. CrimeStop. CTOC advised that the dissemination of TF intelligence from the FID/FIU will be co-ordinated at a senior level and the agencies are currently undergoing specialised training in this regard.
180. It does not appear that priority is given to TF related matters. As stated throughout this report, the Jamaican authorities have focused their efforts in targeting predicate crimes as opposed to ML and TF offences. As TF was not properly incorporated in the NSP as a threat to Jamaica, it is unclear whether the current approaches by law enforcement agencies are consistent with their national counter-terrorism strategies and investigations.

#### *Effectiveness, proportionality and dissuasiveness of sanctions*

181. Jamaica has not levied any sanctions or measures against any natural or legal persons as there have been no prosecutions or convictions. As fully described in R.5 (TC Annex), section 12 of the TPA extends criminal liability to natural persons under sections 3 to 12. Anyone convicted of any TF offence shall face a penalty of life imprisonment. This sanction is considered effective, proportionate and dissuasive. With

regard to legal persons, it is unclear whether the penalties that could be imposed are proportionate or dissuasive as the assessors were not given any sentencing guidelines or any relevant information to determine effectiveness.

182. The technical deficiency in relation to the TF offence outlined above does not have a substantial impact on effectiveness as it was not a factor that led to the lack of TF investigations or successful prosecutions.

*Alternative measures used where TF conviction is not possible (e.g. disruption)*

183. Any criminal justice, regulatory or other methods used by the Jamaican authorities to disrupt and prevent TF activities is not significant in this context since there have not been any prosecutions or convictions.

*Overall Conclusions on Immediate Outcome 9*

184. Jamaica to some degree has a system of awareness for TF. However the CFT regime is still at a very early stage of development. Accordingly, important and major steps have to be taken to improve their CFT system. Noteworthy is the lack of careful consideration of TF in Jamaica's NSP which could have led to more focus being given to this threat. As a result, LEAs do not prioritise terrorism and TF related matters and have concentrated their efforts in pursuing other predicate offences. The lack of training and funding to facilitate such training is also of concern which contributes to the lack of prosecutions or convictions for any related TF offences. CTOC, the lead agency for the investigation of terrorism and TF offences was only recently established. Consequently, their investigative techniques, organizational processes and experience with co-operation with domestic and foreign counterparts have not been sufficiently tested in practice.

- 185. The rating for Immediate Outcome 9 is a low level of effectiveness.**

*Immediate Outcome 10 (TF preventive measures and financial sanctions)*

186. Jamaica has not applied UNSCR 1267 and its successor resolutions and UNSCR 1373 without delay due to the protracted implementation of its sanctions regime. This is a significant impediment to Jamaica's ability to prevent terrorists and terrorist organisations from transferring funds. The relevant mechanisms to designate individuals and entities covered by UNSCR 1267 and 1373 will be addressed under the TPA.

*Targeted approach, outreach and oversight of at-risk non-profit organisations*

NPOs

187. In 2013, the Charities Act was enacted to provide a supervisory and AML/CFT framework for NPOs. At present the regime equally applies to all types of NPOs and there are no specific measures effected for NPOs which are vulnerable to abuse for TF. The Authorities have indicated that the intention is for the regime to apply to high risk NPOs which will be identified from a threat assessment which is yet to be undertaken. Accordingly, the Authorities are yet to adopt a RBA to its Charities sector and to appropriately apply countermeasures based on TF identified risks.

188. The Charities Authority is responsible for the administration of the voluntary registration and regulation of the NPOs. At the time of the onsite, 595 Charities had applied to be registered by the Charities Authority with 350 charities registered, mainly to take advantage of tax incentives. Registration requires the submission of audited financial statements, which is proving difficult for some of the smaller charities. Since 2014, registration also requires the completion of a fit and proper assessment of all applicants. Further, fitness and propriety tests have been implemented for directors and officers of NPOs upon renewal of registration. The DFSC has conducted 30 inspections for compliance with the Charities Act, but has not yet introduced any AML/CFT filing requirements, nor have they had any dialogue with regard to TF risk. The Charities Authority has the ability to conduct AML/CFT onsite examinations of NPOs and 30 have been undertaken.
189. There has been outreach to the sector through radio interviews and Government broadcasts. There have also been awareness sessions with community organisations, churches and the social services council as well as various newspaper articles. However, the outreach was not specifically with respect to CFT.
190. Notwithstanding the commencement of implementation of the Charities Act, Jamaica has not adopted a risk based approach to its NPO sector and is yet to conduct a vulnerabilities assessment to identify which NPOs are at risk for TF abuse.

#### *Deprivation of TF assets and instrumentalities*

191. Jamaica has not had any instances of seizing TF assets and instrumentalities.

#### *Consistency of measures with overall TF risk profile*

#### *Financial Institutions*

192. Assessors sought to determine whether FIs were aware of their CFT responsibilities. All were aware of the legislative obligations to freeze terrorist assets without delay, and use the UN consolidated and OFAC lists to screen customers at on-boarding and to file TPRs.

#### *DNFIs/DNFBPs*

193. The DNFIs/DNFBPs sector has not yet been brought under the TPA, therefore, matters relating to TF are not currently being monitored by the various supervisory authorities, and obligations with respect to TF matters have not been imposed on the entities within the various sub-sectors. As such, the effectiveness of any possible TF prevention regime currently being contemplated for DNFIs/DNFBPs cannot be ascertained at this time.

#### *Overall Conclusion on Immediate Outcome 10*

194. The Jamaican Authorities enacted the UNSCRIA 2013 to implement targeted financial sanctions regarding PF obligations through Regulation. To date the Authorities have issued the UN Security Council Resolution (Implementation) Regulations which implemented UNSCR 1718 (2006) and 1874 (2009) with respect to North Korea.

195. Jamaica has not demonstrated that it has an effective system to combat TF. It lacks experience in implementing the relevant UNSCRs that would facilitate the identification and deprivation of resources to support terrorist activities and organizations. Jamaica has not sufficiently identified and assessed TF as a risk which has resulted in insufficient actions to appropriately and proportionately mitigate that risk.
196. Although the Charities Act came into force in 2013, the Charities Authority has only recently begun to register and supervise NPOs for CFT compliance, but has indicated improved efforts and targeted actions in this sector. However, the sector remains vulnerable to potential misuse for TF as a proper assessment has not been carried out to identify and focus on those NPOs that would be most susceptible to TF. Since registration is voluntary, Jamaica is unable to effectively identify those NPOs that account for a substantial share of the sectors international activities and financial resources under the control of this sector.
- 197. The rating for Immediate Outcome 10 is a low level of effectiveness.**

### *Immediate Outcome 11 (PF financial sanctions)*

198. Jamaica has not taken any substantial measures to prevent persons and entities involved in the proliferation of weapons of mass destruction from raising, moving and using funds or other assets for PF. Jamaica has signed and ratified a number of non-proliferation treaties and conventions, namely: the Treaty on the Non-Proliferation of Nuclear Weapons, the Chemical Weapons Convention and the Convention on the Production and Stockpiling of Biological and Toxin Weapons and on their Destruction. However the implementation legislation has yet to be enacted to give effect to both Conventions.
199. The UNSCRIA is the Act governing the implementation of PF related UN targeted financial sanctions (TFS). The Regulations made under section 3 of the UNSCRIA will give effect to decisions of the UN Security Council by proscribing persons or entities; restricting or preventing the supply, sale or transfer of goods or services; restricting or preventing uses of, dealings with, and making available, assets; restricting or preventing the procurement of goods or services; providing for indemnities for acting in compliance or purported compliance with those regulations; providing for compensation for owners of assets. The Regulations shall also have extra-territorial effect.
200. The Act and Regulations apply to FIs as well as DNFIs/DNFBPs. The Jamaican authorities have noted that the other outstanding UNSCRs will have to be subject to the normal legislative process and were unable to provide a timeline for when that will be concluded. They are therefore not in force in Jamaica and FIs and DNFIs/DNFBPs are not under an obligation to comply with them.

### *Implementation of targeted financial sanctions related to proliferation financing without delay*

201. The Authorities noted that the Act is fairly new and they would need to understand how the regime for the implementation of TFS relating to the financing of proliferation will be exercised. Consequently, only the UN Security Council Resolution (Implementation) Regulations in relation to the Democratic People's Republic of Korea has been issued. Resolution 2087 (2013) was adopted by the UN Security Council on

22nd January, 2013 but was only passed in the Jamaican Parliament in November, 2013. This does not demonstrate full and proper implementation of PF related TFS without delay.

#### *Identification of assets and funds held by designated persons/entities and prohibitions*

202. As one of the measures to monitor compliance by regulated entities, they are required to report at least every four (4) months to the FID, indicating whether they are in possession of assets of designated persons or entities. This reporting procedure has not commenced as the implementing regulations have not been prepared. Furthermore, no guidance has been issued to assist regulated entities in understanding their obligations under the Act and Regulations.

#### *FIs and DNFBPs' understanding of and compliance with obligations*

203. The competent authority cannot demonstrate that it has effectively monitored and ensured compliance by FIs and DNFBPs with their obligations regarding TFS relating to PF. DNFBPs do not appear to have a good understanding of their PF obligations and were not generally aware of the UNSCRs and their obligations in relation thereto.

#### *Competent authorities ensuring and monitoring compliance*

204. The FID is tasked with monitoring compliance with regard to whether there are any regulated entities in possession of assets that belong to designated persons or entities. As stated above, there are no reporting procedures in place to ensure that FIs and DNFBPs are adequately monitored. The Jamaican authorities indicated that technical assistance will be needed to fully implement these obligations. The Assessors therefore concluded that fundamental improvements are needed to develop an effective TFS regime in respect to proliferation.

#### *Overall Conclusion on Immediate Outcome 11*

205. Jamaica has not demonstrated that it has an effective system in this area and fundamental improvements are needed. Persons and entities designated under the respective UN Resolutions have not been identified or assets frozen through the implementation of the Regulations. FIs and DNFBPs are not monitored for compliance with their obligations to implement the UNSCRs. There is a general lack of awareness and knowledge by both the Government agencies and the private sector of the proliferation risks and no guidance has been issued to assist with this deficiency. Jamaica is therefore unable to effectively identify and prevent persons and entities from raising, moving and using funds involved in the proliferation of weapons of mass destruction.

206. **The rating for Immediate Outcome 11 is a low level of effectiveness.**

## **CHAPTER 5. PREVENTIVE MEASURES**

### *Key Findings and Recommended Actions*

|                     |
|---------------------|
| <b>Key Findings</b> |
|---------------------|

- Financial institutions have a good understanding of ML/TF risks and have implemented preventative measures to mitigate ML/TF risks, including at a group level through the adoption of group compliance programmes and group internal audit and compliance functions. However, effective implementation of AML/CFT measures and mitigants vary between the DTIs, insurance companies and securities companies. The BOJ is yet to revise its AML/CFT Guidelines to incorporate a RBA.
- Commercial banks have indicated that their correspondent banks have placed onerous conditions/ restrictions or attempted to have commercial banks un-bank money remitters due to the perception of the high risks associated with these types of customers.
- FIs are aware of the requirement to have a documented and approved compliance programme. They are also aware of their reporting obligations for filing STRs, TTRs and quarterly terrorist reports. FIs interviewed confirm that there are screening procedures for hiring staff, AML/CFT training programmes and independent audit functions.
- There is no AML/CFT regulatory regime for the microfinance sector. In recognition of this, the Authorities have drafted legislation and consulted with stakeholders.
- The Securities Sector, based on its asset size, appears to be underreporting STRs and also appears to be engaged in defensive reporting.
- The abatement of the implementation of the AML/CFT regime against lawyers significantly impacts the effectiveness of the AML/CFT system given the recognized risk of this sector and the fact that they perform the functions of TCSPs who are not currently included as DNFIs/DNFBPs.

### ***Recommended Actions***

- The Banking Services Act, should be implemented since it is a critical piece of legislation which would enable the full adoption of consolidated supervision for financial groups.
- Jamaica should hasten to enact micro lending institution legislation and extend the AML/CFT regime to include microcredit lending institutions.
- The BOJ should issue its revised Guidance Notes to incorporate a risk based approach to AML/CFT
- The apparent defensive reporting of STRs by the Securities Sector should be investigated and measures implemented to ensure appropriate reporting of STRs to FID.
- The AML/CFT regime for lawyers should be enforced as swiftly as possible.
- All AML guidance for DNFIs/DNFBPs should be brought into effect immediately.
- DNFIs/DNFBPs should continue to implement a RBA in relation to their customers.
- DNFIs/DNFBPs should review their procedures for reporting STRs to ensure that staff fully understand their obligations in relation thereto.
- Jamaica should ensure the DNFI/DNFBP sector is subject to TF legislation.
- The deficiencies in legislation as detailed in the Technical Compliance Annex for Recommendations 10, 14, 16 to 19 and 21 should be remedied.

*Immediate Outcome 4 (Preventive Measures)*

207. The DNFI/DNFBP sectors in Jamaica comprise the following:

**Table 13: DNFI/DNFBP Sectors**

| DNFI/DNFBP Sector   | Designated Supervisor                                   | Number of Entities Licensed                                    | Number of Entities Qualifying for AML/CFT supervision |
|---|---|--|---|
| Casinos   | Casino Gaming Commission                                | 0  | 0   |
| Other Gaming (Gaming Lounges) <sup>8</sup>  | Betting, Gaming and Lotteries Commission                | 16   | 16  |
| Real Estate Agents  | Real Estate Board                                       | 304 – dealers<br>495 - salesmen                                | 799   |
| Lawyers <ul style="list-style-type: none"> <li>• Notaries</li> <li>• TCSPs</li> </ul> | General Legal Council                                   | 1789 – private<br><br>61 licensed (49 active)<br>865 (approx.) | unknown   |
| Accountants   | Public Accountants Board                                | 270 – registered accountants including 168 auditors            | 4   |
| Dealers in precious metals and stones   | Only subject to the cash transaction prohibition regime | 50 firms with a total of 100 branches                          | -   |

208. The DNFI/DNFBPs operating in Jamaica are highlighted in the above table. Dealers in precious metals and stones have not been brought under Jamaica’s AML supervisory regime. These consist of local jewellers who sell primarily to residents and duty free jewellers who sell primarily to hotel or cruise guests and other ex-pats. DPMSs are subject to the prohibition on cash transactions exceeding JAM\$1M (US\$8,645) and must sign a letter of understanding submitted by the DPMS’s bank annually, acknowledging understanding and enforcement of the restriction. Loan facilities extended to DPMSs are dependent on acceptance of this letter.

<sup>8</sup> Gaming lounges are entities with 20 or more machines

209. Notarial services in Jamaica are provided by attorneys who must have at least 10 years' experience and who are appointed through the Ministry of Justice. Additionally, TCSP services are provided by lawyers and accountants, although individuals have the ability to form a company directly with the Companies Registry. As noted in section 1.5 the 2013 NSP identified organised crime as a Tier 1 threat, and recognised lawyers as facilitators for their role in establishing businesses for individuals connected to organised crime and executing other business transactions. Also identified as facilitators to organised crime were accountants and real estate agents. Given the large size of the legal profession, this sector was considered to be sufficiently important in determining effectiveness, particularly given the ability of lawyers to act as TCSPs, as well as the current injunction against the enforcement of the AML/CFT regime, when considered against their recognition as a Tier 1 threat.

#### *Understanding of ML/TF risks and AML/CFT obligations*

210. In 2013, the POCA and TPA Regs were amended to include a RBA to AML/CFT. Since the NRA is not completed, FIs are yet to revise compliance programmes and to incorporate national ML/TF risks identified by the NRA into their risk management strategies. While the FSC has revised its Guidance to insurance companies and securities companies to incorporate a RBA to AML/CFT, the BOJ is yet to do so.
211. FIs demonstrated to the Assessors a high degree of understanding of ML/TF risks. FIs interviewed demonstrated that they can recognise and differentiate different levels of ML/TF risks and take steps to mitigate the risks. The financial groups work together with the supervisors (BOJ and FSC), FID and LEAs which enhance their ability to understand national ML/TF risks. The FIs have sufficient understanding of the ML/TF risks of their customers and have appropriate risk based frameworks to mitigate the risks. The financial sector is dominated by financial groups which are highly interconnected since they consist of banks, insurance companies, securities dealers, cambios, money remitters and credit unions. This interconnectedness means that the financial groups control key players in other sectors which enhances the level of understanding of AML/CFT among the various segments of the financial sector. Given that in the majority of cases, the commercial banks are the parent company, the banking sector has a relatively better understanding of their risk profile and their AML/CFT obligations and better application of risk mitigating measures. The micro credit financial institutions are not part of the AML/CFT regime and the Assessors were unable to determine whether this sector understands ML/TF risk since they are not required to comply with AML/CFT requirements.
212. DNFIs/DNFBPs, like FIs, are required to be aware of their ML risk and establish programmes to mitigate such risk. All CDD/EDD, record keeping and oversight requirements instituted for FIs also apply to supervised DNFIs/DNFBPs, including the need to risk assess clients and identify beneficial ownership. Although guidelines developed by the various supervisors have not been brought in to force, DNFIs/DNFBPs have a general sense of what is required of them. Real estate agents collect CDD information, which is reviewed every 5 years from the time of the first transaction. Non-resident clients are required to submit notarised proof of identification; however, real estate agents reported that only 5% of their business is non-face-to-face. For corporate clients, shareholder information is gathered, but the REAs do not drill down to the BO. There appears to be a general lack of understanding of the difference between a shareholder and a BO. Some of the REAs have developed procedures manuals to guide staff on what their accepted parameters are for on-boarding new clients.

213. The number of accountants qualifying to be supervised for AML/CFT purposes is minimal, as is their client base. Background checks are carried out on new clients and records are maintained for 6 years, however, there was no indication that CDD information was reviewed during this period. The general method used by both the REAs and accountants for risk assessing clients is to determine whether a client is a PEP or not. Both sectors were aware of obligations to file STRs but none had been filed. With regard to casinos and gaming lounges, the obligations under the POCA are new to these entities, but in an effort to adhere to the requirements, procedures manuals for use by staff, have been developed in some instances to ensure awareness of their AML/CFT obligations. All sectors have identified and put in place designated officers who are responsible for receiving and reviewing STRs and submitting them to the FID.
214. DPMSs were unaware of the TTR requirements since they are not under the AML supervisory regime. Further, they indicated that they had not been provided with any information on what to do should a suspicious transaction occur. DPMSs were of the view that the cash restrictions and reporting requirements were problematic and that the transactions should be accepted and then reported rather than not accepting the transactions at all. Assessors found that there was a clear lack of understanding of the potential ML risk posed by the sector even with the JA\$ 1 million cash transaction prohibition in place.

#### *Application of risk mitigating measures*

215. Since the 3rd Round Mutual Evaluation, Jamaica has extended its AML/CFT regime to include selected DNFIs/DNFBPs such as real estate dealers, accountants, gaming lounges and attorneys. AML/CFT laws and regulations were updated to comply with the requirements of FATF Recommendations, and DNFIs/DNFBPs are now subject to the POCA and the POCA (MLP) Regs. They are not, however, subject to the TPA. Additionally, as indicated earlier, the Jamaica Bar Association (JBA) filed for and obtained an injunction which currently prevents attorneys from being supervised for AML/CFT purposes. This is considered a major impediment to the implementation of Jamaica's AML/CFT regime for DNFIs/DNFBPs since the NSP recognised attorneys as being facilitators of ML.
216. The various designated DNFIs/DNFBPs supervisory authorities have all drafted guidelines for the implementation of an RBA to supervision; however, many of these guidelines are yet to be effected so it is not possible to determine what impact these guidelines have had on the level of effectiveness of the licensed entities within the DNFIs /DNFBPs sector.
217. There are group AML/CFT compliance and risk management frameworks which enable a better understanding of ML/TF risks and relatively better understanding of customer risk profiles, AML/CFT obligations and better application of mitigating measures. Assessors are of the view that given the compliance culture in these groups and the close collaboration with Supervisors, the FID and LEAs, the level of effective AML/CFT risk management within those groups is enhanced. The risk mitigation structures and measures implemented by financial groups and the financial institutions which comprise the group are adequate. The micro credit financial institutions are not part of the AML/CFT regime and the Assessors were unable to determine whether any ML/TF risk mitigation measures have been implemented by this sector.

218. In 2015, the FSC issued revised guidelines to assist the financial sector in implementing legislative requirements. Since the Third Round Mutual Evaluation, the BOJ Guidelines is yet to be revised to reflect a RBA and other changes contained in the AML/CFT legislation. The BOJ and FSC Guidelines are considered other enforceable means.
219. The FSC's AML/CFT Guidelines are used to ensure that licensees establish required AML/CFT measures and comply with the POCA and TPA. The FSC does this by establishing a comprehensive set of procedures that track closely and reference the FSC's AML/CFT Guidelines. The procedures are used to conduct onsite examinations of the insurance, securities and pension licensees by evaluating their compliance with the Guidelines in respect of the following key categories: Executive Responsibilities; Employee Integrity, History and Controls; Training Initiatives; Detection and Reporting; Identification/Know Your Customer Procedures; Controls; Independent Audit and Control functions. Each category details an expansive series of AML/CFT requirements that financial institutions must satisfy to be in compliance with the Guidelines.
220. For the entities regulated by the BOJ, the Guidance Notes are part of the AML/CFT requirements with which licensees are required to specifically demonstrate compliance. It is evident from on-site examinations that financial institutions have developed their internal policies on the basis of the AML/CFT laws as well as the Guidance Notes. The Guidance Notes are utilized in training sessions (both in-house for BOJ supervisory staff and externally for licensees) and are a constant point of reference to assist licensees with complying with their respective statutory obligations.
221. There is continuous outreach by the FID, BOJ and FSC to the relevant segments of the financial sector through participation in seminars, conferences and individual interactions with FIs.

#### *Application of enhanced or specific CDD and record keeping requirements*

222. FIs have adopted a rules based approach to CDD since the requirements are contained in legislation. Risk based approaches to the implementation of CDD, *inter alia* focus on the identification of risk posed by the type of customer taking into account the product or service as well as whether the individual is a non-resident or from a high risk country. Such requirements are documented in compliance programmes which are approved by the board of directors. Supervisors and FIs indicated that while there have been improvements in the level of compliance with CDD requirements in the financial sector, there are still deficiencies in complying with CDD.
223. FIs are aware that information on beneficial owners must be obtained and request such information from their business customers. The information is obtained on a best efforts basis. There is a need to strengthen the CDD conducted on beneficial owners since the information is currently unavailable from the Companies' Registry. Assessors were not provided with any information to determine the extent to which business relationships are either continued or terminated when BO information is not obtained.
224. FIs do not tend to rely on third parties for the CDD process even where a customer may be common to different entities within a financial group. This was indicated by DTIs, insurance and securities segments of the financial sector.

225. There was awareness and compliance with record keeping requirements by FIs. BOJ and FSC indicated that recordkeeping deficiencies did not seem to be a key weakness across the segments of the financial sector. However, given that FIs do not fully comply with CDD requirements, there are gaps in the collection of all the requisite CDD documentation and therefore there are gaps in record keeping.
226. DNFIs/DNFBPs are held to the same CDD requirements as FIs. Customer identification documents are collected and, in the case of accountants, background checks are carried out on new clients. Source of funds are determined but there was no mention of determining source of wealth. Supervisory guidelines require CDD to be carried out on a risk basis, but most guidelines are still in draft form and not yet in effect.
227. DNFIs/DNFBPs are able to identify shareholders but the real estate agents appeared to have a better understanding of the difference between ownership of shares and beneficial ownership. However, identification procedures did not extend to identification of BO information in most cases, particularly in relation to ownership of foreign companies as REAs noted that this information was not usually available.
228. All supervised DNFIs/DNFBPs displayed an awareness of the record keeping requirements stipulated in the POCA. Most supervisors have not yet commenced onsite examinations; therefore, the level of compliance with CDD and record keeping measures could not fully be determined.
229. FIs use publicly available information including World Check to identify PEPs. Reliance is also placed on responses when persons are completing the CDD process. Feedback from the DTIs, insurance and securities companies indicated that identification of close associates and family members of PEPs is a challenge. The FIs recognised that these sources are unable to identify family members and associates of PEPs. When a person becomes a PEP subsequent to the commencement of the relationship, this can only be recognised during subsequent reviews of the relationship unless a self-declaration is made.
230. Issues relating to the identification and classification of foreign and domestic PEPs identified among the FIs are also relevant to the DNFIs/DNFBPs. Real estate dealers appear to have a better understanding of the information that is required as it relates to identity of spouses, children, business activities, source of funds and geographic risk.
231. Commercial banks have indicated that their correspondent banks have placed onerous conditions/restrictions on, or attempted to have commercial banks un-bank money remitters. The commercial banks are aware of and satisfactorily comply with requirements for correspondent banking.
232. Commercial banks are aware and comply with the standards on wire transfers. Further, the financial sector is aware of the FATF and FSRBs published list of jurisdictions which insufficiently comply with FATF Recommendations when conducting business. In the case of the FIs supervised by the BOJ, they are required to indicate what measures are taken to mitigate the risk of dealing with such jurisdictions. The Assessors were unable to determine whether the FSC requires regulated entities which fall under their regulatory purview to indicate what measures are taken to mitigate the risk of dealing with jurisdictions identified by the FATF and FSRBs as sufficiently complying with FATF Recommendations.
233. Assessors did not receive any indication of difficulties in applying AML/CFT measures for new technologies and products since the process includes an AML/CFT product risk assessment.

234. FIs are aware of obligations regarding UN Sanctions lists. FIs file required TPA reports; however, no terrorist STRs have ever been filed. Further, FIs have not implemented any TFS relating to TF. DNFIs/DNFbps are not covered under the TPA.

*Reporting obligations and tipping off*

235. Financial institutions understand their reporting obligations regarding the Threshold Transaction Report (TTR) which is required for cash transactions above the limits prescribed in Regulation 3(1) of the POCA Regs. During the period 2011 to 2013, TTR reporting increased by 16% from 116,550 to 134,888. Reporting of TTRs by commercial banks and cambios was 92% of the TTR reporting, and to a lesser extent (7%) from Remitters and Building Societies. Overall, the combined reporting from commercial banks and cambios increased from 107,327 in 2011 by 15,736 (15%) to 123,063 in 2013. The two largest commercial banks submitted, on average, 65% of the total TTRs submitted. In 2013, there was increased reporting from commercial banks (23%), building societies (92%) and merchant banks (92%). In contrast there was a decrease in reporting by cambios (15%), securities dealers (28%) and remitters (12%). The insurance sector reported the least amount of TTRs.

**Table 14: Threshold Transaction Reports Received (2011 – 2013) (Source FID)**

| Type of Financial Institution | 2011           | 2012           | 2013           |
|-------------------------------|----------------|----------------|----------------|
| Commercial Banks              | 83,041         | 90,012         | 102,510        |
| Cambios                       | 24,286         | 21,212         | 20,553         |
| Credit Unions                 | 146            | 100            | 73             |
| Building Societies            | 3,126          | 9,101          | 6,004          |
| Merchant Banks                | 587            | 895            | 1,129          |
| Securities Dealers            | 520            | 369            | 376            |
| Remittance Services           | 4,830          | 3,753          | 4,227          |
| Insurance Services            | 13             | 4              | 16             |
| <b>Total</b>                  | <b>116,550</b> | <b>125,446</b> | <b>134,888</b> |

236. For the years, 2011 to 2013 the FID received STRs as shown below:

**Table 15: Suspicious Transaction Reports Received 2011 – 2013 (source FID)**

| Type of Financial Institution | 2011  | 2012  | 2013   |
|-------------------------------|-------|-------|--------|
| Commercial Banks              | 273   | 198   | 218    |
| Cambios                       | 7,650 | 8,904 | 46,061 |
| Credit Unions                 | 130   | 140   | 327    |
| Building Societies            | 132   | 140   | 390    |
| Merchant Banks                | 9     | 6     | 7      |

|                     |                |                |                |
|---------------------|----------------|----------------|----------------|
| Securities Dealers  | 157            | 177            | 216            |
| Remittance Services | 311,774        | 298,882        | 148,901        |
| Insurance Services  | 21             | 21             | 18             |
| Designated FI       | 0              | 0              | 0              |
| <b>Total</b>        | <b>320,146</b> | <b>308,468</b> | <b>196,138</b> |

237. During the three year period 2011 to 2013, the reporting of STRs under the POCA decreased by 39%. The majority of the STRs are filed by money remitters, the volume of which declined by 52% during the three year period. This was mainly attributable to the money remitters becoming more proactive in dealing with lottery scamming and more effective measures were introduced in identifying and reducing fraudulent transfers, this resulted in the temporary closure of some branches in areas where the lottery scam was deemed to be more prevalent. In addition, more sophisticated software and improved systems for detecting suspicious transactions led to a more targeted approach by money remitters. In 2013, money remitters submitted 76% of all STRs filed.
238. For the period 2012 and 2013, the securities sector filed on average 0.6% of STRs. In 2013 there were two hundred and sixteen (216) STRs filed by seven companies and of this amount, 135 were filed by one of the largest securities companies in Jamaica.
239. Filing of STRs within the securities sector is sometimes influenced by their intermediary relationship with banks as they themselves do not deal in cash. Issues of overlap also exist where persons with multiple licences file as one entity and not separately based on activity. There also appears to be some defensive reporting within the sector. Assessors are of the view that there appears to be under-reporting of STRs within the sector given its size and this warrants further investigation. The securities sector is 42% larger in terms of funds under management for customers than the commercial banking sector.
240. Additionally, there was a five times increase in the number of STRs filed by cambios which was as a result of changes in the manner of reporting by one of the larger cambios. There were no STRs filed under the TPA.
241. In the case of money remitters, the Assessors were of the view that the volume of STRs filed should be greater. Filing by these entities is done on a manual basis which restricts the level and quality of filing. There is also an apparent lack of communication between some remitting agents which hinders their ability to identify possible suspicious activity.
242. The FID indicated that there has been an improvement in the quality of SARs which suggests that there is a better understanding of reporting obligations.
243. Assessors were informed that disclosures submitted to the FIU would generally contain accurate and reliable information necessary for the carrying out of its analytical function. There were however, reports where FIs consistently made errors. In cases such as these, the relevant regulators (the BOJ and FSC) were advised. As a result of their involvement there has been an improvement in the quality of reports submitted.

244. FIs explained, however, that although they have a good relationship with the FID, they have experienced slow feedback from the FID especially with regard to the acknowledgement of disclosures, and that the feedback they receive is in the form of requests for additional information. They have therefore deduced that there is no issue with the quality of the STRs that have been submitted.
245. During the period 2011 to 2013, FID sent 124 letters to reporting entities providing feedback on the quality of reports, however it was difficult to determine the effectiveness of the feedback since the information provided did not show the total number of STRs submitted versus the number of letters despatched. Some of the deficiencies identified were (i) inadequate identifying information provided on customers and other parties to the transaction (ii) insufficient source of funds information given. In some instances, the source of funds information was not credible yet the reporting entity still conducted the transaction without substantiating the source of funds, (iii) reasons for suspicion not clearly stated, (iv) reporting institutions continuing to accommodate suspicious transactions from the same customers over an extended period and (v) reports being submitted on minors who clearly do not have control of the accounts. Further the FID indicated that regular meetings between the FIU and various industry groups are held and used as an avenue to provide feedback. The disconnect between the FIs and the FID in relation to the quality of the STRs highlights the need for continued outreach and provision of information and feedback on the quality of reports filed.
246. FIs understand tipping-off and have included it in their compliance programmes. Further, staff are trained using role play and scripted messages as to how to interact with customers and not engage in tipping-off. Additionally, disciplinary action can be initiated against staff who engage in tipping-off.
247. DNFIs/DNFBPs are aware of their obligations to file STRs; however, no reports have been filed. Assessors determined that this may be due to several factors, including the relative newness of the DNFIs/DNFBPs regime, the limited number of entities that qualify to be supervised for AML/CFT purposes and the level of business they conduct, as well as a need for additional training within the entities on how to identify such activities. Some training has been provided by the various supervisors as part of their outreach programmes to the relevant sectors. Additionally, the injunction obtained by the JBA means that lawyers are under no obligation to file STRs or adhere to any other AML/CFT obligations until a ruling has been made. DNFIs/DNFBPs also understand tipping-off and have familiarised staff of the concept through internal training. Disciplinary action, including termination, can be initiated against staff for tipping-off.

**Table 16. Shows the level of compliance with listed persons reporting under the TPA in 2013 (Source FID)**

|                     | <b>TOTAL</b> | <b>Number Reporting</b> | <b>Compliance Rate (%)</b> |
|---------------------|--------------|-------------------------|----------------------------|
| Commercial Banks    | 7            | 7                       | <b>100.00</b>              |
| Building Societies  | 4            | 4                       | <b>100.00</b>              |
| Insurance Companies | 14           | 9                       | <b>64.29</b>               |
| Merchant Banks      | 2            | 2                       | <b>100.00</b>              |
| Credit Unions       | 42           | 35                      | <b>83.33</b>               |
| Securities Dealers  | 48           | 23                      | <b>47.92</b>               |
| Cambios             | 70           | 9                       | <b>12.86</b>               |

|               |            |           |              |
|---------------|------------|-----------|--------------|
| Remittances   | 9          | 5         | 55.56        |
| Designated FI | 1          | 1         | 100.00       |
| <b>TOTAL</b>  | <b>197</b> | <b>95</b> | <b>48.22</b> |

248. Section 15(3) of the TPA requires every regulated entity to report to the FID once in every four (4) calendar months, or in response to a request made to it by FID, whether or not it is in possession or control of any property owned or controlled by or on behalf of a listed entity. A listed entity is a person on a Listed Entity Order, which has been approved by a Judge of the Supreme Court and caused to be published by the DPP in a national newspaper.
249. In 2013, all reports received were nil reports with compliance level among the financial institutions at December 2013 at 48%. FID engaged the BOJ and FSC to work with their respective regulated entities to achieve 100% compliance with this reporting requirement. The BOJ and FSC used moral suasion and succeeded in having the regulated entities comply with the filing of this report without the need to apply any sanctions.

*Internal controls and legal/regulatory requirements impending implementation*

250. FIs are aware of the requirement to have a documented and approved compliance programme. They are also aware of their reporting obligations for filing STRs, TTRs and quarterly TPA reports. FIs interviewed confirm that there are screening procedures for hiring staff, AML/CFT training programmes and independent audit functions.
251. Financial groups have established internal controls through internal audit and compliance departments which appear to coordinate efforts with each other. Each function reports on a frequent basis to the board of directors on AML/CFT matters. Compliance personnel have adequate access to customer information which enables them to monitor transactions and business activities of customers. Based on interviews conducted with the FIs, there are procedures for the internal submission of STRs which are then reviewed by the nominated officer. Where financial groups have operations outside Jamaica the compliance units domiciled in Jamaica appear to extend their activities to those operations. The enactment of the Banking Service Act, 2014 would facilitate the conduct of consolidated supervision of financial groups.

252. Jamaica has recognised that its microfinance lending sector poses ML/TF risk since it does not fall under the AML/CFT regime. Persons accessing the microfinance loans from these micro-lending institutions are usually not able to borrow from either the commercial banks and to a limited extent certain credit unions. Legislation is being contemplated to mitigate this risk.
253. Jamaica is a cash intensive economy. Further, the 2014 Global Findex indicated that only 78% of persons 15 years and over have bank accounts. During interviews with the financial sector, possible reasons advanced for this were, the inability of persons to have more than one form of identification and / or not being able to provide references. One mechanism developed to treat with this issue is the introduction of custodian account based payment systems which permit simplified CDD. The BOJ issued guidelines for electronic retail payment services in 2013. There are five such pilot projects.
254. Most DNFI/DNFBPs have internal procedures manuals in place that address operational matters. DNFI/DNFBPs are now taking their AML/CFT obligations into account in updating their compliance and procedures manuals, or developing such manuals. Staff are screened before hiring and training is carried out to ensure they are aware of their obligations. There are adequate systems in place for monitoring customer transactions.

#### *Overall Conclusion on Immediate Outcome 4*

255. Financial institutions understand the nature and level of ML/TF risks and apply to some extent commensurate risk based mitigation strategies. However the RBA to AML/CFT is relatively new and the BOJ is yet to issue its revised risk based AML/CFT Guidance Notes. Financial institutions encounter challenges in collecting CDD information on beneficial owners. Financial institutions to some extent apply AML/CFT preventative measures commensurate with their risks and report suspicious transactions. Compliance and training programmes include tipping off and staff can be sanctioned for breaching AML/CFT policies. There are also procedures for the filing of STRs. The lack of adequate reporting of STRs by the Securities Sector given its size is of concern.
256. Not all DNFI/DNFBPs are covered under the AML/CFT regime. Those that are, have a general understanding of their AML/CFT risk, but have not yet instituted any risk based mitigation strategies. No suspicious transactions have been reported, although there are procedures for filing STRs. Several factors contribute to this including the relative newness of the DNFI/DNFBPs regime, the limited number of entities that qualify to be supervised for AML/CFT purposes and the need for additional training. DNFI/DNFBPs are aware of requirements with respect to tipping-off and employees are trained and sanctions are in place for staff in this regard.
257. The micro credit lending institutions are not subject to AML/CFT requirement and are therefore not required to implement risk appropriate AML/CFT mitigation strategies. This sector which is growing remains vulnerable to ML/TF abuse.
- 258. The rating for Immediate Outcome 4 is a low level of effectiveness.**

## CHAPTER 6. SUPERVISION

### *Key Findings and Recommended Actions*

#### **Key Findings**

- Jamaica's AML/CFT supervisory regime for FIs is adequate. There is a relatively robust licensing regime in place which deters criminals from holding senior management positions or becoming significant shareholders. There is a high level of interconnectedness among financial institution as a result of common ownership structures. The BOJ and FSC, to some extent, engage in consolidated AML/CFT supervision utilising a risk based approach.
- The microfinance sector is yet to be brought under the AML/CFT regime.
- The approach to AML/CFT supervision of MVTS operators is not fully risk based.
- Jamaica has a fairly large DNFI/DNFBPs sector part of which has only recently come under supervision.
- Jewellers and TCSPs have not yet been brought under any supervisory regime (Jamaica is now developing appropriate TCSP legislation, however, there is no independent TCSP sector as yet in Jamaica).
- Most designated DNFI/DNFBPs supervisors are still in the process of developing their AML/CFT supervisory framework.
- Designated supervisors with the exception of the Real Estate Board, have not commenced any AML/CFT monitoring, however, they do have existing frameworks in place for prudential monitoring that are being used as a platform for developing their AML/CFT supervisory frameworks.
- It is unknown as to how many attorneys carry out activities that would require supervision for AML/CFT purposes as the reporting and CDD responsibilities under the AML/CFT framework are currently the subject of an injunction filed by the Jamaica Bar Association (JBA) against the AGC and the GLC.
- DNFI/DNFBPs are currently not subject to supervision in relation to the requirements of the TPA.

#### **Recommended Actions**

- Supervisory Authorities should implement AML/CFT consolidated supervision due to the prevalence of financial groups
- FSC should implement consolidated supervision and further develop its risk based approach to AML/CFT supervision.
- The microfinance sector should be required to comply with AML/CFT requirements and be supervised by a competent authority.
- The BOJ and FSC should undertake thematic AML/CFT studies by sector and types of institutions to improve understanding of sector risks.
- The BOJ should enhance its risk based approach to supervision of MVTS by incorporating best practices.
- With regard to DNFI/DNFBPs, Jamaica should:

- Bring all designated DNFI/ DNFBPs/ under AML/CFT supervision
  - Ensure supervision is carried out on a risk basis.
  - Ensure fit and proper testing is carried out on an on-going basis.
  - Continue to engage DNFI/ DNFBPs and supervisors in on-going training and outreach programmes.
- The REB should conduct an evaluation of the activities carried out by all registered real estate agents to determine how many real estate agents should fall under AML/CFT supervision.
  - The deficiencies in legislation as detailed in the Technical Compliance Annex for Recommendations 26 to 28 and 35 should be remedied.

