THE FATF 40 + 9 RECOMMENDATIONS AND THE ACCOUNTING PROFESSION

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The views expressed herein are my views and not necessarily those of the Bank of Jamaica

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Don't shoot the messenger!!!!

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Where to start?

- Broad overview the FATF requirements;
- Implications of designation under POCA;
- The PAB Rules;
- The Regulatory Regime
- Risk based Approach: some ideas;
- Way Forward

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Some Background

- In 2005 Jamaica was assessed as regards its levels of compliance with the FATF 40+9 Recommendations regarding Anti-Money Laundering and Combatting the Financing of Terrorism by the CFATF;
- Scores: Jamaica was found to be compliant totally with 3 Criteria, Largely Compliant with 27 Criteria, Partially Compliant with 13 and Non-Compliant with 5;
- Since then greater levels of compliance with passage of the POCA, the FID Act, the Terrorism Prevention Regulations and other measures;
- One of key areas of non-compliance: Designated Non Financial Institutions and Professions.

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Who are FATF's DNFBPs (per Rec. 16)?

- Lawyers (in certain circumstances);
- Casinos (re: transactions over a threshold);
- Accountants (in certain circumstances)
- Gem and Precious metal dealers (over a cash threshold)
- Real estate agents (in certain circumstances)
- Trust and Corporate Service Providers (in certain circumstances).

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FATF'S REQUIREMENTS FOR DNFBPS

- Rec 12 requires compliance with Rec. 5 (CDD); Recs. 6 (PEPS) and 8 (Technology), 9 (Intermediaries and Introducers), 10 (Record keeping) and 11(Unusual Transactions);
- Rec. 16 requires DNFBP compliance with Rec 13 (Suspicious Transaction Reporting);
- Rec. 24 requires a competent authority or SRO responsible for monitoring/ensuring compliance with AML/CFT requirements, with adequate powers and resources.

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Circumstances for Accountants

- buying and selling of real estate or other assets;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

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Circumstances for Accountants

- Also Note:

  According to the Glossary to the 40 + 9: References to attorneys and accountants refer to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to "*internal professionals*" that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering.

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Critical Issue: Monitoring for Compliance

Rec 24: Countries should ensure that categories of designated non-financial businesses and professions are subject to effective systems for monitoring and ensuring their compliance with requirements to combat money laundering and terrorist financing. This should be performed on a risk-sensitive basis.

- Rec 25: The competent authorities should establish guidelines, and provide feedback which will assist financial institutions and designated non-financial businesses and professions in applying national measures to combat money laundering and terrorist financing, and in particular, in detecting and reporting suspicious transactions.

According to the Interpretative Note for Rec. 16…

Countries may allow lawyers, notaries, other independent legal professionals and accountants to send their STRs to their appropriate <u>self-regulatory organisations</u>, provided that there are appropriate forms of co-operation between these organisations and the FIU.

Cabinet Decision

- By Cabinet Decision of June 7, 2010, the Cabinet determined that:
  - (a) certain professions, among them accountants should be designated under Fourth Schedule of the Proceeds of Crimes Act as designated non financial institutions and professions;
  - (b) Appropriate steps be taken to sensitize stakeholders and;
  - (c) Appropriate arrangements be put in place for the monitoring of compliance with the obligations under the Act

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Regulated sector:

Financial institutions & DNFBPs (not carrying financial business primarily and designated by Minster's order)

POCA obligations for regulated sector

- S. 94(2) Making the required disclosure to either the nominated officer or designated authority in form and manner prescribed
- Section 94(3) paying special attention to complex large unusual transactions, patterns of transactions that are inconsistent with normal transactions
- S. 94(7) adhere to procedures prescribed in Regulations for the purpose of preventing detecting money laundering

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Defences s. 94(5) and (6)

- Reasonable excuse for not disclosing the information;
- Person is an attorney & information came to him in privileged circumstances;
- There is no knowledge or suspicion of ML and the person in sector has not received training as prescribed in regulations;
- Court will consider supervisory guidance issued and procedures prescribed by regulations.

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Competent authority: BOJ/FSC

POCA (ML) Regulations

- **Reg. 3.** Duty of financial institution to report t/action over threshold; (US$5000 for remitters, US$8000 for cambios, US$15,000 for others)
- **Reg 3(6)** Power of FID to ask for better particulars,
- **Reg 4** Provisions to apply for exemption;
- **Reg 5** Requirement for regulated business policies on employee integrity, history, training, independent audit, compliance officer, consultation with competent authority

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POCA (ML) Regulations

- **Reg 6** Obligation on regulated business to maintain identification/ transaction verification, record keeping, internal control procedures per regs; also keep employees aware of procedures and statutory provisions, training,

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POCA (ML) Regulations

- **Reg 7** Identification and verification, where no update, discontinue business;
- **Reg 7** Transaction verification procedures to verify the purpose and nature of relationship or one off transaction;
- **Reg 8** De minimis CDD ($US 250) for ID, Much less than other countries (N/A for remitters)
- **Reg 9** Wire transfers

