



NATIONAL RISK ASSESSMENT

FINAL REPORT

August-2021



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FOREWORD BY HON. NIGEL CLARKE, DPHIL., MP MINISTER OF FINANCE AND THE PUBLIC SERVICE

As a member of the global community, Jamaica recognizes that money laundering (ML), terrorism financing (TF) and proliferation financing (PF) is a global threat that requires a global response. It is for this reason that Jamaica has committed to international standards established by the global standard-setting body, the Financial Action Task Force (FATF). Jamaica also recognizes that having an effective anti-money laundering, counter-terrorism financing and counter-proliferation financing (AML/CFT/CPF) regime is a key criterion for participation in the global financial system.

In demonstrating our commitment towards improving our AML/CFT/CPF regime, Jamaica has amended several legislations such as the Proceeds of Crime Act, the United Nations Security Council Resolution Implementation Act and the Terrorism Prevention Act in line with global best practices. Further legislative changes are being made to strengthen our regime; some of these include, amendments to the International Trusts and Corporate Services Act (which sets the framework for the supervision of trust and corporate service providers) and the Companies Act (amendments to Beneficial Ownership).

This comprehensive National Risk Assessment (NRA), which covers the period 2016 to 2019, with technical assistance from the World Bank, demonstrates Jamaica's commitment to improving our AML/CFT/CPF regime. The NRA identifies the primary money laundering threats and vulnerabilities and provides the foundation for policymakers, law enforcement officials, competent authorities, designated authorities and the private sector to implement mitigating measures. With this enhanced understanding of the AML/CFT threats and vulnerabilities, Jamaica is in a position to better direct resources towards sectors/professions that are at a higher risk for ML. This will also allow us to develop and maintain an ongoing national programme to strengthen Jamaica's AML/CFT/CPF framework.

The Government of Jamaica is committed to continuing to work to strengthen the country's AML/CFT/CPF regime as we seek to make our country the place of choice to live, work, raise families and do business.

**The Hon. Nigel Clarke, Dphil., MP
Minister of Finance and the Public Service**

FOREWORD BY MAURENE A SIMMS, CD JAMAICA'S PRIME CONTACT TO CFATF

Jamaica is committed to taking the necessary steps required to improve its anti-money laundering, counter-terrorism financing and counter-proliferation financing (AML/CFT/CPF) regime. It is out of this commitment that the country has introduced important initiatives to strengthen the oversight and monitoring mechanisms for its AML/CFT/CPF framework, including providing key technical and administrative support to the National Anti-Money Laundering Committee (NAMLC), which I currently chair. The NAMLC is primarily responsible for coordinating and directing Jamaica's response to AML/CFT/CPF activities including undertaking measures to ensure on-going understanding of the country's risks and circumstances to inform appropriate policy response.

The NRA which covers the period 2016 to 2019, identifies and assesses Jamaica's threats and vulnerabilities to money laundering (ML), terrorism, and terrorism financing (TF). The results from the NRA will form the basis for an action plan that will be shared with policymakers, competent authorities and the designated authority and will facilitate continuous improvements in Jamaica's AML/CFT/CPF framework. This continued improvement will be coordinated through the NAMLC.

In completing the NRA, several subject matter experts across the various competent authorities, the designated authority (Financial Investigations Division), law enforcement agencies and the private sector were consulted. The collaboration spurred by the NRA will serve as a foundation for further engagement among the key agencies charged with AML/CFT/CPF responsibilities. I know that this will only serve to strengthen our AML/CFT/CPF framework.

The completion of this NRA signals the satisfaction of a key action item in Jamaica's Action Plan agreed with the Financial Action Task Force (FATF) under its increased monitoring framework. The NRA also forms the foundation for the effective completion of many of the other items outlined in the Action Plan.

We are mindful that the NRA was conducted using data from a finite period of time and therefore requires ongoing updates to ensure we continue to understand our ML/TF/PF risks as they evolve. Through the NAMLC Prime Contact Secretariat, the risks identified in this report will be monitored and will ensure continuous cooperation and coordination between policy-makers, competent authorities, law enforcement agencies, and the private sector.

On behalf of myself and the NAMLC, I want to express heartfelt gratitude to the NRA core team led by Dr Dana Morris Dixon who worked assiduously and persistently to complete this assessment. I also want to thank all agencies that contributed to the NRA; your participation is truly appreciated.