### *Immediate Outcome 3 (Supervision)*

259. Section 91A of the POCA provides for the powers of the CAs in charge of monitoring FIs, for compliance with the ML obligations of the POCA. These powers include inspection or directing an inspection by third parties, examining or taking copies of documents relating to the operations of the business. Regulation 20 of the TP (Reporting Entities) Regulations, 2010 lists the functions of the CAs as monitoring of compliance by reporting entities with the requirements of the Act and Regulations thereunder; and issuing guidelines regarding effective measures to prevent the commission of relevant terrorism offences.
260. Jamaica's DNFI/ DNFBPs sector has only recently come under AML supervision; however, DNFI/ DNFBPs are still not subject to the TPA as a phased approach has been taken to bringing DNFI/ DNFBPs under the AML/CFT supervisory regime. This decision, however, was not based on any assessment of risk with regard to TF, but rather on the entities' ability to adjust to AML/CFT supervision.
261. Supervisory authorities have been assigned for all of the relevant DNFI/ DNFBPs except for DPMSs and TCSPs which have not been designated for AML/CFT purposes. Supervisors are in the process of developing their AML supervisory frameworks, including finalising procedures, manuals and sector guidelines. Jamaica has a general prohibition on cash transactions exceeding JA\$1M (US\$8,645), which falls below the FATF cash transaction threshold of US\$15,000 for dealers in precious metals and therefore they do not fall under Jamaica's AML/CFT regulatory system. The Authorities consider this prohibition as a sufficient guard against the requirement for this sector to be supervised for AML/CFT purposes, outside of any risk assessment conducted on the sector itself.
262. Jamaica does not have an independent TCSP sector. Currently, such services may be provided by either lawyers or accountants although, based on returns submitted by registered accountants, no accountants provide these services. Additionally, persons can register companies directly with the Registrar of Companies, which currently allows for the registration of local companies and foreign companies doing business within Jamaica. There is no requirement for persons wishing to register a company to do so through a TCSP, lawyer or accountant. This lack of regulation presents a gap in Jamaica's AML/CFT regime as there is limited oversight, particularly in relation to the collection of BO information, to which the current Companies Act is silent. The current injunction in place by the JBA which affects CDD and record keeping

matters as they relate to attorneys further stymies the country's ability to effectively identify and mitigate any potential risk amongst this group.

263. Jamaica has taken a policy decision to promote itself as an International Finance Centre and is in the process of developing legislation to allow for the establishment of an international financial services regime which will require the regulation of persons providing TCSP services.

*Casino Gaming Commission (CGC)*

264. The CGC has not yet issued a casino gaming licence but has embarked on the development of the regulatory framework in anticipation of any casino gaming licence to be issued. The current structure of the CGC, which includes a Director of Enforcement and Investigation will be subject to further development as licences are issued. Draft Guidance Notes to casino operators, outlining their obligations under the POCA, including fit and proper criteria for licensing and the requirement for on-site inspections using a risk-based approach, have been completed but are awaiting Ministerial approval in order to be issued.

*Betting Gaming and Lotteries Commission (BGLC)*

265. Gaming Lounges are supervised by the BGLC which also has supervisory responsibility for betting houses and lotteries. However, only the gaming lounges with over 20 machines have been designated for AML supervision. Licenses are issued and must be renewed on an annual basis and licensees must go through fit and proper testing as part of licensing and every five years thereafter. Guidance notes similar to the CGC's have been developed and are waiting to be gazetted to take effect.

*Real Estate Board (REB)*

266. The REB is the designated supervisor for real estate dealers. There are 7 officers employed as examiners who have commenced preliminary on-site AML examinations. The REB has made participation in AML training a pre-requisite to obtaining a licence to practice and has partnered with the University of Technology to provide the relevant training. For the 2014-15 licensing period 237 licenses were withheld for failure to comply with the training requirement and 221 dealers and salesmen have since complied and been issued their certificates as persons cannot transact business without a valid licence. No other enforcement action has been taken on those dealers and salesmen who did not comply with the training requirement. Additionally, the REB has issued guidance notes similar to those drafted by other designated supervisors and is awaiting Board approval of its on-site examination manual.

*General Legal Council (GLC)*

267. Attorneys in Jamaica are supervised by the GLC, and are required to file annual returns, Part 2 of which requires the individual or firm to indicate whether it has engaged in activities that would qualify it to be supervised for AML/CFT purposes. It is also a requirement for persons handling client monies to file annual accounting reports in order to receive their practicing certificate. In 2013, 862 accounting reports were

filed. In 2014, 1,464 reports were filed. Since 2012 the GLC has been making efforts to put an AML framework in place to complement its existing supervisory framework. This included the development of AML guidance notes which took effect in May 2014 and have been used as a template by other designated supervisors, as well as the creation of a regulatory department and planned recruitment of officers to conduct inspections and data analysis. Efforts were well in train when the JBA filed an injunction against compliance with the POCA in November 2014. This injunction is still in place and as a result, has prevented attorneys from having to file the annual declarations that would identify those attorneys that would qualify to be supervised for AML/CFT purposes. The injunction prevents the GLC from being able to carry out any AML supervision of the 1789 attorneys in private practice in Jamaica. Notwithstanding, 6 annual returns were filed for 2014. The current inability to supervise for AML/CFT increases the vulnerability of the sector.

*Public Accountancy Board (PAB)*

- 268. The PAB has identified 4 of its 270 registrants as carrying out activities that should be supervised for AML/CFT. For monitoring purposes all registrants in practice are subject to a Practising Monitoring Programme which determines whether they meet the international requirements to practice as an accountant. Beginning in 2015 this review will also include the review of AML compliance of the 4registrants identified to be carrying out activities subject to AML/CFT supervision. Monitoring of other registrants will also include a review to ensure they are not conducting activities that qualify to be monitored for AML/CFT compliance.
- 269. The microfinance sector is currently regulated through the Money Lending Act. This sector is vulnerable to ML/TF since it is not required to comply with AML/CFT laws.

*Licensing, registration and controls preventing criminals and associates from entering the market*

*Measures to prevent criminals and their associates from entering the market*

- 270. The BOJ and FSC have mandatory licensing regimes which include fit and proper assessments which act as a barrier to prevent criminals and their associates from entering the financial sector. Fit and proper assessments are undertaken for shareholders above a specified threshold, persons who control or exert influence, directors and senior managers of financial institutions.
- 271. Both the BOJ and FSC submit regular requests for information to the FIU as the information is used in direct support of their assessment of fit and proper applications for persons seeking to enter the financial services industry. The demand for this information is sometimes high, however, the information appears useful to their operational needs.

**Table 17: Requests made to the FIU by the BOJ and FSC – 2011-2014**

| Year | Amount |
|------|--------|
| 2011 | 101    |
| 2012 | 112    |

|              |            |
|--------------|------------|
| 2013         | 63         |
| 2014         | 72         |
| <b>Total</b> | <b>348</b> |

272. With respect to shareholding, in deposit taking institutions, the BOJ undertakes assessments for shareholders owning 20% or more, and with respect to shareholding in cambios and remittance companies' assessments are undertaken for shareholders owning 10% or more or persons who exercise control. Assessments are undertaken to every director and manager of an ultimate holding company or a financial holding company and its subsidiaries. Assessments are undertaken prior to initial licensing as well as every five (5) years. It is an on-going process.
273. In the case of the FSC, assessments are done for shareholders owning 10% or more or persons who exercise control, of the shareholding of the company. Further, where the shareholder owning 10% or more is a corporate entity then the same categories of persons listed above undergo the fitness and propriety test. However, fitness and propriety assessments are not undertaken for directors and managers of an ultimate holding company or a financial holding company and its subsidiaries. This gap can be exploited by criminals who may wish to abuse this type of corporate vehicles.
274. These BOJ and FSC assessments are complemented by due diligence checks by FID and are done on an on-going basis, in some instances annually and in other instances every five years.
275. DNFIs/DNFBPs falling under Jamaica's AML/CFT regime are subject to fit and proper testing at the point of licensing which, ensures criminals are prevented from holding any management positions, or significant or beneficial ownership interest in these entities at that point. Guidance Notes call for on-going fit and proper testing, currently this is carried out at the point of certificate renewal for lawyers, real estate agents and accountants, and every five years when licenses are reviewed by the BGLC (CGC has a similar provision).
276. A regime does not exist for preventing criminals and their associates from holding or being the beneficial owner of, a significant or controlling interest or a management function in a micro credit institutions. This sector is therefore vulnerable for ML/TF abuse.

*Supervisors' understanding and identification of ML/TF risks*

277. The BOJ and FSC have a good understanding of the RBA to prudential supervision, and are now implementing a RBA to AML/CFT. Each has developed a risk assessment tool to assess the inherent risk of each sector using a wide range of information based on international standards and best practices as well as risks identified by local law enforcement authorities.
278. In early 2015, the BOJ established a dedicated AML/CFT Unit ("the Unit") with responsibility for conducting AML/CFT onsite examinations on a risk based consolidated approach. This enhanced approach facilitates AML/CFT and prudential risks to be reviewed and supervised on a systemic and consolidated basis for highly connected financial groups. While the BOJ has commenced AML/CFT thematic reviews, FSC is yet to undertake thematic studies to enhance its understanding of sector specific ML/TF risks and its understanding of threats and vulnerabilities facing the insurance and securities sectors

**Table 18: Regulatory Resources of the BOJ and FSC**

| TYPE OF ENTITY & NUMBER  | COMPETENT AUTHORITY | INSPECTION STAFF RESOURCES   |
|--|---------------------|--|
| Deposit Taking Institutions (Deposit Taking Institutions (48 ), namely, 6 commercial banks, 2 merchant banks, 3 building societies and 37 credit unions)   | BOJ                 | 8 (including HOD) 2 exam teams headed by an Examiner in Charge.  |
| Cambios (66 companies operating through 159 locations/service points at end-January 2015<br>Remittance Service Providers (8 companies operating through 402 locations/service points at end January 2015 ) | BOJ                 | On-site Examination<br>Cambios: 8 inspectors (4 teams of 2 officers each) Remittance 6 inspectors (3 teams of 2 officers each).<br>In-house Examination:<br>Cambios: 3 officers<br>Remittance: 2 officers<br><br>Each supervisory department is headed by an Assistant Manager. They both report to the Head of Department |
| Securities Firms (51 )<br>46 Licenced Dealers/Investment Adviser/Companies<br>5 Individual Dealers/Investment Advisers   | FSC                 | 3 (1 Senior Securities Analyst and 2 Securities Analysts)<br>Led by the Senior Analyst.  |
| Insurance Companies (145 )<br>19 Insurance Companies and<br>126 Insurance Intermediaries   | FSC                 | 5 ( 2 Senior Insurance Analyst and 2 Insurance Analyst)<br>Lead by the Senior Analyst  |
| Pensions ( 432 )<br>419 Pension Plans and<br>13 Retirement Schemes   | FSC                 | 4 (1Senior Pensions Analyst and 3 Pensions Analysts)<br>Led by the Senior Analyst.   |

279. Both the FSC and the BOJ have indicated that human resources are limited given the volume and intensity of supervision required. Accordingly, the Assessors are of the view that this impedes the BOJ and FSC from being able to optimally and effectively perform their supervisory mandates. The establishment of the dedicated AML/CFT Unit at the BOJ will enable persons in the Unit to develop the necessary expertise in the conduct of AML/CFT examinations.

280. AML/CFT Guidelines developed by the designated DNFIs/DNFBS supervisors outline the types of on-site examinations that may be carried out. The Guidelines call for routine inspections to be carried out during the examination period, which is specified as one year for the BGLC, CGC, and REB, and two years for the GLC. Such examinations appear to be rule-based rather than on any assessment of actual ML/TF risk. Follow up examinations are conducted for the purpose of addressing any inadequacies identified during the routine exam, while random examinations are executed to test the routine examination process. Special examinations are trigger-based and are conducted in circumstances where the supervisor may have cause for concern about the compliance of a licensee with relevant AML/CFT laws, amongst other things.

These examination methods do not appear to be based on any risk-based assessment of the entities within the sectors.

281. With the exception of the REB, on-site examinations by DNFIs/DNFBPs supervisors have not yet commenced and therefore do not allow for proper identification of risk within each sector. In relation to the REB, findings of the on-site inspections conducted revealed a lack of understanding within the sector of their AML/CFT obligations, which has caused the REB to initiate further training for real estate agents.
282. While the NSP has identified accountants and real estate agents as possible facilitators of ML, supervisors are of the view that any related risk is relatively low due to the small number of entities that qualify for AML/CFT supervision rather than on any evaluation of the activities carried out by these entities. In relation to lawyers, the GLC acknowledged the findings of the NSP in relation to the risk lawyers pose as facilitators to ML, however, until the injunction filed by the JBA is decided upon by the Courts the GLC is unable to carry out any risk assessment on the sector.

#### *Risk-based supervision of compliance with AML/CTF requirements*

283. The BOJ and FSC are in the process of implementing a RBA to AML/CFT supervision. The focus has been on conducting onsite examinations of individual entities. Both the BOJ and FSC have developed supervisory frameworks for off-site monitoring and annual on-site inspections which take into account the nature, scale and complexity of its regulated entities. A RBA is used to select entities for onsite AML examinations. In addition, to determine compliance with legislation, an AML/CFT risk assessment is conducted. Risk areas are identified as low, medium or high. Inherent ML/TF risks are only taken into account to a limited extent when developing the frequency and intensity of onsite examination. The approaches utilised by BOJ and FSC do not fully permit supervisory attention to be focussed on areas that are deemed to pose a higher ML/TF risk and to allocate resources accordingly.
284. The BOJ has developed and implemented a comprehensive manual for AML/CFT onsite examinations which would facilitate the use of a structured and standardised method to examinations utilising the risk profile of the institution which will be used to scope the nature and intensity of the work to be undertaken by the BOJ. The AML/CFT Unit conducted two RBA examinations at the time of the mission. Prior to the establishment of the Unit, AML/CFT examiners (who were responsible for administering prudential examinations of the activities of a portfolio of financial institutions), would have administered the AML/CFT aspect of the examinations as a module within the prudential evaluation of the FIs.
285. During the six year period 2008 to 2014, the BOJ conducted 144 on-site examinations that included reviews of the AML/CFT frameworks of DTIs including credit unions. Of the reviews, 39 related to the 11 licensed DTIs and 105 reviews related to credit unions. Table 19 below highlights the nature of the deficiencies identified. The main shortcomings were in the areas of KYC, retrospective due diligence, know your employees and policy frameworks.

**Table 19. Showing the nature of deficiencies for the 11 DTIs over the period 2008 to 2014**

| <b>NATURE OF FINDINGS</b>                       | <b>NUMBER OF DTIs WITH DEFICIENCY</b> |
|---|---------------------------------------|
| Inadequate Board Oversight                      | 8 (73%)                               |
| Inadequate Policy Framework                     | 9 (82%)                               |
| Lack of timely AML reports to the Board         | 7 (64%)                               |
| Lack of a dedicated or adequate Compliance Unit | 7 (64%)                               |
| Lack of Independence of Nominated Officer       | 7 (64%)                               |
| Lack of Internal Audit Review of AML/CFT        | 5 (45%)                               |
| Inadequate KYC for new customers                | 11 (100%)                             |
| Inadequate Retrospective Due Diligence          | 11 (100%)                             |
| Lack of monitoring of high risk accounts        | 8 (73%)                               |
| Lack of Know Your Employee documentation        | 9 (82%)                               |
| Inadequate AML/FT training                      | 8 (73%)                               |
| Inadequate employee awareness on AML matters    | 8 (73%)                               |
| Threshold Transaction Reporting                 | 7 (64%)                               |
| Suspicious Transaction Reporting                | 8 (73%)                               |

286. Cambio and money remitter onsite examinations are a prerequisite to the renewal of the annual license. The money remitter onsites include examination of sub-agents with branches located throughout Jamaica. Although sub-agents are not licensed by the BOJ, they are subject to fit and proper assessments and are further required to implement AML/CFT measures. An agent can be terminated if a sub-agent fails to comply. Assessors are of the view that this is not consistent with a risk based approach since onsite examinations are a critical part of the renewal of license process and does not appear to be based on materiality and risk such as business model, delivery channels, customer profiles and quality of risk management. The frequency and scope of onsite examination and on-going monitoring do not appear to consider risk issues such as cash intensity, nature and number of agents and the nature and severity of past breaches.

287. For the four year period 2010 to 2014 a total of 63 and 1,207 onsite examinations were conducted on money remitters and cambios respectively. Table 20 below highlights the nature of the deficiencies identified. The main shortcomings were in the areas of KYC, source of funds and failure to submit threshold transaction reports.

**Table 20. Showing the nature of deficiencies for the Cambios and MVTS over the period 2010 to 2014**

| Nature of the Deficiency                        | MVTS  | Cambio |
|---|-------|--------|
| Lack of customer identification                 | 20.5% | 12.48% |
| Lack of customers' address                      | 44.1% | 0      |
| Source of Funds (not recorded)                  | 14.7% | 9%     |
| Source of Funds (not verified)                  | 0     | 50.28% |
| Failure to submit Threshold Transaction Reports | 11.8% | 16.3%  |

288. The Caribbean Regional Technical Assistance Centre (CARTAC) was contracted by the FSC to review *inter alia* its level of compliance with the Insurance Core Principles (ICPs). The Report notes that the FSC is yet to fully implement the requirements of the ICPs on group supervision, cross border supervision, supervisory cooperation and coordination and AML/CFT. The Report also indicated that with respect to the IOSCO Principles further work was required to comply with principles 19, 21 and 24-28. The FSC appeared overly generous with time periods to make disclosures.

289. During the last five years, the FSC has conducted 51 and 77 onsite examinations of insurance companies and securities firms respectively. It has also conducted 3 onsite examinations of insurance brokers. In 2014, the FSC conducted 6 examinations of insurers and intermediaries and 5 examinations of security companies. The common inadequacies identified were with respect to AML/CFT policies and procedures, know your employee procedures and staff training, incomplete customer due diligence information and lack of a risk based approach to CDD.

290. Most financial institutions are members of financial groups which are highly connected. It is relatively common to encounter groups which consist of a DTI, insurance company, cambio, MVTS and securities companies mainly domiciled in Jamaica. The ability to conduct consolidated onsite examinations are hindered since the Banking Services Act is yet to be enacted. When this occurs, BOJ and FSC will be able to conduct consolidated onsite examinations for these domestic financial groups. The FSC has collaborated with its regional counterparts regarding AML/CFT compliance of an insurer and upon the request of a host regulator, conducted a targeted AML/CFT onsite examination of an insurer. Also, the BOJ has conducted AML/CFT onsite examinations on behalf of its regional banking counterparts.

291. The BOJ and FSC are members of NAMLC as well as the financial working group for the NRA. These mechanisms enable them to share information on AML/CFT. An additional mechanism of collaboration occurs through the meetings of the Financial Regulatory Committee (FRC) that include as members the BOJ, FSC, Ministry of Finance and the JDIC. AML/CFT issues are a standing agenda item at these

meetings, which generally serves as a forum for consolidated supervision of FIs regulated by the BOJ and the FSC.

292. While there are existing provisions for prudential supervision of the various DNFIs/DNFBPs sub-sectors, frameworks are still being developed by the designated supervisors to carry out proper AML regulation on the relevant sub-sectors. Current supervisory frameworks include a combination of off-site monitoring and on-site inspections; however, supervision at this point appears to be more rules-based as all entities go through an annual prudential review regardless of nature, size or complexity of the business they engage in. With the exception of the Real Estate Board, on-site AML inspections have not been conducted by any of the supervisors. Guidelines developed by the various supervisors, which in most cases are still in draft form, call for a risk-based approach to supervision. This, however, was not being carried out.

#### *Remedial actions and effective, proportionate, and dissuasive sanctions.*

293. The BOJ and FSC have issued warning letters as well as work with the entities to address issues that are identified during the onsite examination. Both the FSC and the BOJ are of the view that this is the best approach which has been successful in improving overall compliance with AML/CFT requirements over time. The BOJ and FSC were unable to provide any statistics to demonstrate how many warning letters were issued for specified breaches including AML/CFT.
294. While there is a licensing regime in place for cambios and MVTs, the BOJ may not be active enough in identifying unlicensed operators in the MVTs sector. There is no market surveillance or any proactive process for identifying and reporting possible unlicensed operators and adequate powers to sanction such activity.
295. While the BOJ indicated that it has been successful in the use of warning letters and Voluntary Board Undertakings (VBU) to keep DTIs compliant with the AML/CFT requirements, it was unable to provide information to demonstrate the nature of remedial action taken for identified breaches including AML/CFT. Given the limited application of sanctions by the BOJ, Assessors were unable to conclude that remedial actions were effective, proportionate and dissuasive.
296. The FSC has an enforcement ladder which includes the monitoring of the execution of a remedial plan. The FSC can also initiate enforcement action either directly or together with the FID or the police as may be necessary. The FSC is yet to exercise its sanctioning powers for AML/CFT breaches since the companies are usually cooperative in rectifying any breaches identified in their AML/ CFT policies and procedures.
297. As previously noted, due to the relative newness of the DNFIs/DNFBPs supervisory regime supervisors have not yet carried out any assessments which would allow them to identify activities being carried out by their licensees that may result in the imposition of sanctions. The REB however, has been proactive and has required its licensees to participate in AML training prior to their licences being issued. For the 2014-15 licensing period 237 licenses were withheld for failure to comply with the training requirement.

#### *Impact of supervisory actions on compliance*

298. During the period 2008 to 2014 with respect to DTIs, the BOJ noted a general improvement in the governance framework in relation to the AML/CFT risk exposure of licensees as evidenced by remedial actions taken to address deficiencies identified during the onsite examinations. Such actions included the implementation of measures over time to address legislative breaches as well as the submissions of action plans to reduce the number of instances of CDD or EDD deficiencies. While some weaknesses remained, it was not as pervasive as in previous examinations, reflecting marked improvements in control mechanisms and improvements or establishment of new information technology systems to enhance the capability for detecting, monitoring and reporting of threshold and suspicious transactions.
299. The limited information provided by the FSC, on the findings from onsite examinations, was insufficient for the Assessors to determine whether regulated entities implemented remedial actions which led to an improvement in the level of compliance with AML/CFT requirements and the extent to which weaknesses remained. Accordingly, the FSC was unable to convince the Assessors of the extent to which its supervisory actions improved compliance with AML/CFT requirements over time.

#### *DNFIs/DNFBPs*

300. In 2015 the REB took the action of withholding licences for failure to comply with its AML/CFT training requirement. This resulted in 221 of the 237 delinquent agents submitting to the AML/CFT training and subsequently being issued their licences.
301. The injunction currently in place, which has stopped legal professionals from having to adhere to the POCA requirements, is a significant weakness in the DNFI/DNFBP regime, particularly since Jamaica's NSP has identified attorneys as facilitators to ML; and given their ability to carry out the services of TCSPs. Despite the injunction, some practitioners are still attempting to comply with the requirements; however, only six (6) practitioners have filed their declaration forms. The Supreme Court has reserved its judgement in the matter which only serves to diminish the GLC's ability to supervise this sector.
302. With respect to the PAB, until their Guidelines are approved, examiners do not have authority to carry out inspections. Should a registered accountant be found not to be in compliance with AML/CFT requirements or requirements under the Public Accountants Act, there is a Practice Monitoring Committee in place which would invite the registrant to come in and explain the reason for non-compliance. Such persons would then be required to submit a report which would include an action plan to address how they would remediate deficiencies. The PAB can prosecute persons found practicing without being registered.
303. The BGLC has not commenced any risk-based supervision for AML/CFT purposes.

#### *Promoting a clear understanding of AML/CFT obligations and ML/TF risks*

304. The Supervisors as Competent Authorities engage the financial sector through consultation and explanation of AML/CFT obligations through several mechanisms including Guidelines, industry forums and individual

attention as required by FIs during the onsite and offsite examination process. The Assessors found that these mechanisms appear to be working well to improve understanding of AML/CFT requirements.

305. DNFI/DNFBPs supervisors have engaged their sectors through various forums and training programmes developed to prepare these sectors for supervision under the AML/CFT regime. The GLC conducted a two month island wide sensitization exercise which focused on raising attorneys' awareness of their obligations under the AML/CFT regime. The REB carried out training for real estate dealers and salesmen with an aim to help them understand their risks and responsibilities with respect to AML/CFT. Real estate agents noted that they were satisfied with the outreach from the REB and that the REB had been providing a good level of guidance and assistance to them. The BGLC has also conducted workshops for the gaming lounges focused on helping them to implement their AML programmes. With regard to the PAB, outreach began in 2010 to make the sector aware of the development of the regime. Since that time, various seminars have been held. Accountants interviewed informed the Assessors that they have been informed by the PAB on CDD requirements. In addition to these sensitization exercises, each supervisor has sought input from their sector during the development of their AML guidelines. As with the FIs, these mechanisms appear to be aiding the various DNFI/DNFBPs understanding of their obligations under the AML/CFT regime as observed through the assessment of these entities.

#### *Overall Conclusions on Immediate Outcome 3*

306. Generally there are licensing and registration controls in place which prevent criminals and their associates from *inter alia* holding or being the beneficial owner or performing a management function in financial institutions. However, there are no such measures for the micro credit lending institutions and this is considered a vulnerability given this sector's growth in recent years. The licensing regime implemented by the BOJ is relatively robust and that of the FSC needs to be enhanced to include the ultimate beneficial owners of insurance and securities companies.
307. The BOJ and FSC are cognisant of the ML/TF risks faced by the respective entities they supervise and have adopted a RBA to AML/CFT supervision, although, each needs to further develop its implementation. The BOJ and FSC have established supervisory frameworks for the financial sectors they respectively supervise. The BOJ's approach is most developed given the risks of the DTIs. Despite risk based supervision, more needs to be done to ensure FIs deepen their understanding and implementation of AML/CFT risk management.
308. Over time the DTI sector has shown improvement in compliance with AML/CFT requirements which demonstrated that the BOJ's actions have made a positive impact on market entry and compliance with AML/CFT requirements. However, the FSC is yet to impose sanctions and was therefore unable to demonstrate that its actions had a positive impact on compliance with AML/CFT requirements in the insurance and securities sectors.
309. The resources at the FSC and the BOJ are limited given the volume and intensity of supervision required which can impact their ability to accomplish their regulatory/supervisory mandates.

310. Given the relative newness of Jamaica’s DNFI/DNFBP AML supervisory regime, and the absence of TF supervision, the country’s supervision, monitoring and regulation of these entities for AML/CFT purposes has been limited. The frameworks to allow for proper desk-based and on-site AML supervision are still being finalised and as such, their effectiveness, including the application of any necessary sanctions is low. The various authorities have, however, engaged in training and outreach programmes to sensitize staff to their regulatory obligations and their sub-sector participants to their AML obligations
311. The injunction against the GLC that is currently preventing the supervision of lawyers in Jamaica for AML/CFT purposes increases the jurisdiction’s exposure to AML/CFT risk, since lawyers may act as TCSPs and have also been identified as facilitators of ML. Further, the REB is of the view that any related ML/TF risk is relatively low due to the small number of entities that qualify for AML/CFT supervision. Even though real estate agents have also been identified as facilitators of ML no evaluation of the activities carried out by real estate agents has been conducted to determine whether more agents should fall under AML/CFT supervision.
312. There is a supervisory gap in the micro finance sector which makes it vulnerable to ML/TF risks.
- 313. The rating for Immediate Outcome 3 is a moderate level of effectiveness.**

## CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- Jamaica does not have any measures in place to prevent the misuse of legal persons and legal arrangements for ML/TF as Competent Authorities have not demonstrated that they have identified, assessed or understood the ML/TF risks that emanate through the use of legal persons and legal arrangement.
- Information on the creation and types of legal persons and arrangements are publicly available.
- Not all legal persons are required to maintain current and accurate information on directors, shareholders, partnerships and beneficial owners.
- There is no specific legal obligation under the Trustee Act for information on beneficial ownership of legal persons to be kept accurate and as up to date as possible. Reliance is therefore placed on common law obligations that are imposed on trustees as fiduciaries to obtain, keep and maintain this information.
- There is no active monitoring conducted by competent authorities to ensure that basic beneficial ownership information is current for all legal persons and arrangements. Therefore, competent authorities cannot be certain that the information obtained is accurate and up-to-date.
- There are no appropriate provisions to ensure that effective, proportionate and dissuasive sanctions are applied against companies, partnerships and trustees who do not comply with filing and record keeping requirements or obligations to update beneficial ownership information.

#### ***Recommended Actions***

- Jamaica should assess the ML/TF risks emanating from the misuse of legal persons and arrangements in the jurisdiction especially in light of the emerging international financial sector.
- The Companies Act should be amended to require all companies to obtain and maintain up-to-date and accurate information on directors, shareholders and beneficial owners. Alternatively, accurate and up-to-date information on beneficial owners of companies should be obtained and maintained for all companies and should be accessible to other competent and law enforcement agencies.
- The Companies Act should be amended to grant powers to the Registrar of Companies to ensure compliance with the Act by companies, whether through investigations or inspections.
- The sanctions provided under the Companies Act should be strengthened to ensure they are effective, proportionate and dissuasive. There should also be mechanisms in place to ensure that sanctions are appropriately applied.
- Trustees should be required to obtain and hold adequate, accurate and current information on the identity of the trustees, beneficiaries, settlors and protectors (if any).
- Jamaica should put measures in place to mitigate the ML/TF risk posed by bearer share warrants.
- There should be effective, proportionate and dissuasive sanctions imposed on trustees when competent authorities note breaches for non-compliance with their statutory obligations.

### *Immediate Outcome 5 (Legal Persons and Arrangements)*

#### *Overview of legal persons*

314. The types of legal persons that can be established or created in Jamaica are: (i) companies limited by shares, (ii) companies limited by guarantee, (iii) mutual fund companies, and (iv) unlimited companies. Those companies can be further categorised as either private or public companies or foreign/overseas companies and local companies. Information on the creation, types and basic features of companies that can be incorporated in Jamaica can be accessed on the Companies Office of Jamaica's website. The Assessors were not provided with updated statistics on the number of companies by categories.
315. The Companies Act states that all companies formed in Jamaica must be registered with the Registrar of Companies. It is important to note that it is not a requirement for persons to secure the services of an Attorney-at-Law or other suitably qualified professional to incorporate or register a company.
316. In order for registration to be effective, the Articles must be signed by each subscriber and be delivered to the Registrar who will register them if they comply with the provisions of the Act. A statutory compliance declaration certifying compliance with the provisions of the Companies Act should also be submitted by either an Attorney-at-Law who has been authorised to form the company, a person named in the articles as a director or secretary of the company, or by a person who is a member of the Institute of Chartered Secretaries and Administrators engaged in the formation of the company.
317. The Companies Act states that each company in Jamaica is obligated to keep a register of its members that includes information on their names and addresses and occupation. However, information on the beneficial owner may not be readily available as this is not an express requirement. Further, in respect to a company

limited by guarantee, there is no provision to provide the names and addresses of the members at the time of registration.

318. The information above must be kept at the company's registered office in Jamaica and in no circumstances should it be kept outside of the jurisdiction. This is expressly stated in section 109(2) of the Companies Act. The register of members and index of the names of members are also publicly available for review by its members without charge, as well as by any member of the general public on payment of a fee, except if the register is closed under the provision of the CA. Any person may request a copy of the register and the company shall cause any copy so required by any person to be sent within a period of ten days following the day next after the day on which the request is received by the company. Of note, is the sanction that is placed on a company and every officer of the company who either refuses to allow the inspection of the register or fails to send a copy of the register within the stipulated period. They will be liable to a fine not exceeding JA\$50,000. Additionally, in instances where there is a refusal or default, the Court may compel an immediate inspection of the register and index or direct that copies be sent to persons who requested them.
319. Changes in the directorship and legal ownership of the companies are recorded and filed with the Registrar of Companies in an Annual Return, and there is a 14 day period stipulated within which all changes in directors and legal owners should be made known to the Registrar. Active monitoring to ensure accurate and updated information is neither mandated by law nor conducted. The Registrar does not have the power to look beyond the contents of these documents to verify that the information contained therein and recommendations have been made to amend the Companies Act accordingly. The penalties to be imposed when a company fails to file an Annual Return is JA\$100 per day up to \$10,000. It is also an offence if any person provides false information in any return, report, certificate or other document required to be filed under the Companies Act. If convicted, that person is liable to imprisonment for a term up to two years and a fine not exceeding JA\$50,000. The Jamaican authorities stated that these sanctions are not effective and are generally not enforced. No statistics on enforcement actions taken against companies were presented. However, the Assessors were informed that companies that do carry on business in Jamaica are more likely to file their documents in a timely manner in order to obtain certificates of good standing for banking purposes.
320. With regard to Limited Partnerships, these entities can be established and registered under the Partnerships (Limited) Act. General information on the partnership is open to public inspection in the Public Record Office. Persons can obtain the name or firm under which the partnership is conducted, the names of all the general and special partners along with their places of residence.
321. Additionally, the terms of the partnership shall be published in the Gazette and two newspapers published in Jamaica for at least six weeks immediately after registration. Such terms will include the partnership's name, general natures of the business transacted, the amount of capital which each special partner contributed to the common stock and the period at which the partnership is to commence and terminate. There is also no active monitoring conducted to ensure that identity and ownership information is accurate and kept up-to-date.

### *Overview of legal arrangements*

322. In Jamaica legal arrangements (“trusts”) are created under common law and therefore there is no defined legislation governing the creation and registration of trusts. The Trustee Act contains a number of provisions in respect to the rights, responsibilities, powers and duties of trustees. However, it does not require trustees to obtain and hold adequate and accurate information on the identity of the settlor, the trustee (s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising control, nor does it mandate trustees to hold information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. Furthermore, there is no legal obligation under the Trustee Act for information on trustees, settlors, beneficiaries and protectors (if any) to be kept accurate and as up to date as possible. Reliance is therefore placed on common law obligations that are imposed on trustees as fiduciaries to obtain, keep and maintain this information. There are no active monitoring conducted to ensure that the information is accurate and current.

#### *International context for legal persons and arrangements*

323. Jamaica does not have established legal and administrative frameworks to provide specialized financial services to non-residents including the creation or administration of legal persons or arrangements. Also, there is no established supervision of TCSPs. However, the Government of Jamaica recently took steps to develop and promote the jurisdiction as an IFC. In pursuance of this initiative, it was determined that a number of international financial services are to be offered from within Jamaica.

324. The Authorities stated that trust and corporate service providers would play an important role as financial intermediaries and can potentially impact transactional flows through the financial system. Their main roles would be to act as gate keepers for the financial sector thereby establishing, administering and managing legal persons, partnerships and legal arrangements that have been formed and registered in Jamaica. In order to regulate and supervise this particular sector, the Government has drafted a Trust and Corporate Services Providers Statute which has been submitted to the Legislation Committee of Cabinet. The Companies Office of Jamaica was not involved in the NRA but the officers have been informed of that initiative.

#### *Public availability of information on the creation and types of legal persons and arrangements*

325. Information on the creation and types of legal persons that may be registered in Jamaica is publicly available. The Companies Office of Jamaica has a centralised registry for companies and information on the names of the companies, registered office, directors and any changes to these particulars can be obtained on payment of a fee either physically at the Companies Office or on its website at: [www.orcjamaica.com](http://www.orcjamaica.com). The Office has also issued brochures and has been actively engaged in awareness and educational activities to inform the general public and professional associations on how to register companies in Jamaica. Continuous reporting is required by all companies through the filing of annual returns and other filings which include information on the directors and shareholders.

#### *Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities*

326. Competent Authorities in Jamaica have not demonstrated that they have identified, assessed or understood the ML/TF risks that emanate through the use of legal persons or legal arrangements. This area was not addressed in the NSP which as noted earlier cited ML as a Tier 1 threat.

*Mitigating measures to prevent the misuse of legal persons and arrangements*

327. There are no measures in place to prevent the misuse of legal persons and arrangements in Jamaica.
328. The Jamaican Authorities noted that the Companies Act is currently being amended to allow the Registrar of Companies to require companies to provide information on beneficial owners. Although it was stated that the instances of nominee directors or shareholders have been none or few, there is no mechanism in place to enhance the transparency of legal persons by ensuring persons who have been listed as directors or shareholders are not acting for and on behalf of third parties. Additionally, the Companies Act allows the issuance of bearer share warrants. However, there are no measures in the Act to require companies to maintain a register of members to whom such warrants have been issued.

*Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements and legal persons.*

329. The Companies Office of Jamaica shares information in a timely manner with other Government agencies including tax and law enforcement agencies. It has collaborated with the FID/FIU, CTOC and the CPC on a number of occasions. These Agencies also have access to the Office's website. The Registrar of Companies has also been involved in the provision of evidence in Court in respect to companies that have been registered in Jamaica. Notwithstanding the timely access to information on companies, other competent authorities cannot be certain that the information is accurate. Furthermore, information on beneficial ownership and legal arrangements cannot be provided by the Companies Office of Jamaica and will have to be obtained from financial institutions through the use of productions orders.
330. As previously mentioned in Immediate Outcome 4, FIs and DNFIs/DNFBPs are required to be aware of their ML risk and establish programmes to mitigate such risk. This includes putting in place CDD/EDD, record keeping and monitoring requirements and the ability to risk assess clients and identify beneficial ownership information. There is however, a tendency for FIs and DNFIs/DNFBPs to collect information only on the shareholder of legal persons as opposed to the beneficial owners. Consequently, Competent Authorities cannot be certain that the information collected through production orders is accurate. The Assessors were not provided with information to demonstrate the ease of securing these orders and no statistics are available to show how many applications for orders were made and the time period under which they were obtained.

*Effectiveness, proportionality and dissuasiveness of sanctions*

331. Companies, and their officers are subject to penalties for failure to comply with provisions under the Companies Act. The Companies Office of Jamaica has only imposed such penalties on a limited number of companies and there is no active monitoring to ensure that the information submitted on the returns is accurate and up-to-date. The penalty for the late filing of Annual Returns is JA\$100 per day up to a maximum of JA\$10,000. The offence of providing false information in any return or other document required to be filed under the Companies Act carries a penalty of imprisonment for a term up to two years and a fine not exceeding JA\$50,000. The Jamaican Authorities informed the assessors these penalties are neither effective nor dissuasive and there is a challenge to ensure companies become and remain compliant.

It can be seen therefore, that no measures have been implemented to prevent the misuse of legal persons for ML/TF purposes.

#### *Overall Conclusions on Immediate Outcome 5*

332. Jamaica has not conducted a comprehensive assessment of the ML/TF risks associated with legal persons and legal arrangements. Accordingly, there is no information on the degree to which companies and trusts are being misused. While the Companies Office of Jamaica offers an online search mechanism for the general public to access information on companies, there is no accurate and up-to-date information on beneficial owners. Furthermore, Trustees are not effectively monitored to verify the accuracy of information they hold on trustees, settlors, beneficiaries and protectors (if any). Therefore, competent authorities are unable to ensure that accurate and current information is kept in respect of legal arrangements.

**333. The rating for Immediate Outcome 5 is a low level of effectiveness.**

## **CHAPTER 8. INTERNATIONAL COOPERATION**

### *Key Findings and Recommended Actions*

#### ***Key Findings***

- Jamaica cooperates with its international law enforcement counterparts, which has resulted in the prosecution and conviction of persons in some instances. There is also usage of mutual legal assistance (MLA) and extradition mechanisms. However there is insufficient focus on statistics and coordination of efforts that would enhance analysis of the level of achievement and inform the effective use of resources
- Jamaica has demonstrated in most cases that its competent authorities and LEAs can provide a wide range of international co-operation such as extradition and assistance through a number of MOUs and is able to do so in a timely manner.
- Jamaica uses its mechanism to provide legal assistance to its foreign counterparts, however there is limited use of the mechanism to request assistance under the MACMA.
- Jamaica has experienced some delays in satisfying MLA requests under the MACMA in relation to contentious matters and due to the limited resources available to the Central Authority.
- Jamaica has mechanisms that allow for the exchange of information with regard to beneficial ownership; however, the availability of such information is limited.
- There are no provisions on information sharing in the TPA.

#### ***Recommended Actions***

- Jamaica should increase its use of the MACMA to request assistance from its foreign counterparts to assist LEAs in pursuing domestic ML, associated predicate offences and TF cases that have a transnational element.

- Jamaica should ensure that information relating to legal persons and arrangements, including beneficial ownership information, is available to the authorities for the purpose of timely exchange of information with foreign partners.
- Jamaica needs to include provisions on information sharing in the TPA that are similar to those in the POCA (section 91(a)).
- Jamaica should allocate more resources to increasing the staff complement at the ODPP (who perform the Central Authority function) and their training to ensure that international requests under MACMA are processed in a timely manner. The ODPP should also consider developing information briefs on the legal system of the main international partners (those who make most requests), which could facilitate dealing with contentious cases.
- Jamaica should maintain comprehensive statistics on international requests made and received and should cover the timeframe in which requests were processed and provided. It should also consider establishing a case management system to allow for managing and coordinating incoming requests.