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POCA (ML) Regulations

- **Reg 10.** Non face to face business; reliance on debit from bank account;
- **Reg 11** procedures where acting as agent;
- **Reg 12** relying on introductions;
- **Reg 13** standards of evidence of identity
- **Reg 14** recordkeeping (ID/ Transaction)
- **Reg 15** Internal controls for reporting;
- **Reg 16** No anonymous accounts;
- **Reg 19** Branches and Subsidiaries

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What about Terrorism Financing

- Minister can designate entities to be reporting entities under s. of the TPA;
- Main obligations refer to suspicious transaction reporting and the reporting of possession or control of assets or property that belongs to a Listed Entity;
- Procedure for the DPP to list entities under s. 14 based on UN Listing and reasonable belief that entity engaged in terrorism or related offences

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Nature of PAB Rules

- Chapter 21 on Money Laundering BOJ1
- Rules stated to be subject to law to the extent of inconsistency;
- The rules are described at Rule 21.3 as Guidance;
- Legal Effect?

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PAB Rules Training and Reporting

- Training obligation;
- Internal Reporting procedures (altho this seems to suggest discretion re: appointment of senior officer to whom queries may be directed and who decides on reporting).
- Appointment of the MLRO is a requirement under POC(ML)R

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Slide 19

BOJ1 The Rules state that internal reporting procedures could involve appointment of a senior person as the person to whom queries may be directed and who takes reponsibility for reporting.
Bank of Jamaica, 10/11/2010

PAB Rules: Identification

- Use of reliable and independent means to identify potential clients;
- Ascertaining the ultimate beneficiary of the work/transaction;
- If client is an agent, ascertain the principal;
- If client is regulated professional acting on behalf of someone else, copies of ID info should be obtained from this professional;
- No work to be carried out if you are not satisfied regarding identification;

PAB Rules re: Identification

- No retrospective due diligence on past clients;
- Where doubts emerge re: identity then more info should be sought. If not obtained, relationship to be terminated;
- Check for consistency between work sought and the usual nature of clients business. Where inconsistency or unusual transactions or patterns thereof then info to be documented and if deemed suspicious reported to the designated authourity

PAB Rules: Suspicious Transactions

- Key: Understanding client and transactions;
- Knowing your legal obligations;
- Here it is FUNDAMENTAL that the Competent/Designated Authority provides guidance on what should constitute a suspicious transaction especially based on some analysis as to types of transactions where Ml is likely to be taking place;
- This is critical both for effective reporting, lower compliance costs as well as establishing legal certainty (see POCA ML R ……)

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The Regulator: Suggested approaches

- As stated before, it is a requirement that DNFBP sectors be supervised to monitor compliance;
- The appropriate methodology is one that is affected by considerations of efficacy (i.e. ensuring that ML not facilitated), risk, supervisory capacity and compliance costs;
- May be critical to somehow isolate those practitioners that engage in the relevant activity so as not to cast net too wide

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Critical Issue: Enforcement

- PAB Act provides for the PAB Board to make rules;
- FATF requires that sanctions for breaches must be effective, proportionate and dissuasive;
- For PAB Rules to meet FATF requirements for the profession, sanctions must meet this standard;
- Disciplinary provisions do not expressly refer to breaches of rules;
- May wish to consider an amendment to make this clear

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Risk Based Approach

- FATF endorsed a risk based approach to DNFBPs applying AML/CFT obligations;
- RBA Guidance for Accountants 17/6/2008
- Measures to mitigate must be commensurate with risks; with more attention/resources directed to areas of most risk
- Avoid however tick box approach

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Risk Based Approach

- Risk analysis necessary: combination of feedback and guidance from National Authorities and analysis of business conducted at the firm;
- Measures should be proportionate;
- A mix of deterrence (CDD measures), detection (monitoring and ST reporting) and record-keeping.
- Fundamental: DECISION MAKING PROCESS

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Risk: High or Low?

- Enhanced due diligence on higher risk clients, relationships & transactions; for example transactions with PEPs, non-face to face transactions (e.g new overseas clients);
- Lower risk: Long Term clients, low sums involved, simple transparent transactions.

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Low Risk

- Particularly relevant to CDD procedures (see deminimis requirement in POCMLR)
- Could entail determination on extent and quantity of CDD information that is required;
- However doesn't affect need to appropriately assess, monitor (check if activity and risk profile match) and record;
- Case could be made for assigning risk rating to clients

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Challenges

- Transitional costs, implementing compliance systems, training;
- Need for greater expert staff to ensure judicious decision-making;
- Ensuring the regulatory response to the diversity of practices is appropriate and balanced;

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Way Forward

- GOJ has committed to implementing the FATF requirements re: DNFBPs;
- Committed to dialogue/co-operation with industries to ensure that legislative framework accomodates DNFBPs (and RBA);
- Appropriate reforms to match laws with DNFBP requirements;
- Hammering out the supervisory regime (law reform, reporting, tests for compliance, industry training and feedback/guidance);

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Way Forward

- The GOJ has asked the BOJ to chair a Task Force comprised of the Ministries of Finance, National Security, Justice and Foreign Affairs (as well as the FID, FSC and CPC) to look at the necessary measures to implement an appropriate DNFBP framework;
- The Task Force will continue the dialogue with industry regulators, industry associations and practitioners to inform its recommendations

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Finally….

Thank you for your attention.

Questions?