Maurene A Simms, CD
Prime Contact to CFATF and Deputy Governor, Bank of Jamaica

Glossary

ACCA	Association of Chartered Certified Accountants
ASYCUDA	Automated System for Customs Data
AML	Anti-Money Laundering
BGLC	Betting, Gaming & Lotteries Commission
BO	Beneficial Ownership
BOJ	Bank of Jamaica
BSA	Banking Services Act
CARTAC	Caribbean Regional Technical Assistance Centre
CDD	Customer Due Diligence
C-FATF	Caribbean Financial Action Task Force
CFT	Combating the Financing of Terrorism
CLASP	Clarendon Association of Street People
COJ	Companies Office of Jamaica
COVID 19	Corona Virus Disease
CSA	Co-operative Societies Act
DBJ	Development Bank of Jamaica
DCFS	Department of Co-operatives and Friendly Societies
DNFBP	Designated Non-Financial Businesses and Professions
DNFI	Designated Non-Financial Institution
DPRK	Democratic People's Republic of Korea
DTI	Deposit-Taking Institution
FATF	Financial Action Task Force
FHC	Financial Holding Company
FID	Financial Investigation Division
FIU	Financial Investigation Unit
FSC	Financial Services Commission
GDP	Gross Domestic Product
GLC	General Legal Council
IAIS	International Association of Insurance Supervisors
ICPs	Insurance Core Principles
IMF	International Monetary Fund
IOSCO	International Organization of Securities Commissions
JaMFA	Jamaica Microfinancing Association

JBA	Jamaica Bar Association
JCCUL	Jamaica Co-operative Credit Union League
KYC	Know Your Customer
LPA	Legal Persons and Arrangements
MCI	Microcredit Institution
MER	Mutual Evaluation Report
ML	Money Laundering
MSBs	Money Service Businesses
MSMEs	Micro, Small and Medium Enterprises
NAMLC	National Anti-Money Laundering Committee
NPO	Non-Profit Organization
NRA	National Risk Assessment
PAB	Public Accountancy Board
PEPs	Politically Exposed Persons
PF	Proliferation Financing
POC(MLP)	Proceeds of Crime (Money Laundering Prevention) Regulations
POCA	Proceeds of Crime Act
REB	Real Estate Board
RGD	Registrar General's Department
SAR	Suspicious Activity Reports
SDNs	Specially Designated Nationals
SOP	Standard Operating Procedures
SPR	Senior Practice Reviewer
STR	Suspicious Transaction Reporting
TFS	Targeted Financial Sanctions
TCS Act	International Corporate and Trust Providers Act
TCSPs	Trust or Company Service Providers
TF	Terrorism Financing
TPA	Terrorism Prevention Act
TSPs	Technical Service Providers
TTR	Threshold Transaction Report
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCRIA	United Nations Security Council Resolutions Implementation Act
US OFAC	United States Office of Foreign Assets Control