### *Immediate Outcome 2 (International Cooperation)*

334. Jamaica has ratified the Vienna, Palermo, Terrorist Financing and the Merida Conventions and has a relatively strong regime for international co-operation. Jamaica has provided assistance to the United States of America, the United Kingdom, Canada and CARICOM countries. The ODPP is the Central Authority for requesting and providing mutual legal assistance under the Mutual Assistance in Criminal Matters Act (MACMA). The ODPP is also the Central Authority for processing extradition requests under the Extradition Act. The ODPP has established two dedicated units - the Mutual Legal Assistance Unit and the Extradition Unit - which have responsibility of administering the requests for and the provision of mutual legal assistance and to facilitate extradition requests, respectively.
335. The Extradition Unit has been successful in securing convictions for lotto fraud and subsequently satisfying extradition requests by foreign states but most notably, the USA, Canada and the UK. In one such case involving a lotto scam and related offences, the offender consented to waiving his rights under the Extradition Act which resulted in his transfer being fast tracked to the USA where he entered a guilty plea. Other cases where mutual legal assistance was successfully satisfied by Jamaica involved offences relating to Ponzi schemes and wire fraud. These cases, however, related to predicate offences and not ML/TF matters.
336. The ODPP has also co-operated with the UK in drug related matters where financial information was provided using production orders and telephone enquiries. Confiscation requests are also satisfied and the proceeds are shared between Jamaica and the requesting state after the relevant confiscation orders are registered with the Court. During the period under review, there were 12 requests received and 10 pending for asset sharing. There is also good co-ordination among other domestic agencies, namely the FID/FIU when investigating ML related matters and pursuing confiscation orders pursuant to MLA requests.
337. Table 21, below indicates the number of MLA requests received and processed by the Jamaican Authorities both under the MACMA and other relevant treaties. The types of offences the requests related to include

ML, drug trafficking, lottery fraud, mail and wire fraud, immigration offences, murder, false identification, forgery of passport documents, bigamy, conspiracy to defraud, larceny, unlawful possession of property, and identity theft. Additionally, in one instance, permission was granted to travel to Jamaica to interview suspects in relation to a Diplomat's homicide. The statistics does not indicate the timeframe in which the requests were processed and provided.

**Table 21**  
**MUTUAL LEGAL ASSISTANCE (MLA) STATISTICS**  
**(Covering the period January 2011 – December 2013**  
**And January 2014 - July 2014)**

| <b>PERIOD</b>   | <b># OF REQUESTS RECEIVED</b> | <b># OF REQUESTS BEING PROCESSED</b> | <b># OF REQUESTS SENT OFF FULL/PARTIAL</b> |   | <b># OF REQUEST CLOSED</b> | <b># OF SUPPLEMENTARY Requests</b> | <b># OF REQUEST WITHDRAW</b> |
|-----------------|-------------------------------|--------------------------------------|--|---|----------------------------|------------------------------------|------------------------------|
| 2011            | 24                            | 14                                   | 9  | 0 | 10                         | 0                                  | 0                            |
| 2012            | 28                            | 21                                   | 6  | 0 | 7                          | 0                                  | 0                            |
| 2013            | 28                            | 8                                    | 19   | 1 | 18                         | 2                                  | 1                            |
| Jan – July 2014 | 15                            | 6                                    | 6  | 3 | 0                          | 2                                  | 0                            |

338. Whilst there are dedicated Units at the ODPP, there are still important staff and resource issues that may hinder effectiveness of the MLA framework. The Jamaican Authorities have cited that Crown Counsels at the dedicated Unit are also tasked with regular court assignments and other office duties in addition to MLA matters. Therefore, at times it has proved difficult to handle court matters and process MLA requests simultaneously resulting in delays in dealing with the MLA requests. It is not certain how much time the staff in the dedicated units devote to international cooperation and domestic cases. However, there are other contributing factors that may lead to delays in responding to requests including, additional information may be sought by the ODPP for further or better particulars such as documents or statements of witnesses and requests are made for amendments to documents or statements that are not in compliance with the laws of Jamaica. The staff and law enforcement officials also need to be trained in handling, MLA-related requests. The Unit can also benefit from a case management system that could be used to better manage and coordinate requests to reduce the processing time for incoming MLA requests.

*Providing constructive and timely MLA and extradition*

339. During the year 2014 the Jamaican authorities received 15 extradition requests of which 10 resulted in a Warrant of Minister for Extradition of Fugitive under the Act. Four of the matters are still pending and one accused is presently in the USA awaiting extradition to Jamaica. The offences associated with these requests include conspiracy to commit wire fraud in connection with the conduct of telemarketing, murder, attempted murder, manslaughter, possession of firearms, aggravated sexual assault, robbery, attempted

murder, non-capital murder, conspiracy to manufacture, distribute and possess with intent to distribute cocaine, conspiracy to import cocaine and marijuana, trafficking in device making equipment, failing to surrender to custody and conspiracy to supply a Class A drug.

340. With respect to limitations relating to extradition requests by foreign states to Jamaica, the Jamaican Authorities stated that some requests tend to be quite complex and difficult when they are associated with certain offences, e.g. fraud. The Extradition Act requires that the requesting State submit almost its entire case which may include affidavits. In instances involving requests from Canada, UK or the USA, a request can be satisfied if a prosecutor's affidavit and an affidavit from the investigating officer summarizing the case are sent. However, Jamaica does not allow the use of hearsay in affidavits, contrary to the laws in the above mentioned countries. As requests can only be satisfied once direct evidence is provided, it is more feasible for Jamaica to have its requests granted by foreign states than for those states to have their extradition requests satisfied by Jamaica. Generally non-contentious MLA requests may be satisfied within 30-90 days, whilst contentious requests may take two-three years to conclude. This is sometimes attributable to failure and delay on the part of third parties to provide the information requested by foreign states, preventing the Central Authority satisfying the requests in a timely manner. Nonetheless, Jamaica has generally received good feedback from its treaty partners and foreign counterparts in relation to MLA and extradition.
341. However, in order to satisfy formal requests on matters of an intrusive nature by non-treaty partners, the ODPP has made recommendations to have the relevant partner designated as a treaty state under section 31 of MACMA to facilitate cooperation for MLA purposes. Such orders have been made for the Netherlands, the Cayman Islands and other British Overseas Territories.
342. The JCF also facilitates international cooperation under the MLA framework and during the period 2012 to 2015, its MLAT Unit within C-TOC honoured 50 international letters of requests from several of its international counterparts. Additionally, the JCF informed Assessors that during the period under review, it has engaged in more than 100 police to police co-operation, which is used as a quicker way to share information with their foreign counterparts.
343. In order to provide constructive and timely information under the Extradition Act, the JCF established a dedicated unit with C-TOC called the Fugitive Apprehension Unit (JFAT). One of the main functions of the Unit is to facilitate the arrest and the custodial transfer of a fugitive from Jamaica to the requesting country. JFAT is staffed with 10 internationally trained investigators who work closely with the US Marshall Service and it has been successful in identifying, arresting and deporting both foreign and local fugitives to USA and Canada. During the period 2012 to 2015, JFAT conducted 34 arrests, 29 extraditions, located 46 fugitives and deported 11 persons.

*Seeking timely legal assistance to pursue domestic ML, associated predicate and TF cases with transnational elements*

344. The main focus for the law enforcement and prosecutorial agencies in Jamaica has been to provide constructive legal assistance and extradition services to their foreign counterparts. This can be seen from

the case examples exhibited throughout this report. (See case study at page 48 and Para. 108). However, there have been a few instances where the Jamaican authorities have sought assistance to investigate domestic predicate offences which have transnational elements. In particular, in 2011 and 2014, the FIU sought information from its counterparts in the British Virgin Islands in respect to one subject in each instance. Similarly, in 2012, requests were made by the FIU from Trinidad & Tobago in respect to 20 subjects. In 2011 and 2012, the FIU made requests for information from its foreign counterparts in St. Lucia. However, the majority of domestic cases with ML related issues with transnational elements that have been successfully disposed were as a result of joint operations by JCF, MOCA and FID and by various competent authorities including law enforcement counterparts that have presence in Jamaica, such as the US Postal Services, DEA, ICE, RCMP, etc. The FID has also spontaneously shared information with its Caribbean counterparts.

345. Jamaica makes significantly lower requests to other countries than it receives from its international counterparts. Consequently, it appears that Jamaica has used its mutual legal assistance mechanism to a limited extent in pursuing domestic ML, associated predicates and TF cases with a transnational element. It should be noted that the NSP has identified transnational organized crime as a Tier 1 threat (high probability/high impact) and it accounts for the majority of investigations for predicates. The Assessors are therefore of the view that in order for ML related cases to be effectively pursued through to conviction, consideration should be given by the Jamaican Authorities to increase its use of existing mechanisms under the MACMA to seek international cooperation to aid in investigations which could support the work of LEAs and prosecutorial agencies.

#### *Providing and seeking other forms of international cooperation for AML/CTF purposes*

346. Jamaica has entered into a wide range of treaties, MOUs and other similar types of agreements with regard to AML/CFT matters. These arrangements involve law enforcement and supervisory authorities and the FIU. The FID obtained membership to the Egmont Group of Financial Intelligence Units in July 2014 which allows it to share information with other members. The FID also executed MOUs with a number of Caribbean countries, namely:- St. Vincent & the Grenadines, Trinidad & Tobago, St. Lucia, Grenada, St. Kitts & Nevis, Turks & Caicos Islands, Curacao, the Cayman Islands and the Bahamas. During the period 2011 to 2014, the FID received a total of requests in respect to 103 subjects from these Caribbean countries. In 2014, it received requests from the UK regarding 9 subjects and requests from FINCEN in respect to 5 subjects.
347. Jamaica's ODPP is able to provide assistance to non-commonwealth states only if there is an existing treaty between Jamaica and the relevant state. Currently Jamaica only has one established treaty with the USA.
348. The BOJ Act and the FSC Act enable the BOJ and FSC to share information with their regional and international counterparts. Both the BOJ and FSC have entered into MOUs with their regional counterparts. The FSC is a party to the IOSCO MMOU.
349. The BOJ and FSC generally provide international cooperation by exchanging supervisory information through MOUs and supervisory colleges. They have participated in supervisory colleges to discuss regional and international financial groups which operate in Jamaica.

350. The BOJ has collaborated on the fitness and propriety of persons where a Jamaican deposit taking institution was establishing cross border operations. There have also been exchanges of information regarding the fitness and propriety of owners, directors and officers of FIs.
351. Additionally, the BOJ shared onsite examination findings on deposit taking institutions with its regional counterparts as well as participated in joint onsite examinations. This cooperation is important given the regional presence of its banks and merchant banks which operate within the Caribbean region
352. Further the BOJ has also participated with a regional regulator in the conduct of a consolidated onsite examination of a regional bank with operations domiciled in Jamaica.
353. The FSC has collaborated with its regional counterparts regarding AML/CFT compliance of an insurer and upon request of a host regulator and conducted a targeted AML/CFT onsite examination of an insurer.
354. The FSC has cooperated in a number of cases which resulted in the identification and prosecution of predicate offences for ML e.g. fraud, market abuse and other financial crimes. Even though the FSC was not a signatory to the IOSCO MMOU at that time, the FSC was able to get cooperation from at least 19 jurisdictions to receive information relating to Cash Plus and Carlos Hill et al. In this case, the criminal prosecution was undertaken by the FID and the FSC used its regulatory powers to ensure that the evidence required, especially outside Jamaica was obtained. The FSC also collaborated with a UK firm that tried to trace funds believed to be hidden in a Swiss bank account.
355. Through formalized intelligence sharing arrangements MOCA is able to share information with the US DHS, ICE, US Postal Service, the DEA, US Marshalls Service, RCMP, UKMCA, and the UK Metropolitan Police. MOCA has indicated that information sharing mechanisms with its international partners work well and cooperation is very good. This has resulted in positive outcomes in relation to extraditions especially with respect to narcotics targets.
356. In April 2011, Jamaican LEAs were recognised by UK authorities for their extensive investigation and close cooperation which led to the disruption of a major ML network operating between Jamaica and the UK. Jamaica's contribution led to the conviction of three persons in South London who were found guilty of conspiracy to launder money by helping to funnel upwards of GBP500, 000 in cash from suspected drug deals to associates in Jamaica, and for transferring criminal property out of the UK. Key suspects were identified in the UK and Jamaica, and the UK LEAs worked with officers from the FID in Jamaica to gather evidence against them.
357. A few months prior to April 2011, US authorities praised the JCF for providing assistance that led to the making of one of the largest seizures of the drug Ecstasy in the US and the criminal indictment of a USA Federal customs officer in the state of Georgia. The joint operations resulted in the seizure of approximately 700,000 Ecstasy tablets having a value of about US\$2.9 million. Other offences committed by the customs officer include conspiring to launder drug money, bulk cash smuggling and attempting to bring a weapon onto an aircraft. The Assessors are of the view that these examples are evidence of the determination of law

enforcement agencies in Jamaica to work together with their foreign counterparts to combat international organized crime.

358. Further, the JCA has an MOU with the US that covers container security and mega ports as well as two MOUs with UNODC, one of which covers the Airport Communication Program, (AIRCOP). The JCF is able to share information with its foreign counterparts through the use of various bilateral and multilateral intergovernmental arrangements as well as through membership in organisations such as INTERPOL and the Association of Regional Commissioners of Police.

#### *International exchange of basic and beneficial ownership information of legal persons and arrangements*

359. FIs are required to collect information on beneficial ownership at the on boarding of the customer and they collect this information to the extent that it is available from the customer. Accordingly, such information would only be available to the Supervisors if it is obtained by the FIs. Therefore, the degree to which the information can be shared is based on whether it can be obtained by the financial institution.
360. While information is available from the Company's Registry on shareholders and directors, the Company's Registry does not currently obtain information on beneficial ownership. Competent authorities will be required to obtain beneficial ownership information for legal persons and arrangements through production orders as already outlined in Immediate Outcome 5. As significant deficiencies have been noted with regard to the availability of beneficial ownership information, the Assessors are not certain that the Jamaican authorities have the ability to exchange accurate and current beneficial ownership information.
361. It is essential to note however, that no requests have been made or received with respect to legal persons or arrangements during the reporting period.

#### *Overall Conclusion on Immediate Outcome 2*

362. Jamaican authorities have put in place legal and administrative frameworks to facilitate MLA and extradition requests, and dedicated Mutual Legal Assistance and Extradition Units have been established under the ODPP and JCF to facilitate international cooperation. However, the Crown Counsels assigned to the dedicated Units under the ODPP are also tasked with regular court assignments and other office duties in addition to MLA matters, which make it difficult for them to handle court matters and process MLA requests. This results in delays in dealing with the MLA requests. Additionally, further training of the staff of the ODPP and other law enforcement officials is needed to ensure the efficient handling of MLA-related requests.
363. Jamaica is able to process non-contentious MLA requests within a reasonable period, but delays may occur in the handling of more contentious requests where there is a failure or delay on the part of third parties to provide the information requested by foreign states. This prevents the Central Authority from being able to satisfy the requests in a timely manner.
364. Coordination among domestic agencies when investigating ML related matters and pursuing confiscation orders pursuant to MLA requests is also reasonable. However, improvements are required, especially to increase the use of international cooperation to enhance Jamaica's investigation and prosecution functions,

particularly as they relate to timely exchange of information. Authorities have generally demonstrated that they are able to cooperate constructively with their foreign counterparts.

365. Jamaica has mechanisms that allow for the exchange of BO information, however, the availability of such information is limited which restricts its ability to satisfy international cooperation requests.
366. Feedback from Jamaica's foreign counterparts in relation to the provision of information pursuant to MLA and extradition requests is generally good. However, authorities lack comprehensive statistics to show the timeframe in which individual requests have been processed and provided
367. **The rating for Immediate Outcome 2 is a moderate level of effectiveness.**

## TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.
2. Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2005. This report is available from [cfatf@cfatf.org](mailto:cfatf@cfatf.org).

### ***Recommendation 1 - Assessing Risks and applying a Risk-Based Approach***

3. This recommendation was issued in February 2012 and is being evaluated for the first time during this mutual evaluation.
4. ***Criterion 1.1*** – Jamaica has prepared a National Security Policy which is limited in scope but will subsequently form the basis for a more comprehensive analysis of the country’s risks. Jamaica has commenced the conduct of a National Risk Assessment (NRA) to deepen its identification and assessment the ML/TF risks for the country.
5. ***Criterion 1.2*** - The National Anti-Money Laundering Committee (NAMLC), is leading the conduct of the NRA. The National Steering Group and three Working Groups (the Investigations and Prosecutions Working Group, the Financial Sector Working Group and the Cross Border and Terrorism Working Group) consider AML/CFT risks and are involved in the preparation of the NRA. The private sector is not involved in the preparation of the NRA.
6. ***Criterion 1.3*** – The only documented risk assessment provided to the Assessors was the National Security Policy, 2013 which is yet to be updated. While Jamaica is committed to keeping the NRA under review, the initial NRA is yet to be completed<sup>9</sup>.
7. ***Criterion 1.4*** – The NAMLC will be responsible for distributing the results of the NRA.
8. ***Criterion 1.5*** – The Major Organised Crime Agency (MOCA) and the Counter Terrorism and Organised Crime Branch (CTOC) were created to focus on financial crime ML and TF. The authorities have advised that the NRA will inform the basis for the further allocation of resources on a risk based approach.
9. ***Criterion 1.6*** – While there are provisions in the POCA Regs for exemptions from customer due diligence (CDD) measures, these are not based on any proven low risk of ML/TF or any of the other conditions specified in the criterion. Authorities explained that the *de minimis* transaction levels in the POCA Regs were initially set in consultation with the Authorities with responsibility for investigating financial crime that were of the view that transactions below US\$250 did not account for a significant level of STRs received or matters which would result in a prosecution for ML. However, given the risks associated with remittance services (at the time the regulatory framework was new in Jamaica in relation to an activity that was globally reflected and treated with, as high risk), remittance transactions are excluded from the *de minimis* threshold. Further relaxation of CDD due diligence measures is being contemplated in light of a financial inclusion policy which is being contemplated by Jamaica.

---

<sup>9</sup> Jamaica’s NRA was completed at the end of May 2016, which was subsequent to the onsite visit.

10. **Criterion 1.7** – Regulation 7A of the POCA Regs requires businesses in the regulated sector to establish risk profiles for business relationships and one-off transactions to determine high risk situations and apply enhanced due diligence (EDD) procedures. A list of high risk situations requiring EDD is provided.
11. **Criterion 1.8** – Regulation 8 of both the POCA and TPA Regulations exempt transactions under the value of US\$250 from identification procedures. As indicated in the explanation under criterion 1.6, this was not based on proven low risk or in accordance with the country’s assessment of its ML/TF risks.
12. **Criterion 1.9** – The financial sector supervisors, the BOJ and FSC, assess the financial institutions compliance with AML/CFT requirements. The assessment of Recommendation 26 indicates that BOJ and FSC have adequate inspection powers and that there are sanctions available. They have commenced a risk based approach to AML/CFT supervision. Regulations 7A and 6A of the POCA Regs and TPA Regulations require regulated businesses and reporting entities respectively, to establish a risk profile and to undertake the appropriate level of due diligence including EDD where the relationship or one off transaction is determined to be high risk. For the purposes of the POCA, regulated businesses include FIs and DNFI/DNFBPs. For the purposes of the TPA Regs, reporting entities include financial institutions, foreign companies in respect of their business in Jamaica relating to banking, securities, insurance, investment advice or trusts, and any other entity designated by the Minister, which currently does not include DNFI/DNFBPs.
13. **Criterion 1.10** - Regulation 6 of POCA Regs requires financial institutions and DNFI/DNFBPs to maintain procedures to assess ML risks. There is no equivalent provision in the TPA. Regulation 7A and 6A of the POCA Regs and TPA Regs respectively deal with the establishment of risk profiles for customers and one-off transactions. Additionally, financial institutions are required to provide Supervisors with books and records which would include risk assessments. However, it is uncertain whether Competent Authorities other than Supervisors would be able to have access to risk assessment information. Guidelines drafted by the various DNFI/DNFBPs supervisors all call for entities to apply a RBA in assessing and managing client risk but the guidelines do not specify that these assessments must be documented or kept up to date. They do, however, outline the risk factors that should be taken into consideration when carrying out the risk assessment.
14. **Criterion 1.11** – (a) There are no legislative measures which require FIs and DNFI/DNFBPs to have policies, controls and procedures which are approved by senior management. However, the BOJ and FSC Guidelines at sections 117 and M paragraph 5 respectively requires that AML/CFT policies be approved by the Board. This would not apply to DNFBPs. (b) Sections 118 and M paragraph 10 requires that the compliance programmes be reviewed regularly and at least annually respectively. (c) As mentioned in criterion 1.9, there are requirements to take enhanced measures to manage and mitigate higher risks. The BOJ and FSC Guidelines are considered other enforceable means.
15. **Criterion 1.12** – While Regulation 8 of both the POCA and TPA Regulations exempt transaction under the value of US\$250 from identification procedures, this is not based on identified low risks. Additionally *criteria 1.9 to 1.11* are partially met. It is noted that the exemption is not applicable if there is suspicion of ML.

### ***Weighting and Conclusion***

16. The country has not yet completed its NRA. While there are some measures in place for the completion of the NRA and requirements reflecting some consideration of risk, these are rudimentary. **Recommendation 1 is rated partially compliant.**

## *Recommendation 2 - National Cooperation and Coordination*

17. This Recommendation (previously R.31), was rated 'LC'. Deficiencies noted in the 3<sup>rd</sup> Round MER were a need for national awareness on the risks of ML and TF and also formal means of consultation for competent authorities and DNFI/DNFBPs. As a result, their public awareness campaigns were revised and several meetings were held with key stakeholders regarding AML/CFT issues. BOJ Guidance Notes were also revised to reflect new measures under the 2007 POCA. A fully functional NAMLC has been established and the TPA was brought into force. There are no outstanding issues. Recommendation 2 has specific requirements to have national policies which are informed by risks and the element of cooperation, exchange of information and domestic cooperation with regard to financing of proliferation is introduced.
18. **Criterion 2.1.** – Measures have been adopted to mitigate the main risks identified in the NSP. However, efforts have focussed on the identification, investigation and prosecution of predicate offences as opposed to offences relating to ML and TF. Having recognised lawyers, accountants and real estate agents as facilitators of ML these sectors were brought under Jamaica's AML regime. Jamaica's NRA has not yet been completed.
19. **Criterion 2.2** – The NAMLC meets quarterly for the coordination and responsibility over national AML/CFT policies, and other Task Forces are also in place. There is also a National Steering Group and three Working Groups which consider AML/CFT risks and are assisting with the preparation of the NRA, as described under **critterion 1.2.**
20. **Criterion 2.3** – NAMLC is one of the main mechanisms for national cooperation and coordination. The Committee was formed to provide a forum for the discussion of AML/CFT issues and to ensure that the necessary measures are taken to improve the country's AML regime and to facilitate compliance with international obligations. NAMLC Committee members include law enforcement and prosecutorial agencies, supervisors, competent authorities, namely: the BOJ, FSC, FID, MOJ, JCF, MFATF, MOF, JCA, ODPP and PICA. There is also inter-agency coordination and information sharing between a number of NAMLC Committee members through the use of MOUs, joint operations and joint meetings. In addition there are other coordination mechanisms such as MOUs and the FRC. See paragraphs 70 to 82 of the effectiveness assessment on IO 1.
21. **Criterion 2.4.** - There are currently no provisions to cooperate and coordinate domestically, specifically with regard to the financing or proliferation of weapons of mass destruction. Authorities made reference to the NAMLC and other task forces, National Steering Group and three Working Groups as under criterion 2.2., however, no information was provided to confirm that the prevention of the financing or proliferation of weapons of mass destruction is in its mandate.

## *Weighting and Conclusion*

22. To some extent, Jamaica has adopted AML policies based on risk identified. NAMLC is the designated coordination mechanism which is responsible for national AML/CFT policies. While Jamaica has mechanisms for authorities to cooperate and coordinate domestically, national policies are to some extent informed by risk. Jamaica also has no policies or mechanisms in place to cooperate and coordinate with regard to combating the financing of the proliferation of weapons of mass destruction. **Recommendation 2 is rated partially compliant.**

### ***Recommendation 3 - Money laundering offence***

23. R. 3 (formerly R.1 and 2) were previously rated ‘PC’ and ‘C’ respectively, with the main deficiencies being criminalization of ML based on property derived from specific offences. Consequently, the predicate offences for ML were limited and did not cover the range of offences in the designated category of offences. The enactment of the Proceeds of Crime Act, 2007 (POCA) created a definition of ML that covered all dealings with criminal property.
24. **Criterion 3.1** – ML has been criminalized based on the Article 3(1)(b) & (c) of the Vienna Convention and Art. 6(1) of the Palermo Convention. Both Conventions have been ratified by Jamaica. The activities referred to in the Conventions have been appropriately covered under various pieces of legislation including the POCA, the Dangerous Drugs Act and the Precursor Chemicals Act.
25. **Criterion 3.2** – Predicate offences for ML cover all serious offences and are based on the concept of activities relating to criminal property. Section 91 of the POCA defines criminal property as property that constitutes a person’s benefit from criminal conduct or represents such a benefit. It is immaterial who carried out or benefited from the conduct. Section 2 of the POCA defines ‘criminal conduct’ as conduct which constitutes an offence in Jamaica or if it occurs outside Jamaica would have constituted an offence had it occurred in Jamaica.
26. **Criterion 3.3** – Jamaica does not use a threshold approach, but rather uses the approach that involves criminal conduct, with criminal property being that person’s benefit from the criminal conduct. As noted above criminal conduct is extended to a wide range of offences in Jamaica.
27. **Criterion 3.4** – The ML offence extends to criminal property (See. POCA section 2 for definition of criminal property) that is a person’s benefit from criminal conduct. Property is defined as all property wherever situate including money, all forms of real or personal property and things in action and other intangible or incorporeal property.
28. **Criterion 3.5** – As discussed above, section 91 of the POCA provides that the offence of ML is directly linked to activities involving criminal property which represents the benefit from criminal conduct and that it is ‘immaterial who carried on or benefited from the conduct.’ Accordingly, it would not be necessary for a person to be convicted of the predicate offence.
29. **Criterion 3.6** – Pursuant to section 2 of the POCA, predicate offences for ML covers criminal conduct which occurred outside of Jamaica.
30. **Criterion 3.7** – Based on Jamaica’s definition of the offence of ML, a person who commits the predicate offence will also be captured once the persons engages in activities noted in sections 92 and 93 of the POCA.
31. **Criterion 3.8** – Pursuant to sections 92 and 93 of the POCA, the ML offences require the *mens rea* of ‘knows or has reasonable grounds to believe’ which incorporates the ability to prove ML from objective factual circumstances.
32. **Criterion 3.9** – Section 98 of the POCA include ML penalties, which on conviction before a Resident Magistrate consists of a fine not exceeding JA\$3M or to imprisonment for a term not exceeding five years or to both such fine and imprisonment for individuals.
33. **Criterion 3.10** – Based on section 49(2) of the Interpretation Act, directors and officers can be criminally liable for ML. Pursuant to section 91A(5) of the POCA, a legal person can be fined on summary conviction

JA\$250,000 (US\$2,163) or at the Circuit Court to a fine not exceeding JA\$1M (US\$8,653). Furthermore, upon conviction of an ML offence before a Resident Magistrate, section 98(1)(a)(ii) of the POCA provides that a body corporate is liable to a fine not exceeding JA\$5M. However, section 98(1)(b)(ii) of the POCA states that a body corporate is liable to a fine if convicted on indictment before a Circuit Court. While the penalties are proportionate to penalties provided for in the POCA and other legislation, the amounts do not appear to be dissuasive especially in respect to legal persons, where at the current exchange rate a maximum fine of JA\$5M is equivalent to US\$43,267. This amount could be insignificant for a large financial institution. There are also administrative penalties available pursuant to section 91A(6), which provides that the registration or licence of a business convicted of an offence (sub-section (5); failure to comply with any requirement or direction that is issued under Part V of the POCA, which deals with ML) can be suspended or revoked. Additionally, section 49(4) of the Interpretation Act provides that the criminal liability of persons does not preclude the ability for them to also be subject to civil liability.

34. **Criterion 3.11** – The ancillary offences to ML of attempt, conspiracy, incitement, aiding, abetting, counselling and procuring are covered by section 91(b)(ii) and (iii) of the POCA. Furthermore, section 92(2) of the POCA provides for the ancillary offence of facilitating.

### *Weighting and Conclusion*

35. The criminalisation of ML has been addressed. The main issue that gives cause for concern pertains to the lack of dissuasiveness of the penalties especially as they pertain to legal persons. **Recommendation 3 is rated largely compliant.**

### *Recommendation 4 - Confiscation and provisional measures*

36. Jamaica was rated 'LC' for R.4 (formerly R.3) in its 3<sup>rd</sup> MER. For the 4<sup>th</sup> Round, the main requirements of this recommendation remain the same. The three (3) deficiencies identified at the time were (i) The relevant extant legislation limits forfeiture to property derived from or used in the commission of predicate offence which does not include all serious offences; (ii) There is no provision for restraint of property intended to be used in the commission of an ML, TF or other predicate offence; and (iii) There is no provision for forfeiture of property of corresponding value with regard to terrorism offences. Jamaica addressed the deficiencies through the enactment of the POCA in 2007. The POCA provides for the restraint and forfeiture of property that constitutes instrumentalities intended for use in the commission of any ML/TF or other predicate offences, and property of corresponding value. More specifically, according to the 9<sup>th</sup> FUR, section 5(6) of the POCA allows the Court to enforce a pecuniary penalty order against the defendant's free assets. The TPA at section 28(5) (A) provides for the Court to order the defendant to pay the Crown an amount equal to the value of the property. This provision therefore allows for the forfeiture of property of corresponding value.
37. **Criterion 4.1** - (a) Section 5(3) of the POCA provides for the forfeiture of property identified as being a defendant's benefit from criminal conduct. Property held by third parties are captured as gifts, pursuant to section 2(2) and 2(4) of the POCA. (b) At section 5(2) (c), any property used in or (any property) in connection with the offence concerned is liable to be forfeited. At section 7 of the POCA non-pecuniary proceeds from conduct are captured where such conduct forms part of a course of criminal activity. (c) Measures at 5(1) of the POCA apply to a defendant who is convicted of any offence. (d) Property of corresponding value is captured at section 5(5) of the POCA where a forfeiture order made under that section, allows the Court to order the payment of an equivalent amount, part or interest of property which cannot be traced or is available for forfeiture purposes.

38. **Criterion 4.2** - (a) The appropriate officer can trace, evaluate and identify property that is subject to confiscation through several means as follows: A disclosure order requiring production of information or material may be obtained, on application, from a Judge (POCA section 105); search and seizure warrants can be obtained in order to seize information and material or to facilitate investigations (POCA section 115); customer information orders can be made (POCA section 119); account monitoring orders can be made (POCA section 126); production and inspection orders can be made (FIDA section 17(1)); account monitoring orders can be made (FIDA section 28); search warrants to seize any book, record or other document in order to facilitate an investigation can be issued (FIDA section 28); Account monitoring orders and search warrants can also be obtained (TPA section 19 and 21). (b) Measures are detailed in section 5 of the POCA for enabling the provisional measures for freezing or seizing to prevent any dealing, disposal etc. (c). Section 33(2) and (6) of the POCA provides for the DPP or the ARA to make an application without notice to a Judge in Chambers to prohibit any person from dealing with any realizable property held by a specific person. The Judge may also make such order as appropriate for the preservation of the property. Thereafter, an authorized officer may seize any realizable property for the purpose of preventing the removal of said property from Jamaica (section 36 of the POCA). Furthermore, section 24 of the TPA gives a constable the authority to seize property he reasonably believes is associated with a terrorism offence to prevent its concealment, loss or destruction or its use in connection with an offence under the TPA. (d) Generally, the Constabulary Force Act under sections 13 to 15, give officers and security forces broad investigative powers. More specifically, the Interception of Communications Act provides for the monitoring, interception and disclosure of telecommunications transmitted between persons and things pursuant to a warrant for interception.
39. **Criterion 4.3** – In considering whether a forfeiture order should be made the rights and interests, of bona fide third parties, in property are taken into consideration and can be protected owing to section 5(4) of the POCA and section 28(5) of the TPA. For restraint orders, an affected person can apply directly to the Court for a variation or discharge. Similar provisions exist in relation to cash seized at section 82 of the POCA.
40. **Criterion 4.4** - Section 3 of the POCA enabled Jamaica to establish an Asset Recovery Agency. A receiver can be appointed, pursuant to section 41 of the POCA, and exercise certain powers in relation to realizable property pursuant to section 42. The powers here include taking possession, managing and realizing such property. Restrained property, which is deteriorating, can be sold and the proceeds held in trust. (Section 34A of the POCA).

### *Weighting and conclusion*

41. Jamaica has an adequate legal framework in place that enables LEAs to confiscate all property required by the standard and to undertake the appropriate provisional measures to prevent the dealing, transfer or disposal of property subject to confiscation. The extent to which competent authorities can take any appropriate investigative measures is limited. **Recommendation 4 is rated largely compliant.**

### *Recommendation 5 - Terrorist financing offence*

42. R. 5 (formerly SR II) was rated ‘LC’ in the 3<sup>rd</sup> MER. The main deficiency was that the TF offences were not predicates for ML and the lack of implementation of the TPA. As noted in R.3 above, the POCA refers to criminal conduct which applies to all crimes which includes TF. The changes to Rec. 5 are limited to introducing an explicit reference to the Terrorist Financing Convention in the text of the Recommendation.
43. **Criterion 5.1.** - Sections 3 and 4 of the TPA incorporate the criminalization of the offence of TF on the basis of Article 2 (1) (b) of the International Convention for the Suppression of Financing of Terrorism (“Terrorist Financing Convention”).

44. **Criterion 5.2.** - Section 2 of the TPA extends the TF offences to any terrorist activity accordingly with Article 2 (1) of the Terrorist Financing Convention.
45. **Criterion 5.3.** - Section 2 of the TPA extends the terrorist offences to “applicable property” and “property” refers to any property of the terrorism offence whether from a legitimate or illegitimate source. While it does not specify whether the funds are from a legitimate or illegitimate source it does provide for property that is from “the commission of any of the following offences, or that has been used”. The latter category would suggest property from legitimate sources.
46. **Criterion 5.4.** - The terrorist activity and offences do not require that the property is actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act.
47. **Criterion 5.5.** - In the 3<sup>rd</sup> MER at paragraph 94, the Assessors noted that there does not appear to be an express provision in the TPA which requires the intentional element of the offence of terrorist financing to be inferred from objective factual circumstances. However, it is expected that the Courts will make such inference as they do for ML offences.
48. **Criterion 5.6.** - A natural person who commits an offence criminalized in the TPA under section 3 to 12 is liable to a penalty of life imprisonment. This sanction appears sufficiently dissuasive but has yet to be tested.
49. **Criterion 5.7.** - Criminal liability also extends to legal persons. Under sections 4 to 12 of the TPA, a body corporate shall be liable upon conviction to a fine. This does not preclude parallel civil proceedings accordingly with section 49(4) of the Interpretation Act which establishes that when there is criminal liability for an act or omission which, apart from that Act, would give rise to civil liability shall not, in the absence of express provision to the contrary; operate to prejudice the civil liability. However, there is no legal basis to determine whether the maximum fine applied to legal persons is proportionate and dissuasive.
50. **Criterion 5.8.** - In accordance with the definition of terrorism offence, it is an offence to attempt to commit, conspire, aid, abet, procure or counsel an offence under sections 4, 5, 6, 7, 8, 10, 11 or 12 of the TPA. Further, sections 9 of the TPA criminalize every person who commits an offence under the Act for the benefit of, at the direction of or in association with, a terrorist group. The offence may be committed whether or not the accused knows the identity of any of the persons who constitute the terrorist group. Section 10 of the TPA provides that every person who knowingly instructs, directly or indirectly, any person to carry out any activity for the benefit of, at the direction of or in association with, a terrorist group to facilitate or carry out a terrorist activity, commits an indictable offence. Such an offence may be committed whether or not the accused knows the identity of the person instructed to carry out the terrorist activity or whether the person, whom the accused instructs to carry out that activity, knows that it is to be carried out for the benefit of, at the direction of or in association with, a terrorist group. Accordingly, criminal responsibility can also be applied to any person who participates in or facilitates another in the commission of a TF offence or attempted offence.
51. **Criterion 5.9.** - ML is defined as person’s benefit from criminal conduct under section 91(1) of the POCA. According to section 2 of the POCA “criminal conduct” means a conduct which constitutes an offence, accordingly, TF is a predicate offence to ML.
52. **Criterion 5.10.** - Section 2 (1) of the TPA sets out the definition of terrorism offence as an offence constituted by an act or omission related to any terrorist activity, and includes acts or omissions committed in or outside of Jamaica.

## *Weighting and conclusion*

53. TF is criminalized according to the Convention, irrespective to whether or not the terrorist act was carried out or not. A full range of ancillary offences are provided under the TPA including attempt, conspire, aid, abet, procure or counsel. However, there are no proportionate and dissuasive fines for legal persons. **Recommendation 5 is rated largely compliant.**

## *Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing*

54. R. 6 (formerly SR. III) was rated 'LC' in the 3<sup>rd</sup> MER. The deficiencies pertained to the lack of measures to directly freeze the assets of listed entities in the TPA or to allow for the forfeiture of property of corresponding value in the TPA. Jamaica addressed the first issue by the issuance of a list of designated persons approved by the Court. The approved list reflects those entities designated in the UNSCR 1267 Committee's list of terrorists as 'listed entities'. The enactment of the Terrorist Prevention (Amendment) Act, 2013 dealt with the deficiency for forfeiture of property of corresponding value (Section 28).
55. **Criterion 6.1** – (a) Section 14 of the TPA provides that the Director of Public Prosecutions ("DPP") shall apply to a Judge of the Supreme Court for an order in respect of an entity if it is included on a list of entities designated as terrorist entities by the United Nations Security Council. The Supreme Court has therefore been identified as having the responsibility for listing entities to be designated and has approved designations on three occasions, namely: 13<sup>th</sup> March, 2014, 12<sup>th</sup> July, 2013 and 6<sup>th</sup> June, 2012. (section14(4). (b) There are no measures in place for identifying targets for designation and the designation criteria for UNSCRs 1267/1989 and 1988 are not catered for in the TPA. (See. Designation criteria at INR6). (c) The evidentiary standard for deciding whether or not to make proposal for designation under section 14 of the TPA is 'reasonable grounds', however this standard is not applicable as contemplated by this sub-criterion since as noted earlier there are no measures for designation as contemplated by this criterion. (d) There are no measures in the TPA or the UNSCRIA that address the use of the sanctions regime standard forms for listing as required for 1267/1989 and 1988. (e) There are no measures that allow for the proposed names, a statement of case etc. with regard to proposing names to the 1267/1989 Committee.
56. **Criterion 6.2** – (a) As noted previously, the Supreme Court has the responsibility to designate an entity. The DPP is required to make an application ex parte pursuant to section 14(1)(b) of the TPA. The DPP can make the application for designation under UNSCR 1373 where he has reasonable grounds to believe that the entity has knowingly committed or participated in the commission of a terrorism offence. There are however no measures for dealing with giving effect to requests from other countries. (b) Jamaica has not provided any mechanisms for identifying targets for designation. Based on the designation criteria for UNSCR 1373 (See. INR6), elements 13(c)(ii) and (iii) are not present in the TPA. (c) No mechanisms were found in the TPA or provided by the Authorities with regard to receiving a request for designation. (d) The evidentiary standard for making an application is 'reasonable grounds to believe' and designations are not conditional on the existence of a criminal proceeding. (e) There are no measures with regard to requesting another country to take action or give effect under the freezing mechanism.
57. **Criterion 6.3** – (a) The Jamaican authorities have cited section14(2) of the TPA that requires the DPP to carry out investigations as he considers necessary before applying to the Supreme Court for an order to designate an entity. Section 14(9) stipulates that the DPP shall, every 6 months, review all orders made to determine whether the circumstances leading to the designation continue to exist. (b) The competent authority (the DPP) can operate *ex parte* with regard to designations as noted previously.

