

JAMAICA'S COMPLIANCE WITH FATF'S INTERNATIONAL STANDARDS ON AML AND CFT

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Background

- The CFATF is an intergovernmental body that comprises countries of the Caribbean Basin who have committed to fighting ML and TF and to implementing the FATF Standards on ML and TF;
- The Financial Action Task Force (FATF) is a part of the OECD and comprises G70 member states, and sets the global standards in AML/CFT;
- CFATF acts as a technical advisor and assists member countries in meeting the standards as well as acts as an advocate for the region at the FATF
- CFATF described as “best in class” by FATF

What the FATF Recommendations cover

- AML/CFT Risk Assessment and Co-ordination
- Money Laundering and Confiscation;
- Terrorism Financing and Financing of Proliferation;
- Preventative measures (both FIs and DNFIs);
- Transparency and Beneficial ownership of legal persons and arrangements;
- Powers and responsibilities of Competent Authorities and other institutional measures
- International Co-operation

MUTUAL EVALUATIONS

- The CFATF and FATF assess members countries progress by carrying out mutual evaluations (MEVAL)to assess countries' levels of compliance;
- Jamaica's last MEVAL was in 2005;
- At that time Jamaica scored 30 Compliant or Largely Compliant of the then 40 plus 8 Recommendations;
- Jamaica's latest MEVAL was in June 2015 to be presented at CFATF Plenary November 2016 in TCI
- The Standards were changed in 2012, including introduction of new requirements for National Risk Assessments as well as measures to combat proliferation;
- The Methodology for mutual evaluations also changed to focus on "Effectiveness" in 2013;

Consequences

- Results of Non-compliance: being a target for ML and TF, being deemed a high risk jurisdiction or a country with “strategic deficiencies”, other states treating transactions with your entities as high risk and therefore apply countermeasures (requiring enhanced due diligence or prohibiting transactions)

Elements of the MEV

- **Effectiveness:** Assesses outcomes; identifies the extent to which the country's AML/CFT system is achieving the objective of the FATF Standards; identifying systemic weaknesses; enabling countries to prioritize measures and improve their systems. Measured with reference to Immediate Outcomes.
- **Technical Compliance:** review of legal framework of laws and enforceable means and powers and procedures of competent authorities (based on the FATF Standards). Measured against the FATF Standards.

Immediate Outcome 1

- IO 1. Money laundering and terrorist financing risks are understood and, where appropriate, actions coordinated domestically to combat money laundering and the financing of terrorism and proliferation.
- Rating Moderate. Jamaica has good co-ordination mechanisms domestically thru NAMLC. But at time of evaluation, NRA was not completed. NRA now complete and approved by Cabinet. Version 2

Immediate Outcome 2

- International cooperation delivers appropriate information, financial intelligence, and evidence, and facilitates action against criminals and their assets.
- Rating: Moderate. Jamaica has strong systems for MLA. Chief issue seems to be inability to access beneficial ownership information and thereby assist other countries seeking this information. Major item of contention with strong chance of upgrade.

Immediate Outcome 3

- Supervisors appropriately supervise, monitor and regulate financial institutions and DNFBPs for compliance with AML/CFT requirements commensurate with their risks.
- Rating Moderate. This is based on unregulated nature of microfinance institutions and infancy of the DNFI sector for ML. Also DNFI not subject to TPA regime. Microfinance Bill prepared. Orders issued to bring DNFI under TPA. BOJ and FSC building their own AML capacity. JAMBAR judgment affirms POCA application to the legal profession.

Immediate Outcome 4

- Financial institutions and DNFBPs adequately apply AML/CFT preventive measures commensurate with their risks, and report suspicious transactions.
- Rating Low. Again Microfinance sector issue and non capture of DNFBs under TPA measures. There are also some technical issues with the law regarding CDD.

Immediate Outcome 5

- Legal persons and arrangements are prevented from misuse for money laundering or terrorist financing, and information on their beneficial ownership is available to competent authorities without impediments.
- Rating Low. No system for capturing UBO information outside of financial sector. Also continued existence of bearer share warrants in CA.
- Company Act has now been amended. Also TCSP law to be passed as well as amendments to Co. and Trust laws.

Immediate Outcome 6

- Financial intelligence and all other relevant information are appropriately used by competent authorities for money laundering and terrorist financing investigations.
- Rating: Moderate . Work to be done on analysing links between disclosures made and ensuing investigations and prosecutions.
- Roll out of goAML software will improve data analysis

Immediate Outcome 7

- Money laundering offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.
- Rating Low: Lack of focus on ML prosecutions, low rates of convictions (based on weak justice sector statistics) as well as tendency to drop ML charges in cases of plea bargaining.
- Statistics issue being addressed at the Supreme Court. Further outreach to JCF on-going.

Immediate Outcome 8

- Proceeds and instrumentalities of crime are confiscated.
- Rating: Substantially met
- The issue of POCA Rules of Court should assist with any “grey areas” relating to the various applications under POCA.

Immediate Outcome 9

- Terrorist financing offences and activities are investigated and persons who finance terrorism are prosecuted and subject to effective, proportionate and dissuasive sanctions.
- Rating: Low. Based on low level of investigations and prosecutions. Also issue of dissuasiveness of penalties for bodies corporate.
- Amendments being done to TPA to deal with several technical issues relating to offences, etc.
- Improvements in the speed of listing of terrorist entities by the DPP.

Immediate Outcome 10

- Terrorists, terrorist organisations and terrorist financiers are prevented from raising, moving and using funds, and from abusing the NPO sector.
- Rating Low. Regulatory framework for NPOs is new. Doesn't cover all NPOs (only those seeking tax exemption) and the regulation does not extend to compliance re: TF.
- UK Charities Commission is delivering technical assistance to Jamaican Authorities

Immediate Outcome 11

- Persons and entities involved in the proliferation of weapons of mass destruction are prevented from raising, moving and using funds, consistent with the relevant UNSCRs.
- Rating Low: Although Jamaica has passed a UN Security Council Resolution Implementation Act, it has not been implemented. Thus only one regulation issued re: DPRK and there is no substantive regime for compliance.
- The implementing regulations are being prepared by MFAFT

Comparisons (?)

| | Jamaica | Trinidad | Canada | C. Rica | Bahama | USA |
|-------|---------|----------|--------|---------|--------|-------|
| IO 1 | Mod | Mod | Subst | Mod | Low | Subst |
| IO 2 | Mod | Mod | Subst | Subst | Mod | Subst |
| IO 3 | Mod | Mod | Subst | Mod | Mod | Mod |
| IO 4 | Low | Mod | Mod | Mod | Mod | Mod |
| IO 5 | Low | Mod | Low | Low | Mod | Low |
| IO 6 | Mod | Mod | Mod | Mod | Mod | Sub |
| IO 7 | Low | Low | Mod | Mod | Low | Sub |
| IO 8 | Substl | Low | Mod | Mod | Low | High |
| IO 9 | Low | Low | Sub | Mod | Low | High |
| IO 10 | Low | Low | Sub | Low | Low | High |
| IO 11 | Low | Low | Mod | Low | Low | High |
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NEXT STEPS

- Jamaica placed into a formal follow up process and monitored by CFATF;
- Outline reforms at next CFATF Plenary to determine on whether Jamaica will be monitored by the CFATF or the FATF.
- Continuously report on developments on the framework to CFATF.
- Develop road map based on the NRA exercise being pursued with the World Bank



The End