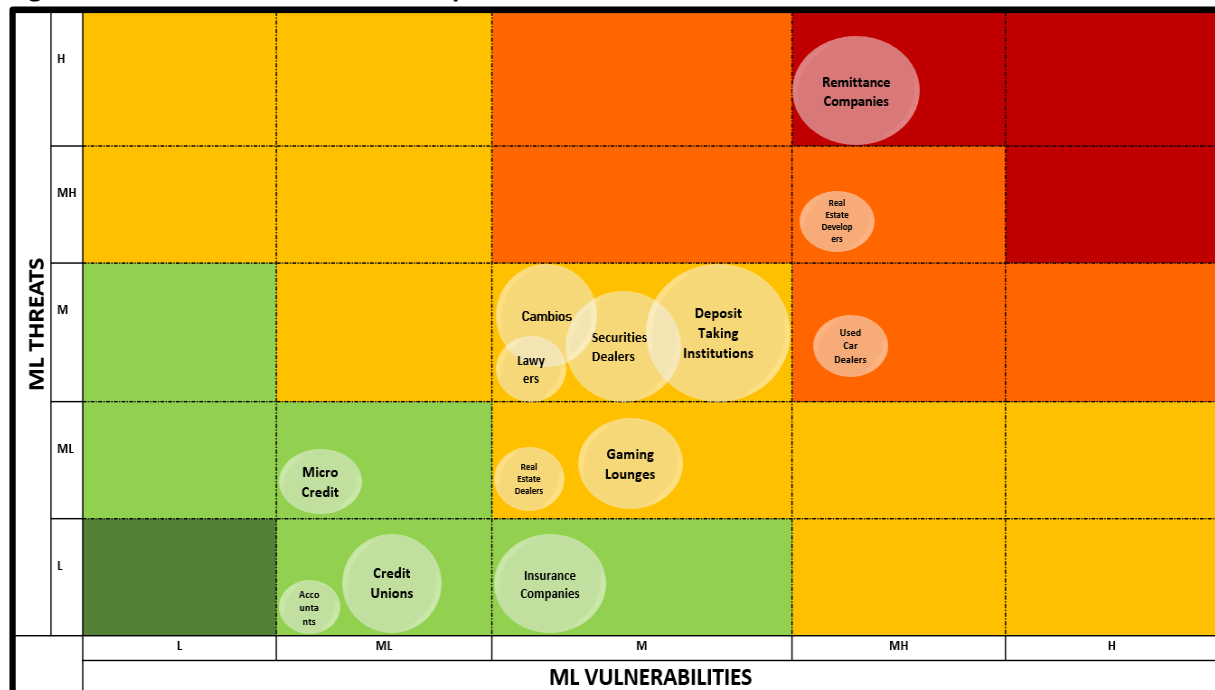
EXECUTIVE SUMMARY

1. Jamaica's National Risk Assessment (NRA) assesses the period 2016 to 2019, and the objectives in undertaking the NRA were to:
 - assist the country in identify and understanding its money laundering (ML) and terrorism financing (TF) risks;
 - facilitate the targeting of resources to address the areas of greatest risk and vulnerability; and
 - maintain a sustainable national programme designed to strengthen Jamaica's anti-money laundering and countering the financing of terrorism (AML/CFT) framework.
2. Jamaica's 2017 Mutual Evaluation Report (MER) concluded that Jamaica was a jurisdiction with strategic deficiencies in its AML/CFT frameworks. Jamaica's publication on the Financial Action Task Force's (FATF's) grey list in February 2020 further signalled that there were gaps in the country's framework, although it should be noted that Jamaica's addition to the list was due in part to a redefinition of the financial assets threshold.
3. Subsequent to the 2017 MER, Jamaica's commitment to implementing measures to address money laundering and terrorist financing resulted in the country successfully applying for re-rating of several recommendations at the Caribbean Financial Action Task Force's (CFATF's) December 2020 Plenary. In acknowledgement of all the work done by Jamaica, the country's ratings improved in twelve of the 40 recommendations.
4. The NRA, which included extensive data collection and consultation, has to a large extent achieved the goals articulated at the start of the process. The proposed action plan which was provided to policymakers and other stakeholders provide a road map to improve Jamaica's AML/CFT framework in the short and medium term.
5. Jamaica's NRA was completed using the World Bank Group's NRA Tool which is comprised of several Excel-based and interrelated modules that enable the detailed assessment of ML/TF threats and vulnerabilities.
6. Extensive data was collected across all modules. The NRA team assessed 371 variables, including the inherent vulnerabilities of key sectors, threat levels, effectiveness of AML frameworks, effectiveness of supervisory frameworks, and effectiveness of compliance frameworks, among others.
7. Seventy-two (72) persons across 17 entities contributed to the assessments conducted across the various aspects of the NRA processes. This signals the high level of commitment and coordination across multiple entities.
8. Jamaica's anti-money laundering (AML), counter financing of terrorism (CFT) and counter financing of proliferation (CPF) regimes are governed by the following suite of legislations:
 - The Proceeds of Crime Act, 2007 (the POCA) and the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007.
 - The Terrorism Prevention Act, 2005 (the TPA) and the Terrorism Prevention (Reporting Entities) Regulations, 2005.
 - The United Nation Security Council Resolutions Implementation Act, 2013 (UNSCRIA)

The aforementioned legislations have all been amended to ensure that the legislative framework is commensurate with the international standard on AML/CFT/PF (the FATF Recommendations).

9. Jamaica has an extensive AML/CFT ecosystem especially at the legislative levels. There is also an extensive network of law enforcement and supervisory agencies that are adequately empowered by statute and are increasingly collaborating on ML/TF matters. The extensive amendments to the key legislations underpinning Jamaica’s framework also demonstrates commitment to enhancing all aspects of the country’s AML/CFT framework.
10. Based on the detailed analysis of 371 variables across eight modules, Jamaica’s Overall Country ML Risk was assessed as **MEDIUM HIGH**. This reflects a National ML Threat of MEDIUM HIGH and National ML Vulnerability of MEDIUM HIGH.
11. The Medium High ML Threat Level is due to the significant number of investigations and prosecutions in Jamaica. The main threats identified in the assessment included ‘lottery scamming’, trafficking in narcotics, trafficking in arms, corruption/ bribery, cybercrimes, fraud and importation of counterfeit products.
12. The National Vulnerability was also assessed as MEDIUM HIGH. Key elements of this rating include, *inter alia*, Jamaica’s high crime rate, porous borders, geographic location, pace of investigations and prosecutions, high level of informality, and significant use of cash in the economy.
13. The Sectoral Heat Map for Jamaica is provided below in figure 1::

Figure 1: Jamaica’s Sectoral Heat Map



Note: DTIs include commercial banks, building societies, and a merchant bank.