58. **Criterion 6.4<sup>10</sup>** – There are no mechanisms to implement targeted financial sanctions without delay. There was no indication of the time period in which targeted financial sanctions should be implemented. The relevant mechanisms to designate individuals and entities covered by UNSCR 1373 will be addressed under the TPA.
59. **Criterion 6.5** – (a) There are no measures in the TPA that provide for the freezing of funds or other assets of designated persons and entities without delay. (b) There are currently no measures in the TPA that satisfy the freezing of certain types or categories of funds. (c) No measures currently in the TPA to address these measures. (d) Pursuant to section 14(5) of the TPA, the DPP is responsible for publishing a copy of the Order in a daily newspaper in circulation. While this method of communicating the designation is not directly to the financial sector or DNFIs/DNFBPs, it is a public notice to all persons residing in Jamaica. The public notice is given within seven days of the Order and there is no requirement to provide guidance to financial institutions or DNFIs/DNFBPs. (f) There are no measures with regard to the protection of rights of bona fide third parties as it relates to the obligations involving the designation of persons or entities. The Authorities cite the protection of third parties with regard to restraint and forfeiture orders in the TPA, which is not relevant in this case.
60. **Criterion 6.6** – (a) The TPA does not provide any procedures for the submission of de-listing request to the relevant UN Sanctions Committee. (b) Pursuant to section 14(6)(7) and (9) of the TPA an entity may apply for a revocation of the Order listing the entity or the DPP can apply following a review of the circumstances that led to designation. There are no measures to unfreeze funds or other assets of persons since there are no mechanisms to freeze these assets. (c) Section 14(7) of the TPA allows for a review of the decision to designate before a Court. (d) There are no measures in the TPA with regard to procedures to facilitate a review by the 1988 Committee of designations made pursuant to UNSCR 1988 (Al-Qaida). (e) There are also no procedures with regard to de-listing petitions through the office of the UN’s Ombudsman. (f) There are no mechanisms to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who were affected by a freezing mechanism by error. (g) Pursuant to section 14(5) the de-listing is communicated through publication in a daily newspaper as noted above there is no specific notification to financial institutions or DNFIs/DNFBPs.
61. **Criterion 6.7**– There are no established procedures to authorise access to funds that have been frozen in accordance with UNSCR 1452 or UNSCR 1373 and subsequent resolutions.

### ***Weighting and conclusion***

62. Overall there are no measures that permit Jamaica to propose designations of persons or entities to the 1267/1989 Committee or the 1988 Committee of the UN based on the designation criteria set out in the relevant UNSCRs. In relation to UNSCR 1373 Jamaica has not provided any mechanisms for identifying targets for designation, nor are there any mechanisms for receiving a request for designation. The freezing of funds or other assets as specified by criterion 6.5 is absent. The public notice is given within seven days of the Order and there is no requirement to provide guidance to financial institutions or DNFIs/DNFBPs. There is the power to designate entities and to monitor on a quarterly reporting basis whether any entities

---

<sup>10</sup> Jamaica presented section 20 of the FIDA and the Civil Procedure Rules as evidence of meeting the requirement. However, based on the timing of the submission (after distribution of Draft 3 of the MER) it will be considered during the follow-up process.

have assets from entities that have been designated through regulation under the UNSCRIA or the TPA. **Recommendation 6 is rated non-compliant.**

### *Recommendation 7 – Targeted financial sanctions related to proliferation*

63. This Recommendation is entirely new, so there is no previous rating or country information to include.
64. **Criterion 7.1.** – The UNSCRIA allows for the implementation of targeted sanctions through regulations. However, Recommendation 7 requires freezing of funds “without delay”, which does not seem to occur in the case of Jamaica. Freezing may take place under section 7 of the UNSCRIA by way of an injunction; however there is no indication of time. Also, sanctions related to Iran (UNSCR 1737, 1747, 1803 and 1929) have not been covered. Targeted financial sanctions with regard to UNSCR 1718 and 1874 (UNSCR 2087 incorporates or is a successor to these two UNSCRs).
65. **Criterion 7.2.** – (a) The UNSCRIA at, section 3, provides the Minister with the ability to issue regulations to give effect and enforce targeted financial sanctions. Freezing may take place under section 7 of the UNSCRIA by way of an injunction. An injunction can be requested by the Attorney General only, and may be granted by a Supreme Court Judge if there is reasonable cause to suspect that a person is about to engage in constituting a contravention of regulations. According to the UNSCRIA Implementation Regulations, regulation 3, the objective of the Regulations is to prevent persons or entities from using or dealing with assets owned or controlled by a designated entity and from making an asset available to a designated entity, otherwise than, in accordance with these regulations and together regulations 5 and 6 make it an offence to incur in dealing with freezable assets (hold, deal, make available). However, there is no indication of times required before an injunction can be granted and there would therefore be a question of freezing obligations being implemented “without delay” as required by criterion 7.2. (b) (i), (ii) and (iii) Freezing obligations would cover all funds or assets, owned or controlled by the designated party or entity. “Freezable Assets” under the UNSCRIA Regulation covers an “asset” owned or controlled by an entity designated in Annex I or Annex II of the UNSCR 2087 (which in turn refers back to UNSCR 1718 and 1874), or derived from any asset included above. The definition of “asset” contained in the UNSCRIA is very broad and basically includes property of any kind and owned wholly or jointly, directly or indirectly by designated persons or entities. (c) Section 6 of the UN Act Implementation Regulations makes it an offence; though not explicitly prohibit, making a freezable asset available. Authorities also cited section 3 of the UNSCRIA as a basis for the said regulations. (d) Authorities indicated that guidance will be issued in the future to comply with this section of the criterion although regulations that are issued to implement UNSCR and actual designations are public. (e) Reporting obligations are duly established in section 5 of the UNSCRIA covering foreign companies related to financial services; FIs and DNFI as well as any other entity which the Minister may designate. There are no requirements to freeze the assets and there is no reference to ‘attempted transactions’. (f) The Authorities note that the rights of third parties are protected under the UN Security Resolution (North Korea) (UN (DPRK) Regulations), (Regulation 7 of the UNSCRIA) by providing the Minister with the power to allow dealings in freezable assets upon a written application.
66. **Criterion 7.3.** - The Chief Technical Director of the Financial Investigations Division established under the Financial Investigations Division Act is the designated authority responsible for monitoring compliance by financial institutions and DNFI/DNFBPs. There are reporting requirements established under section 5 of the UNSCRIA. However, the obligation does not currently extend to a specified category of DNFI/DNFBPs, namely Attorneys-at-law. Monitoring would be performed by supervisory authorities and the penalties for non-compliance are in the case of an individual, a fine not exceeding five hundred thousand

dollars or to imprisonment for a term not exceeding six months, or to both. If a body corporate contravenes the provisions under the UNSCRIA a fine not exceeding three million dollars will be imposed.

67. **Criterion 7.4.** – (a) Section 3(5) of the UNSCRIA provides that ‘where a Minister is satisfied that a person or entity has been proscribed in error in any regulations made under this section, the Minister shall by Order published in the Gazette, amend the regulations as to delete the provision proscribing that person or entity.’ Based on section 49(1) of the UNSCRIA, the listing remains in effect until the UN determines or notifies otherwise. There are no delisting measures pursuant to UNSCR 1730. (b) The UNSCRIA does not have explicit freezing measures but there is the ability for an injunction under section 7. As noted at (a) above, the regulation can be amended to address errors. (c) There are no measures presented that comply with the exemption measures set out in UNSCRs 1718 and 1737. While Reg. 7(1) of the UN (DPRK) Regulations allows the Minister to make exemption upon application, the relevant UNSCR 1718 requires that exemptions be brought to the attention of the UN Committee and that permission be received from the Committee. (d) There are no specific mechanisms for communicating de-listings and freezings to FIs or DNFI/DNFBPs.
68. **Criterion 7.5** – There are no measures in place by the Jamaican Authorities to permit the addition to the accounts frozen pursuant to UNSCRs 1718 or 1737 of interests or other earnings due on accounts or other payments due under contracts, agreements or similar obligations.

### *Weighting and Conclusion*

69. Jamaica has a general framework for enforcing targeted financial sanctions as required by Recommendation 7, for combating the financing of the proliferation of weapons of mass destruction. However, critical components of the Recommendation are absent namely, the ability to freeze without delay, ensuring appropriate protection for third party rights and the establishment of an effective de-listing procedure. Guidance for entities which would implement sanctions and are mandated to report on these is also needed. **Recommendation 7 is rated partially compliant.**

### *Recommendation 8<sup>11</sup> – Non-profit organisations*

70. This Recommendation which was formerly SR. VIII was rated ‘NC’ in the 3<sup>rd</sup> MER, as Assessors found that there were no CFT measures in place to deal with non-profit organisations (NPOs) (See. 3<sup>rd</sup> MER, paras. 369 and 370).. No substantial changes have been introduced to revised R.8. Jamaica passed a Charities Act in November 2013 setting the framework for registering and monitoring NPOs which includes charitable trusts or any other institution, incorporated or not, which pursue a charitable purpose.
71. **Criterion 8.1.** – (a) Jamaica passed the Charities Act (CA) in November 29<sup>th</sup>, 2013 to *inter alia* maintain, protect and enhance public trust and confidence in charitable organisations in Jamaica and enhance the accountability of these organisations. Section 40 of the Charities Act indicates that the said Act should be reviewed no later than three (3) years after the commencement date and this provides elements to deal with any potential new risks derived from the sector. It is also foreseen that with the provisions introduced by the Act, Jamaica will be able to obtain information on the sector in the future. (b) The Authorities are yet

---

<sup>11</sup> R.8 and its Interpretative Note was revised by the FATF in June 2016, i.e. after the onsite visit. The revised version will be taken into account during the follow-up process.

to conduct a comprehensive assessment of the sector, which will, identify the features and types of NPOs that are particularly at risk of being misused for TF. The absence of a domestic review of the NPO sector prevents the Authorities from obtaining information on the NPOs activities, size and other relevant features as the basis to identify the features and types of NPOs that may be at risk for TF or other forms of terrorist support by virtue of their activities or characteristics. Section 7(1)(i) outlines one of the functions of the Authority as to take such steps as may be required to ensure that registered charitable organisations are not misused for criminal purposes or controlled by persons engaged in criminal activities. However, there is no specific indication of a periodic reassessment of the sector.

72. **Criterion 8.2.** – The Commissioner of Charities and his staff have received training on TF issues from the FID. Outreach to the wider sector continues to be done on a phased basis. There have been interviews on Jamaica Information Services (government broadcast), participation in talk shows on radio, sensitisation and outreach to community organisations and churches and newspaper articles written. A public forum in consultation with other government agencies is being planned. The outreach to the sector has not focussed on TF issues.
73. **Criterion 8.3.** –Jamaica is seeking to promote transparency, integrity and public confidence in the administration and management of NPOs. As explained by the Authorities, the record keeping and reporting regimes in the Charities Act will strengthen transparency and will increase scrutiny of NPO affairs in Jamaica. The express mandate of the Charities Act and the Charities Authority would be the maintenance, protection and enhancement of public trust and confidence in charitable organizations; promote compliance by governing board members with their legal obligations regarding the management of charitable organizations and enhancing accountability of charitable organizations to donors, beneficiaries and the general public (See. Section 5 of the Charities Act). Apart from the mandate of the Charities Authority, there is no other documentation which expresses a clear policy to promote transparency, integrity and public confidence on the administration of all NPOs.
74. **Criterion 8.4** – Jamaica applies the same standards to all NPOs. Since registration is voluntary and for tax purposes, it is not known whether the requirements of the criteria apply to (i) a significant portion of the financial resources under the control of the sector or (ii) a substantial share of the sector’s international activities. (a) Section 24 of the CA, requires the Charities Authority to maintain a Register containing certain information which includes a summary of their objectives and purposes and the names of the governing board members who are required to be fit and proper (section 17) within the meaning of section 18. Additionally, charitable organizations are also required to notify the Charities Authority of any changes in address, appointments, constitution, among others (section 28 of the Charities Act). Section 25 permits information kept in the Register to be made available to a public body, the Authority and the public upon payment of a fee. The CA does not provide for the maintenance of information by the NPOs on the identity of persons who own, control or direct their activities including senior officers and trustees, or for such information to be publicly available or through appropriate authorities. (b) Section 27 of the CA establishes that all NPOs are obliged to correctly record and explain its transactions and financial position and performance. They should also enable true and fair financial statements to be prepared to be audited and furnish to the Charities Authority any information it may require and open their books for inspection. However, there is no requirement for NPOs to issue annual financial statements that provide detailed breakdowns of income and expenditure. (c) There is no requirement to establish maintain and implement specific controls that guarantee that the funds are being accounted for and are spent in a manner consistent with the NPO’s purpose and objectives, though as explained in (b), there is an obligation to keep adequate record of transactions, financial position and performance. (d) NPOs will be registered through the Charities

Act. Apart from registering so as to benefit from tax exemptions, there was no evidence provided to suggest that this would capture NPOs which by virtue of their activities or characteristics are at risk for being misused by terrorist as conduits for financing their activities (e) NPOs do not follow a “know your beneficiaries and associated NPOs” rule. (f) Section 27 of the Charities Act requires NPOs to keep records and explain its transactions and financial position and performance for a period required by Tax Authorities (i.e. 7 Years as per Income Tax Act). This does not meet the element of the criteria which requires the financial records to be detailed enough to verify that funds have been spent in a manner consistent with the purpose and objectives of the NPO. However, there are no requirements related to the keeping of information in (a) and (b) of the criteria for a period of at least five years.

75. **Criterion 8.5** –The Charities Authority is not able to monitor compliance with criterion 8.4 given the deficiencies noted in the discussion on that criterion. The Act empowers the Authority to monitor a charitable organization’s activities to ensure that they fall under the definition and also promote compliance with the Charities Act and any regulation made under the Act (section 7(1)(f), (g)). It is also able to apply sanctions which range from suspension to the revocation of the registration as an NPO. The Authorities have indicated that since there are no express prohibitions in the Act which preclude others processes whether parallel civil, administrative, or criminal proceedings these actions can be pursued. The CA does not provide for any financial sanctions.
76. **Criterion 8.6** - (a) Authorities are able to cooperate and coordinate domestically (section 9 of the Charities Act) and internationally. (b) and (c) Full access to information on particular NPOs which includes financial and programmatic information is not granted (though as explained under criterion 8.4 (b), there is an obligation to keep financial records); nor are there mechanisms to ensure relevant information is promptly shared with competent authorities to take preventive actions against NPOs being used as a front for fundraising for a terrorist organization or being exploited as a conduit for TF. This is also applicable for escaping asset freezing measures, concealing or obscuring the clandestine diversion of funds intended for legitimate purposes but redirected for terrorists to terrorist organizations.
77. **Criterion 8.7** – Section 9(5) of the Charities Act specifically establishes the possibility of the Charities Authority cooperating by providing documents or other information, with any law enforcement agency or regulatory agency or regulatory authority in a jurisdiction outside Jamaica, which has responsibilities in that jurisdiction for investigating or taking enforcement action against money laundering, the financing of terrorism or other financial crimes, where the Authority is satisfied that the law enforcement agency or regulatory authority has requested cooperation, and will use documents provided or other information shared, in furtherance of those responsibilities and for no other purpose. Authorities also indicated that exchange of information also occurs through Mutual Legal Assistance (MLA) and FIU to FIU and, MOUs or agreements were provided. However, appropriate and specific points of contact and procedures to respond to international requests, still need to be identified.

### *Weighting and Conclusion*

78. Although Jamaica has established a legal framework for registering and obtaining information with regard to NPOs, it is not risk based and TF focussed. Further development of relevant regulations and guidance, the establishment of appropriate point of contact for international cooperation, and other measures as detailed above are still needed. **Recommendation 8 is rated non-compliant.**

## ***Recommendation 9 – Financial institution secrecy laws***

79. This Recommendation formerly R. 4 was rated ‘LC’ in the 3<sup>rd</sup> MER due to the FSC’s inability at the time of the mutual evaluation to sign the IOSCO MOU allowing the sharing of information. It was also noted in the text of the MER that FIs regulated by the FSC did not have the same avenues to share information as FIs under the regulation of the BOJ. As indicated in the matrix attached to Jamaica’s 11<sup>th</sup> FUR section 68F of the Securities (Amendment) Act 2013 provides for the FSC to share information with overseas securities regulatory bodies. For the 4<sup>th</sup> Round, the main requirements of this recommendation remain the same.
80. **Criterion 9.1** - As indicated in the 3<sup>rd</sup> MER paragraphs 241 – 247 both the BOJ and the FSC can access relevant information from their respective regulated entities. While the BOJ can share information with both local and foreign competent authorities, the FSC was limited at the time of the mutual evaluation to sharing information with local competent authorities. Section 68F of the Securities (Amendment) Act 2013 provides for the FSC to share information with overseas securities regulatory bodies. All FIs can be subject to customer information orders and account monitoring orders under sections 119 and 126 of the POCA respectively. These court orders allow for access to information by relevant law enforcement authorities.
81. The BOJ Act establishes the Financial Regulatory Council (FRC) by way of a MOU, consisting of the Competent Authorities, the BOJ and the FSC with the other members being the JDIC and the Financial Secretary. The FRC is chaired by the Governor of the BOJ and has quarterly meetings where information on the financial sector/entities is shared. Under the POC (Amendment) Act 2013, section 91A (2)(d) outlines the internal and external bodies with which a Competent authority can share information.
82. Section 34D and Section 16 of the BOJ and FSC Acts permit the sharing of information among *inter alia* the BOJ, FSC, JDIC, overseas regulatory authorities and the FID.
83. The FSC (Overseas Regulatory Authority) (Disclosure) Regulations permit the FSC to disclose information to overseas regulators of the pensions and insurance sectors as well as the securities sectors.
84. While there is a duty of confidentiality and secrecy imposed by the financial and regulatory laws on directors, officers etc. of licensed FIs with respect to customers and the affairs of such institutions and a similar duty is also imposed on the supervisors of such institutions, there are exemptions as provided for in the law, including with respect to sharing of information with foreign counterparts and domestic LEAs which they obtain in the course of their supervisory functions. With regard to the sharing of information between FIs required for R.13, 16 or 17, the BA (4th Schedule), the FIA (4th Schedule), the Building Societies Act (8th Schedule) provide for the sharing of information in circumstances that are in the interest of FIs regulated by the BOJ. Provisions for sharing of information by direction of the Minister of Finance with authorized persons which can include relevant competent authorities are also included in the above mentioned Schedules.
85. No obstacle that would inhibit the implementation of the FATF Recommendations was identified in the regime for correspondent banking, wire transfers, and reliance on third parties.

## ***Weighting and Conclusion***

86. **Recommendation 9 is rated compliant.**

## *Recommendation 10 – Customer due diligence*

87. This Recommendation (formerly R. 5) was rated ‘PC’ in the 3<sup>rd</sup> MER due to nine deficiencies concerning customer identification, on-going due diligence, determination of the natural person, verification of the legal status of legal arrangements and reporting obligations in case of inadequate identification. During the follow-up process the deficiencies were addressed by the enactment of the 2013 amendments to the POCA Regs. The changes for R. 10 are mainly related to greater specificity on measures to identify the beneficial ownership of customers that are legal persons or arrangements establishing a notion of “reasonable measures” and establishing a “step-by-step approach” to identify beneficial ownerships of legal persons. There are also new CDD measures to beneficiaries of life insurance policies.
88. **Criterion 10.1** - The requirement of this criterion is met by Reg. 16 of the POCA Regs.as stated in paragraph 18 of the 11<sup>th</sup> FUR. A similar requirement is contained in Regulation 16 of TPA.
89. **Criterion 10.2** – Regulations 6, 7 and 8 of the POCA Regs require all regulated businesses to obtain and verify the identity of all applicants for business relationships or one-off transactions above US\$250. The transaction verification procedures in Regulation 7(3)(b) of the POCA Regs requires that consideration be given to transactions carried out in a single operation or in several operations which appear to be linked. The requirements for all wire transfers as set out in regulation 9 are more stringent than the *de minimis* threshold requirements of R. 16. The designated threshold of US\$250 (Reg. 8(1)) is not applicable if there is a suspicion of ML in which case full identification and verification is required. Regulation 7(1) (c) stipulates that CDD is updated whenever there is any doubt about the veracity or adequacy of previously obtained customer information. Similar provisions are set out in regulations 4, 5 and 8 of the Terrorism Prevention (Reporting Entities) Regulations (TPR) covering TF.
90. **Criterion 10.3** – Regulation 7(1) of the POCA Regs requires all regulated businesses to obtain satisfactory evidence of identity and Regulation 13 requires verification of such identity from all applicants for business or one-off transactions. The definition of satisfactory evidence of identity as set out in Regulation 7(5) includes independent source documents which does not expressly exclude using reliable information. Regulation 5 of the TPR is similar to Regulation 7(1) of the POCA Regs and mirrors a similar requirement for both identification and verification of identity of the applicant for business. The TPA does not contain a definition of satisfactory evidence as in the case of the POCA Regs. Notwithstanding, the absence of such definition, in practice the standard of determining satisfactory evidence would equally apply for customer verification purposes. However, the methodology specifies that all requirements of Recommendation 10 be codified in law or other enforceable means so the missing element of verifying the customer’s identity using reliable identification data in the POCA as well as the lack of a definition of satisfactory evidence in the TPA are deficiencies.
91. **Criterion 10.4** – Regulation 11 of the POCA Regs requires regulated businesses to verify that any person purporting to act on behalf of a customer is so authorised and identified. As set out in regulation 11(3) (a) regulated businesses are only required to identify such persons, verification of such identification is not mandated as required in the criterion. Regulation 11(3)(b) requires the verification that the agent is authorised to act on behalf of the principal. Similar measures are outlined in regulation 11 of the TPR and the deficiency is that the agent’s identity is not required to be identified.
92. **Criterion 10.5** - Regulation 13 of the POCA Regs provides for the identification of persons who own or exercise effective control of a legal arrangement or person other than an individual or each director and shareholder holding more than 10 percent of the voting rights of a body corporate. Regulation

13(1)(c)(ii)(A) requires satisfactory evidence of identity for a person other than a natural person who exercises ultimate effective control over that person. It goes on to further explain at (B) that in the case of body corporate the relevant documentation includes evidence of incorporation and establishes the identity of each director and shareholder. Further, Regulation 13 speaks to establishing the identity of *inter alia* the person who exercises effective control of the legal arrangements (trust, settlement or other type of legal arrangement) and each beneficiary under the legal arrangement including the ultimate beneficial owners of the property concerned in the arrangement. In the case of a legal person where an individual who exercises ultimate control over the legal person cannot be identified, the identity of the senior manager who makes or implement decisions with respect to the activities of the legal person should be established. Also, the regulation stipulates that evidence of identity is satisfactory when the person obtaining the evidence is reasonably satisfied that the applicant is the person he claims to be. Additionally, Regulation 7 of the POCA Regs requires the verification of the applicant's identity. Similar requirements are contained in Regulations 5 and 13 of the TPA.

93. **Criterion 10.6** – Regulation 7(2)(a) of the POCA Regs require regulated businesses to have transaction verification procedures requiring measures to produce satisfactory evidence as to the purpose and intended nature of the business relationship or one-off transaction, which would include the understanding of the purpose and intended nature of the business relationship. Similar measures are outlined in regulation 6(1) (a) of the TPR.
94. **Criterion 10.7** – The provisions of regulations 7A(3) and 7(1) (c)(i) of the POCA Regs. requires regulated entities to carry out reasonable due diligence in the conduct of every transaction to ensure that it is consistent with its knowledge of the applicant for business, its business, risk profile and stated source of funds. Additionally, regulation 7(1)(c)(i) of the POCA Regs. requires customer information to be kept under review to ensure accuracy and is updated at least once every seven years during the course of the business relationship or at more frequent intervals as warranted by the risk profile of the business relationship. Similar provisions are contained in Regulation 5(b) and 6A of the TPR.
95. **Criterion 10.8** – Regulation 7A (3) requires a regulated business to carry out reasonable due diligence in the conduct of every transaction to ensure that the transaction is consistent with its knowledge of the applicant's trade, profession, risk profile and stated source of funds. Regulation 7(2) requires a regulated business to take such measures that will produce satisfactory evidence as to the purpose and intended nature of the business relationship. However, there is no requirement to understand the nature of the customer's business and its ownership and control structure.
96. **Criterion 10.9** – Regulation 7(1)(a) requires all regulated businesses to obtain satisfactory evidence of identity and Regulation 13 requires verification of such identity from all applicants for business or one –off transactions. (a) Regulation 13(1)(c)(iii)(C) of the POCA Regs *inter alia* requires regulated businesses in the case of a body corporate (other than a body corporate listed on a stock exchange) which is licensed or otherwise authorized under the laws of the jurisdiction in which the body corporate is registered to provide evidence of incorporation. It is common practice for this to be satisfied by a certification of incorporation which would have information/proof of the name and legal form of the company. The Authorities indicated that the carve out in Reg. 13(1)(c)(iii)(C) of the Regs allows regulated businesses to rely on the fact that a body corporate is listed on a recognized stock exchange without having to seek to establish the matters discussed in Regulation 13(1) (c).
97. **Criterion 10.10** – Regulation 13(1)(c)(ii) of the POCA Regs refers to a category of customer titled “a person other than an individual.” This term is not defined and can be interpreted to refer to all types of body

corporates as well as legal arrangements, settlements or trusts. The Regulation requires regulated businesses to identify the individuals who exercise ultimate effective control of this customer, or the senior manager who makes or implements decisions with respect to the activities of the “person other than an individual” must be identified. It gives the regulated entity an option. It does not meet the requirement of having to identify the natural person who ultimately has a controlling ownership interest in the legal person. Further Regulation 13(1)(c)(ii) of the POCA Regs requires regulated businesses in the case of a body corporate (other than a body corporate listed on a stock exchange) which is licensed or otherwise authorised under the laws of the jurisdiction in which the body corporate is registered to identify shareholders holding ten percent or more of the voting rights of a body corporate and the identification of the natural person who ultimately has controlling ownership interest in the body corporate or where the natural person exerting control through ownership cannot be identified, the requirement is to identify the natural person who holds the position of senior managing official who makes or implements decisions with respect to the activities of the corporate body. As indicated in the discussion on criterion 10.5, Regulation 7 requires the verification of the identity of the beneficial owners. As noted before, it only applies to a specific subset of body corporates and does not apply to all body corporates. Further, the (b) element, of identifying and taking reasonable measures to verify the identity of beneficial owners to the extent that there is doubt as to whether the person with the controlling ownership interest is the beneficial owner or where no natural person exerts control through ownership interest, the identity of the natural person exercising control or the legal person or arrangement through other means, is missing. The Authorities have cited Regulation 13(1)(c)(ii)(B) of the POCA Regs, which does not satisfy the requirement of the essential criteria which speaks to ‘**doubt**’ which is different from an inability to identify identifying the senior manager in place of the person with ultimate effective control which applies when the person who exercises ultimate effective control cannot be identified. The Assessors are of the view that element (c) of the criteria is not addressed in the legislation. There are similar deficiencies in the TPA.

98. **Criterion 10.11** – Section (i) of regulation 13(1) (c) of the POCA Regs requires regulated business for transactions involving a settlement, trust or other type of legal arrangement to identify 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.
99. **Criterion 10.12** – This criterion requires the conduct of CDD on the beneficiary of life insurance and other investment related insurance policies as soon as the beneficiary is identified or designated. The Authorities cited regulation 13(1)(c) of the POCA Regulations which does not address the requirements of the criterion.
100. **Criterion 10.13** – This criterion requires that financial institutions consider the beneficiary of a life insurance policy as a relevant risk factor in determining whether EDD is applicable. The Authorities cited regulations 13(1)(c)(i)(A) & (c)(iii)(A) of the POCA Regulations which do not address the requirements of the criterion.
101. **Criterion 10.14** – Regulation 7(1)(a) of the POCA Regulations which require businesses to identify and verify the identity of applicants for business relationships or one-off transactions as soon as is practicable after contact is first made. Regulation 13(2) stipulates that the period for obtaining satisfactory evidence of identity of applicants for business depends on the nature of the business relationship or one-off transaction, the geographical locations of the parties and whether it is practical to obtain the evidence before commitments are entered into or before any money is transferred. The obligation for verification as soon as practicable would satisfy the requirement for FIs to verify the identity of the customer and beneficial owner

before or during the course of establishing a business relationship or conducting occasional transactions. Regulation 13(2) provides for all the circumstances to be taken into account, which *inter alia* includes the nature of the business relationship or the one off transactions (i.e. the risk in doing the transaction) and whether it is practical to obtain the evidence before commitments before any money is transferred (i.e. so as not to interrupt the normal conduct of business), when determining the period within which satisfactory evidence of identity is to be obtained. It however does not require that the ML/TF is managed. Further, there is no requirement which permits the completion of verification after the establishment of the business relationship. There are similar requirements in the TPA.

102. **Criterion 10.15** - Requires financial institutions to adopt risk management procedures concerning the conditions under which a customer may utilise the business relationship prior to verification. The Authorities cited regulation 13(2) of the POCA Regs which requires that all circumstances shall be taken into account when determining the period within which satisfactory evidence of identity of the applicant for business has to be obtained. Such circumstances include whether it is practical to obtain the evidence before commitments are entered into or before any money is transferred. Similar requirements are contained in Section 13(2) of the TPA. The provisions do not specify the conditions under which the account may be utilised prior to the receipt of the satisfactory evidence of identity and so does not address the requirements of the criterion. However, the methodology specifies that all requirements of Recommendation 10 be codified in law or other enforceable means so the missing element is considered a deficiency in the law.
103. **Criterion 10.16** – Regulation 7(1)(c) (of the 2013 amendments to the POCA Regs.) requires customer information to be kept under review with a view to ensuring its accuracy and that it is updated at least once in every seven years or more frequently as warranted by the risk profile of the business relationship. Customer information is also required to be updated whenever there is any doubt about the veracity or adequacy of the previously obtained customer information. Further, Regulation 7A(3)(b) of the POCA Reg. requires *inter alia* the conduct of reasonable due diligence of every transaction so as to verify the identity of the applicant for business. This would allow for a frequency that is more often than seven years. The equivalent provisions are Regulation 5(b) of the TP (Reporting Entities) Regulations, 2010 and amended regulation 5(b) in the Amendment Regulations, 2013.
104. **Criterion 10.17** – Regulation 7A(4) of the POCA Regs requires businesses in the regulated sector to carry out enhanced due diligence on business relationships or one-off transactions which are determined to be high-risk. Regulation 7A(2) identifies high risk category of relationships to include PEPs, a person not ordinarily resident in Jamaica, a trustee, a company having nominee shareholders or shares held in bearer form or any other category or class or person as the Supervisory Authority may specify by notice published in the *Gazette*. Additional categories of persons have not been specified by any Supervisory Authorities. The equivalent requirements are contained in regulation 6A(4) of the Terrorism Prevention (Reporting Entities) Regulations, (Amendment), 2013.
105. **Criterion 10.18** – Regulation 8 of the POCA Regs and Regulation 8 of the TPR deal with the *de minimis* limit below which CDD is not required for transactions. The exemption from CDD for the *de minimis* limit is not applicable if there is suspicion of ML or TF. In both instances the lower risks have not been identified and provisions do not allow for simplified due diligence where lower risks have been identified by either the country or the financial institution. Regulation 8 does not satisfy the requirements of the criteria.
106. **Criterion 10.19** – Regulation 7(1)(b) of the POCA Regs requires regulated businesses not to open an account, commence a business relationship or carry out a one-off transaction if they are unable to verify an

applicant's identity. Regulation 7(1)(d) requires the termination of a business relationship when customer information cannot be updated. Both provisions require the regulated business to consider the submission of an STR regarding the customer. The regulations regarding an applicant for a business relationship or one-off transaction is limited to inability to verify an applicant's identity rather than comply with relevant CDD measures as required by the criterion. The definition of "customer information" includes the customer's name, address etc. and where applicable the matters reflected in regulation 13(c). Whilst the definition is not very prescriptive beyond the reflection of identification details and the wording does suggest that the parameters of that definition extend beyond the matter of customer, the Assessors are of the view that the *eiusdem generis* rule would not permit the other CDD measures to be included as part of the definition of customer information which principally deal with matters of identification. The transaction verification procedures which include evidence as to the purpose and intended nature of the business relationship or one of transaction as detailed in Regulation 7(2) do not appear to be part of the identity and verification of identity requirements prescribed in Regulation 7(1). Section 5 and 13 of the TPA contain a similar deficiency.

107. **Criterion 10.20** – Sections 100(4)(c) and (5)(b) of the POCA deal with the need for a required disclosure before or after proceeding with a prohibited act i.e., the offence of money laundering. Additionally, the BOJ AML/CFT Guidance Notes as referenced advises that where circumstances do not allow for the CDD process to be engaged without a tipping off situation occurring, then the transaction should be conducted and the required disclosure made to the designated authority. However, neither the POCA nor the BOJ AML/CFT Guidance Notes treats with the element of the criterion which specifically requires where a financial institution forms a suspicion of ML/TF and they reasonably believe that proceeding with the CDD process will tip-off the customer that FIs be allowed to not pursue the CDD process and submit a STR. There is no such requirement in either the TPA or its Regs.

### ***Weighting and Conclusion***

108. The level of compliance of the above criteria vary with 8 criteria being met, 5 partially met, 3 largely met and 4 not being met. Significant criteria concerning when CDD is required and specific CDD measures for all customers (10.3 , 10.10, 10.18 ,10.19 and 10.20) have deficiencies and are all partially met. Further, there is non- compliance with criterion 10.4, 10.12, 10.13, 10.15 and 10. 18. **Recommendation 10 is rated partially compliant.**

### ***Recommendation 11 – Record-keeping***

109. This Recommendation (formerly R. 10) was rated 'PC' in the 3<sup>rd</sup> MER due to lack of transaction record keeping requirements for exchange bureaux and the securities industry, no requirement for transaction records to be kept longer than five years on the instructions of a competent authority or for customer and transaction records to be available on a timely basis to domestic authorities. As noted in paragraph 33 of the 11<sup>th</sup> FUR the enactment of the POCA in 2007 and its Regulations resulted in all but one of the deficiencies being fully addressed. The deficiency regarding the no requirement for customer and transaction records to be available on a timely basis to domestic authorities has been partially met by the use of disclosure orders. This Recommendation has the additional requirement for records of any analysis undertaken of an account (e.g. inquiries to establish the background and purpose of complex, unusual large transactions).

110. **Criterion 11.1** – Regulation 6(1)(a)(ii) and Reg. 14 of the POCA Regs requires all regulated businesses which includes all FIs to maintain all necessary transaction and identification records for a period of seven years commencing on the date after the completion of the transaction or the business relationship whichever occurs later.
111. **Criterion 11.2** - As mentioned above Regulation 6(1)(a)(ii) and Reg. 14 of the POCA Regs provide for the keeping of all identification and transaction records for a period of seven years commencing on the date after the completion of the transaction or the business relationship whichever occurs later. These provisions do not specifically include account files, business correspondence and results of any analysis undertaken as required.
112. **Criterion 11.3** – Regulation 14(4) of the POCA Regs requires that transaction records be kept to facilitate the reconstruction of the transactions.
113. **Criterion 11.4** – Regulation 14(2), (4) and (5) of the POCA Regs amended 2013 mandates that transaction records are available to the designated authority or competent authority as required by the POCA, subsidiary regulations and any other law. Regulation 14(4) and (5) do not specify the swift provision of the information to the designated authority, however it does state that the information is to be provided as may be required.

### ***Weighting and Conclusion***

114. While the main requirement for the maintenance of identification and transactions records is in place, mandated ease of accessibility is limited to transaction records and there is no requirement for record-keeping of account files, business correspondence or the results of any analysis undertaken. Additionally, the Regulations do not specify the swift provision of information to the designated authority. **Recommendation 11 is rated partially compliant.**

### ***Recommendation 12 – Politically exposed persons***

115. Jamaica was rated ‘LC’ for R.12 (formerly R.6) in its 3<sup>rd</sup> MER. The lone deficiency identified at the time was that the Guidance notes did not fully comply with the requirements for ascertaining the source of funds and wealth for PEPs. During the follow-up process the BOJ issued new guidance notes to address this weakness. R.12 incorporates the requirement of implementing measures to determine whether a client falls into the two new categories of PEPs: domestic PEPs (though these were already mentioned in additional elements) or PEPs of international organizations. Financial institutions are required to apply additional CDD on a risk-sensitive basis.
116. **Criterion 12.1** – (a) This is met at Regulation 7A(1) of the POCA Regs whereby regulated businesses are required to establish risk profiles regarding their business relationships in order to determine which of such relationships are high risk however, such determination is limited to the applicant for business and does not address risk assessment of the beneficial owner. At Regulation 7A(2), relationships or transactions with PEPs are deemed to be high risk. (b) According to Section 7A (4) high risk relationships require the enhanced due diligence procedures, found at 7A(5). These include the requirement that senior management approval is needed to commence or continue the business relationship. (c) Measures requiring verification of the source of funds or source of wealth of all other persons concerned in the business relationship is found at 7A (5)(b). Here however, regulated businesses are given an option to apply either one of the

measures. (d) The requirement to conduct ongoing enhanced monitoring throughout the course of the business relationship is found at 7A (5)(c).

117. **Criterion 12.2** – (a) Jamaica has prescribed three (3) categories of individuals as PEPs. They are :(i) individuals in relation to any State, who carry out prominent public functions; (ii). Individuals who hold or have held a senior management position in an international organisation; and (iii). An individual who is a relative or close associate to a person in (i) or (ii) above. This categorization is found at Regulation 7A(6)(a) – (c) and makes no differentiation between domestic and foreign PEPs. Consequently, the measures at 7A (5)(b) in relation to ‘all other persons concerned in the business relationship’ are relevant. (b) The requirements at 12.1 (b) to (d) above are equally applicable to all PEPs as domestic PEPs are treated the same as foreign PEPs and considered high risk.
118. **Criterion 12.3** - Regulation 7A (6)(c) provides that PEP obligations apply to an individual who is a relative or a close associate of a person carrying out prominent public functions and an individual who holds or has held a senior management position in an international organisation. The term relative is defined so as to include a spouse, child, step child, adopted child, spouse of a child, parent, brother or sister, while close associate is defined as a business partner or an individual associated in any other form in a common commercial enterprise with the identified PEP.
119. **Criterion 12.4** - No evidence was provided to indicate that financial institutions are required to determine whether beneficiaries or BO of beneficiaries of life insurance policies are PEPs and to conduct the necessary EDD before the payout of policy proceeds.

### ***Weighting and conclusions***

120. All the identified categories of PEPs and their close associates and relatives are covered by the requirements. All PEPs whether local or foreign are classified as high risk and enhanced due diligence measures are required to be applied. Further, risk profiles established in order to determine which of such relationships are high risk do not address risk assessment of the beneficial owner. Additionally, FIs are permitted to apply either source of funds or source of wealth verification, and not both, as required by the Standards. The specific PEP requirements for the beneficiaries of life insurance policies have not been addressed neither is there any requirement for senior management approval or enhanced scrutiny where higher risks relating to such policies are identified. **Recommendation 12 is rated partially compliant.**

### ***Recommendation 13 – Correspondent banking***

121. The Recommendation (formerly R. 7) was rated ‘LC’ in the 3<sup>rd</sup> MER since FIs were not required to ascertain whether respondent institutions had been subject to a ML/FT investigation or regulatory action. This deficiency was addressed during the follow-up process by revision of paragraph 82 of the BOJ (AML/CFT) Guidance Notes which expressly require FIs to ascertain whether respondent institutions had been subject to ML/TF prosecutions or investigations. The BOJ (AML/CFT) Guidance Notes were accepted as enforceable means during the 3<sup>rd</sup> MER. This Recommendation includes requirements on FIs in relation to shell banks (former R. 18).
122. **Criterion 13.1** - Paragraph 82 of the BOJ (AML/CFT) Guidance Notes incorporates the requirements of the criterion. It specifies that financial institutions must apply appropriate due diligence to correspondent banking relationships by gathering sufficient information and performing enhanced due diligence processes on correspondent banks prior to establishing such relationships which should at a minimum include obtaining authenticated/certified copies of Certificates of Incorporation and Articles of Association (and any other company documents to show registration of the institution within its identified jurisdiction of

residence); Obtaining authenticated/certified copies of banking licences or similar authorization documents, as well as any additional licences needed to deal in foreign exchange; Determining the supervisory authority which has oversight responsibility for the respondent bank; Determining the ownership of the financial institution; Obtaining details of respondent bank's board and management composition; Determining the location and major activities of the financial institution; Obtaining details regarding the group structure within which the respondent bank may fall, as well as any subsidiaries it may have; Obtaining proof of its years of operation, along with access to its audited financial statements (5 years if possible); Information as to its external auditors; Ascertaining whether the bank has established and implemented sound customer due diligence, anti-money laundering and anti-terrorism financing policies and strategies and appointed a Compliance Officer (at senior management level), inclusive of obtaining a copy of its AML/CFT policy and guidelines; Ascertaining whether the correspondent bank has in the previous 7 years (from the date of the commencement of the business relationship or negotiations therefore), been the subject of or is currently subject to any regulatory action or any AML/CFT prosecutions or investigations. It indicates that a primary source from which this information can be sought and ascertained include the Banking Regulatory Authority for the jurisdiction in which the correspondent bank is resident.