14. The risk scores by sector are provided in table 1 below:

Table 1: Sector Risk Score

Sector	Sector's Vulnerability to ML	Sector's ML Threats	Overall Sector Risk Score
Deposit Taking Institutions (DTIs) (including banks)	Medium	Medium	MEDIUM
Securities	Medium	Medium	MEDIUM
Insurance Companies	Medium	Low	MEDIUM-LOW
Remittance Companies	Medium-High	High	HIGH
Cambios	Medium	Medium	MEDIUM
Credit Unions	Medium-Low	Low	MEDIUM-LOW
Real Estate Dealers	Medium	Medium-Low	MEDIUM
Gaming	Medium	Medium-Low	MEDIUM
Public Accountants	Medium-Low	Low	MEDIUM-LOW
Attorneys-at-Law	Medium	Medium	MEDIUM

Note: Only sectors that currently fall in the country's AML/CFT framework for FIs and DNFBs are included in the table above. Sectors such as Microfinance and TCSPs are assessed separately.

15. In relation to the financial services sector (comprising DTIs, insurance companies, securities companies, and money service businesses [MSBs]), there was some variability in the sector risks as ratings ranged from Medium-Low to High. The financial services sector is quite advanced in its implementation of risk-based supervision and licensees tend to have fairly effective compliance functions.
16. The Remittance sector was assessed as having the highest risk given the high incidence of ML investigations linked to lottery scamming.
17. The designated non-financial businesses and professions (DNFBPs) sector includes gaming operators, public accountants, real estate dealers, and attorneys. The majority of DNFBPs assessed were rated as Medium risk, with the exception of public accounts that was rated as Medium-Low. The professions in this sector must prioritize the full implementation of risk-based supervisory frameworks and strengthen compliance functions especially vis-à-vis suspicious transaction reporting.
18. The assessment also explored sectors that do not currently fall under the existing AML/CFT framework. Through an analysis of data including number of STRs, investigations and prosecutions, it was clear that the real estate development sector and the used car dealer sectors were both signalling. As such, it is important that keen attention be paid to these sectors to ameliorate the emerging risks.
19. The assessment concluded that there is a fair level of collaboration across law enforcement agencies, but there is still need for increased referral of cases for possible money laundering investigation and prosecution.
20. The supervisory framework across the competent authorities was assessed as fair. The financial institutions (FIs) have already implemented aspects of risk-based supervision and in some instances, have developed very sophisticated risk-based monitoring through the assistance of the multilateral

community. There are, however, concerns regarding the low level of staffing in units charged with supervising AML/CFT frameworks.

21. The FIs are increasingly utilizing typologies and thematic papers, but the DNFBPs have not incorporated these important tools into their supervisory frameworks. In addition, the FID must develop and disseminate typologies across the relevant sectors, as per its mandate.
22. The vulnerability and threat level vis-à-vis terrorism financing has been assessed as LOW. Despite Jamaica's high rate of crime and several investigations, there has been no significant terrorism activity or terrorism financing activity detected in the country. Nevertheless, the authorities continue to engage in domestic and international cooperation to understand Jamaica's changing vulnerability and threat environment.

In relation to training, significant strides have been made through the creation of training and development opportunities for agencies involved in terrorism financing investigations. This training, combined with the experience of the FID, has equipped staff to undertake terrorism financing investigations, should the need arise.

23. The framework to regulate trust and company service providers (TCSPs) is currently being put in place. Trust and company services are provided by both financial institutions (insurance companies, banks, among other entities) and non-financial entities (accountants, attorneys and individuals) usually as an additional service to their main offerings. However, the full extent to which TCS are being provided in Jamaica is not fully determined due to the unregulated nature of the sector.
24. There are over 1,200 charities registered in Jamaica, the majority of which were established for religious purposes. In the context of the Jamaican environment, these entities are not considered attractive for terrorist financing and are considered to be Low risk in this regard—a position supported by the findings of law enforcement agencies. Despite the low assessed risk, the NPO sector is not adequately supervised and requires significant resources and attention to facilitate robust supervision of the sector.
25. The LPA sector was assessed as Medium risk and did not feature heavily in ML/TF investigations. However, as the country modernizes its suite of company formation types to attract both local and international entities, the vulnerability within the sector may increase. In this regard, collaboration will be required among the various agencies charged with monitoring LPAs (National Anti-Money Laundering Committee (NAMLC), FID, and the Companies Office of Jamaica (COJ), to identify trends and typologies within the LPAs space as they evolve. In addition, there is a need for more ongoing risk assessments to ensure the competent authorities identify and understand the risks as they evolve in the various company types.
26. The Companies Act also needs to be urgently amended to be consistent with international norms in the treatment of beneficial ownership.
27. The NRA—in using a very rigorous methodology— was able to provide a comprehensive picture of the AML/CFT risks in Jamaica. The NRA demonstrated that there has been much improvement in Jamaica's AML framework, but there remain some significant gaps that need to be addressed. The work already done is important, but Jamaica must address in short order the areas of deficiency identified in the NRA so as to continue the strengthening of Jamaica's AML/CFT framework.

CHAPTER 1: AIM OF NATIONAL RISK ASSESSMENT & METHODOLOGY

1.1 AIM OF NATIONAL RISK ASSESSMENT

Jamaica's National Risk Assessment (NRA) which covers the period 2016 to 2019 seeks to identify, assess and deeply understand the money laundering (ML) and terrorist financing (TF) risks within the country. This will enable Jamaica to further enhance the country's national risk-based anti-money laundering (AML) and countering the financing of terrorism (CTF) framework. The results of the NRA will be widely shared among key government and non-government stakeholders, including competent authorities and law enforcement agencies, and will be made available to the general public.

The objective of the assessment is to help the country identify and understand its ML and TF risks; facilitate targeting resources to address the areas of greatest risk and vulnerability and develop and maintain a sustainable/ongoing national programme designed to strengthen Jamaica's AML/CFT framework. In this regard, the intention is that recommendations coming out of the NRA will inform the development or finalization of various national policies, programmes and action plans to (i) address deficiencies identified; (ii) establish mechanisms for sustainable/ongoing measures to strengthen Jamaica's AML/CFT framework.

The NRA was pursued with the expectation that the findings would raise awareness of the AML/CFT requirements across all sectors and would ultimately stimulate interaction, cooperation, and collaboration among stakeholders in both the public and private sectors. Competent authorities and their licensees are expected to use the findings of this NRA to inform their own ongoing risk assessments and implementation of their risk-based supervisory frameworks.

The NRA also sought to identify emerging areas of risk and make recommendations on the mitigating measures that should be implemented. Through the NRA process, competent authorities were encouraged to enhance their data and information collection practices. It is expected that data requested by the NRA team that was not readily available, will now be collected and analysed by the relevant agencies, which will enable a greater understanding of AML/CFT risks in the country in the future.

1.2 METHODOLOGY

1.2.1 HIGH-LEVEL COMMITMENT

Political commitment and support for the NRA was provided by the Minister of Finance and Public Service (The Minister) who is the ultimate sponsor for Jamaica's AML/CFT efforts. The Minister was updated on the progress of the NRA through the National Anti-Money Laundering Committee (NAMLC). The NRA project was assigned by the Minister to the Office of the Deputy Governor and Deputy Supervisor of Banks at the Bank of Jamaica to coordinate and lead the NRA. The Deputy Governor is also Jamaica's Prime Contact to the Caribbean Financial Action Task Force (CFATF) and Chair of the National Anti-Money Laundering Committee (NAMLC). In recognition of the importance of the NRA, a dedicated project team was created at the Bank of Jamaica, in the Office of the Deputy Governor.

Through a partnership with the private sector, a senior member with experience in leading major projects in the private and public sectors was seconded and assigned to the dedicated NRA project team, as the project team lead and advisor. In addition to the project team lead, the dedicated NRA team consisted of six additional members drawn from across the Bank of Jamaica (BOJ). These individuals are experienced in AML/CFT requirements, bank supervision, legal and compliance, and information technology. The role of the team was to facilitate the completion of the NRA by working closely with all