123. **Criterion 13.2** – With regard to “payable-through accounts” paragraph 86 of the BOJ (AML/CFT) Guidance Notes refers to the criteria for introduced business in paragraph 72. The criteria requiring introducers/respondent institutions to adhere to the minimum KYC standards set out in the guidance notes and FIs to be able to verify the due diligence procedures undertaken by the introducer/respondent institution at any stage and the reliability of the system to verify the identity of the customer would allow for FIs to satisfy themselves that the respondent bank has performed CDD obligations on its customers that have direct access to the accounts of the correspondent bank. Paragraph 72 also requires FIs to obtain all the relevant identification data and other documentation pertaining to a customer's identification from introducers/respondent banks with regard to “payable-through accounts”.
124. **Criterion 13.3** – Paragraphs 82A and 84 of the BOJ (AML/CFT) Guidance Notes incorporate the requirements of the criterion. Paragraph 84 requires financial institutions to ensure that correspondent relationships are not established or continued with shell banks. Paragraph 82A requires financial institutions to satisfy themselves that the foreign respondent banks do not permit their accounts to be used by shell banks and stipulates certain indicators which financial institutions should pay attention to.

### ***Weighting and Conclusion***

125. **Recommendation 13 is rated compliant.**

### ***Recommendation 14 – Money or value transfer services***

126. This Recommendation formerly SR. VI was rated ‘LC’ in the 3<sup>rd</sup> MER since the regulatory regime for remittance companies was due to come into effect by July 2005. As indicated in the follow-up process a regulatory regime commenced in July 2005 with remittance companies subject to the direct supervision of the BOJ. The new element in this Recommendation is the requirement to actively identify and sanction unlicensed or unregistered MVTs providers.
127. **Criterion 14.1** – Section 22G (1) of the Bank of Jamaica Act (BOJ Act) requires the approval of the Minister of Finance for the operation of a money transfer and remittance agency or agent. Licensing requirements are set out in the Operating Directions for Remittance Companies issued by the BOJ.

128. **Criterion 14.2** - Section 22D of the BOJ Act imposes a penalty on summary conviction of a fine not more than US\$431 and/or imprisonment for a term not more than one year and on conviction a fine not more than US\$862 and/or imprisonment for not more than 5 years for performing the activities of a money transfer and remittance agency or agent without a licence. Further, section 22 D(2) provides that a Court may if it thinks fit, in relation to an offence involving any foreign currency or foreign currency instrument, order the foreign currency or foreign currency instrument to be forfeited and impose a larger fine up to treble the amount or value of the currency or instrument as the case may be. However the circumstances under which a Court may exercise this power is not circumscribed in law and therefore the specific circumstances under which forfeiture and a larger fine can be administered for a breach is uncertain. The monetary sanctions are low and are not dissuasive. Up-to-date listings of all licensees are available on the BOJ's website. In addition the public is notified, via an advertisement in the daily newspapers, where a previously approved entity is no longer in operation. Where a licensee remains in operation but ceases to offer service at a specific location the media release specifically states this. Persons who have information regarding illegal operators are advised by the BOJ to notify the law enforcement authorities such that the matter may be investigated. The BOJ has no remit or powers to sanction unlicensed entities since it does not have the authority to enquire into the activities of unlicensed remitters.
129. **Criterion 14.3** - The BOJ was delegated to regulate remittance services by Instrument of Delegation dated February 11, 2005. The designation from the Minister of National Security conferring the status of Competent Authority for *inter alia* AML/CFT compliance was in 2007. Money transfer and remittance agencies and agents are required by Direction 12.4 of the Operating Directions to comply with AML/CFT laws. Additionally paragraphs 7 and 8 of the BOJ AML/CFT Guidance Notes stipulates that BOJ will take appropriate sanctions for any violation of AML/CFT laws by financial institutions including MVTs providers and on-site examinations will include an AML/CFT component.
130. **Criterion 14.4** – As already indicated section 22G(1) of the BOJ Act requires the approval of the Minister of Finance for the operation of a money transfer and remittance agent. Licensing is carried out by the BOJ.
131. **Criterion 14.5** – Direction 11.2 of the Operating Directions requires operators and their agents to comply with all AML/CFT laws. However, all locations, including sub-agent operated locations are subject to annual on-site inspections and in-house monitoring of their operations.
132. Direction 14.2 of the Operating Directions requires Operators to ensure that their Sub-agents operate in compliance with the Directions outlined in the approval, as the Operator will be subject to the sanctions described under Direction 14.1 for the breach or failure of its Sub-agents, and in addition to the sanctions outlined in Direction 14.1, the Bank of Jamaica may also require the Operator to sever the relationship it has with the Sub-agent.

### ***Weighting and Conclusion***

133. MVTs providers are required to be licenced and are under the supervisory regime of the BOJ. The deficiency identified is the new element of the Recommendation requiring active identification and sanctioning of unlicensed or unregistered MVTs providers. **Recommendation 14 is rated partially compliant.**

### ***Recommendation 15 – New technologies***

134. This Recommendation (formerly R. 8) was rated ‘PC’ in the 3<sup>rd</sup> MER. The deficiencies were the absence of a requirement for licensees to be cognizant of the misuse of technological advancements and have policies and procedures to address any specific risks associated with non-face-to-face business relationships or transactions in respect of non BOJ regulated institutions. These measures were met by the enactment of the POCA Regulations. More specifically, Reg. 6(1)(iv), established the obligation of implementing procedures to assess the risk of ML arising from its products and business practices (whether new or existing) and developing technologies that are applied or used in such products and practices. R.15 focuses on preventing risks associated with all new or developing technologies and new products and business practices and sets out a new obligation for countries to identify and assess the risks.
135. **Criterion 15.1** - Jamaica met this criterion as indicated in the 11<sup>th</sup> FUR for the 3<sup>rd</sup> Round. Under POCA Regs amended in 2013, the regulated businesses are required to implement “procedures to assess the risk of ML arising from its products and business practices (whether new or existing) and developing technologies applied or used in such products or practices”.
136. **Criterion 15.2** - (a) and (b) FIs are required to assess their risks by emerging technologies and design customer identification procedures with regard to such risks in accordance with the BOJ Guidance Notes. POCA Regs amended in 2013, establish that Regulated businesses are also precluded from beginning or continuing any product or practice without implementing measures to identify, manage or mitigate those risks. According to the “Standard of Best Practice for Effective Corporate Governance of Deposit-Taking Entities” para. 62; FIs should develop a risk management framework which should include approved policies and procedures to govern risk management in order to ensure that new products and major risk initiatives are approved by the board and/or appropriate board committee. Additionally, para. 75(d)(iv) sets out that institutions should provide the Supervisory Authority with information about the commencing of a new type of product or service prior to notification of/sign-off. The FSC Guidelines at page 44 also reflect that FIs are required to assess their risks by emerging technologies and design customer identification procedures with regard to such risks.

### ***Weighting and conclusion***

137. **Recommendation 15 is rated compliant.**

### ***Recommendation 16 – Wire transfers***

138. This Recommendation (formerly SR.VII) was rated ‘PC’ in the 3<sup>rd</sup> MER since FIs were not required to include full originator information accompanying cross border wire transfers. Deficiencies in requirements for ordering financial institutions regarding domestic wire transfers, non-routine transactions, beneficiary financial institutions and lack of measures to effectively monitor compliance with SR.VII were identified. The deficiencies were dealt with in the POC (MLP) Regulations and the BOJ (AML/CFT) Guidance Notes. The Recommendation includes new requirements for transfers below the threshold and for ordering, intermediary and beneficiary FIs and links to R. 6 and R. 20.
139. **Criterion 16.1** – Regulation 9 of the POC (MLP) Regulations requires all regulated businesses that carry out wire transfers of over US\$1,000 (or its equivalent) to obtain the correct name, address, account number if any of the originator and beneficiary of the wire transfer and the reference number assigned to the

transaction. Additional requirements include a national identification number, the customer identification number or the date and place of birth of the person who places the order for the transfer and the holder of the account that is the source from which the funds are transferred.

140. **Criterion 16.2** – The above requirements are applicable to all wire transfers above US\$1,000 and will therefore include wire transfers bundled in a batch file for transmission.
141. **Criterion 16.3** - Under regulation 9 of the POC (MLP) Regulations all FIs are required to obtain for all wire transfers the correct name, address, account number if any of the originator and beneficiary of the wire transfer and the reference number assigned to the transaction.
142. **Criterion 16.4** – There is no specific requirement for FIs to verify the information in criteria 16.3 when there is a suspicion of ML/TF obligations under the POC (MLP) Regulations. However regulation 8(1) of the POC (MLP) regulations requires that all transactions be verified once there is a suspicion. A similar requirement is stipulated in regulation 8(1) of the TP (Reporting Entities) Regulations with regard to TF suspicion.
143. **Criterion 16.5** - Regulation 9 of the POC (MLP) Regulations mandates that all wire transfers i.e. domestic wire transfers are required to include originator information through the payment process and chain.
144. **Criterion 16.6** – As already indicated regulation 9 of the POC (MLP) Regulations requires originator information to accompany all domestic wire transfers. Additionally Regulation 9(2B) requires the ordering FI to be able to make available to the requesting beneficiary FI originator information within three days. Additionally as indicated in criterion 11.4 transaction records are available to law enforcement authorities.
145. **Criterion 16.7** – As indicated in criterion 11.1 all transactions records are required to be maintained for at least seven years after the date of a transaction.
146. **Criterion 16.8** – Regulation 9(3) of the POC(MLP)Regs makes it an offence for anyone who breaches the requirements of this regulation. There is no specific prohibition on executing wire transfers where criteria 16.1 to 16.7 cannot be met. However, where a financial institution is unable to comply with the requirements contained in Regulation 9(1), 2(A) and 2(B) it cannot proceed with the wire transfer without breaking the law and upon conviction being subject to criminal penalty as well as imprisonment.
147. **Criterion 16.9** - The obligations for all wire transfers as set out in regulation 9 of the POC (MLP) Regulations covers all regulated businesses which conduct wire transfers and requires that they receive and include all relevant information throughout the payment process and chain, thereby including intermediary FIs.
148. **Criterion 16.10** - As already indicated the above mentioned wire transfer and associated record-keeping requirements are applicable to all wire transfers and cover the requirements of the criterion.
149. **Criterion 16.11** – The obligation for intermediary FIs to receive and include all relevant information on wire transfers throughout the payment process and chain as set out in regulation 9 of the POC (MLP) Regulations would of necessity required them to be able to identify those wire transfers that lack required originator or beneficiary information.
150. **Criterion 16.12** – There are no requirements for intermediary FIs to have risk-based policies and procedures to determine when to execute, reject or suspend a wire transfer lacking originator or beneficiary information or the appropriate follow-up action. Paragraph 92B(ii) of the BOJ AML/CFT Guidance Notes in dealing with transfers lacking complete originator information stipulates that it is the responsibility of the FI to

ensure that it can legally terminate the transaction or to delay acting on the transaction until the requisite information has been received. This measure only applies to transfers not accompanied by complete originator information and does not treat with transfers not accompanied by complete beneficiary information.

151. **Criterion 16.13** - The obligation for beneficiary FIs to receive all relevant information on wire transfers throughout the payment process and chain as set out in regulation 9 of the POC (MLP) Regulations would of necessity required them to be able to identify those wire transfers that lack required originator or beneficiary information.
152. **Criterion 16.14** – Regulation 7(1)(a)(i) & (ii) and regulation 9(2A) & (2B) of the POC (MLP) Regulations as cited by the authorities for this criterion deal with CDD at the beginning of a transaction which would apply to the ordering FI in a wire transfer. Regulation 9(1) of POC Regs requires all persons involved in a wire transfer to receive accurate and relevant information throughout the payment process and chain. Regulation 9(2) defines the meaning of “persons involved” to include the sender as well as every recipient of the funds transferred. Additionally, Regulation 9(2A) clarifies that the information required in Regulation 9(1) includes identification information. However, there is no requirement for the beneficiary FI to verify the identity of the beneficiary if the identity has not been previously verified and the maintenance of such records as required by Recommendation 11.
153. **Criterion 16.15** – Paragraph 92B of the BOJ Guidance Notes only address the issue of originator information as it pertains to financial institutions. Further, there is no requirement for beneficiary financial institutions to have risk based policies and procedures for determining whether to execute, reject or suspend a wire transfer lacking required originator or beneficiary information and appropriate follow-up action.
154. **Criterion 16.16** – MVTS providers are regulated businesses as set out in the Fourth Schedule of the POCA and are therefore subject to the requirements for wire transfers as outlined in the POC (MLP) Regulations.
155. **Criterion 16.17** - Jamaica does not have any MVTS providers that control both the ordering and beneficiary side of a wire transfer. There are no specific provisions which require the filing of a STR in any other country where the MVTS provider controls both the sending and receiving end of the transfer.
156. **Criterion 16.18** – The obligations as set out under the analysis for R.6 is also applicable to FIs processing wire transfers and accordingly means that there are no measures that allow Jamaica to adequately deal with the measures as set out in the UNSCRs 1267, 1373 and their successor resolutions. R. 6 was rated non-compliant.

### **Weighting and Conclusion**

157. While a substantial number of the criteria have been met, the outstanding criteria deal with the lack of risk based policies and procedures for determining when to execute, reject or suspend a wire transfer. Furthermore, the requirement for information on the originator and the beneficiary as well as, appropriate follow-up action has not been addressed. Additionally, the inability to freeze and comply with prohibitions from conducting transactions with designated persons and entities under UNSCR 1267 and 1373 are deficiencies. **Recommendation 16 is rated largely compliant.**

### ***Recommendation 17 – Reliance on third parties***

158. This Recommendation (formerly R. 9) was rated ‘LC’ due to the lack of FSC regulated FIs being required to obtain the necessary information from third parties concerning certain elements of the CDD process and assuming the ultimate responsibility for CDD for introduced business. As indicated during the follow-up process the FSC Guidelines were revised to explicitly include the above mentioned deficiency. The new requirements of the Recommendation include a clear delineation of ultimate responsibility remaining with the FI and a more flexible approach to intra-group reliance.
159. **Criterion 17.1** - (a) Regulation 12(1), (1A) and (2) of the POCA Regs allows FIs to rely on third-party FIs and DNFIs/DNFBPs (Reg. 12(2)) to perform identification procedures required under regulations 7 and 11. The referenced procedures include customer identification, beneficial ownership identification, understanding the nature of the business and agent identification. Information required by the referenced procedures can be either obtained immediately or without delay upon request by the FI. (Reg. 12(1A) (a)) This measure provides for an option while the criterion requires that the information regarding the identity of the customer and beneficial owner as well as the understanding of the nature of the business be immediately obtained. (b) Regulation 12(1A) requires FIs to take steps to satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements will be made available from the third party upon request without delay. (c) There is a requirement for the FI to satisfy itself that the introducing institution is regulated and supervised (Reg. 12(2)(a)) this requirement is specific to local FIs and DNFIs/DNFBPs (the definition of regulated business is limited only to FIs in Jamaica). Further Regulation 11(6) provides for the agent where being based or incorporated, or formed under the laws of a country in which there is in force at least AML laws equivalent to those set out at Part V of the POCA; and the person would be a regulated business if that person was situated in Jamaica and that person acts in the course of a business in relation to which a foreign regulatory authority exercises regulatory functions and controls. Consequently the measure includes foreign regulated FIs. Finally, Paragraph 72 of the BOJ Guidance Notes and section 4 on cases requiring third party evidentiary support of the FSC AML/CFT Guidelines stipulate that the ultimate responsibility for CDD measures should remain with the FI relying on the third party.
160. **Criterion 17.2** – Regulations 11 and 12 of the POCA Regs deal with requirements pertaining to agents whether based or incorporated, or formed under the laws of a country in which there is in force at least AML laws equivalent to those set out at Part V of the POCA; and the person would be a regulated business if that person was situated in Jamaica and that person acts in the course of a business in relation to which a foreign regulatory authority exercises regulatory functions and controls. Additionally, the BOJ and FSC issue notifications, of FATF’s and CFATF’s lists of jurisdictions with strategic AML/CFT deficiencies, to their respective regulated entities. Regulation 7A of the POCA Regs requires the establishment of a risk profile for all business relationships and Regulation 13(2) of the POCA Regs *inter alia* requires that all circumstances including the geographical locations of the parties be taken into account when determining the period in which satisfactory evidence of identity has to be obtained. Further Regulation 7A(4) requires that EDD procedures be carried out where a business relationship or one-off transaction is determined to be high risk. Regulations 6A, 11 and 13 of the TPA contain similar provisions.
161. **Criterion 17.3** – (a) Regulation 5(2)(e) of the POCA extends AML requirements to members of financial groups and permits the disclosure of information by each member company to other companies within the group other than information which is protected from disclosure under the POCA or any other law. Regulation 4 of the TPA requires reporting entities to establish certain procedures including those for

identification, record keeping and internal reporting. The definition of reporting entity *inter alia* means ‘a person, group etc. which includes foreign companies in respect of their business in Jamaica relating to banking, securities, insurance advice or trusts, financial institutions and any entity designated by the Minister’. It is unclear whether group connotes the same meaning as that in Regulation 5(2)(e) of the POCA and whether the TPA and its Regs apply to members of a financial group. Further there is no provision which permits the sharing of information by each member company to companies within the group. Nonetheless, financial institutions which are members of a financial group which are domiciled in Jamaica will be required to comply on an individual basis with the requirements of TPA and its Regs.(b) Amendments to the Banking Act and the Financial Institutions Act enabled the BOJ to require deposit taking institutions (DTI) which are part of a group and at least one member of that group is not a bank or other regulated or supervised financial institution to effect a restructuring such that the ownership of the DTI is held directly by a financial holding company which does not own other companies within the group unless those other companies are regulated or supervised financial institutions. While restructurings were effected and a number of financial groups were established, consolidated supervision could not be fully implemented because the Banking Services Act is yet to be enacted. The dedicated AML/CFT Unit of the BOJ commenced the conduct of consolidated AML/CFT examinations in 2015. In the case of the FSC, it does not appear that consolidated AML/CFT examinations have been conducted. (c) As indicated in the discussion of criteria 17.2, the same requirements on higher country risk are applicable for third party reliance by FIs within the same financial group.

### ***Weighting and Conclusion***

162. There are gaps with part of the requirement of the main criterion with regard to immediately obtaining the identity of the customer and beneficial owner as well as the understanding of the nature of the business be immediately obtained. Further, there are several deficiencies as noted above with respect to group level supervision of AML/CFT compliance programmes by the BOJ and FSC. **Recommendation 17 is rated partially compliant.**

### ***Recommendation 18 – Internal controls and foreign branches and subsidiaries***

163. Recommendation 18 is a combination of (formerly R. 15 and 22). Former R. 15 was rated ‘LC’ in the 3<sup>rd</sup> MER since assessment of effectiveness was not possible due to the recent enactment of CFT measures and the need to issue specific CFT guidance particularly to FSC regulated institutions. Former R. 22 was rated ‘LC’ due to the need for supervisory authorities to test compliance with requirements of R. 22 to assess effective implementation and no requirement for FIs to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures. The requirement for the issuance of specific CFT guidance particularly to FSC regulated institutions with regard to R. 15 was addressed in the BOJ (AML/CFT) Guidance Notes and the FSC AML/CFT Guidelines. With regard to R. 22, the outstanding requirement for FIs was dealt with in the POCA Regs and the TPR. Recommendation 18 now includes an additional requirement of an independent audit function for internal controls and financial group AML/CFT programmes
164. **Criterion 18.1** – Regulations 5(1), (2) and (3) of the POCA Regs requires regulated businesses to implement policies, procedures and controls for the prevention and detection of ML, to include procedures to ensure high standards of integrity of employees, programmes for on-going training of employees, arrangements for an independent audit to test implementation of the aforementioned and nomination of a management officer to be responsible for the implementation of the above mentioned policies, procedures and controls

including the reporting of suspicious transactions. Similar provisions are contained in Section 18 of the TPA. The above provisions do not specify that the policies, procedures and controls have regard to the ML risks and size of the business. Paragraph 9 of section II part H of the FSC Guideline states that compliance requires risk review and paragraph 4 of section III part M speaks to establishing a risk profile to determine which transactions or relationships are high risk and there is no mention of having regard to ML/TF risk and the size of the business.

165. **Criterion 18.2** – Regulation 5(2)(e) of the POC (MLP) Regulations requires regulated businesses as a part of a group of companies to implement group wide AML/CFT programmes, policies, procedures and controls. Additionally, the Fourth Schedule to the POCA requires an entity which has corporate responsibility for the development and implementation of group wide AML/CFT policies and procedures for the group of companies of which the entity forms a part, is also a regulated business under the POCA. There is no similar provision to Regulation 5(2)(e) of the MLP Regulations in the TPA which requires financial groups to implement group-wide programmes against TF. Although the provision permits the disclosure of information by each member company to other companies within the group, information which is protected from disclosure under POCA or any other law cannot be shared. Additionally, there are no explicit requirements which (i) provide for policies and procedures for sharing of information for the purposes of CDD and AML/CFT risk management; (ii) the provision at group level for access to account and transaction information from branches and subsidiaries; (iii) the implementation of measures to ensure safeguards of the confidentiality and use of information exchanged.
166. **Criterion 18.3** – Regulation 18 of the POCA Regs requires regulated businesses to ensure that their foreign branches and subsidiaries conform to the AML legal obligations in Jamaica or to the higher standard where there is a difference in applicable requirements of Jamaica and the host country. Additionally where foreign branches and subsidiaries are unable to conform to the standard above, the regulated business is required to inform the competent authority designated with regulating their compliance with the ML obligations. The above provision does not require the application of appropriate additional measures to manage the ML risks. Similar requirements are set out in regulation 18 of the TPR with regard to the CFT requirements of the TPA and the TPR. Additionally the same concern about the lack of application of appropriate additional measures to manage the relevant TF risks is applicable. Additionally, Paragraph 4 of the BOJ Guidance Notes indicates that a financial institution is required to assess the AML/CFT regime existing in any jurisdiction in which its branches or subsidiaries operate and ensure that subsidiaries comply with the Jamaican laws if these are the more effective requirements, and that such initiatives must form a part of the group risk management initiatives that are mandated by virtue of the consolidated supervisory provisions under the Banking Act, Financial Institutions Act and Building Societies Act.

### ***Weighting and Conclusion***

167. The criteria regarding policies and internal controls, foreign branches and subsidiaries have several deficiencies. There are gaps since provisions do not specify that the policies, procedures and controls have regard to the ML risks and size of the business. Further, there is no requirement for group wide TF programmes as well as specific requirements which provide for policies and procedures for sharing of information for the purposes of CDD and AML/CFT risk management; (ii) the provision at group level for access to account and transaction information from branches and subsidiaries; (iii) the implementation of measures to ensure safeguards of the confidentiality and use of information exchanged. Additionally there are no measures which require financial groups to apply appropriate additional measures to manage ML/TF

risks and inform home supervisor where the host country does not permit the proper implementation of AML/CFT measures consistent with the home country requirements. **Recommendation 18 is rated partially compliant.**

### ***Recommendation 19 – Higher-risk countries***

168. This Recommendation (formerly R 21) was rated ‘PC’ in the 3<sup>rd</sup> Round MER and the level of compliance was improved towards the end of the 3<sup>rd</sup> Round follow up process. Section 7A of the amendment to the POCA Regs and section 94(b) resulted in substantial compliance with this Recommendation. The only outstanding issue was the requirement to have the written findings on unusual transactions available for auditors. R. 19 requires the application of enhanced due diligence (EDD) measures for transactions and business relationships from countries and to be able to apply countermeasures when this is called for by the FATF. Countries are required to inform financial institutions of possible AML/CFT weaknesses in other countries.
169. **Criterion 19.1** -FIs and DNFI are not required to apply EDD, proportionate to the risks, to business relationships and transactions with clients from countries from which this is called for by the FATF. Section 7A (1), (2) (b), (4), and (5) of the POCA (MLP) Regs and regulations 6A(1),(2)(b),(4), and (5) of the TPR stipulate that the regulated sector should establish a risk profile regarding business relationships or transactions with a view to determining the business relationships or one-off transactions which are high risk. Reg. 7A(2)(e) states that relationships or transactions classified as high-risk include those where the applicant for business is “a member of such other class or category of persons as the supervisory authority may specify by notice published in the *Gazette*.” Such relationships or transactions are subject to EDD in accordance with Reg. 7A(4). The legislation is not clear, however, as to whether this requirement relating to the publication in the *Gazette* extends to all existing business relationships or is restricted to new applicants for business as the MLP Regs appear to suggest. There is no corresponding provision in the TPR, as while Reg. 6A mirrors the MLP Regs, it too speaks only to applicant for business and does not include the provision allowing for the listing of members of such class or category of persons in the *Gazette* by the supervisory authority.
170. Section 94(4)(b) of the POCA, requires businesses to 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*, which may be interpreted to include countries specified by the Jamaican authorities or other international sanctioning bodies such as the UN and FATF. Further, the MLP and TP (Reporting Entities) Regs require EDD to be carried out on business relationships and one-off transactions that are deemed to be high risk. As noted above, under the MLP Regs, a customer resident or domiciled in a territory specified in a list of applicable territories published by notice in the *Gazette* is deemed high risk and would be subject to EDD measures; however this provision is not included in the TPR.
171. **Criterion 19.2** - (a) There is no provision to apply countermeasures proportionate to the risks when called to do so by the FATF. (b) The authorities indicated that financial institutions are required to pay special attention to customers resident or domiciled in the list of applicable territories that is published in the *Gazette* by the Supervisory Authority, which is established in POCA at section 94(4)(b). This may be interpreted to include countries specified by the Jamaican authorities or other international sanctioning bodies such as the UN and FATF, but does not specify the country’s ability to apply countermeasures, outside of the requirement to apply EDD, independently of any call by the FATF to do so.

172. **Criterion 19.3** – POCA, section 94(4)(b) establishes that businesses in the regulated sector shall 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. Further, advisories are issued by the BOJ and by the FSC to their respective licensees and registrants when notice of jurisdictions with weak AML/CFT frameworks come to their attention from FATF and CFATF.

#### ***Weighting and conclusions:***

173. The law allows the implementation of a risk profile for business relationships or transactions. FIs and DNFIs/DNFBSs are not explicitly required to apply EDD proportionate to the risks, business relationships and transactions with clients from countries from which this is called for by the FATF. However, relationships or transactions where the applicant for business is “a member of such other class or category of persons as the supervisory authority may specify by notice published in the *Gazette*” are subject to EDD. There is no provision to apply countermeasures proportionate to the risks when called to do so by the FATF or otherwise, outside of the application of EDD. FIs are notified of weaknesses in other countries’ AML/CFT systems through advisories issued by the BOJ and FSC pursuant to section 94 of the POCA. The measures stipulated in the POCA are not implemented with regard to TF as there are no corresponding provisions in the TPA and TPR. **Recommendation 19 is rated partially compliant.**

#### ***Recommendation 20 – Reporting of suspicious transaction***

174. This Recommendation (formerly R.13 and SR.IV) was rated in the 3<sup>rd</sup>. MER as ‘PC’. At the end of the follow-up process, both Recommendations were sufficiently addressed at least to a level comparable with ‘LC’. Jamaica issued the POCA and the TPA and their Regulations to address the Assessors’ deficiencies. In terms of the review of the Standard by the FATF, this Recommendation is unchanged.
175. **Criterion 20.1** - Pursuant to the POCA Regs section 94(3) entities are required to make a disclosure as soon as reasonably practicable, to the identified nominated officer within the entity or directly to a designated authority regarding the information or other matter on which the knowledge or belief, that another person has engaged in a transaction that could constitute or be related to money laundering. Section 2 of the POCA provides that the designated authority is the CTD of the FID. Under the TPA, section 16, the entities have the duty to report certain transactions, which according to section 16(3) of TPA, are suspicious transactions and report them to the designated authority.
176. **Criterion 20.2** - Section 94(4)(ii) of the POCA and section 16(3A) of TPA require regulated businesses or FIs to report suspicious transactions whether completed or not without any limitation of amount.

#### ***Weighting and conclusion***

177. **Recommendation 20 is rated compliant.**

#### ***Recommendation 21 – Tipping-off and confidentiality***

178. Jamaica was rated ‘LC’ for R.21 (formerly R.14) in its 3<sup>rd</sup> MER. The lone deficiency being the lack of a provision to prohibit tipping off when an STR or related information was being reported. The recommended cure was for clarity to be made that tipping-off is prohibited when an STR or related information is being reported to the FIU. No significant changes were made to this Recommendation for the Fourth Round.

179. **Criterion 21.1** – According to section 137 of the POCA, no action suit or proceedings may be brought against any financial institution, or any of its employees, for any act done in the course of, or carrying out the provisions of the POCA. At section 137(1) neither civil nor criminal proceedings nor professional sanctions for breach of confidentiality may be brought against any director or employee of an institution who provides information or submits reports pursuant to obligations under the said POCA. The TPA at section 15(5) provides measures which protect any person, from both criminal and civil proceedings, who makes a report relative to terrorist property. Additionally, section 16(7) of TPA extends the immunity from civil and criminal proceedings to STRs filed and any reports on any transaction which is complex, unusual large or an unusual patterns of transactions.
180. **Criterion 21.2** – Measures prohibiting tipping-off are contained in sections 97 and 17 of the POCA and TPA respectively. These measures are limited to situations where an investigation is either prejudiced or likely to be prejudiced, or where information is disclosed on an ongoing or pending money laundering investigation and does not cover the issue of tipping off in relation to information contained in STRs not yet filed with the FIU.

### ***Weighting and conclusion***

181. FIs and their employees are protected from criminal and civil proceedings once they report in good faith. A significant deficiency exists because the tipping-off offence is seen as being committed once the disclosure has been made or the person has reasonable grounds to suspect that the disclosure has been made. Tipping-off in relation to information that is in the process of being filed with the FIU as part of an STR is not covered. **Recommendation 21 is rated partially compliant.**

### ***Recommendation 22 – DNFBPs: Customer due diligence***

182. Recommendation 22 (formerly R. 12) was rated ‘NC’ in the 3<sup>rd</sup> MER since DNFI/DNFBPs were not covered in the existing AML/CFT framework for Jamaica. In November 2013, Jamaica established a framework for Designated Non-Financial Institutions (DNFIs). However, the provisions of the TPA are not yet applicable to these entities. The essential requirements for DNFI/DNFBPs remained unchanged in the revised Standards.
183. **Criterion 22.1(R.10)** – Pursuant to paragraph 1(2) of the 4<sup>th</sup> Schedule of the POCA, the Minister of National Security designated casinos, real estate dealers, gaming lounges with 20 or more machines, and lawyers and accountants as regulated businesses for the purposes of POCA. Trust and Company Service Providers (TCSPs), notaries, and dealers in precious metals and precious stones were not specifically designated. Jamaican Authorities have noted however that the requirements of section 101A of the POCA which prohibits cash transactions exceeding JA\$1M (US\$8,645) captures dealers in precious metals and stones. With regard to TCSPs these activities are carried out by lawyers and accountants, however new legislation is expected to be passed to address this sector. Notaries in Jamaica must be attorneys with minimum 10 years’ experience and are appointed by the Ministry of Justice. The Authorities have also indicated that there is a current suspension of the AML regime for attorneys, due to an injunction granted by the Jamaican Courts. The matter was expected to be resolved by a final hearing in February 2015, but the decision has been reserved so the injunction is still in place. In keeping with *criterion 10.2*, DNFI pursuant to Reg. 6 of the POCA Regs are required to undertake CDD measures when establishing business relations. The CDD measures include identification and verification pursuant to Regs. 7 and 11 respectively of the POCA Regs Occasional and linked transactions are also covered by Reg. 7(2), (3)(a) and (b). The threshold for these

transactions is US\$250. Pursuant to Reg. 7(3)(d) of the POCA Regs regulated businesses are required to undertake CDD where there is doubt about the veracity or adequacy of the information obtained. For *critterion 10.3*, Reg. 7 of the POCA Regs provides that ‘customer information’ includes name, address, taxpayers’ number, date and place of birth etc. With regard to verifying that a person is authorized to act on behalf of a customer (*Criterion 10.4*) Reg. 11 (3)(b) of the POCA Regs provides for the establishment of the identity of the principal, agent, beneficiary and ultimate beneficial owner, but verification of such identity is not mandated. With regard to *critterion 10.5*, Reg. 13 of the POCA Regs requires the identification of the beneficial owner (BO); there are no requirements to take reasonable measures to verify the identity of the BO however. *Criterion 10.6* Reg. 7(2)(a) of the POCA Regs calls for transaction verification procedures to include production of satisfactory evidence of the purpose and intended nature of the business relationship or one-off transaction but does not require the FI to understand such purpose or nature. With regard to on-going due diligence, (*critterion 10.7*), Reg. 7A(3) of the POCA Regs requires CDD to be carried out to ensure that transactions are consistent with the regulated business’ knowledge of its customer, the applicant’s risk profile and the stated source of funds. Regulations 7(1)(c) of the POCA Regs requires that CDD information remains up-to-date and relevant. For measures with regard to legal persons and legal arrangements, (*Criterion 10.8, 10.9, 10.10 and 10.11*), Regs. 7A(3), 13(1)(c) of the POCA Regs are relevant. The deficiency identified in *critterion 10.6* with regard to the requirement to understand the nature of the customer’s business also applies to *critterion 10.8*. Under *critterion 10.9* there is no requirement to identify persons holding senior management positions in the legal person or arrangement. Additionally, element (c) of *critterion 10.10* is not addressed in the legislation.

184. For CDD for beneficiaries of life insurance policies, (*critterion 10.12 and 10.13*), the authorities have cited Reg. 13 of the POCA Regs, however there are no specific measure for CDD with regard to this issue. With regard to the timing of verification (*Criterion 10.14 and 10.15*), DNFI’s are required to identify and verify applicants for business as soon as is practicable after first contact (See. Reg. 7(1)(a) of the POCA Regs and Reg. 13(2) of the TPR. *Criterion 10.16* (existing customers) is dealt with under Reg. 7(1)(c) and 7A of the POCA Regs, which requires a review of the CDD at least every seven years or more frequently as warranted by the customer’s risk profile. The TPR makes similar provisions at Regs 5(b) and 6A(1)(4) and (5). The risk based approach (RBA) (*Criterion 10.17 and 10.18*) is dealt with by Reg. 7A(1), (4) and (5), which require regulated businesses to establish a risk profile with regard to business relationships and one-off transactions. Where the risks are high Reg. 7A(5) provides measures for senior management approval to commence or continue the relationship and verification of the source of fund or wealth. It should be noted that the Standards require that both the source of funds and wealth be verified and not one or the other. Similar measures are found in the TPR at Reg. 6A(1), (4) and (5). Simplified CDD is based on a *de minimis* amount (i.e. transaction of a value of US\$250 or less or such amount as determined by the Minister) and not any requirement for a risk analysis. (See. Reg. 8 of the POCA Regs.). Where there is a failure to satisfactorily complete CDD, the regulated business is required pursuant to Reg. 7(1)(b) of the POCA Regs to not proceed any further with the transaction and make an assessment as to whether a suspicious activity report should be filed pursuant to section 94 of the POCA. There is no corresponding measure with the consideration of filing an STR under the TPR for similar actions. CDD and tipping-off (*Criterion 10.20*) are not covered by the cited sections (section 100(4)(a) and 5(b) of the POCA) since those sections deal with the protection of persons who make authorized disclosures. The other matters cited by the Authorities do not relate to DNFI’s, but to BOJ licensees.
185. **Criterion 22.2(R.11)** – *Criterion 11.1* has been applied pursuant to Reg. 14(5) of the POCA Regs, which requires a regulated business to keep the data on which the relevant business transaction was completed for

a period of seven years after the date the relevant business transaction was completed or the business relationship was terminated. This period can be adjusted by the designated authority. There is no specification as to whether the data is domestic or international; *criterion 11.2* is only partially met because there are no specific requirements with regard to ‘account files’ and business correspondence or the results of an analysis undertaken in the cited Reg. 14(4) and (5) of the POCA Regs. With regard to *criterion 11.3*, Reg. 14(4) provides that records should be kept of each transaction in a manner that will facilitate the reconstruction of the transactions and provide information to the designated authority. There is a similar provision in the TPR at Reg. 14(4). For *criterion 11.4*, Reg. 14(4) and (5) do not specify the swift provision of the information to the designated authority; however it does state that the information is to be provided as may be required.

186. **Criterion 22.3(R.12)** – For *criterion 12.1*, Reg. 7A(1) requires the establishment of a risk profile to determine which transactions are high risk. Pursuant to Reg. 7A(6) PEPs (high ranking government officials, heads of state, etc. and persons holding senior management positions in international organizations are deemed to be high risk. There is no distinction between a foreign PEPs and domestic PEPs and all categories of PEPs presented are considered high risk. EDD pursuant to Reg. 7A(4) and (5)(a) of the POCA Regs and Reg. 6A(4) and (5) of the TPR includes obtaining senior management approval to commence or continue the business relationship or one-off transactions, Reg. 7A(4) and (5)(b) of the POCA Regs. requires high risk customers have their source of funds or source of wealth verified as part of the EDD process. However, the requirement of the Standards is that both source of funds and wealth be verified and not either one or the other. With regard to *criterion 12.2*, as noted earlier there is no distinction between foreign and domestic PEPs and all PEPs are treated as high risk and subject to EDD; *criterion 12.3* - Close associates and relatives are clearly defined at Reg. 7A(7) of the POCA Regs and the measures noted at *criterion 12.1* are applicable to these categories of persons. For *criterion 12.4*, there are no measures with regard to determining whether the BO of a beneficiary is a PEP with regard to life insurance policies.
187. **Criterion 22.4(R.15)** – *Criterion 15.1* is dealt with through Reg. 6(1)(a)(iv), which covers new and existing products and practices. The measures include doing a risk assessment and taking appropriate measures to manage and mitigate the risk. (*Criterion 15.2*). Regulated businesses are also precluded from beginning or continuing any product or practice without implementing measures to identify, manage or mitigate those risks. However, no similar measures exist in relation to the TPA.
188. **Criterion 22.5(R.17)** – With regard to *criterion 17.1*, there is no requirement to obtain the CDD immediately instead, Reg. 12(1) and 12(1)(A) allows the regulated entities to rely on steps taken by the third party with regard to CDD once the information is transmitted as soon as reasonably possible. There also needs to be a risk profile which would satisfy the regulated business that a high risk transaction is not involved. It should be noted that Reg. 12(2)(a) clarifies Reg. 12(1)(a) of the POCA Regs Re: third parties pertaining to regulated entities. The information to be obtained can be received without delay upon request by the regulated business. Further, Reg. 12(1)(a) of the POCA Regs requires satisfaction that the applicant is a regulated business and at Reg. 12 (2) that CDD is being obtained and recorded in keeping with Regs. 7 and 11 of the POCA Regs. For *criterion 17.2*, while Jamaica maintains and circulates UN Security Council lists and CFATF publications of jurisdictions with strategic AML/CFT deficiencies and weaknesses, there is no indication as to whether any analysis is carried out on these lists to determine their relevance to Jamaica in relation to assessing country risk; *criterion 17.3*, there appear to be no measures with regard to third parties that are part of the same financial group. The POCA provides for entities to have corporate responsibility for the development and implementation of group wide AML/CFT prevention, policies and procedures.

See. 4<sup>th</sup> Schedule of the POCA, Reg. 5 of the POCA Regs and section 94(4)(b) of the POCA. Reg. 18 of the POCA Regs deal with group supervision, but the same deficiencies outlined in R.17 apply.

### *Weighting and conclusion*

189. Overall there is a framework for CDD for DNFIs/DNFBPs that requires identification and verification of the customer and other parties where relevant. These include measures to identify the BO, but not to verify the identity of the BO. Measures to deal with settlements, trusts or other types of legal arrangements are present along with the requirement to identify each director that has more than a 10% share in the entity. Risk analysis is required to determine a PEP, but all PEPs covered by the POCA Regs and the TPR are dealt with as high risk and require the application of EDD. The EDD provisions are in keeping with the Standards except where the option is given to obtain source of funds or source of wealth information. The requirement in relation to the beneficiaries of life insurance and other investment related insurance policies is not relevant for this criterion. The measures for the timing of verification and dealing with existing customers are in place. For simplified CDD, there is no indication that this is based on a risk analysis but rather on the application of a *de minimis* approach, whereby the CDD measures noted in Reg. 7 of the POCA Regs will not be applicable where the value of the transaction is less than US\$250 or such amount as determined by the Minister. The tipping-off requirements with regard to CDD imposed by the FSC do not apply to DNFIs/DNFBPs. Also at this time there is an injunction that prevents the AML/CFT measures being exercised by lawyers and enforced by their regulator. **Recommendation 22 is rated partially compliant.**

### *Recommendation 23 – DNFBPs: Other measures*

190. Recommendation 23 (formerly R. 16) was rated ‘NC’ in the 3rd MER since DNFIs/DNFBPs as noted earlier were not covered under Jamaica’s AML/CFT regime. See. Criterion 22.1 above for the current AML/CFT framework for the DNFI/DNFBP sector in Jamaica. The essential requirements for DNFIs/DNFBPs remained unchanged in the revised Standards.
191. **Criterion 23.1(R.20)** – For criterion 20.1, DNFIs are not required to report STRs related to TF. Criterion 20.2 - Section 94(4)(a)(ii) of the POCA and section 16(3A) of the TPA imposes the obligation to report suspicious transactions as soon as reasonably practicable, whether completed or not without any limitation of amount. However, the TPA currently does not apply to DNFIs/DNFBPs.
192. **Criterion 23.2(R.18)** – Criterion 18.1: Regulation 5 of the POCA Regs provides for internal controls and foreign branches and subsidiaries, more specifically, Reg. 5(1)(3) of the POCA Regs provides for the nomination of an officer of the business at a managerial level to ensure the implementation of the programmes, policies, procedures and controls for the business. Similar measures are contained at section 18 of the TPA. These provisions do not specify that policies, procedures and controls should have regard to ML risks and size of the business. Regulations 5(2)(a) and (b) of the POCA Regs requires the establishment of a system to evaluate the personal employment and financial history of employees, while ongoing employee training is provided for at Reg. 5(2)(c) of the POCA Regs and section 18(2)(c) of the TPA. Regulation 5(2)(d) of the POCA Regs and section 18(2)(d) of the TPA provides for an independent audit function to test the system.

193. **Criterion 23.3(R.19)** – For criterion 19.1, the Authorities cite Reg. 7A(1)(2)(b), (4) and (5) of the POCA Regs., which essentially deal with risk profiles and ongoing due diligence in the verification procedures. While there are measures to employ EDD based on the risk, there are no measures to apply EDD to countries where this is called for by the FATF. Criterion 19.2 is dealt with by section 94(4)(b) of the POCA (as amended), which requires that businesses in the regulated sector pay attention to business relationships and transactions with customers resident or domiciled in a territory specified in the lists of applicable territories published by notice in the Gazette by a supervisory authority so that all transactions with such persons are noted and can upon request be made available to the designated authority, supervisory authority or competent authority. These measures however do not provide that countermeasures appropriate to the risk be applied when called for by the FATF or at the country’s own initiative. With regard to criterion 19.3, the Authorities cite the same provision as criterion 19.2 above with regard to providing notice to FIs and DNFIs about the concerns of weaknesses in other countries AML/CFT systems. It is unclear whether the notice given in the Gazette indicates the concerns with the listed countries AML/CFT systems.
194. **Criterion 23.4(R.21)** – Criterion 21.1 – section 137 of the POCA protects persons who exercise functions under the Act. There is a broader measure at section 137(2) of the POCA that specifies businesses in the regulated sector, which will include DNFIs, directors, principals, employees or agents of a FI or business in the regulated sector; criterion 21.2 has an issue with STRs that are ‘being’ reported. Section 97(1)(b) refers to the enforcing authority ‘acting or proposing to act’, however, this does not appear to cover the concept as it relates to pending or on-going investigations, and does not cover tipping off in relation to the filing of an STR. Further, the FSC Guidelines cover the concept of STRs that are ‘being’ filed with regard to tipping-off, but the FSC Guidelines are not applicable to DNFIs. Additionally, the requirement is that these matters be instituted by law; therefore, the application of guidance in the absence of a legislative provision does not meet the requirement of the criterion.

### ***Weighting and conclusion***

195. There are requirements for internal controls for foreign branches and subsidiaries. Measures with regard to reporting STRs and attempted transactions related to TF are not in place for DNFIs/DNFBNs. Policies, procedures and controls required under the POCA Regs do not specify that they should have regard to ML risks and size of the business. While there are measures to employ EDD based on risk, there are no measures to apply EDD to countries where this is called for by the FATF. Businesses are required to pay attention to business relationships and transactions with customers resident or domiciled in a territory specified in the list of applicable territories published in the Gazette, however, there is no provision for countermeasures appropriate to the risk to be applied when called for by the FATF or at the country’s own initiative. With regard to tipping-off, directors, principals, employees or agents of a DNFI/DNFBN are protected, however, the Regulations do not address instances where the STR is ‘being’ filed by a DNFI/DNFBN. **Recommendation 23 is rated partially compliant.**

### ***Recommendation 24 – Transparency and beneficial ownership of legal persons***

196. Recommendation 24 (formerly R. 33) was rated ‘LC’ in the 3<sup>rd</sup> MER. The only deficiency noted by the Assessors was that information regarding beneficial ownership of an incorporated company was not captured. The Assessors had stated that Jamaica’s Registrar of Companies should consider instituting measures to capture information regarding BO of a company incorporated company as well as information regarding the nationalities of the BOs. For the 10<sup>th</sup> FUR, Jamaica indicated that the Companies Office of

Jamaica (COJ) provided comments to its portfolio Ministry (Industry, Investment and Commerce) regarding comments made by the AG and that since there was a long delay in having the Companies Act (CA) amended, the COJ was giving consideration to recommending to the Ministry that a separate Cabinet submission be made with regard to specific proposed amendments. This would include the capture of information regarding BO. However, to date there is no indication that this has occurred. R. 24 has more requirements than its predecessor, including the need for a proper framework for identifying the different types, forms of legal persons and the process for their creation; assessment of ML/TF risks associated with the various forms of legal persons; the requirement for a company registry and the maintenance of specified types of information.

197. **Criterion 24.1** – The Companies Act (“CA”) provides for incorporation of various types of legal persons, namely: companies limited by shares, companies limited by guarantee, Mutual Fund companies and unlimited companies. Those companies can be further categorised as either private or public companies. The CA outlines the requirements for registration and the Companies Office of Jamaica’s website also publishes the procedures, form and basic features of companies that can be incorporated in the country. With respect to Limited Partnerships, these may be established under the Partnerships (Limited) Act. Information on the name or firm under which the partnership is conducted, general nature of the business and the names of all the general and special partners and their respective places of residence is open to public inspection in the Public Record Office Requirements for financial institutions to identify beneficial owners are stipulated in law and are publicly available.
198. **Criterion 24.2** – Jamaica is preparing its National Risk Assessment (NRA) and to date, there has been no formal ML/TF risk assessment with regard to all forms of legal persons.
199. **Criterion 24.3** – Pursuant to section 352 of the CA there is public access to information held by the Registrar upon the payment of a fee. Section 3 of the CA requires Articles of Incorporation to be filed with the Registrar; while section 8 states what should be contained in the Articles of Incorporation. A BRF must also be completed. This form requires information such as the name of business, registered address of the company, name of the accounting firm, the number of directors, the full name, occupation, nationality and address of the directors/proprietors and information on the company secretary. In relation to limited partnerships, information on the names of all the general and special partners are required to be filed at the Public Record Office in addition to the name of the partnership and the nature of the business to be transacted. This information is open to public inspection.
200. **Criterion 24.4** – Pursuant to section 109 of the CA, companies are required to keep a register of its members or shareholders at the company’s registered address in Jamaica, at some other office of the company where the register is maintained or at the office of a person who undertakes the maintenance of the register on behalf of the company. The section further states that the register shall not be kept at a place outside of Jamaica. The contents of the register of shareholders/members are also contained at section 109 of the CA. There is no requirement for the register of shareholders/members to contain the voting rights of the shareholders/members, but the Authorities note that this is contained in the Articles of Incorporation. Section 5 of the Partnerships (Limited) Act, provides that limited partnerships are required to state in the Certificate of Formation of Limited Partnership, the names of all the general and special partners interested in the limited partnership, distinguishing which are general and which are special partners together with their respective places of residence. The amount of capital that each special partner contributed to the common stock of the limited partnership should also be recorded. Section 9 of the Partnerships (Limited) Act, states that this information is to be filed in the Record Office and is open to public inspection.

201. **Criterion 24.5** – Sections 121 to 123 of the CA require every company in Jamaica to file annual returns containing information on the names, addresses and occupation of all past and present members of the company, the number of shares held by present members, shares transferred and the date of such transfers, address of the registered office and of the location of the register of members as well as debenture holders, shares and debentures, the company’s indebtedness and the name of directors of the company. The annual return must be filed no later than the anniversary of the company’s incorporation or if the company’s last return that was filed on a different date, the anniversary of that date. However, there are no mechanisms available to ensure that the information contained in the annual return or the register of members or shareholders are accurate and updated on a timely basis. Competent authorities are unable to ensure that information on limited partnerships is accurate and updated in a timely manner.
202. **Criterion 24.6**– Notwithstanding the obligation for companies to maintain information on past and present members (legal ownership), the CA does not require companies to obtain and hold up-to-date and accurate information on beneficial owners. The Jamaican Authorities note that the CA will be amended to allow the Registrar of Companies to require that of companies. Furthermore, DNFIs/DNFBPs such as attorneys-at-law, accountants and agents providing services in relation to the formation of companies are not obligated to obtain and maintain information on the ownership of such companies. However, FIs are under an obligation to obtain and maintain such information in accordance with the POCA Regs. It must be noted also, that section 168 of the CA states that the Minister may appoint one or more competent inspectors to investigate and report on the membership of any company for the purpose of determining the true persons who are or have been financially interest in the success or failure (real or apparent) of the company or able to control or influence the policy of the company. Additionally, with respect to public companies, the Securities Act authorises companies to investigate the ultimate owners of shares issued to them. The Authorities have noted the impending amendment to the CA that would provide for the BO information to be kept up-to-date and accurate as possible. The criterion requires one or more of these methods to be used therefore the criterion is partially met.
203. **Criterion 24.7** – As stated above, the CA provides for companies to keep a register of its members or shareholders at the company’s registered address in Jamaica. The Partnerships (Limited) Act requires the limited partnership to keep information on its general and special partnerships. However, there is on specific provision under the CA or the Partnerships (Limited) Act that states that information on the BO must be accurate and as up-to-date as possible. However, FIs that are under an obligation to obtain and maintain BO information are required to ensure that it is kept up-to-date and relevant in accordance with Recommendation 10. The Authorities have also noted the impending amendment to the CA that would provide for this requirement.
204. **Criterion 24.8** – By virtue of section 52 of the CA, companies are required to submit returns of allotment of shares to the Registrar of Companies that will provide information on the names, addresses and description of the persons to which shares are allotted. As stated above, companies are also required to file annual returns that will list all past and present members and the number of shares held by them but there is no requirement to provide information on the beneficial owner. There are also no obligations for a person resident in Jamaica to assist competent authorities with providing beneficial ownership information in respect to companies that have incorporated outside of Jamaica and have applied to establish a place of business within the island. These companies are only required to submit a certified copy of the charter, statutes or articles of the company or other instrument defining the constitution of the company, names and addresses of directors and the name and address of the person receiving the notice for the purpose of service of process.

205. **Criterion 24.9** – All documents for active companies are kept by the Registrar of Companies indefinitely. In respect of companies that have been struck or wound-up, the documents are kept for at least 20 years following the date of the companies’ striking or winding-up. There is currently no provision in the CA that requires companies to maintain information and record for at least five years. However, the POCA Regs require a regulated business, particularly FIs to maintain all necessary identification records for a period of seven years commencing on the date after the completion of the transaction or the business relationship whichever occurs later. However, this requirement is not extended to DNFIs/DNFBSs such as attorneys-at-law, accountants and agents providing services in relation to the formation of companies.
206. **Criterion 24.10** – Law enforcement authorities in Jamaica, through an authorized officer, can obtain beneficial ownership information from any person suspected have having possession or control of such information through production orders under section 17 of the FIDA and section 21 of the TPA, or disclosure orders under section 105 of the POCA. Production orders are applied through a Judge in Chambers who may make an order requiring the person in relation to the investigation to (a) produce any information, book, record or document containing the information relevant to the investigation; (b) make such information, book, record or document that is in the person’s possession or control available to the authorized officer for inspection; or (c) answer questions either at once or, at such time and place as may be specified in the order. Under POCA, disclosure orders will grant authorization to law enforcement authorities to (a) produce the information to an appropriate officer; (b) give an appropriate officer access to the information within a period stated in the order; and (c) require a person to answer questions in relation to the information.
207. **Criterion 24.11** – The CA does not authorise the issuance of bearer shares by companies. However, section 82 of the CA provides for companies limited by shares to grant bearer share warrants. There are no measures in the CA to address the issue of reducing the risks of bearer share warrants. The Authorities note that proposals have been made to amend the CA in line with the section 122 of the UK’s CA, which requires that the company note in its register of members the fact of the issue of a warrant and the shares included in the warrant as well as information regarding the bearer when the share warrant is presented.
208. **Criterion 24.12** – The CA does not have measures with regard to the reduction of risks arising from nominee shareholders or directors. The Jamaican Authorities stated that the CA is undergoing reforms to address this issue.
209. **Criterion 24.13** – Section 109 of the CA stipulates that companies as well as their officers must maintain registers of their members failing which a penalty of fifty thousand dollars will be imposed on both the companies and every officer who are in default. The CA also states that every company shall submit to the Registrar of Companies successive annual returns. Failure to do so will result in a penalty of one hundred dollars for each day the default continues subject to a maximum of ten thousand dollars. The penalties outlined are neither proportionate nor dissuasive.
210. **Criterion 24.14** – As highlighted in 24.10 above, law enforcement authorities are able to obtain information held by the Registrar of Companies either through public searches or production orders. Jamaica is able to share such information with foreign counterparts utilising its wide range of MOUs in place.
211. **Criterion 24.15** – There is no information that Jamaica monitors the quality of assistance it receives from other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad.

## *Weighting and conclusion*

212. Jamaica has not addressed the issue of instituting measures to capture information regarding BO of an incorporated company as well as information regarding the nationalities of the BOs that was recommended in the 3<sup>rd</sup> MER. Additionally, while basic information on shareholders/members is available, the current CA does not contain measures to deal with ML/TF risks associated with the various types of entities, the maintenance of BO information, , the maintenance of information for at least five years, bearer share warrants and nominee shareholder and directors, sanctions for failure to comply with the measures. Whilst these are not expressly stipulated in the CA, there are measures that have been adopted by the Jamaican authorities to address transparency and beneficial ownership of legal persons. For instance, FIs that are under an obligation to obtain and maintain BO information are required to ensure that it is kept up-to-date, relevant and held for at least seven years in accordance with POCA Regs (reference is made to text outlined in Recommendation 10). Furthermore, the Securities Act authorises public companies to investigate the ultimate owners of shares issued to them. **Recommendation 24 is rated partially compliant.**

## *Recommendation 25 – Transparency and beneficial ownership of legal arrangements*

213. This Recommendation (formerly R. 34) was rated ‘C’ in the 3<sup>rd</sup> MER. R. 25 includes obligations for all the countries whether they recognise trust law or not. Trustees should provide information to the financial institutions or DNFIs/DNFBPs regarding its establishment as a trustee and guarantee that such information can be accessed in a timely manner by competent authorities.
214. **Criterion 25.1** – In Jamaica legal arrangements (“trust”) are created under common law and therefore there is no defined legislation governing the creation and registration of trusts. The Trustee Act contains a number of provisions in respect to the rights, responsibilities, powers and duties of trustees. However, it does not require trustees to obtain and hold adequate and accurate information on the identity of the settlor, the trustee (s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising control. In addition, it does not mandate trustees to hold information on other regulated agents of, and services providers to, the trust, including investment advisors or managers, accountants, and tax advisors. Authorities however noted that a new Trusts Act as well as a Corporate Services Providers Act will be introduced whereby the profession of trusts will become a regulated profession and designated under POCA as a DNFI and be liable to AML obligations under POCA, and become also a reporting entity under the TPA. Notwithstanding, common law obligations are extended to trustees requiring them to keep records and know basic information with regard to the identity of the settlor, trustees and beneficiaries. Additionally, financial institutions and those DNFIs/DNFBPs that are covered by POC (MLP) Regulations are required to identify the settlor, legal owner and other person who exercises effective control over the legal arrangement.
215. **Criterion 25.2** – Common law obligations require trustees to keep adequate records. However, there is no legal obligation for information on trustees, settlors, beneficiaries and protectors (if any) to be kept accurate and as up to date as possible. There is also no active monitoring conducted on trustees to ensure that information is updated on a timely basis.
216. **Criterion 25.3** – There are some measures to ensure that trustees disclose their status to financial institutions and those DNFIs/DNFBPs that are covered by POC (MLP) Regulations. Regulation 13 (1) ( c ) requires business in the regulated sector, when dealing with trusts or other type of legal arrangement, to establish the identity of the settlor, legal owner or other person who exercises effective control of the legal

arrangement, as the case may require, and the beneficial owner. In the case of a person other than a natural person, they must assess the identity of the natural persons who exercise ultimate effective control over the person; and in the case of a body corporate, it includes evidence of incorporation and establishes the identity of each director and shareholder (if any).

217. **Criterion 25.4** – There are no laws in Jamaica that prevent trustees from providing information to financial institutions or DNFIs/DNFBPs, upon request. As stated in 25.3 above, there are general requirements imposed on financial institutions and DNFIs/DNFBPs to ensure that they obtain from trustees, the identity of the settlor and information on other persons who exercise effective control over the legal arrangement.
218. **Criterion 25.5**- Competent Authorities and in particular, law enforcement authorities have broad investigatory powers under POCA (section 105 et seq.), customer disclosure orders (section 119); TPA (sections 19, 20 (monitoring orders), 21 (examination and production orders), and 22 (offence not to present information available) and under the FIDA (section 17) which facilitate access to information held by trustees (when it becomes available), FIs and DNFIs/ DNFBPs.
219. **Criterion 25.6**- (a) and (b) – Authorities indicated that there are mechanisms under the FIDA and under the MACMA to facilitate the exchange of information in this area and this would apply to information held by registries or other domestic authorities or domestically available. No specific citations were provided, however, the FIDA (section 12), for instance, contemplates the ability of the FID to enter into agreements with foreign counterparts and share information. Based on the MACMA, competent authorities may be able to use their investigative powers in accordance with domestic law (POCA, FIDA), to obtain beneficial ownership on behalf of foreign counterparts. Authorities also indicated that information regarding trust deeds (which establish express trusts) is available through the Records Office which is a public registry.
220. **Criterion 25.7**- There are neither dissuasive nor proportionate sanctions imposed under the Trustee Act on trustees to ensure that they are legally liable for any failure to perform the duties relevant to meeting their obligations. Furthermore, there are no mechanisms in place to ensure that they are adequately covered by Jamaica’s AML/CFT regime. However, this is expected to change with the passage of the new Laws mentioned in criterion 25.1.
221. **Criterion 25.8** – Jamaica has proportionate, dissuasive sanctions, both criminal and administrative for failing to grant competent authorities timely access to information regarding the trust referred to in criterion 25.1, should it become available, given that as explained under criteria 25.1, is currently not available. Authorities explained that failure to grant access to law enforcement authorities is an offence which includes a range of sanctions. For instance, POCA section 112 (failure to comply with a disclosure order) establishes a fine not exceeding JA\$1M or a term of imprisonment not exceeding 12 months or both fine or imprisonment. For legal persons, sanctions may not be considered dissuasive. See discussion at R. 35 below.

### ***Weighting and Conclusion***

222. There are no express obligations in the Trustee Act for trustees in Jamaica to obtain and hold information on beneficial ownership. Hence, all other measures cannot be fully considered as in place. However, Jamaica has information on trusts available as required under POCA Regs and broad provisions for authorities to cooperate and coordinate domestically and internationally. Further, legislation to bring Trusts and Corporate Services Providers will be developed in the near future. Jamaica has not fully implemented measures to prevent the use of legal arrangements for ML/TF purposes. Although there are obligations

under common law and POCA Regulations to identify the certain persons who exercise control over a legal arrangement, there are no requirements or mechanisms to ensure that the information is accurate and up-to-date. Further, the POCA Regulations will only extend to legal arrangements administered by particular categories of regulated entities that are FIs. **Recommendation 25 is rated partially compliant.**

### ***Recommendation 26 – Regulation and supervision of financial institutions***

223. This recommendation (formerly R.23) was rated ‘LC’ in the 3<sup>rd</sup> MER due to the lack of proper consolidated supervision, the exclusion of some FIs from the purview of the Money Laundering Act and non-completion of CDD assessments for money remittance agents. The authorities have advised during the follow-up that provisions for consolidated supervision are in the BA, BSA and FIA and have been included in the Banking services Bill. Additional measures for consolidated supervision have also been introduced in the SA. The POCA has included all FIs within the AML/CFT regime. There has been no substantial change in the Recommendation except for the inclusion of the prohibition of shell banks.
224. ***Criterion 26.1*** – Section 91(g) of POCA provides for the Minister of Finance to assign a competent authority to monitor compliance of any business in the regulated sector with the ML requirements of the POCA and subsidiary legislation and to issue relevant guidelines. By letter dated November 12, 2007, the Minister of National Security designated the FSC as the Competent Authority with regard to AML for persons engaging in insurance business as well as insurance intermediaries under the Insurance Act and dealers and investment advisers under the Securities Act. A similar letter of same date was issued to the BOJ also designating it as a Competent Authority with regard to AML. The BOJ is responsible for banks, merchant banks (i.e. FIA licensees, cooperative societies, building societies, cambios and remittance services Section 18(5) of the TPA provides for the Minister of Finance to appoint any person to monitor compliance with sections 15, 16 and 18 of the TPA. Similar provisions to Section 91(g) of POCA are contained in Regulation 20 of the TPA Regs. Accordingly, BOJ was designated as the Competent Authority for commercial banks, merchant banks (i.e. FIA licensees, cooperative societies, building societies, cambios and remittance services with regard to CFT by letter issued by the Minister of Finance and Planning dated May 20, 2015. Additionally, by letter dated May 20, 2015, the Minister of Finance and Planning designated the FSC as the Competent Authority with regard to CFT for persons engaging in insurance business as well as insurance intermediaries under the Insurance Act and dealers and investment advisers under the Securities Act. There is a supervisory / regulatory gap with respect to micro finance institutions which are currently legislated under the Money Lending Act and are yet to be brought under the AML/CFT framework.
225. ***Criterion 26.2*** – Section 4 of the BA, section 4 of the FIA and section 8A of the Building Societies Act require banks, merchant banks and building societies respectively to be licensed. MVTS providers are subject to a licensing regime under section 22G of the BOJA as set out in criterion 14.1. Section 22A2 of the BOJA stipulates that only authorised dealers can be foreign exchange dealers or cambios. A licencing regime for cambios has been established by the BOJ under section 22B (2) of the BOJA. Sections 4 to 7 of the CSA require the registration of cooperative societies and set out requirements for such registration to be overseen by the Registrar of Friendly and Cooperative Societies. While there is no specific prohibition against shell banks the licensing requirements in the BA ensures that shell banks have not been established in Jamaica.
226. Sections 7(1), 8(1) and 10(1) of the SA require anyone carrying on securities or investment business or who operates as a dealer’s or investor advisor’s representative to be licensed. Sections 7(1) and 70(1) of the IA

require the registration of all insurance business and insurance intermediaries by the FSC. Additionally, section 5 of the Pensions Act requires the licensing of administrators, investment managers and registration of trustees of approved pension schemes by the FSC. Micro credit lending institutions are not licensed or registered.

227. **Criterion 26.3** – With regard to the FIs under the supervision of the FSC, section 11(1) of the IA provides that each person managing or controlling an applicant for registration is a fit and proper person. The criteria to be considered when assessing a person’s fitness and propriety are contained in Section 2(3) of the IA. Further, Regulation 111(g) and (h) respectively of the Insurance Regulations has similar requirements for the applicants for registration of insurance intermediaries and each person with whom the applicant is associated in the business of insurance intermediation. Sections 7(1)(a), 8(2) and 9(1)(a) of the Pensions Act require the licensing of pension fund administrators, investment managers and trustees respectively that the members of the applicant’s Board and persons in key positions must satisfy the fit and proper criteria. In addition, where information is brought to the FSC’s attention that a person’s fitness and propriety is in issue, the FSC may launch an investigation into the matter and revoke that status where justified. In January 27, 2010, the Pensions Division issued a bulletin which speaks to the new requirements related to the Registration processing and Fit and Proper Assessments. Section 9(3)(a)(ii) of the Securities Act requires the FSC in granting a license to be satisfied that *inter alia*, officers or members holding ten percent or more meet the fit and proper criteria in section 3A. Further section 59 permits an issuer by notice in writing to require a person to disclose whether he is a beneficial owner of 10% or more of shares in the issuer. It should be noted that the above measures are only applicable at registration and licensing. Additionally neither the provisions for insurance, securities or pensions extend the fit and proper requirements to beneficial owners of licensed or registered FIs. The fit and proper reviews for licensees and registrants are on-going and periodic assessments are made by the FSC (every 5 years). Fitness and propriety assessments do not appear to extend to every director and manager of an ultimate holding company or a financial holding company and its subsidiaries.
228. With regard to the FIs under the supervision of the BOJ, sections 4(3) of the BA and the FIA respectively and section 8B (3) of the Bank of Jamaica (Building Society) Act require all prospective owners (holding voting share 20% and over), directors, and senior managers to meet the statutory fit and proper criteria before an application for a licence to operate as a bank, merchant bank or building society is granted. Sections 11 of the BA and FIA respectively and regulation 66A of the Bank of Jamaica (Building Society) Regulations, 2005 make the fit and proper criteria an on-going obligation that must be maintained during the course of a licence. Re-assessment of fit and proper criteria for all directors and senior managers of banks, merchant banks and building societies are conducted every five years. Fitness and propriety assessments apply to every director and manager of an ultimate holding company or a financial holding company and its subsidiaries.
229. In relation to remittance services and cambios, all prospective owners (holding voting share 10% and over), directors, and senior managers are required to meet fit and proper criteria before an application for a licence to operate as a cambio or remittance service is granted. These requirements are set out in the Operating Directions for both cambios and remittance services. These directions are enforceable. Jamaica does not yet have legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest of holding a management position in a micro credit lending institution.
230. **Criterion 26.4** – CARTAC on behalf of the FSC conducted a self-assessment regarding compliance with IAIS and IOSCO principles. The report *inter alia* noted that with respect to the Insurance Core Principles (ICPs) consolidated supervision was in its infancy and this required urgent attention together with corporate

governance, risk management and internal controls, cross border supervisory cooperation and coordination in both normal and in crisis situations. Further with respect to the IOSCO principles, the report noted that further work is required with respect to principles 24 and 28. Based on the assessment, it appears that FSC has to undertake a number of initiatives to become compliant with the ICP and IOSCO principles.

231. No information was provided to permit assessment of compliance with the Basel Committee on Banking Supervision Principles (BCPs). With regard to the BOJ sections 29C-F of the BA and FIA allows for the consideration of the inherent risks, business, model and other relevant factors which are incorporated into the supervisory assessment. Ongoing reporting requirements allow for information to be assessed based on the risk profiles and the groups within which they reside. While the structure of the financial groups allow for consolidated supervision, it can only be fully implemented when the Banking Services Act is enacted. Supervision of MVTS providers, cambio and credit unions for ML/TF risks are carried out by the BOJ. Micro credit institutions are not yet regulated, supervised or monitored for AML/CFT compliance.
232. **Criterion 26.5** – The BOJ and FSC apply to a certain extent a risk based approach in its AML/CFT supervision of financial institutions. Financial sector supervisors follow an annual offsite and onsite supervisory plan using a combination of prudential indicators, findings from previous onsite examination reports and other areas of specific focus based on the circumstances of the financial institution. Inherent ML/TF risks are only taken into account to a certain extent, while the size of the financial institution may be one of several factors in determining risk among other factors (for example activities of the financial group, geographical risk, product risk, client risk, etc.). Other factors considered by the BOJ, include the risks identified by licensees and those generally highlighted by international standards and best practices and by local law enforcement authorities. The frequency and intensity of onsite examination are driven to a very limited extent by ML/TF risks at the national or sectorial levels as entities with higher ML/TF risk profiles are not prioritised. The approaches used by BOJ and the FSC do not fully permit supervisory attention to be focused on areas that are deemed to pose higher ML/TF risk and to allocate resources accordingly. The dedicated AML/CFT Unit, established by the BOJ in the last quarter of 2014, commenced consolidated AML/CFT onsite in 2015.
233. In the case of cambios and MVTS supervision the frequency and intensity is driven by the annual renewal dates of licenses and is not ML/TF risk driven.
234. Most financial institutions are members of financial groups and are typically highly interconnected. Accordingly there are group AML/CFT compliance programmes which provide as necessary differentiations to cater for inherent risks specific to the nature of the business. The onsite examination process includes a review of the financial institutions' ML/TF risk management framework including internal controls and related procedures. A Supervisor has not yet been identified for micro credit institutions and consequently onsite examinations are yet to commence.
235. **Criterion 26.6** - With regard to the BOJ the supervisory framework is risk based with examinations usually in respect of areas of specific focus as assessed in relation to the circumstances of DTIs which includes emerging developments within the operations of the financial group. The FSC includes an AML/CFT component as part of its offsite monitoring dependent on the external factors such as major events in a country and the internal factors such as previous examinations, follow up examinations, and corporate governance issues. The FSC includes an assessment of compliance with AML/CFT requirements during its on-site inspections. These measures do not fully address the requirement of the criterion for assessment of the ML/TF risk profile of a FI or group periodically.

## *Weighting and Conclusion*

236. The BOJ and the FSC have been designated competent authorities for monitoring compliance with AML/CFT obligations. An effective licensing regime has been established for regulated FIs and measures have been implemented to prevent criminal elements for owning, controlling or managing FIs. Deficiencies have been identified in compliance with the Core Principles and implementation of risk-based and group consolidated supervision with respect to the FSC. Both the BOJ and the FSC have commenced implementation of a risk based approach to AML/CFT but are yet to fully implement consolidated supervision. Further, there is an AML/CFT as well as supervisory gap for micro credit institutions which are currently regulated under the Money Lending Act. **Recommendation 26 is rated partially compliant.**

## *Recommendation 27 – Powers of supervisors*

237. This Recommendation formerly R. 29 was rated ‘LC’ in the 3<sup>rd</sup> MER due to recent development of assessment techniques in the AML/CFT area by the FSC and the starting of examinations of insurance companies in a limited manner. In response to the recommendation for the FSC to implement a comprehensive system of on-site AML/CFT examinations the authorities submitted statistics during the period 2005 to 2012 on the numbers of AML/CFT on-site examinations carried out by the FSC. There is no revision to the Recommendation other than that supervisors should have powers to supervise and monitor compliance.
238. **Criterion 27.1** – Section 91A of the POCA provides for the powers of the competent authorities in charge of monitoring FIs for compliance with the ML obligations of the POCA. These powers include inspection or directing an inspection by third parties, and examining or taking copies of documents relating to the operations of the business. Regulation 20 of the TP (Reporting Entities) Regulations, 2010 lists the functions of the competent authority (CA) as monitoring compliance by reporting entities with the requirements of the Act and regulations thereunder; and issuing guidelines regarding effective measures to prevent the commission of relevant terrorism offences. In addition, under section 8(1) of the FSCA the FSC can impose on FIs a range of sanctions for contravention of relevant AML/CFT legislation. The BOJ has similar powers under the BA and the FIA for breaches. Micro credit lending institutions are not supervised neither are they subject to AML/CFT requirements.
239. **Criterion 27.2** – Section 91A(2)(a) of the POCA provides for a CA to carry out or direct a third party to carry out inspections or such verification procedures as necessary to ensure that businesses in the regulated sector comply with the POCA and its regulations. Section 91A (2)(c) of the POCA allows for a CA to examine and take copies of information or documents related to the operation of any business in the regulated sector. The definition of CA includes those appointed to monitor compliance with the POCA and its regulations. As noted in criterion 26.1 the BOJ and the FSC are the designated AML/CFT supervisors.
240. Section 6(2)(b)(i) of the FSCA requires the FSC to carry out at least annual examinations of its regulated FIs to ensure compliance with the FSCA and any relevant law. While the FSC has a general provision to conduct examinations of all its licensees the provision in the POCA limits the BOJ to ensuring compliance with only the POCA and its regulations and does not include the issuance of AML/CFT Guidelines. Sections 29 and 30 of the BA and FIA empower the BOJ to conduct onsite examinations and to have access to books and records. Given the deficiency noted in 26.1 with regard to micro credit lending institutions, Supervisors do not have the authority to conduct inspections of these institutions.

241. **Criterion 27.3** – As indicated above, POCA provides for a competent authority to examine and take copies of information or documents but there is no measure for a supervisor to compel production of information in the POCA. Section 6(3)(b) of the FSCA provides for the FSC to compel any officer of a prescribed FI to produce any information, records, books or documents in his possession regarding the operations of the FI. Section 30(b) of the BOJA provides for the BOJ to require any bank or specified FI to furnish information the BOJ requires to perform its functions and responsibilities. Additionally, given the deficiencies noted in 26.1 and 26.2, Supervisors are not authorised to compel the production of any information relevant to the monitoring compliance with AML/CFT requirements.
242. **Criterion 27.4** – Section 8(1) of the FSCA empowers the FSC to impose on FIs for contravention of relevant legislation measures which include the requirement for the institution’s Board to provide an undertaking to take corrective action; to give directions; to issue a cease and desist order; to require the institution to take certain steps or to refrain from a course of action; to restrict the scope of business; to impose limitations on activities of the business; to require the removal of any director or manager and to exercise any other function under any relevant Act. Section 6(2) (c) (ii) of the FSCA provides for the FSC to suspend, cancel or revoke any license or registration in accordance with section 91A (5) of the POCA. Additionally, section 21 of the FSC Act allows the FSC to offer a person the opportunity to discharge any liability as specified in the Fourth Schedule by payment of a fixed penalty. The liabilities in the Fourth Schedule relate to various offences under the Securities Act and the Insurance Act. The FSC is not empowered to administer administrative penalties for AML/CFT breaches.
243. Similar measures for ML breaches are also applicable by the BOJ under sections 25(1) and (6) of the BA and FIA with regard to licensees under the respective laws. These provisions do not include TF breaches. While the BOJ has advised that in practice similar procedures are followed for building societies equivalent provisions for ML/TF breaches have not been set out in legal provisions. The authorities have advised that this inconsistency will be addressed once the Banking Services Act comes into effect. Regulations 63 to 66 and the First Schedule of the Building Societies Regulations, 1995 details the sanctions which can be applied. Additionally, section 22E of the BOJ Act allows the BOJ to offer a person the opportunity to discharge any liability as specified in the Appendix by payment of a fixed penalty. The liabilities in the Fourth Schedule pertain to various offences by MVTs or exchange bureaux. Similarly, section 42 and the Third Schedule of the Banking Act and Financial Institutions Act respectively also contain provisions which allow the BOJ to offer a person the opportunity to discharge any liability as specified in the Third Schedule by payment of a fixed penalty. The Third Schedule details various offences pertaining to businesses of banking and deposit taking. The BOJ is unable to administer administrative penalties for AML/CFT breaches.
244. In relation to remittance companies and cambios, similar measures are set out in direction 14.1 of the Operating Directions for Remittance Companies and direction 22 for Operating Directions for Cambios. Based on the discussion in Recommendation 14, the Operating Directions can be considered enforceable means in accordance with the FATF Methodology. There is no sanctions regime for micro credit lending institutions.

### ***Weighting and Conclusion***

245. The supervisory authorities the BOJ and the FSC generally have the necessary powers to monitor compliance of their respective FIs with AML/CFT obligations, including powers of inspection, ability to compel information and impose sanctions for breaches of AML/CFT requirements. The BOJ and the FSC

do not have powers to administer administrative penalties for AML/CFT breaches. As noted in the analysis of Recommendation 26, there is neither a regulatory / supervisory regime for micro credit lending institutions nor are they subject to AML/CFT requirements. Accordingly, Supervisors are not empowered to ensure compliance with AML/CFT requirements, conduct inspections, compel the production of information relevant to monitoring compliance with AML/CFT requirement and a sanctions regime does not exist for micro credit lending institutions. **Recommendation 27 is rated partially compliant.**

### ***Recommendation 28 – Regulation and supervision of DNFBPs***

246. Recommendation 28 (formerly R.24) was rated ‘NC’ in the 3<sup>rd</sup> MER. The main deficiency noted by the Assessors was that casinos were outside the purview of the AML/CFT measures, as were the other categories of DNFI/DNFBPs and there was a lack of adequate regulation. Jamaica passed the Casino Gaming Act 2010, established a full AML supervisory regime under the regulation of the Casino Gaming Commission. The new FATF Standard specifically indicates that the systems for monitoring and ensuring compliance with AML/CFT requirements should be performed by a supervisor or SRB. It is also required that the supervisor or SRB take necessary measures to prevent criminals or their associates from being professionally accredited and to have effective, proportionate and dissuasive sanctions. In 2013, Jamaica established an AML/CFT regulatory regime for DNFI/DNFBPs. See. R. 22 above.
247. **Criterion 28.1** - (a) Casinos are required to apply for a casino gaming license to the Casino Gaming Commission according to section 14(1) of The Casino Gaming Act (CGA). Gaming machine operators with twenty or more machines are required to be licensed by the Betting Gaming and Lotteries Commission (BGLC) in accordance with section 7 of the Betting, Gaming and Lotteries Act (BGLA). (b) The CGC shall grant the casino gaming license in accordance with sections 2(2) and 15(1)(a) of the CGA, and ‘fit and proper’ requirements are defined under s.15(2). Both applicants and their associates must meet these criteria in order to hold any relevant financial interest or position in the casino. The BGLC shall grant a license in accordance with s.8(1) of the BGLA once it satisfies itself that the applicant meets the ‘fit and proper’ criteria set out in section 7 (2B). (c) Under POCA section 91A the CGC and the BGLC as Competent Authorities can carry out inspections or verifications procedures as may be necessary in order of verifying the compliance with the AML/CFT requirements.
248. **Criterion 28.2** – The cited section 91A of the POCA outlines the function of the competent authority.
249. The Government of Jamaica has designated the following bodies as the Competent Authority for the following areas:
- a. Casinos – Casino Gaming Commission (Government Supervisor)
  - b. Attorneys – The General Legal Council (Government Supervisor)
  - c. Real Estate Dealers – Real Estate Board (Government Supervisor)
  - d. Accountants – Public Accountancy Board (Government Supervisor)
  - e. Gaming Machine Operators – Betting Gaming & Lottery (Government Supervisor).
250. No authorities have been designated for the other categories of DNFI/DNFBPs identified by the Recommendations. (TCSP services may be provided by attorneys or accountants and are therefore captured under those supervisory bodies. Additionally, notarial services must be provided by attorneys who are

supervised by the GLC. Dealers in precious metals and stones have not been brought under Jamaica's AML/CFT regime.