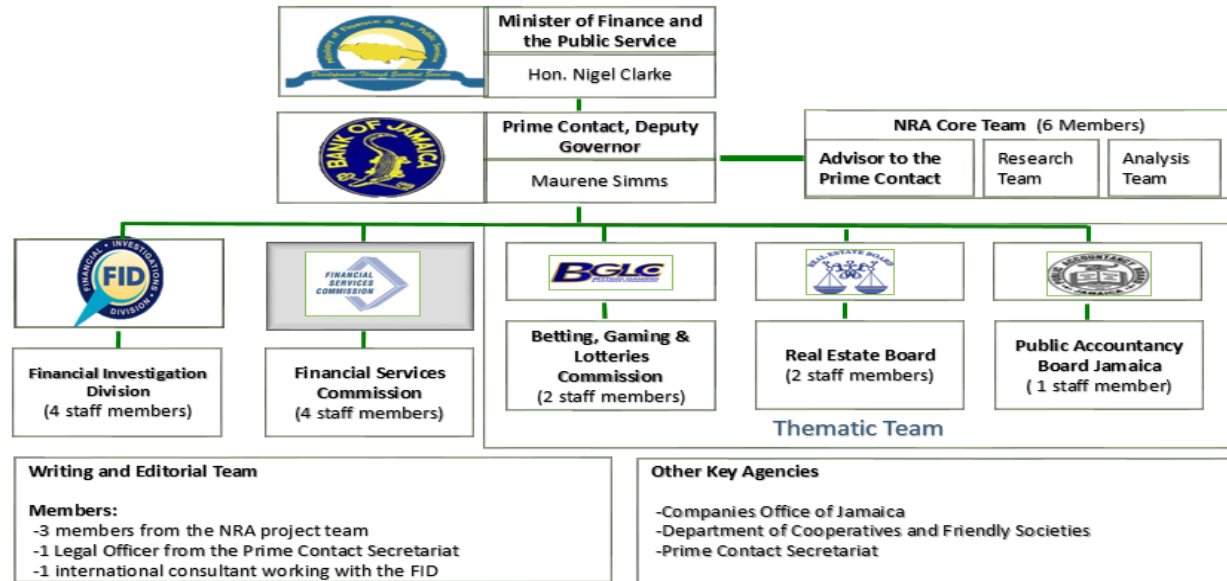
the relevant stakeholders in the public and private sectors. The NRA team was also required to coordinate the collection of requisite data across all the elements of the NRA.

In addition to the dedicated NRA team, external assistance was provided by senior members of the Financial Services Commission (FSC), the Financial Investigation Division (FID), the Real Estate Board (REB), and the Betting Gaming and Lotteries Commission (BGLC), who completed guidance papers in their capacity as competent authorities and designated authorities. These entities assigned dedicated resources to complete their assigned assessments/guidance papers given the priority of the NRA.

In completing the NRA report, a “writing team” was created to frame the narrative of the NRA and to accurately depict the completion of the risk assessments/guidance papers. The writing team was comprised of three members from the dedicated NRA project team, and led by the project lead/advisor. In addition, a subject matter expert from the NAMLC was assigned to the writing team as well as an international consultant working with the FID.

A “review team” was also created to approve the final narrative of the NRA report. This team was comprised of Jamaica’s Prime Contact, senior members of the FID team, as well as senior officials in the BOJ. The organizational chart below (figure 2) depicts the organizational structure of the NRA.

Figure 2: NRA Organizational chart:



1.2.2 INTER-AGENCY COLLABORATION

In addition to the NRA project team, key players from across government agencies participated in the lengthy NRA process. Key participants include, *inter alia*:

- Financial Investigations Division;
- Jamaica Constabulary Force;
- Ministry of Justice;
- Ministry of National Security;
- Bank of Jamaica;
- Financial Services Commission;
- Prime Contact Secretariat;

- The Betting Gaming and Lotteries Commission;
- Jamaica Customs Agency;
- Companies Office of Jamaica;
- Tax Administration Jamaica;
- Real Estate Board;
- Public Accountancy Board;
- Department of Co-operatives and Friendly Societies among others.

In addition to the above-mentioned government agencies, there was significant data obtained from several private sector partners through stakeholder meetings and questionnaires administered to relevant businesses in the sectors of focus.

A list of all the individuals who worked on the NRA as well as entities that participated in focus group meetings at the various stages of the project is included in Appendix 1. It shows the extensive collaboration across many sectors in Jamaica to finalize the NRA.

1.2.3 THE WORLD BANK NRA TOOL

Jamaica's NRA was completed using the World Bank Group's NRA Tool which is comprised of several Excel-based and interrelated modules that enable the assessment of ML/TF threats and vulnerabilities. In the methodology used "Threats" are defined as the scale and characteristics of the proceeds of criminal activities or financing of terrorism in the jurisdiction, while "Vulnerabilities" refers to weaknesses or gaps in a jurisdiction's defences against money laundering and terrorist financing. The tool recognises that threats or vulnerabilities may exist at the national or sectoral level, and all together determine the ML/TF risk level in a jurisdiction. The NRA tool is centred on seven modules that focus on the money laundering risk assessment (modules 1 – 7) and module 8 that is used to assess the risk of terrorism financing. In addition to modules one to eight, the World Bank's guide on Legal Persons and Arrangements, and Trust & Company Services Providers were used to assess these sectors. The FATF frameworks for these areas were also used as a guide in the assessments. The modules and sectors assessed are categorized in table 2 below:

Table 2: World Bank's NRA Modules

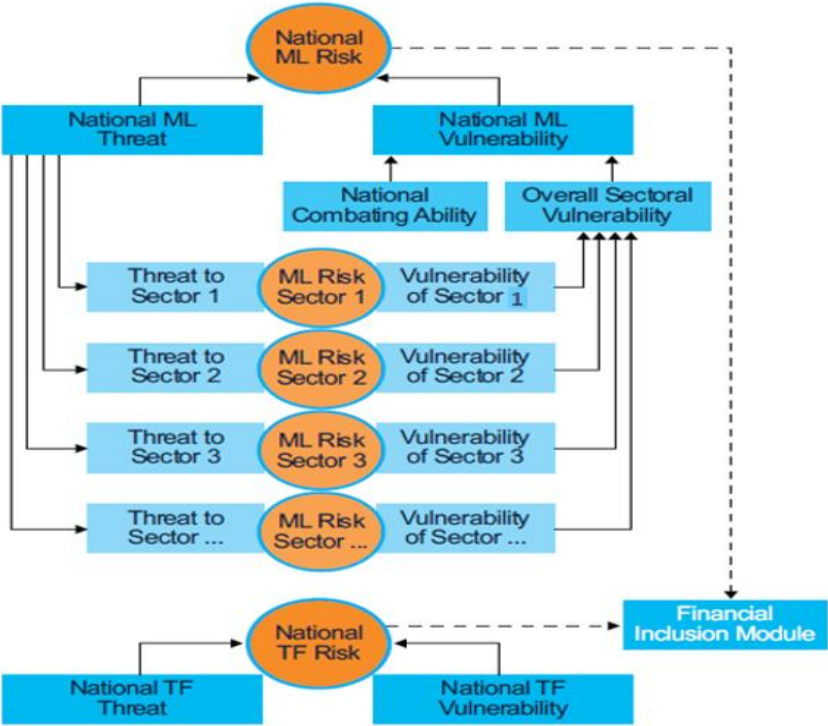
Money Laundering Risk Assessment	Terrorist Financing Risk Assessment	Other Sectors Assessed Using the WB Tool
<ul style="list-style-type: none"> •Module 1-Threat Assessment •Module 2-National Vulnerability •Module 3-Banking Sector Vulnerability •Module 4-Securities Sector Vulnerability •Module 5-Insurance Sector Vulnerability •Module 6-Other Financial Institutions' Vulnerability •Module 7-DNFBP Sectors Vulnerability 	<ul style="list-style-type: none"> •Module 8-National Terrorism Financing Threat and Vulnerability 	<ul style="list-style-type: none"> •Legal Persons and Arrangements •Trust & Company Service Providers

National Vulnerability Module (Module 2) and the modules designed for the vulnerability assessment of various sectors (Modules 3 to 7) have a unique and relatively complex logic that utilizes weighted averages, built-in preconditions, and formulas. However, the modules for Threat Assessment, Terrorism Financing Assessment, Legal Persons and Arrangements, and Trust and Company Service Providers rely on relatively simple matrix-based structures.

As shown in figure 3 below, threat and national vulnerability are the two main factors affecting the risk of money laundering at the national level. The threat module is based on the assumption that the money laundering threat is a function of “proceeds of crimes”. Therefore, all submodules attempt to analyse generation, flows, and patterns of proceeds of crimes from different perspectives.

At the end of the threat assessment, the NRA team had a fair understanding of money laundering threats to various sectors as well as the overall money laundering threat at the national level. National vulnerability assesses the defence and reaction mechanisms available for combating money laundering. National vulnerability is also impacted by the vulnerabilities of the various sectors that could potentially be abused for money laundering. The general structure of the World Bank tool and its interconnectedness is shown in figure 3 below. The NRA teams assessed 371 unique variables across the first eight modules which were used to calculate the national and sectoral scores.

Figure 3: The Structure of the World Bank’s Risk Assessment Tool



1.2.4 DISCLAIMER

The National Risk Assessment of Jamaica has been conducted as a self-assessment by Jamaica. This assessment used the National Money Laundering and Terrorist Financing (ML/TF) Risk Assessment Tool that has been developed and provided by the World Bank. The World Bank team's role was limited to: 1) delivery of the tool; 2) providing guidance on the technical aspects of the tool; 3) review of draft NRA documents and providing feedback to assist in the accurate use of the tool. The data, statistics, and other information populated into the National ML/TF Risk Assessment Tool templates, as well as the findings, interpretations, and judgments under the scope of the National Risk Assessment process, belong to Jamaica and do not reflect the views of the World Bank.