251. **Criterion 28.3** - Section 91(1)(g) of the POCA gives the designated Authority the authority to monitor compliance of, and issue guidelines in relation to AML; however, it does not extend to CFT. The designated authorities have all put systems in place to allow them to monitor compliance with AML requirements by their licensees. These systems include on-site inspections and mandatory annual filings. Not all relevant entities have been designated as DNFIs/DNFBPs and are therefore not subject to monitoring for AML/CFT compliance.
252. **Criterion 28.4** - (a) Under section 91A of POCA the competent authorities have powers of inspection and verification of procedures, issuing directions for compliance, taking copies of information or documents in order to supervise any business, sharing information with other competent authorities and imposing registration and reporting requirements to business in the regulated sector. (b) In order to deprive criminals and their associates of holding or being a beneficial owner of a business, the DNFIs/DNFBPs are subject to tests under their governing legislations. Under section 15 of the CGA, the issuance of the license for casinos, is subject to examination to determine whether the applicant and associates are fit and proper persons to be concerned in the management or operation of a casino. Under section 6 of The Legal Profession Act (LPA) in order to practice a legal professional is required to have a qualification to practice law and be of good character. Under section 11 of The Public Accountancy Act (PAA), accountants are required to have qualifications for registration and be of good character. Under section 7 of The Betting Gaming and Lotteries Act, a person who requires a license permit shall make an application in writing to the Commission in the prescribed form and manner and according with the requirements established in the Act. Under sections 14 and 20 of the Real Estate (Dealers and Developers) Act, real estate businesses should apply to obtain a license issued by the Board to engage in real estate business according to the requirements of registration. None of these legislation require the determination of the ultimate beneficial owner at the time of licensing or thereafter. (c) Sanctions established under the POCA are also applicable for DNFIs/DNFBPs, but in general do not appear to be dissuasive (See analysis for R. 35). There are no designations under the TPA.
253. **Criterion 28.5** - The authorities indicated that the POCA does not specify the frequency and intensity of AML/CFT supervision. Guidance Notes drafted by the designated supervisors provide for the supervision of DNFIs /DNFBPs on a risk-sensitive basis, however, most of these are not yet in force and issues of TF are not covered.

### ***Weighting and conclusion***

254. There are licensing requirements for casinos which include fit and proper criteria for assessing the applicant and associates. Similar measures are applicable to lawyers, accountants, real estate agents, and casino and betting, gaming and lotteries operators. Designated authorities have powers to monitor for compliance; however, sanctions available are not dissuasive. Not all categories of DNFIs/DNFBPs are supervised for AML/CFT compliance and no DNFIs/DNFBPs are subject to the TPA. There are no measures that require competent authorities to take necessary measures in order to supervise DNFIs/DNFBPs on a risk-sensitive basis. **Recommendation 28 is rated partially compliant.**

## **Recommendation 29 - Financial intelligence units**

255. Jamaica was rated ‘LC’ for R.29 (formerly R.26) in its 3rd MER. The lone recommendation was for the Minister to consider appointing the Chief Technical Director (CTD) of the FID as the designated authority for the receipt of disclosures. Since Jamaica’s 3rd MER, changes to the FATF Standards now require several additional measures to be in place. Issues that arise, based on the new measures, are whether the FIU: (i) conducts operational and strategic analyses; (ii) has access to the widest possible range of information (iii) has the ability to disseminate information spontaneously; (iv) protects the information by: (a) rules for security and confidentiality; (b) levels of staff security clearance; and (c) limiting access to the FIU’s facilities; (v) has the operational independence and autonomy: (a) to freely carry out its functions; (b) to independently engage in the exchange of information; (c) has distinct and core functions from its overarching ministry; (d) is able to individually and routinely deploy its resources as it freely determines (vi) has applied for Egmont membership.
256. **Criterion 29.1** – The Financial Investigation Division (FID) was established in 2010 pursuant to section 4 of the FIDA. The FID has a Chief Technical Director (CTD), appointed by the Minister. The Financial Intelligence Unit (FIU) is a unit within the FID which was also established in 2010. The FIU is the designated authority with responsibility to collect, request, receive, process, analyse and interpret information relating to financial crimes and any other reports made or received pursuant to the said FIDA or any other Jamaican law. Reporting of STR’s related to TF is provided for at section 16 of the Terrorism Prevention Act (TPA).
257. **Criterion 29.2** – (a) The CTD of the FID receives disclosures filed by reporting entities pursuant to sections 94 and 95 of the POCA and reports relating to TF pursuant to section 16 of the TPA. (b) According to measures provided at section 101 of the POCA the CTD of the FID also receives reports from persons either transporting or ‘causing’ the transportation of cash in excess of US\$10,000 or its equivalent. At regulation 3 of the POC (MLP) regulations FIs are required to report certain large cash transactions.
258. **Criterion 29.3** – (a) Measures detailed at section 3(6) of the POC (MLP) regulations and section 5(1)(b) of the FIDA, permit the CTD to request information from reporting entities relating to ML, associated predicate offences and TF. The CTD is permitted under section 5(1)(b) of the FIDA, to use this information, when needed to perform analyses; (b) Information held by statutory bodies must be disclosed to the CTD pursuant to paragraph 13 of the first schedule of the POCA. Section 3(6) of POCA (MLP), allows the FIU direct and indirect access to the widest range of financial, regulatory, administrative and LEA information. The FIU has access to a number of government databases which assist in the undertaking of their analytical functions. These databases include: Automated Motor Vehicle, Property Tax, Land Valuation, Stamp Duty and Transfer Tax, Integrated Computerized Tax Administration System, Taxpayer Registration Number, Jamaica Customs, Companies Office of Jamaica, Inland Revenue Driver’s License Database, National Land Agency, FINCRIME, FINTRAN, World Check Link and the JCF.
259. **Criterion 29.4** – (a) No measures are detailed for the undertaking of operational analysis, however, it is practiced. The FIU undertakes operational analysis based on the information received from reporting entities and other information accessible to it. (b) There are no measures e detailed for the undertaking of strategic analysis also, nevertheless, the FIU again uses their available information to create financial profiles on specific targets based on request from specialized law enforcement units. This tool is used to

identify assets and bank accounts of these individuals and also to provide vital information as to their associates and links to possible proceeds of crime.

260. **Criterion 29.5** Section 5 (1)(b) of the FIDA provides the function of the FID. Section 5(1)(d) and section 5(1) (e)(i) of the FIDA, empowers the CTD to disseminate, spontaneously and upon request information and reports in respect to financial crimes, transaction reports and any other reports made and received pursuant to the FIDA or other Jamaican legislation and the results of its analysis to relevant competent authorities as set out in the functions. FID, LEAs and the BOJ have access to a secured shared folder administered by the FID's IT Unit. Other government agencies are responded to through the CTD's office with hard copy, which require a signature of acknowledgement as well as proper identification. International dissemination is conducted through The Egmont Secure Web System.
261. **Criterion 29.6** – (a) Section 10 of the FIDA provides for the protection of the FIU's information and prohibits the disclosure of this information with the exception of specific areas set out in section 10(4) of FIDA. The Financial Intelligence Unit Security Policy (FIUSP), are guidelines set for the Standard Operating Procedure (SOP). These guidelines are internal policies, used to govern the access to, control and management of government information and the information resources. The primary goal is to prevent or minimize the impact of information security and breaches and to enhance the protection of information resource held by the FIU. (b) The FIUSP has a standard criterion for accessibility to the Unit. The IT Unit is responsible for maintaining the accessibility of staff to the Unit by affixing times of entrance and exit. Staff access logs are also maintained by the IT Unit and restricted persons can only enter the Unit, if permitted by a member of the Unit. When a staff member proceeds on vacation, their access code is deactivated. (c) Access to computer systems are restricted to authorized personnel with valid user name and password. The Director of the FIU has access to all folders within the Intel Share Folder which holds records of work undertaken within the Unit as well as public documents. Staff restriction is placed on all folders within the Intel Share Folder which allows protocol for access control.
262. **Criterion 29.7** – (a) The FID is a statutory body within the Ministry of Finance which was established pursuant to section 4 of the FIDA. According to section 3 of the FIDA, the FID was established as a department of government with sufficient independence and authority to carry out its functions effectively. (b) The CTD can enter into a contract, MOU or other agreement with a public body in Jamaica or a foreign FIU or department or associations of a foreign FIU. These measures are found at section 12 of the FIDA. Approval of the Minister is a requirement and the foreign entities to which arrangements can be made are limited to FIU related entities and therefore; do not include all competent authorities. (c) Measures provided at section 5 of the FIDA allows for the distinct core functions of the FIU. (d) The FIU as a department within the MOFP is subject to the general consultation requirement concerning the overall budgetary directions of the MOFP to deploy resources as it considers necessary to carry out its functions.
263. **Criterion 29.8** – The FID attained membership in the Egmont Group in June 2014.

### **Weighting and conclusion**

264. The FIU is a unit within the FID and all reports required to be filed pursuant to Jamaican laws are filed with the CTD. Measures detailed at section 3(6) of the POC (MLP) regulations along with Sections 5(1)(b) and section 5(1) (e)(i) of the FIDA, empowers the CTD to collect, request, receive, process, analyze, interpret

and disseminate information, spontaneously and upon request; analytical functions are carried out to a large degree; and as such there can be more statistical data on how the analysis and disseminated STRs support the system of financial investigations. The power of the Minister to provide approval for the FIU to make arrangements or engage with foreign entities on exchange of information is a limitation to the operational independence of the FIU. Nonetheless, the FID has a broad ability to access information from persons and entities under the FIDA. **Recommendation 29 is rated largely compliant.**

### ***Recommendation 30 – Responsibilities of law enforcement and investigative authorities***

265. Jamaica was rated ‘LC’ for R. 30 (formerly R. 27). The main issue at the time was the lack of implementation of the TPA due to its recent enactment. Recommendation 30 requires that there should be a Law Enforcement Authority (LEA) responsible for ML/TF investigations in a national context. Countries should designate a competent authority to identify, trace and initiate actions to freeze and seize property subject to confiscation. While LEAs are not considered competent authorities in Jamaica, they are involved in receiving financial intelligence to conduct investigations involving ML and TF.
266. ***Criterion 30.1*** – The FIDA establishes the FID as the statutory body to investigate financial crimes. The Constabulary Financial Unit (CFU) of the FID consist of a dedicated team of police officers assigned to the FID to undertake ML/TF investigations supported by a team of forensic accountants collectively referred to as the FIT. Section 2(a)(b) POCA authorizes officers of the JFC who are designated by the Commissioner of Police, assigned to the FIT Team and operate within the FID, to conduct investigations of money laundering and other predicate offences. In addition to this the JFC has taken additional measures to ensure that ML/TF and associated predicate offences are investigated within the framework of AML/CFT policies by establishing two additional units namely: (a) MOCA, established in August 2012 as a result of a merge between the JFCs Anti-Corruption Branch and the Major Organized Crime Task Force into one agency Major Organized Crime Agency. MOCA is mandated to investigate money laundering, predicate offences and major transnational crimes. (b) CTOC, also established in 2013, as a result of the merge between the JFCs Flying Squad and the Organized Crime Investigations Division into one branch called the Counter-Terrorism and Organized Crime. CTOC is responsible for investigating terrorism and all related threats to terrorism.
267. ***Criteria 30.2*** – Pursuant to section 3(4) of the POCA, the FID has the authority to carry out ML/TF investigations. Additionally MOCA and CTOC are authorized to conduct ML/TF investigations or may refer such investigations to the CFU. Measures are in place as cited in sections 2 and 3 of POCA.
268. ***Criteria 30.3*** – The Authorities have reported that the FID is the Assets Recovery Agency (ARA) as per section 5 of the POCA. Additionally, Part 1 of the POCA is concerned with the ARA and the FID has been so designated according to section 3 (1) (a). Section 5 (1) of the POCA empowers the FID to apply for forfeiture orders, relating to a defendants benefit from criminal lifestyle. Section 33 (1) empowers the FID to apply for restraint orders to prohibit persons from dealing with realizable property. For terrorism offences the DPP may make forfeiture applications pursuant to section 33 of the TPA and restraint orders applications pursuant to section 35 of the TPA. Section 85 of POCA speaks to the tracing of property and states where original property obtained through unlawful conduct is or has been removable, any property that represents in whole or in part directly or indirectly the original property is recoverable property. Section 85(3) states that such property may be followed in the hands of the person who obtains it which allows the

authorities to trace and dispose of such property. No citations were provided to measures which enable the either the FID or the DPP to expeditiously identify and trace property.

269. **Criterion 30.4** – Customs officers are included as LEAs, authorized to conduct financial investigations under the POCA Part V (on ML) and Part VI (investigations) under section 91(1)(f) and also under section 103, which extends to the following areas: Account monitoring orders, Seizure of realizable property that is subject to Restraint Order, Disclosure Orders, Ancillary Orders, Search and Seizure Warrants and Customer Information Orders. Additionally, the Customs (Preventive Service) Rules, issued under the Revenue Administration Act, reflect that the Commissioner of Customs and Excise may from time to time require any Customs officer to carry out special duties in connection with the prevention of smuggling. The duties include boarding and rummaging of aircrafts and ships, the examination of passengers and their baggage and such other duties assigned by the Commissioner of Customs and Excise.
270. **Criterion 30.5** – The Major Organized Crime and Anti-Corruption Agency (MOCA) of the JCF was established through the amalgamation of the Major Organized Crime and the Anti-Corruption Branch of the JCF in August 2014. MOCA is authorized to investigate ML/TF offences linked to corruption and is focused on targeting major organized criminal networks including those involved in public sector corruption.

### ***Weighting and conclusion***

271. The FID under section 3 of the FIDA has been designated as the LEA with responsibility for ensuring ML, associated predicate offences and TF are properly investigated. Section 5(1)(e) and 5(2)(a) of the FIDA, also reflect that the functions of the FID include the ability to investigate or cause to be investigated any person who is reasonably suspected of being involved in the commission of any financial crime either on the CTD's own initiative or at the request of the DPP, Commissioner of Police or any other public body. Additionally, under the POCA, customs officers are empowered to utilise these financial investigative measures. Section 85 of the POCA speaks to the tracing of property obtained through unlawful conduct. Section 85(3), states that such property may be followed in the hands of the person who obtains it, which allows the authorities to trace and dispose of such property. However, no citations were provided to measures which enable either the FID or the DPP to expeditiously identify and trace property.
- Recommendation 30 is rated largely compliant.**

### ***Recommendation 31 - Powers of law enforcement and investigative authorities***

272. Jamaica was rated 'LC' for R. 31 (formerly R. 28). The main issue at the time was the lack of implementation of the TPA due to its recent enactment. R. 31 expands the powers of LEAs and Investigative Authorities (IA). Competent authorities should have mechanisms in place to identify whether natural or legal persons hold or control accounts and be able to require information from FIU when conducting relevant investigations.
273. **Criterion 31.1** – (a) Section 105 of the POCA allows for a disclosure order to be made by a Judge, upon application, by an appropriate officer. Such an order can be obtained for the purpose of investigations (POCA section 105(2)(b)) requiring a person who appears to be in possession or control of information or

material to produce such information or material. Section 17 of the FIDA permits an authorized officer, who is pursuing a financial investigation, to apply to either a Judge in Chamber or Resident Magistrate for an order against a person suspected of having possession or control of information, book, record or document. For terrorism offences, section 21 of the TPA provides for the DPP to apply for a production order or an order that information or documents be made available.

274. (b) Measures permitting searches to be conducted on premises can be found at section 115 of the POCA. The FIDA, at section 31(1) provides for the obtaining of search warrants, by authorized officers. For terrorism financing offences section 23(2)(b) of the TPA permits a constable to search premises for applicable property. Pursuant to section 17 of the Constabulary Act, 1935 the police can search persons on any ship or boat or any person who would have landed from a ship or boat. There are no provisions with regard to the search of persons Pursuant to section 72(3)(b) of the POCA, an authorized officer (namely a Constable, Customs Officer or Officer of the Asset Recovery Unit) may conduct a search on a person if the officer has reasonable grounds for suspecting that a person is carrying cash, which is recoverable property. It should be noted that these searches are limited to specific situations and considerations.
275. (c) Measures are provided at section 13 of the Constabulary Force Act for the general duties of the police inclusive of “performing all the duties appertaining to the office of a constable.” The taking of witness statements is a part of the functions routinely carried out by the Police. While such duties are not articulated so as to include specific measure for the recording of witness statements the JCF Rule 1988 6.11 provides that “Every original signed statement taken by the police must be available in Court and should be tendered to the Crown Prosecutor before the Court sits; and it is also a requirement of the Divisional Officer to bring to the notice of the Crown Prosecutor any information which though inadmissible as evidence, may be used.
276. (d) The CTD is permitted to apply to a Judge or Resident Magistrate for an Order under section 17(1) of the FIDA. Such an order is in relation to a person suspected of having possession or control of information, book, record or document. The Order requires the suspected person to either produce make available for inspection or answer questions about the information, book, record or document. Accounting records used in the ordinary business of a FI are exempted from these measures (section 17 (5) (a) of the FIDA). No information, book, record or document nor any information gleaned directly or indirectly from them can be used in criminal proceedings (Section 19 of the FIDA). As noted at (b) above section 115 of the POCA provides measures enabling search and seizure warrants to be obtained. These warrants are in relation to forfeiture investigations into a person’s benefit from criminal conduct, civil recovery investigations for recoverable or associated property and the investigation of money laundering offences. Section 21 of the TPA speaks to TF offences and provides measures for the DPP to obtain either a production order or an order requiring that information or documents be made available. Here accounting records can only be copied or examined but not removed. For terrorism offences section 23 of the TPA permits a constable to obtain a warrant enabling him to seize applicable property. Predicate offences to ML which include financial crimes are dealt with under the FIDA and the Constabulary Force Act. The Authorities indicated that in Jamaica’s framework, LEAs are not competent authorities as such title applies to regulatory and supervisory authorities such as the BOJ, FSC and the DNFI/DNFPB regulators. The powers exercisable under the POCA are extended to authorized officers of the FID, JCF and JCA investigating predicate offences related to ML.

277. **Criterion 31.2 - (a)** Undercover operations are facilitated by section 16 of the First Schedule of the POCA, which at 16(2) allows the Director to direct a member of staff of the Agency to identify himself by means of a pseudonym. Further section 16(4) requires that persons who are directed to use a pseudonym may not in any proceedings under the POCA be asked any questions that are likely to reveal his true identity. This sub-criterion is met. -The Interception of Communication Act permits the interception of communication as directed by a warrant issued by a Judge. The Cybercrime Act in conjunction with provision of the Interception of Communications Act allows authorized persons to access, use or modify any programme or data in a computer. This sub-criterion is met. (c) Section 6(3) of the FSC Act empowers the FSC if an investigation is being conducted, to at all times have access to all books, records and documents in the possession or control of any director, manager, officer or employee of any prescribed financial institution; to require the said person to furnish such information or to produce such books, records or documents as are in his possession or control, that relate to the operations of the financial institution. Section 109 of the POCA provides for the production of electronic information, but it is limited to such information when it is the subject of a disclosure order. This sub-criterion is partially met. (d) Undercover operations under the POCA, First Schedule at section 16 will include controlled deliveries.
278. **Criterion 31.3 – (a)** The mechanism through which the identification as to whether natural or legal persons hold accounts can be found at section 119 of the POCA, which provides for the obtaining of a customer information order. (b) The process through which the FIU can identify assets is centred on section 13 of the First Schedule of the POCA, which mandates statutory authorities to disclose the information they hold to the CTD. No prior notification is presumed. As stated competent authorities are regulatory and supervisory authorities, therefore they have access to such information as of right in the course of their statutory supervisory functions via audits and inspections. However measures relating to the process used by LEAs are provided for in the POCA.
279. **Criterion 31.4 –** Competent authorities conducting investigations of ML, TF and associated predicate offence are able to ask the CTD for all relevant information collected and held by the FID. Section 6(3) of FIDA allows for the FID to cooperate with an investigative authority in the exercise of any functions conferred on the authority under the Act.

### ***Weighting and conclusion***

280. Jamaica's law enforcement and investigative authorities have the power to obtain relevant information with regard to investigations and prosecutions of ML/TF. Compulsory measures can also be used to obtain same. Investigative authorities are generally permitted to use the full spectrum of investigative techniques (wiretapping, undercover operations and accessing computer systems) to pursue ML, associated predicate and TF offences as measures are provided for in section 6(3) of the FIDA, which allows for the FID to cooperate with an investigative authority in the exercise of any functions conferred on the authority under the Act. Measures are also contained in the Interception of Communications Act, the Cybercrimes Act and the POCA (First Schedule). There are limitation with regard to the search of persons and limitations with regard to the production of electronic information under the POCA. **Recommendation 31 is rated largely compliant.**

### *Recommendation 32 – Cash Couriers*

281. At the time of Jamaica's 3<sup>rd</sup> MER, R. 32 (formerly SR. IX) was not adopted by the CFATF and it was therefore not assessed. The new requirements for the 4<sup>th</sup> Round are in criteria 32.2 and 32.10 and are related to the declaration of currency or BNIs and the existence of safeguards without restrictions of trade and movements of capitals.
282. **Criterion 32.1**-A declaration system has been implemented by Jamaica, under Section 101 of the POCA which requires a person to report to the designated authority the incoming and outgoing cross-border transportation of cash including bearer-negotiable instruments (BNIs) into or out of Jamaica. A declaration system applies for shippers and mailers with regard to cross border transportation of cash and BNIs through the mail and via cargo.
283. **Criterion 32.2** – (a-c) Based on Section 101 of the POCA, a person who transports cash (including BNIS), is required to submit to the designated authority a written declaration, which applies to all travelers carrying amounts exceeding US\$10,000 currency or its equivalent in any other currency. According to section 102 (a) of the POCA, the Minister may make regulations prescribing the form and manner in which a disclosure of cross border movement of funds shall be made.
284. **Criterion 32.3** - This Criterion is not applicable to Jamaica, since Jamaica has a declaration system and not a disclosure system.
285. **Criterion 32.4** - Section 3 of the Customs Act states that for the purpose of carrying out the provisions of the customs laws all officers shall have the same powers, authorities and privileges as are given by law to officers of the Constabulary Force. Therefore, customs officer have general powers to investigate, request and obtain further information from the carrier, in the assumption of a false declaration or a failure to declare.
286. **Criterion 32.5** - Section 209 (1) of the Customs Act creates an offence that if any person, in any matter relating to customs makes or subscribes or causes to be made or subscribed any false declaration or makes or signs or causes to be made or signed, any declaration, certificate or other instrument required to be verified. It is also an offence if a person falsifies any document required by the customs laws or by or under the direction of the Commissioner. Section 209(2) of the Customs Act incorporates a fine not exceeding JA\$500,000 or treble the value of the goods to which the offence relates, whichever is greater for failing to declare cash.
287. **Criterion 32.6** - The cited legal basis (section 101(2) of the POCA) does not make reference to providing information to the FIU specifically about suspicious cross border transportation incidents through a secure system, however, they do make the declaration directly available to the FID (under sections 101 (2) and 91 (1) (h)).
288. **Criterion 32.7** - The FIDA at section 12 establishes domestic cooperation provisions through the issuance of MOUs and exchange of information to investigating and prosecuting financial crime. The FID and JCA have entered into a Memoranda of Understanding and exchange of information for investigating and prosecuting financial crimes. The JCA also share MOUs with the JDF, TAJ and PICA.
289. **Criterion 32.8** - Section 75(1) of the POCA allows an authorized officer to seize any cash in case of having reasonable grounds for suspecting that the cash or part of it is intended by any person for use in unlawful conduct. However, pursuant to section 75(3) there can be no seizure even where there is a suspicion once the amount is below the threshold. There is no legal basis to determine whether the seizure operates in reasonable time or in cases of a false declaration. The Authorities cited section 209 of the Customs Act;

however this is not relevant to the authorities' ability to stop or restrain currency or BNIs upon a false declaration.

290. **Criterion 32.9** – (a)-(c) As indicated in criterion 32.6 above, all cross border declarations are submitted to the FID. The Authorities indicated that requests for international assistance may be made via the Egmont Group, Interpol or MACMA. The FIU is responsible for the storage and maintenance of records Cross Border Reports which are entered into the CTRs database for further analysis on receipt. Upon completion, the information is filed in a cabinet that is assigned a lock and key for a period of twelve (12) months. At the end of this period, the information is sent to the FID's warehouse. The warehouse key is in the possession of the DIU Secretary and office manager of the FID. There is no indication as to how these records are maintained.
291. **Criterion 32.10** - There is no information regarding the measures that have been put in place to ensure the proper use of information collected through the declaration system. There is no evidence that the declaration system does not restrict trade payments between countries for goods and services or the freedom of capital movements.
292. **Criterion 32.11** - The POCA at section 101(3) establishes a fine of JA\$250,000 or treble the amount of cash transported, whichever is the greater. Pursuant to section 79 of POCA, the forfeiture of seized cash and BNI is allowed.

### ***Weighting and conclusion***

293. Jamaica has established system for cross border transportation of currency through the mail and via cargo. Customs officers have the same powers as are given to law to officers of the Constabulary Force and can therefore exercise the power to request and obtain further information from a carrier in order to target false declarations or failure to declare. All declarations are reported to the CTD. Additionally, the fines for failure to declare are proportionate and dissuasive as a fine trebling the amount of cash transported can be imposed. POCA also allows the forfeiture of seized cash and BNI. However, there can be no seizure of cash if there is a suspicion once the amount is below the prescribed threshold. Further, the Assessors were not provided with any specific information regarding the measures that have been put in place to ensure the proper use of information collected through the declaration system. There is also no evidence that the declaration system does not restrict trade payments between countries for goods and services or the freedom of capital movements. **Recommendation 32 is rated largely compliant.**

### ***Recommendation 33 – Statistics***

294. This Recommendation (formerly R. 32) was rated 'LC' in the 3rd MER. The Assessors noted that there was a lack of systematic feedback and since then, some improvements have been made. For instance, the Financial Investigations Division (FID) developed yearly reports for 2010-2011, and 2011-2012, and monthly performance indicators covering the period February 2013 to February 2014, which are available on the FID's website (See 10th FUR para. 12). The FID also acquired the GOAML Software which was expected to significantly increase possibilities of statistical analysis (See. 11th FUR matrix). Jamaica consistently continued to present implementation statistics throughout the follow-up process.
295. **Criteria 33.1** - (a) and (c) Section 5 (1) of the Financial Investigations Division Act (FIDA) refers to FID maintaining statistics. Section 5 (1) (i) of the FIDA expressly requires the FID to maintain statistics on STRs, received and disseminated and property frozen, seized and confiscated. (b) Section 5 (1) (i) and (iii)

make reference to maintaining statistics on the prosecution of financial crimes and investigations. Jamaica is unable to provide comprehensive statistics on ML/TF investigations, prosecutions and convictions. (d) The Central Authority, Office of the Director of Public Prosecutions (DPP) maintains statistics on mutual legal assistance requests. Authorities indicated that other agencies, such as the Jamaica Constabulary Force (JCF) and Jamaica Customs Authority (JCA) also maintain statistics. The Ministry of Justice is currently working on a project to track convictions in both the lower and Supreme Courts, though not expressly requested in law, regulations, guidance, instructive or other enforceable means.

### *Weighting and Conclusion*

296. Jamaica maintains statistics on matters relevant to its AML/CFT system. This is done by several agencies, however only the FID is mandated by law to do so. **Recommendation 33 is rated partially compliant.**

### *Recommendation 34 – Guidance and feedback*

297. This Recommendation (formerly R. 25) was rated ‘PC’ in the 3<sup>rd</sup> MER, the main deficiency being the lack of a mechanism to efficiently provide feedback to FIs and DNFIs/DNFBPs, on a systematic basis. The essential requirements of the revised Recommendation remain unchanged. After the mutual evaluation, Jamaica promoted the issuance of the FIDA with specific reference to the duty of the FID to provide guidance to FIs and DNFIs/DNFBPs regarding their obligations under FIDA or any other enactment (section 5 (2) (c) of the FIDA), among other improvements as detailed below. Only matter unresolved is the absence of coverage in current provisions of some DNFIs/DNFBPs (i.e. TCSPs).
298. **Criteria 34.1** – Section 5(2)(c) of the FIDA imposes an obligation on the FID to provide feedback in consultation with competent authorities. POCA at section 91(1)(g) states that competent authorities are responsible for issuing guidelines to their supervised entities. In addition, regulation 2(3) of the POCA Regs and regulation 3(1) of the TPR indicate that the Courts will have regard to guidance issued by regulatory bodies in determining whether a person has complied with the regulations. Following the stated obligation the BOJ, FSC and the FID have all issued guidance. Further the BOJ and FSC onsite examination processes include feedback as to the status of compliance or non-compliance with AML/CFT requirements and financial institutions are monitored using action plans with specific timelines for the remediation of AML/CFT deficiencies.
299. The BOJ, on the completion of each on-site examination, presents its findings to the management of the DTI, cambio or remittance company at an Exit Review Meeting (through an Exit Interview Summary Sheet/form). The findings are discussed and management has the opportunity to respond to the findings before its report is finalized.
300. In the case of DTIs, the BOJ prepares a comprehensive management report that is sent to the board and management of the DTI. The report outlines the areas of exception, required actions to be taken and implemented by the DTI to address deficiencies under advice to the BOJ within a given time period usually between thirty (30) and ninety (90) days of receipt of the report. Concomitantly, there is also communication (including written communications, meetings and telephone conversations) with the DTI, cambio or remittance company. At the follow up onsite examination verification is done to determine whether exceptions have been addressed, as well as, to identify any new and emerging AML/CFT deficiencies or issues.
301. In the case of the FSC, deficiency letters are issued after an exit conference where the areas of concerns are pointed out to the licensees and also commendations are made on improved areas. Licensees are given a

time period in which to respond with mitigating measures in accordance with instructions issued by the FSC. Follow ups examinations are done to ensure adherence of the requirements of the FSC.

302. The framework for the monitoring of the DNFIs/DNFBBPs provides for the issuance of feedback in relation to compliance with AML requirements, however, inspections have yet to be conducted to test this process. Additionally, not all DNFIs/DNFBBPs are covered by the AML/CFT regime.

### *Weighting and Conclusion*

303. Competent authorities in Jamaica have issued guidelines to FIs currently covered by the AML/CFT regime. *DNFI/DNFBBP* supervisors all have guidelines drafted, but most are yet to be brought into force, and do not cover CFT. The financial sector Regulators, the BOJ and FSC, provide feedback to the financial institutions under their respective purviews as part of their onsite examination process. **Recommendation 34 is rated largely compliant.**

### *Recommendation 35 – Sanctions*

304. This Recommendation (formerly R. 17) was rated ‘LC’ in the 3rd MER and the main deficiency was related to the terrorism financing legislation being very recent and the inability to assess its sanctions; no changes in the current Standard.
305. **Criterion 35.1** - With regard to R. 6, most of the criterion have not been met. For those criteria that have been met or partially met, they are punishable by imprisonment for life for an individual and fines for a body corporate. The fines for a body corporate should not exceed JA\$5M. For R. 8, the Charities Act is relevant, with section 21 providing for the suspension of approval for registration of an organisation as a charitable organisation under certain conditions. Section 22 of the Charities Act provides for the revocation of approval for registration as a charity. Sanctions are contained at section 122 of the POCA and range from a fine not exceeding JA\$1M for an individual and not exceeding JA\$3M for an entity. The sanctions for R. 10 are in keeping with the sanctions noted for R. 9 except that for individuals, there can also be a term of imprisonment not to exceed 12 months and both the fine and imprisonment can be applied to an individual. Where there are sanctions for R. 11-23 they are for the most part the same as those noted for R. 10. It should be noted that R. 14 sanctions also include forfeiture measures, which add to the level of dissuasiveness for offences pertaining to MVTS. Additionally, section 5 of the POCA provides that where a Court determines that a person has benefitted from criminal conduct, the property so derived can be forfeited or the person can pay to the Crown an amount equal to the value of his benefits. While the sanctions under the various DNFIs/DNFBBPs legislation are general sanctions for non-compliance with the provisions of the Acts, DNFIs/DNFBBPs are subject to the POCA and therefore all relevant sanctions under the POCA apply.
306. While the fines are proportionate, the sanctions for entities do not appear to be sufficiently dissuasive considering that some entities are international companies for which this amount can be considered minimal. Neither the BOJ nor the FSC can administer administrative penalties for AML/CFT contraventions.
307. **Criterion 35.2** – In general, section 49(2) of the Interpretation Act provides that where a body corporate is found guilty of an offence (limited membership company), any director or general manager, secretary or similar officer of the body purporting to act in that capacity is liable. Section 6(3)(b) of the FSCA, section 69(3) of the Securities Act and section 147(3) of the Insurance Act provide sanctions for directors, principal

officers or other officers. Section 97 of the POCA makes no specific reference to the liability of directors; however the Interpretation Act would apply.

### *Weighting and Conclusions*

308. Jamaica’s AML/CFT sanctions regime is proportionate and provides not only criminal sanctions but also administrative sanctions for some offences as noted above. The main issue for consideration however is the dissuasiveness of the sanctions especially with regard to the fines which range to a maximum of JA\$5M for entities who in some cases are international in nature and for whom this amount will be extremely palatable and not at all dissuasive. **Recommendation 35 is rated partially compliant.**

### *Recommendation 36 – International instruments*

309. Recommendation 36 (formerly R. 35 and SR. I) were both rated ‘LC’ in the 3<sup>rd</sup> MER. R. 36 incorporates an explicit requirement for countries to become party and implement the United Nations Convention Against Corruption. For R. 35, the deficiencies were that Art. 6(1) and 6(2)(b) of the Palermo Convention, which required the criminalisation of the laundering of the proceeds of crime and the inclusion of all serious crime as predicate offences to ML was not fully enforced. With regard to SR. I, the deficiencies included the fact that TF was not a predicate offence for ML; no provisions to directly freeze the assets of listed entities in the TPA; no provision to allow for the confiscation of property of corresponding value in the TPA and the recent passage of the TPA which affected an assessment of implementation. The enactment of the POCA in 2007 addressed issues pertaining to the laundering of the proceeds of crime and the inclusion of all serious offences as predicates for ML. Section 28 of the TPA addressed the issue of the confiscation of property of corresponding value. The TPR and the UNSCRIA have addressed issues with regard to the freezing the assets of listed entities.

310. **Criterion 36.1** – Jamaica has signed and ratified the following Conventions:

| Convention   | Date Signed        | Date Ratified      |
|--|--------------------|--------------------|
| 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) | October 2, 1989    | December 29, 1995  |
| 2000 UN Convention against Transnational Organized Crime (Palermo Convention)                                | September 26, 2001 | September 29, 2003 |
| United Nations Convention against Corruption (Merida Convention)   | September 16, 2005 | March 5, 2008      |
| 1999 UN Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention)        | November 10, 2001  | September 16, 2005 |

311. **Criterion 36.2** – Jamaica has incorporated the relevant articles of the Vienna, Convention into its domestic legislation through the enactment of The Dangerous Drugs Act, Mutual Assistance (Criminal Matters) Act, The Customs Act and The Proceeds of Crime Act. The relevant articles of the Palermo Convention have been incorporated into the Proceeds of Crime Act, Mutual Assistance (Criminal Matters) Act, Criminal Justice (Suppression of Criminal Organizations) Act and The Corruption Prevention Act. The Terrorism Prevention Act and United Nations Security Resolutions Implementation Act cover those articles that are

relevant in the Terrorist Financing Convention and the Merida Convention articles have been enacted through The Corruption Prevention Act. However, Jamaica has not fully implemented Article 11 of the Vienna Convention which relates to controlled deliveries.

### *Weighting and Conclusion*

312. The fact that Jamaica has ratified all the relevant Conventions is important, since the process of ratification requires that domestic legislation be enacted to meet the Conventions' requirements. The Article that has been noted as having no measures is necessary in most instances to ensure the strongest regime possible and allow for the widest international cooperation. **Recommendation 36 is rated largely compliant.**

### *Recommendation 37 - Mutual legal assistance*

313. Recommendation 37 (formerly R. 36) was rated 'LC' in the 3rd MER. The main deficiency was the inability to fully assess the implementation of the TPA because of its recent enactment at the time of the evaluation. The revised R. 36, now 37, requires that countries should have an adequate legal basis to provide cooperation and have in place all the needed mechanisms to enhance cooperation. Countries are now required to provide non-coercive assistance regardless of dual criminality provisions. The FATF Standard clarifies that the requesting country should make best efforts to provide complete factual and legal information, including any request for urgency.
314. **Criterion 37.1** - Jamaica has a legal basis for providing a range of mutual legal assistance. Section 15 of the MACMA outlines the wide range of mutual legal assistance which may be provided in relation to ML and associated predicate offences and TF investigations, prosecutions and related proceedings. These include the location and identification of persons; the examination and taking of testimony of witnesses; the production of documents and other records, including judicial and official records; the making of arrangements for a person to give evidence or assist investigations; the temporary transfer of persons in custody for the purpose of giving evidence; the carrying out of search and seizure, service of documents; the restraining of dealings in property or the freezing of assets that may be forfeited or necessary to satisfy pecuniary penalty orders; the tracing and seizure and forfeiture of property and such other matters that may be agreed.
315. **Criterion 37.2** – Under MACMA, the Minister of Justice is the Central Authority but the function was delegated to the Office of the DPP. Procedures are outlined in sections 4-30 of the MACMA. There is a dedicated Unit at the Office of the DPP that is responsible for the handling of ML requests. The Office of DPP maintains procedures for the timely prioritization and execution of requests, including a case management system.
316. **Criterion 37.3** - Mutual Legal Assistance can only be rejected on certain circumstances outlined in section 16 of the MACMA including: where compliance with the request would contravene the Constitution or prejudice the security, international relations or other essential public interests of Jamaica; if there are substantial grounds for believing that the prosecution is on account of race, religion, nationality or political views; the request relates to conduct for which the person has been convicted or acquitted in Jamaica; where confidentiality requested in relation to information or evidence furnished by Jamaica would not be protected by the relevant foreign state. Furthermore, a refusal may arise where in the view of the Office of the Directory of Public Prosecutions, (the Central Authority); the offence is not one that constitutes an offence in Jamaica or where the use of the information would not be restricted to the purpose stated in the request.

317. **Criterion 37.4-** (a) The grounds for refusal outlined in the MACMA section 16 do not include fiscal matters. (b) Additionally secrecy or confidentiality is not reasons to refuse a request, except when confidentiality of information that would be provided cannot be protected in the foreign state (section 16(g) of MACMA).
318. **Criterion 37.5-** Section 24 of the MACMA expressly states that where assistance is provided to a foreign state in relation to the provision of information or evidence, The Central Authority may, subject to subsection (2), require that such information or evidence be kept confidential in accordance with such conditions as may be specified. Subsection (2) further states that the requirement to keep the information or evidence confidential will not apply in cases where it is needed for the purpose of any criminal proceedings in the relevant foreign state.
319. **Criterion 37.6 -** Section 16 (2) of the MACMA allows the Central Authority to decline assistance where the conduct does not constitute an offence in Jamaica. Therefore, dual criminality is not a condition of rendering service since the central authority makes the decision.
320. **Criterion 37.7-** In Jamaica, the practice has been that the Central Authority normally looks at the substance of the matter and can consider a conduct equally criminal in Jamaica. As noted immediately above there appears to be no dual criminality requirement.
321. **Criterion 37.8-** (a) Section 15(3)(a)-(j) of the MACMA provides the assistance that may be given. Assistance relating to production, search and seizure of documents and other records including judicial or official records can be provided. The ability to have direct requests from foreign judicial or law enforcement authorities to domestic counterparts does not seem to be consistent with the legal framework in place, which requires that requests for assistance are made through the Central Authority (Section 15(4) of the MACMA). (b) It appears that section 15(3)(j) – ‘such matters as may be included in an agreement or arrangement in force between Jamaica and a foreign state’ is broad enough to include the possibility of a ‘broad range of other powers and investigative techniques.’

### ***Weighting and Conclusion***

322. **Recommendation 37 is rated compliant**

### ***Recommendation 38 – Mutual legal assistance: freezing and confiscation***

323. Jamaica was rated ‘PC’ with these requirements because at the time the laws and procedures to provide response to MLA requests were limited to the definition of ML, TF and other predicate offences which do not cover all serious offences as required by the then Recommendation 1. According to paragraph 47 of Jamaica’s 11th FUR the enactment of the POCA rectified the deficiency. The new FATF requirements are at 38.2, 38.3 (b) and 38.4. The analysis of 38.4 is required in so far as this criterion is now a direct obligation whereas in the 2004 methodology the obligation was only due for consideration. The issues are (i) whether measures exists for providing assistance to requests for non-conviction based confiscation; (ii) whether measures exists for managing and disposing of property frozen seized and confiscated; (iii) whether measures exists for managing and sharing confiscated proceeds with other countries.
324. **Criterion 38.1 -** (a) Sections 15 (1) of the MACMA provides for assistance to a foreign state, on request, in respect of investigations and proceedings relating to a criminal matter. The type of assistance can be found at section 15 (1) (i) and includes the tracing, seizure and forfeiture of property that may be subject to

forfeiture. Assistance with regard to restraining dealing of property or the freezing of assets that may be forfeited is covered at section 15 (1) (h).

325. **Criterion 38.2** - Section 27(8) of the MACMA provides for the Central Authority to apply to the Supreme Court on behalf of a foreign state, for a forfeiture order or pecuniary penalty order under the POCA in relation to property that is believed to be located in Jamaica and for the Authority to make arrangements for the enforcement of any such order. It is unclear whether this provision will extend to circumstances when a perpetrator is unknown, unavailable by reason of death, flight or absence. Additionally, the provisions of the MACMA are only in relation to criminal matters so there are no measures that specifically allow for non-conviction based confiscation proceedings.
326. **Criterion 38.3** - The Office of the DPP, FID, Chambers of the Attorney General and the Ministry of National Security have put in place measures as described under R. 4 to co-ordinate the seizure and the confiscation of property with other countries. Section 27 of the MACMA provides for the enforcement of foreign forfeiture orders, foreign restraint orders and foreign pecuniary penalty orders where some or all of the property available to satisfy the order is believed to be in Jamaica. A foreign state may also request the Central Authority in Jamaica to register the above orders in the Supreme Court so that they may be enforced as if they were a forfeiture order, restraint order, pecuniary order made by a court in Jamaica in respect of a prescribed offence. There are no measures with regard to disposal.
327. **Criterion 38.4** - The Sharing of Forfeited Property Act together with the ‘Agreement between the Government of the United States of America and the Government of Jamaica Regarding the Sharing of Forfeited Assets or the Proceeds of Disposition of Such Assets’ provide a basis upon which the Jamaican Authorities are able to share confiscated property with foreign states which are parties to the Vienna Convention and the United States of America, respectively. International conventions such as the Merida Convention also provide for asset sharing and proceeds of crime mechanisms. Furthermore, there are asset sharing agreements/arrangements with a number of countries including the United Kingdom and Canada.

### ***Weighting and conclusions***

328. Under the MACMA, assistance can be provided to foreign States on request, with section 15 providing a wide range of assistance. There are legal and administrative mechanisms for the co-ordination of seizure and confiscation actions with other countries including provisions for managing, and when necessary sharing of property frozen, seized or confiscated. However, the fact that the provisions of the MACMA cannot be leveraged for non-criminal matters is a deficiency. **Recommendation 38 is rated largely compliant.**

### ***Recommendation 39 – Extradition***

329. This Recommendation was rated ‘C’ in the 3<sup>rd</sup> MER. The revised FATF Standards require an adequate legal framework for extradition with no unreasonable or unduly restrictive conditions when assessing and rendering extradition requests. There should be a clear and efficient process to facilitate the execution of extradition requests, and the progress should be monitored by a case management system.
330. **Criterion 39.1** - (a) Extradition is governed by the Extradition Act 1991. Under section 5 of the Extradition Act, any offence against the law in an approved State, i.e. designated Commonwealth State, a treaty state that has taken place in Jamaica that is of a kind over which Contracting States under The Hague and Montreal Conventions are required by; are extraditable offences. An extraditable offence is an offence in

an approved State that is punishable by a term of imprisonment exceeding two years (which would include ML and TF offences). Additionally, section 5(3) of the Extradition Act specifically sets out the terrorism offences under the TPA as extraditable offences. (b) Section 12 of the Extradition Act also sets out the process for the execution of extradition requests including prioritisation where appropriate. An Extradition Unit has been established with the Office of the DPP to handle extradition requests and it ensures that they are prioritised. The Authorities noted that non-contentious matters may be satisfied within 30 to 90 days. The Authorities noted that the Court system also facilitates extradition proceedings. (c) The Extradition Act does not include any unreasonable or unduly restrictive conditions on the execution of requests. Section 7 outlines the general restrictions on extradition, for example:- (a) where the offence is of a political character; (b) where the request is made for the purpose of prosecuting the person for his race, religion, nationality or political opinions; (c) where the person may be denied a fair trial or punished because of his race, religion, nationality or political opinions; (d) where the offence would be statute barred; or (e) where the person would have been entitled to a discharge on the basis of his previous conviction or acquittal.

331. **Criterion 39.2** - There is no statutory bar against Jamaica extraditing its own nationals as under section 5 of the Extradition Act, the extradition offences do not exclude nationals from Jamaica.
332. **Criterion 39.3** – Under the Extradition Act there is a requirement of dual criminality. Section 5(1)(a)(ii) of the Extradition Act states that an extradition offence is one that would constitute an offence against the law of Jamaica if it took place within Jamaica and would be punishable under the law of Jamaica with imprisonment for a term of two years or any greater punishment. The Authorities have indicated that in practice, the Courts would consider the underlying act or omission to determine whether in corresponding circumstances it would constitute an offence in Jamaica.
333. **Criterion 39.4** - Section 17 sets out mechanisms to extradite without formal extradition proceedings. The fugitive has to consent his willingness in writing to be extradited. The extradition will be done forthwith to the approved State who made the request.

### ***Weighting and conclusion***

334. **Recommendation 39 is rated Compliant.**

### ***Recommendation 40 – Other forms of international cooperation***

335. This Recommendation was rated ‘PC’ in the 3<sup>rd</sup> MER. The main deficiency was that the FID was unable to share information overseas and spontaneous reporting or sharing was non-existent. This was greatly improved with the passing of the FIDA on March 26<sup>th</sup>, 2010 as recorded in the 2<sup>nd</sup> FUR paragraph 12. A number of international cooperation agreements for exchange of information and asset sharing, among others, are also in place. However, it is still unclear that the FID is able to share information upon specific requests. In addition, some of the requirements imposed under the revised Recommendation 40, such as allowing for the cooperation between non-counterparts, are not complied with.
336. **Criterion 40.1** – There are measures in place to ensure that competent authorities in Jamaica can rapidly provide the widest range of international cooperation in money laundering, predicate offences and terrorist financing matters. The FID is able to share information spontaneously, which the CTD considers appropriate, needed, etc. Authorities indicated that other forms of international cooperation include: a) Jamaica Customs membership in the Caribbean Customs Law Enforcement Council as well as b) the powers for competent authorities under the POCA section 91A (2) (d), c) the ability for the FSC to share

information with foreign counterparts, and d) the powers of the BOJ to share information under section 34D of the BOJA and multilateral MOUs such as the one Jamaica holds with the Caribbean Group of Bank Supervisors (CGBS). These generally include the ability to share any type of information that can help overseas authorities to exercise their regulatory functions, to conduct civil, criminal or administrative proceedings. Authorities also indicated that Jamaica participates in joint operations and task forces for investigations and the prosecution of complex offences and that there are bilateral cooperation and information sharing agreements between the Government of Jamaica and other Governments details of which were not provided.

337. **Criterion 40.2** – (a) Jamaica has a legal basis to provide cooperation as per section 12 of the FIDA section 34D of the BOJ Act, section 16 of the FSC Act, along with the use of MOUs with countries and relevant foreign and domestic competent authorities. (b) There are no measures that prevent competent authorities from using the most efficient means to co-operate. (c) There are clear and secure mechanisms to exchange information. (d) and (e) Based on the Standard Operating Procedures (SOP) of the FID; there are clear processes for the prioritization of requests and safeguarding of information received. The BOJ has entered into an MOU with its Caribbean counterparts which facilitate the sharing of information. Section 16 of the FSCA empowers the FSC to share information with the BOJ, FID, DPP and overseas regulatory authorities.
338. **Criterion 40.3** - Competent Authorities have formal and informal bilateral and multilateral arrangements to cooperate with a wide range of foreign counterparts. The FID has eleven (11) MOUs signed with foreign jurisdictions and is a member of the Egmont Group the BOJ is party to a multilateral MOU with fourteen (14) jurisdictions; the FSC is also party to MOUs with three (3) jurisdictions and other informal agreements. The JFC, as a member of INTERPOL shares information in conformity with INTERPOL's processes and procedures.
339. **Criterion 40.4** - Authorities indicated that requesting authorities invariably provide feedback, especially in the form of requests for additional information.
340. **Criterion 40.5** - (a) Jamaica does not unduly restrict sharing of information or assistance because of tax matters. In fact, Jamaica has double taxation treaties which expressly allow sharing of information (i.e. FATCA IGA), though these were not provided. (b) Secrecy laws do not prevent authorities from receiving and sharing information via specified legal avenues. The BA, FIA and Building Societies Act, all provide for customer information sharing under certain conditions (Fourth Schedule of each Act). (c) There were no indications as to whether other forms of international cooperation could be affected (or not) by on-going investigations, inquiries or proceedings. (d) While there are no specific legislative measure, Authorities stressed that when looking for instance, at mutual legal assistance requests, the Central Authority looks at the substance rather than terminology and this gives them an idea of how the nature of requests would be assessed.
341. **Criterion 40.6**- Section of 34D(5) and (6) of the BOJ Act establishes controls and safeguards to ensure that information exchanged by competent authorities is used only for the purpose, and by the authorities, for which they were provided. It further provides that BOJ will satisfy itself that when it shares information with an overseas regulatory authority that such authority is subject to adequate legal restrictions on further disclosures, including the provision to the Bank of (i) an undertaking of confidentiality on the part of the authority; or (ii) an undertaking by the authority not to disclose the information provided without the consent of the Bank. While section 15(4) of the FSC Act provides for the confidentiality of information shared, it does not provide the safeguard that the information must be used only for the intended purpose and there is no restriction on the further disclosure of the information. In the case of FID, the requirement

is met through section 12(4) of the FIDA, which is complemented by MOU provisions and Egmont principles given the fact that the FID is now an Egmont member. With regard to the JCF, as an INTERPOL member the JCF is guided by INTERPOL Rules on Processing Data.

342. **Criterion 40.7** – The FID’s MOUs with competent authorities include confidentiality provisions. Members of the FID are subject to secrecy obligations under the First Schedule of POCA, paragraph 4 as well as section 10 of the FIDA. Officers of the FSC are also subject to secrecy obligations under section 15 of the FSC Act. Officers of the Casino Gaming Commission are also under confidentiality obligations (section 70). Finally, the JCF is also a member of INTERPOL and sharing can only occur following INTERPOL rules, which were not provided. There was no indication of secrecy or confidentiality provisions being applicable to the Charities Commissioner. The BOJ’s confidentiality measures are as discussed previously under section 34D of the BOJ Act.
343. **Criterion 40.8** - Jamaica’s competent authorities are able to conduct enquiries on behalf of foreign counterparts and obtain all information that would be attainable by them if such enquiries were being carried out domestically, under the FIDA, Extradition Act, FSC Act, and existing MOUs.
344. **Criterion 40.9** - The FIU has a legal basis for providing cooperation (section 12 of the FIDA).
345. **Criterion 40.10** - Authorities indicated, and the Assessors confirmed, that the FID, as a matter of course, requests and receives feedback from foreign counterparts, particularly when joint investigations are conducted.
346. **Criterion 40.11**- (a) and (b) Section 12 of the FIDA contains broad enough provisions to contain all information required to be accessible under Recommendation 29 and any other information which can be obtained, on a reciprocity basis. Authorities indicated that the FID can share information on STRs and other information relevant to ML, associated predicate offences and TF. The FID can also obtain and share additional material such as law enforcement, administrative and financial information based on the principle of reciprocity.
347. **Criterion 40.12** - Section 91A of the POCA *inter alia* permits competent authorities to share information for AML purposes. There is no equivalent provision in the TPA. Financial Supervisors have a legal basis to cooperate with their foreign counterparts under the Bank of Jamaica Act (section 34D (1) (a)(v) The BOJ is a signatory to the Regional MOUs executed by the Caribbean Group of Banking Supervisors (CGBS.). Section 16 of the FSC Act allows the disclosure of information under certain circumstances which in subsection (1)(d) appears to limit the ability to share information for AML when the request is made in writing by the Minister and not for purposes of CFT. The FSC indicated that there are also formal agreements with the Turks and Caicos Islands Financial Services Commission and the Eastern Caribbean Securities Regulatory Commission, the Trinidad and Tobago Securities and Exchange Commission and the Financial Services Commission of Barbados. The FSC also has informal arrangements with National Futures Association, Commodity Futures Trading Commission, the Central Authority of the United States, St. Kitts and Nevis and British Virgin Islands Financial Services Commissions and the US Securities Exchange Commission.
348. **Criterion 40.13** - Both the BOJ and the FSC are able to share information which is domestically available to them.
349. **Criterion 40.14** - (a) and (b) Both the BOJ and the FSC are able to share regulatory and prudential information under their governing statute and under international agreements such as the CGBS agreement.

Sharing in this instance occurs through Regulatory Colleges held via teleconferences. (c) AML/CFT information can also be shared under POCA section 91A(1)(d). There is no equivalent provision in either the TPA or TPA Regulations which would enable the BOJ or FSC to share CFT information.

350. **Criterion 40.15** - Authorities indicated that the BOJ and the FSC are able to conduct enquiries on behalf of their foreign counterparts but this can only be done within the constraints of the governing statute or governing legislation, which would seem to refer back to the FSC and BOJ Act or any other act that would apply to the case in particular. The BOJ in particular, would also be able to award such right under multilateral MOUs as the CGBS. The essential criteria also require financial supervisors as appropriate to authorize or facilitate the ability of foreign counterparts to conduct inquiries themselves in order to facilitate effective group supervision. There are no provisions which allow t the FSC to do this.
351. **Criterion 40.16**- The condition to have prior authorization before dissemination of information exchange or use of information for supervisory and non-supervisory purposes is covered under section 34D (5)(ii) of BOJ Act, which *inter alia* requires the BOJ to satisfy itself that the overseas authority is subject to adequate legal restrictions on further disclosures including the provision to the BOJ of (i) an undertaking of confidentiality on the part of the authority; or (ii) an undertaking by the authority not to disclose the information provided without the consent of the BOJ. Clause 9.2 of the CGBS MOU prevents disclosure of information to third parties without prior written consent of the requested authority. While section 16 of the FSC Act permits the sharing of information it does not provide a similar safeguard as contained in the BOJ Act. Neither the BOJ Act nor the FSC Act provides that where the requesting financial supervisor is under a legal obligation to disclose or report the information, then in such cases, at a minimum, the requesting financial supervisor should promptly inform the requested authority of this obligation.
352. **Criterion 40.17** - Law enforcement authorities (FID, JCF, Customs, Jamaica Defense Force (JDF) and the DPP) are able to share information domestically available based on the FIDA, and a number of sharing agreements. Authorities indicated the following examples: (i) MOUs between the FID and the FIU of Bermuda, Cayman Islands, Curacao, Columbia, St. Kitts and Nevis, St. Maarten, Trinidad and Tobago, St. Lucia, and the British Virgin Islands. ii) Information Sharing Agreements between the Drug Enforcement Agency, US Immigration and Customs Enforcement, Royal Canadian Mounted Police, US Postal Inspectors and the UK National Crimes Agency. iii) Agreements between the Government of Jamaica and foreign governments for the JDF and JCF to be able to share information, such as the “Ship Rider Agreement” with the US for the cooperation in suppressing illicit maritime drug trafficking; “Agreement with the US regarding the sharing of forfeited assets or the proceeds of disposition of such assets”; “Agreement with the Republic of Colombia for cooperation in the fight against illicit traffic in narcotic drugs and psychotropic substances”; “Agreement with the Government of Canada regarding the sharing of proceeds of the disposition of forfeited assets”; MOU with the Government of the United Kingdom for sharing of proceeds of the disposition of forfeited assets and equivalent funds”. Authorities also indicated that Jamaica Customs is able to exchange information pursuant to several MOUs, such as the one signed with CCLEC and the above cited Agreement with the US to suppress illicit maritime drug trafficking. Finally, the ODPP is able to share information pursuant to the Extradition Act. Authorities indicated that the ODPP also has informal agreements for sharing information, including through the DPP’s membership in the International Association of Prosecutors (IAP).
353. **Criterion 40.18** - Authorities explained that law enforcement authorities are able to use their powers, including any investigative techniques, to assist foreign counterparts. Even though this is constrained to the legal channels available, mainly the FIDA. The JCF is also a member of INTERPOL and information can

be shared following their rules and restrictions. This is in accordance with the principle of powers being used in accordance or subject to domestic law in the first instance, and governed by Interpol, Eurojust or individual country agreements when applicable.

354. **Criterion 40.19** - Authorities indicated that Jamaica has a long history of joint law enforcement teams and the conduct of cooperative investigations, and that examples include the Jamaican Operations Linked to Telemarketing (JOLT) Task Force which included officers from the US Immigration and Customs Enforcement, among others.
355. **Criterion 40.20** - Authorities indicated that the use of indirect means to share information would only be possible in cases where the objective of the exchange goes beyond governing legislation. The use of indirect means would not be used to circumvent requirements of the law. Authorities also indicated that specifically for the BOJ, broadest parameters of information exchange will be permissible under the new Banking Services Act which will come into effect on the day appointed by Ministerial Order which has not occurred. The BOJ, JCF, FSC and Customs all have the power to exchange information directly with non-counterparts. Pursuant to section 16 of the FSC Act, the FSC has the power to exchange information with a competent authority which by its definition is a non-counterpart. Similarly, the JCF and Customs exchange information with the FID which is facilitated by MOUs signed by these parties.

### ***Weighting and Conclusion***

356. Jamaica has a wide variety of international cooperation agreements and MOUs, as well as some forms of informal cooperation, including using networks such as the IAP and INTERPOL. See list noted at criterion 40.17 above. With regard to the possibility of restrictive conditions on the exchange of information, there is no indication as to whether other forms of international cooperation could be affected (or not) by ongoing investigations, inquiries or proceedings. With regard to controls and safeguards on the information exchanged, the FSC Act does not provide any measures to ensure its use for the intended purpose. On the issue of confidentiality of information, there was no indication that they were applicable to the Charities Commissioner. The Assessors view this as a minor deficiency because of the level of risk associated with the NPO sector. There is no equivalent measure in the TPA with regard to the exchange of supervisory information for CFT purposes. There are no provisions in the BOJ Act or the FSC Act that require a requesting authority to promptly inform the BOJ or the FSC of its obligation to disclose or report information gathered from either supervisor in instances where they are legally obligated to disclose or report such information. **Recommendation 40 is rated partially compliant.**

## Summary of Technical Compliance – Key Deficiencies

| Compliance with FATF Recommendations                      |        |   |
|---|--------|---|
| Recommendation  | Rating | Factor(s) underlying the rating   |
| 1. Assessing risks & applying a risk-based approach       | PC     | <ul style="list-style-type: none"> <li>Jamaica is yet to complete a NRA</li> <li><i>De minimis</i> threshold of US\$250 not based on established criteria</li> <li>TPA Regulation requirements for CDD do not apply to DNFBPs</li> </ul>  |
| 2. National cooperation and coordination                  | PC     | <ul style="list-style-type: none"> <li>National policies and a prioritised action plan that have been informed by a comprehensive national risk assessment have not been formulated.</li> <li>Jamaica does not have policies or mechanisms in place to cooperate and coordinate with regard to combating the financing of the proliferation of weapons of mass destruction.</li> </ul>  |
| 3. Money laundering offence                               | LC     | <ul style="list-style-type: none"> <li>Sanctions pertaining to legal persons are not effective, proportionate or dissuasive</li> </ul>  |
| 4. Confiscation and provisional measures                  | LC     | <ul style="list-style-type: none"> <li>Appropriate investigative measures are limited in some instances.</li> </ul>   |
| 5. Terrorist financing offence                            | LC     | <ul style="list-style-type: none"> <li>Sanctions in respect to legal persons are not effective, proportionate or dissuasive</li> </ul>  |
| 6. Targeted financial sanctions related to terrorism & TF | NC     | <ul style="list-style-type: none"> <li>There are no measures that permit Jamaica to propose designations of persons or entities to the 1267/1989 Committee or the 1988 Committee of the UN.</li> <li>There are no mechanisms for giving effect to requests from other countries</li> <li>The designation requirements under the TPA only relate to entities and not to individuals</li> <li>There are no mechanisms to collect or solicit information to identify persons and entities that based on reasonable grounds, or a reasonable basis to suspect, meet the criteria for designation.</li> <li>There are no mechanisms to implement targeted financial sanctions without delay.</li> <li>The TPA does not provide for the freezing of funds or other assets of designated persons and entities without delay.</li> <li>The TPA does not provide any procedures for the submission of de-listing request to the relevant UN Sanctions Committee</li> <li>There are no procedures with regard to de-listing petitions through the office of the UN's Ombudsman.</li> <li>There are no established procedures to authorise access to funds that have been frozen in accordance with UNSCR 1452.</li> </ul> |
| 7. Targeted financial sanctions related to proliferation  | PC     | <ul style="list-style-type: none"> <li>Clarity on a direct and without delay freezing obligation is needed.</li> <li>Need to provide for 3rd party rights protection and de-listing procedures.</li> <li>There are no Regulations setting out the reporting requirements to be observed by FIs and DNFBPs</li> <li>There is no guidance issued to FIs and DNFBPs outlining the procedures for implementing the targeted financial sanctions</li> <li>Obligations to comply with Regulations under the UNSCRIA do not extend to all categories of DNFBPs i.e. Attorneys-at-law</li> </ul>  |

## Compliance with FATF Recommendations

| Recommendation                        | Rating | Factor(s) underlying the rating  |
|---------------------------------------|--------|--|
| 8. Non-profit organisations           | NC     | <ul style="list-style-type: none"> <li>• NPOs are not required to:               <ul style="list-style-type: none"> <li>○ Keep annual financial statements that provide detailed breakdowns of income and expenditure</li> </ul> </li> <li>• Follow a know your beneficiary and associated NPOs rule</li> <li>• Authorities are not able to investigate and gather information through mechanisms identified in criteria 8.6 (b) and (c)</li> <li>• No appropriate points of contact and procedures to respond to international requests for information regarding TF or other forms of terrorism support have been identified</li> </ul>  |
| 9. Financial institution secrecy laws | C      |  |
| 10. Customer due diligence            | PC     | <p>There are no requirements which provide for:</p> <ul style="list-style-type: none"> <li>• CDD to be undertaken for beneficiaries of life insurance policies (10.12 and 10.13)</li> <li>• Verification of the identity of person purporting to act on behalf of a customer (10.4)</li> <li>• The adoption of risk management procedures concerning the conditions under which a customer may utilise a business relationship prior to verification (10.15)</li> <li>• Not pursuing the CDD process where the financial institution forms a suspicion of ML/TF where they reasonably believe that performing the CDD process will tip off the customer (10.20)</li> <li>• Verification of customer information using an independent source is not contained in TPA (10.3).</li> <li>• Verification of customer information using reliable identification data source is not contained in POCA and TPA (10.3)</li> <li>• Provisions do not require the verification of the identity of the beneficial owner (10.5)</li> <li>• There appears to be a conflict between Regulations 7 and 13 with respect to the requirements regarding body corporates listed on a recognised stock exchange (10.9).</li> <li>• Laws do not reflect the requirement to identify and verify identity of beneficial owner to the extent that there is doubt or where no person exerts control through ownership interest (10.10(b))</li> <li>• <i>De minimis</i> level of US\$250 was not identified through adequate analysis of risk by country or financial institution. (10.18)</li> <li>• Law is limited to only where financial institution is unable to identify customer as opposed to complying with relevant CDD measures as required by 10.19.</li> </ul> |
| 11. Record keeping                    | PC     | <ul style="list-style-type: none"> <li>• Record keeping provisions do not specifically include account files, business correspondence and results of any analysis undertaken as required</li> <li>• Regulations do not specify the swift provision of information to the designated authority.</li> </ul>  |
| 12. Politically exposed persons       | PC     | <ul style="list-style-type: none"> <li>• FIs are required to apply either source of funds or source of wealth verification, but not both</li> <li>• The specific PEP requirements for the beneficiaries of life insurance policies have not been addressed</li> <li>• There is no requirement for senior management approval or enhanced scrutiny where higher risks relating to insurance policies are identified.</li> </ul>   |

## Compliance with FATF Recommendations

| Recommendation  | Rating | Factor(s) underlying the rating  |
|---|--------|--|
|   |        | <ul style="list-style-type: none"> <li>Established risk profiles do not take into account risk assessments of beneficial owners.</li> </ul>  |
| 13. Correspondent banking                                   | C      |  |
| 14. Money or value transfer services                        | PC     | <ul style="list-style-type: none"> <li>Legislation does not provide remit or powers to sanction unlicensed MVTs.</li> <li>No active identification of unregistered MVTs providers</li> </ul>   |
| 15. New technologies  | C      |  |
| 16. Wire transfers  | LC     | <p>There are no measures which:</p> <ul style="list-style-type: none"> <li>Require a beneficiary financial institution to verify the identity of the beneficiary if the identity has not been previously identified and maintain this information in accordance with Recommendation 11 (16.14).</li> <li>For beneficiary financial institutions to have risk based policies and procedures for determining whether to execute, reject or suspend a wire transfer lacking required originator or beneficiary information and appropriate follow up action (16.15)</li> <li>In the case of a MVTS provider that controls the ordering and beneficiary side of a wire transfer, require the MVTS provider to take into account information from both sides of the transaction and to file an STR in any country affected by the suspicious wire transfer and make the relevant transaction information available to the FIU (16.17).</li> </ul>   |
| 17. Reliance on third parties                               | PC     | <ul style="list-style-type: none"> <li>Although financial institutions and DNFBs/DNFBPs are permitted to rely on third parties, Regulation 12 1A(a), -the use of the words “as soon as is reasonably practicable after the introduction” does convey immediacy. However, it continues “or without delay upon request”. Since an option is given a financial institution can opt for a period beyond immediately, which is not what is requirement in 17.1.(a); and -does not require financial institutions to satisfy itself <i>inter alia</i> that copies of other relevant data relating to CDD will be made available from the third party upon request without delay (17.1.(b))</li> <li>Meaning of ‘group’ in Reg. 5(2)(e) of the POCA is unclear as well as whether the TPA and its Regs apply to members of a financial group.</li> <li>No provision which permits the sharing of information by each member company to companies within a group.</li> <li>Lack of full implementation of consolidated supervision due to non-enactment of the BSA.</li> </ul> |
| 18. Internal controls and foreign branches and subsidiaries | PC     | <ul style="list-style-type: none"> <li>Compliance programmes do not require FIs to consider the size of the business</li> <li>There is no equivalent of Regulation 5(2)(e) of POCA Regs applicable to terrorism and terrorism financing</li> <li>Legislation does not explicitly provide for group AML/CFT policies for implementation of adequate safeguards on confidentiality and use of information exchanged.</li> <li>There is no requirement for financial groups to apply appropriate, additional measures to manage ML/TF risks and to inform their home supervisors where the host country does not permit the proper</li> </ul>   |

## Compliance with FATF Recommendations

| Recommendation   | Rating | Factor(s) underlying the rating   |
|--|--------|---|
|  |        | implementation of AML/CFT measures consistent with the home country   |
| 19. Higher-risk countries                                  | PC     | <ul style="list-style-type: none"> <li>• No provision in the TPA to apply ECDD to business relationships and transactions from countries called for by the FATF</li> <li>• There is no provision to apply countermeasures proportionate to the risks when called to do so by the FATF or otherwise</li> </ul>   |
| 20. Reporting of suspicious transaction                    | C      |   |
| 21. Tipping-off and confidentiality                        | PC     | <ul style="list-style-type: none"> <li>• Measures prohibiting tipping-off are limited to situations where an investigation is either prejudiced or where information is disclosed on an on-going or pending money laundering investigation</li> <li>• Measures prohibiting tipping-off does not cover the issue of tipping off in relation to the filing of STRs, hence there is no requirement which prohibits directors, officers and employees from disclosing the fact that an STR or related information is being filed with the FIU.</li> </ul>   |
| 22. DNFBPs: Customer due diligence                         | PC     | <ul style="list-style-type: none"> <li>• Identification and verification measures do not require the verification of the identity of the BO</li> <li>• The EDD provisions only require entities to obtain source of funds or source of wealth information and not both</li> <li>• For simplified CDD, there is no indication that this is based on a risk analysis but rather on the application of a <i>de minimis</i> approach</li> <li>• The tipping-off requirements with regard to CDD do not apply to DNFBPs.</li> <li>• There is an injunction that prevents the AML/CFT measures being exercised by lawyers and enforced by their regulator.</li> </ul>   |
| 23. DNFBPs: Other measures                                 | PC     | <ul style="list-style-type: none"> <li>• DNFBPs are not required to report STRs related to TF</li> <li>• There are no measures to apply EDD to countries where this is called for by the FATF</li> <li>• There is no requirement to apply countermeasures appropriate to the risk when called for by the FATF or at the country's own initiative</li> <li>• Tipping off at the point of filing of an STR is not covered.</li> </ul>   |
| 24. Transparency and beneficial ownership of legal persons | PC     | <ul style="list-style-type: none"> <li>• There has been no ML/TF risk assessment with regard to all forms of legal persons.</li> <li>• The Companies Act does not require companies to obtain and hold up-to-date and accurate information on beneficial owners.</li> <li>• DNFBPs/DNFBPs that provide services in relation to the formation of companies are not obligated to obtain and maintain information on the ownership of companies.</li> <li>• There is no obligation for a person resident in Jamaica to assist competent authorities with providing beneficial ownership information in respect to companies that were incorporated outside of Jamaica and have applied to establish a place of business within Jamaica.</li> <li>• There is currently no provision in the Companies Act that requires companies to maintain information and records for at least five years.</li> <li>• There are no measures with regard to the reduction of risks arising from the issuance of bearer share warrants or nominee shareholders or directors</li> <li>• No international cooperation with regard to BO of legal persons.</li> </ul> |

## Compliance with FATF Recommendations

| Recommendation  | Rating | Factor(s) underlying the rating  |
|---|--------|--|
| 25. Transparency and beneficial ownership of legal arrangements       | PC     | <ul style="list-style-type: none"> <li>• The Trustee Act does not require trustees to obtain and hold information on the identity or the settlor, trustee(s), beneficiaries or the protector (if any).</li> <li>• No legal obligations exist to ensure that information on the settlor, trustee(s), beneficiaries and the protector is kept accurate and up-to-date as possible.</li> <li>• There are no dissuasive or proportionate sanctions imposed under the Trustee Act on trustees to ensure that they are liable for failure to perform the duties relevant to meeting their obligations.</li> <li>• Trustees are not covered under Jamaica's AML/CFT regime. Further legislation for TCSPs needs to be completed.</li> </ul> |
| 26. Regulation and supervision of financial institutions              | PC     | <ul style="list-style-type: none"> <li>• There is a supervisory / regulatory gap with respect to micro finance institutions which are currently legislated under the Money Lending Act and are yet to be brought under the AML/CFT framework. (26.1)</li> <li>• Neither the Insurance, Securities nor Pensions Acts extend the fit and proper requirements to beneficial owners of licensed or registered FIs (26.3).</li> <li>• Consolidated supervision not yet fully implemented.</li> </ul>  |
| 27. Powers of supervisors   | PC     | <ul style="list-style-type: none"> <li>• Relevant enforcement powers for ML breaches do not extend to TF breaches</li> <li>• Enforcement powers are not legislated for all FIs                             <ul style="list-style-type: none"> <li>• The BOJ and FSC do not have powers to administer administrative penalties.</li> <li>• No sanctions regime for micro credit lending institutions.</li> </ul> </li> <li>• No regulatory/supervisory regime for micro credit lending institutions; nor are they subject to AML/CFT requirements.</li> </ul>   |
| 28. Regulation and supervision of DNFBPs                              | PC     | <ul style="list-style-type: none"> <li>• Not all DNFBPs are supervised for AML/CFT</li> <li>• Guidance Notes drafted by the designated DNFI/DNFBP supervisors providing for supervision on a risk-sensitive basis are not yet in force and issues of TF are not covered.</li> <li>• Sanctions do not appear to be dissuasive.</li> <li>• No requirement for DNFBPs to determine the ultimate beneficial owner at the time of licensing or thereafter</li> </ul>  |
| 29. Financial intelligence units                                      | LC     | <ul style="list-style-type: none"> <li>• Analytical functions are limited-there should be more statistical data on how STRs support financial investigations.</li> <li>• There are no measures to require information from others than those that filed the STR.</li> </ul>  |
| 30. Responsibilities of law enforcement and investigative authorities | LC     | <ul style="list-style-type: none"> <li>• The FID has not been designated as LEA for ensuring M/TF and associated offences are properly investigated.</li> <li>• Customs cannot utilize financial investigative measures.</li> </ul>  |
| 31. Powers of law enforcement and investigative authorities           | LC     | <ul style="list-style-type: none"> <li>• There are some minor limitations with regard to the search of persons.</li> <li>• Customer information can only be obtained by appropriate officers and not all competent authorities.</li> </ul>   |
| 32. Cash couriers   | LC     | <ul style="list-style-type: none"> <li>• There are no provisions in place to seize cash if there is a suspicion once the amount is below the prescribed threshold.</li> <li>• There are no measures that have been put in place to ensure the proper use of information collected through the declaration system.</li> </ul>   |

## Compliance with FATF Recommendations

| Recommendation   | Rating | Factor(s) underlying the rating   |
|--|--------|---|
|  |        | <ul style="list-style-type: none"> <li>The declaration system does not restrict trade payments between countries for goods and services or the freedom of capital movements.</li> </ul>   |
| 33. Statistics   | PC     | <ul style="list-style-type: none"> <li>Only the FID is mandated to maintain statistics.</li> <li>Jamaica does not maintain comprehensive statistics that will reflect its overall effectiveness and efficiency of its AML/CFT regime particularly in respect to investigations, prosecutions and convictions.</li> </ul>  |
| 34. Guidance and feedback                              | LC     | <ul style="list-style-type: none"> <li>Insufficient feedback to DNFIs/DNFBPs given its relative infancy state of AML/CFT supervision</li> <li>Guidance Notes drafted by the designated DNFIs /DNFBPs supervisors providing for supervision on a risk-sensitive basis are not yet in force and issues of TF are not covered</li> </ul>   |
| 35. Sanctions  | PC     | <ul style="list-style-type: none"> <li>Sanctions are not dissuasive</li> </ul>  |
| 36. International instruments                          | LC     | <ul style="list-style-type: none"> <li>Jamaica has not fully implemented Article 11 of the Vienna Convention.</li> </ul>  |
| 37. Mutual legal assistance                            | C      |   |
| 38. Mutual legal assistance: freezing and confiscation | LC     | <ul style="list-style-type: none"> <li>MACMA does not address non-conviction based proceedings.</li> </ul>  |
| 39. Extradition  | C      |   |
| 40. Other forms of international cooperation           | PC     | <ul style="list-style-type: none"> <li>There is no umbrella provision in either the TPA or TPA Regs similar to that of Section 91A of POCA to enable the sharing of information for CFT.(40.14(c))</li> <li>No indication as to whether other forms of international cooperation could be affected (or not) by on-going investigations, inquiries or proceedings.</li> <li>No measures in the FSC Act with regard to ensuring that there are controls and safeguards to protect information that is exchanged.</li> <li>No indication that confidentiality of information is applicable to the Charities Commissioner.</li> <li>No provisions which allow the BOJ or FSC to conduct enquiries on behalf of foreign counterparts in order to facilitate effective group supervision.</li> <li>No provisions in the BOJ Act or the FSC Act that require a requesting authority to promptly inform the BOJ or the FSC of its obligation to disclose or report information gathered from either supervisor in instances where they are legally obligated to disclose or report such information.</li> </ul> |

*Table of acronyms*

|        |   |
|--------|---|
| AIRCOP | Airport Communication Program   |
| ALSTF  | Anti-Lottery Scam Task Force  |
| AML    | Anti-Money Laundering   |
| ARA    | Asset Recovery Agency   |
| BGLC   | Betting Gaming and Lotteries Commission                               |
| BNIs   | Bearer Negotiable Instruments   |
| BO     | Ultimate Beneficial Owner   |
| BOJ    | Bank of Jamaica   |
| BPU    | Border Protection Unit  |
| BSA    | Banking Services Act  |
| CARTAC | Caribbean Regional Technical Assistance Centre.                       |
| CFT    | Countering the Financing of Terrorism                                 |
| CAs    | Competent Authorities   |
| CBR    | Cross-Border Reports. Also called CTRs by Jamaican authorities.       |
| CDD    | Customer Due Diligence  |
| CGO    | Contractor General Office   |
| CPC    | Corruption Prevention Commission                                      |
| CTD    | Chief Technical Director  |
| CTOC   | Counter-Terrorism and Organised Crime Branch                          |
| DFSC   | Department of Friendly Societies and Cooperatives                     |
| DNFI   | Designated Non-Financial Institution. Used interchangeably with DNFBP |
| DNFBP  | Designated Non-Financial Business or Profession                       |
| DPMSs  | Dealers in precious metals and stones                                 |
| DPP    | Director of Public Prosecutions                                       |
| DTI    | Deposit Taking Institution  |
| EDD    | Enhanced Due Diligence  |
| FID    | Financial Investigations Division                                     |
| FIDA   | Financial Investigations Division Act                                 |
| FIU    | Financial Intelligence Unit   |

|       |  |
|-------|--|
| FRC   | Financial Regulatory Council                               |
| FSC   | Financial Services Commission                              |
| FUR   | Follow-Up Report   |
| GLC   | General Legal Council                                      |
| ICP   | Insurance Core Principles                                  |
| IAP   | International Association of Prosecutors                   |
| JBA   | Jamaica Bar Association                                    |
| JCA   | Jamaica Customs Authority                                  |
| JCF   | Jamaica Constabulary Force                                 |
| JDF   | Jamaica Defence Force                                      |
| JDIC  | Jamaica Deposit Insurance Corporation                      |
| JFAT  | Jamaica Fugitive Apprehension Unit                         |
| JOLT  | Joint Operation Linked to Telemarketing                    |
| JSAT  | Justice Security Accountability and Transparency Programme |
| LER   | Listed Entity Report                                       |
| MLAT  | Mutual Legal Assistance Treaty                             |
| MOCA  | Major Organized Crime Agency                               |
| MOF   | Ministry of Finance  |
| MOJ   | Ministry of Justice  |
| MOU   | Memorandum of Understanding                                |
| MNS   | Ministry of National Security                              |
| NAMLC | National Anti-Money Laundering Committee                   |
| NSP   | National Security Policy                                   |
| NRA   | National Risk Assessment                                   |
| OCG   | Office of the Contractor General                           |
| OCID  | Organised Crime Investigations Division                    |
| ODPP  | Office of the Director of Public Prosecutions              |
| PICA  | Passport Immigration Control Authority                     |
| POCA  | Proceeds of Crime Act                                      |
| PAB   | Public Accountancy Board                                   |

|            |   |
|------------|---|
| REA        | Real Estate Agents  |
| REB        | Real Estate Board   |
| RPD        | Revenue Protection Division                                   |
| SOP        | Standard Operation Procedure                                  |
| STRs       | Suspicious Transaction Reports                                |
| TAJ        | Tax Administration Jamaica                                    |
| TCSP       | Trust and Company Service Provider                            |
| TPA        | Terrorism Prevention Act                                      |
| TPR        | Terrorism Prevention Regulations                              |
| TTR        | Threshold Transaction Report                                  |
| UNSCRI Act | United Nations Security Council Resolution Implementation Act |
| UNSCR      | United Nations Security Council Resolution                    |



© CFATF 2017

[www.cfatf-gafic.org](http://www.cfatf-gafic.org)

January 2017

## Anti-money laundering and counter-terrorist financing measures – Jamaica *Mutual Evaluation Report*

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Jamaica as at the date of the on-site visit June 1-12, 2015. The report analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Jamaica's AML/CTF system, and provides recommendations on how the system could be strengthened.