1.2.5 EMERGING AREAS

In addition to the sectors that fall under Jamaica’s AML/CFT framework, emerging areas of risk that are not included in the country’s AML/CFT framework were also assessed. Data was collected through interviews, working group meetings, and surveys. The sectors assessed using this approach were:

- Used car dealers; and
- Real estate developers.

1.2.6 DATA COLLECTION

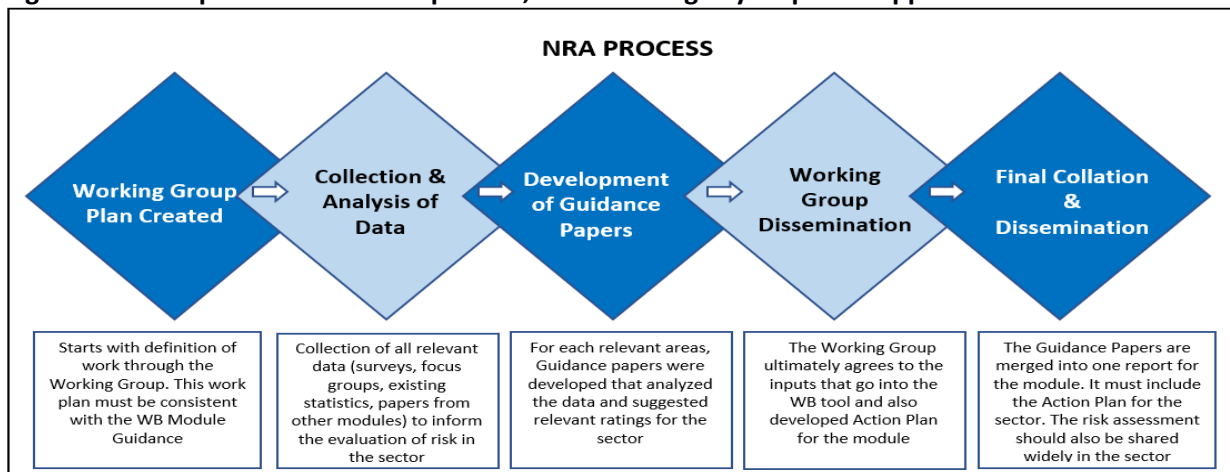
Extensive data was collected across all modules, and as was noted before, the teams had to assess 371 variables across the key modules. Data collected ranged from law enforcement actions to the level of suspicious transaction reporting in various sectors. In some instances, data was not readily available and the respective working team had to use data from several sources to triangulate information to arrive at the quantitative data required for the World Bank tool and to facilitate a good understanding of the ML/FT risks in the requisite sector. The data collected was also placed in a central database that allowed for cross-referencing across modules. This database will serve as the central repository for future work on the risks in Jamaica.

There were many instances of data gaps across the sector assessments and where proxy data could not be identified and used, these gaps were included in the action plans for the respective sectors.

1.2.7 WORKING GROUPS

During the NRA process, Working Groups were established across all modules to aid in the collection and analysis of data. The Working Groups were comprised of key government stakeholders and in some instances private sector groups. The Working Groups were responsible for scoring variables as per the World Bank tool and reviewing the outputs of the working teams. There were robust discussions in the working group meetings and in many instances, additional data was identified and supplementary analysis was recommended in these meetings. Figure 4 below depicts the key steps taken to accomplish the final output of the NRA. It shows the important role that the working group plays in the process, which includes the formulation of the sector work plan and the rating of the various variables in each module. Figure 4 also highlights that the final output of the NRA will be widely shared among stakeholders

Figure 4: In completion of the NRA process, the following key steps and approaches were taken:



1.2.8 CONSULTATIONS AFTER THE INITIAL DRAFT OF THE NRA

Between May and August 2021, consultations were held with key stakeholders in both the private sector and the public sector to disseminate the findings of the NRA and to allow for consultation on the recommendations included in the final action plan. A total of 19 consultation sessions were held and the recommendations emanating from those sessions were incorporated in the NRA.

CHAPTER 2: JAMAICA'S AML/CFT FRAMEWORK

2.1 BACKGROUND

This chapter covers the legal, regulatory and law enforcement frameworks governing the anti-money laundering (AML), counter financing of terrorism (CFT) and counter-proliferation financing (CPF) regime in Jamaica. Since the publication of Jamaica's Mutual Evaluation Report (MER) by the Caribbean Financial Action Task Force (CFATF) in January 2017, specific focus has been placed on improving these frameworks.

Jamaica's 2017 MER concluded that Jamaica had strategic deficiencies in its AML/CFT/CPF framework. The ratings, vis-à-vis the FATF 40 Recommendations, are outlined in table 3 below, and as can be seen, whilst Jamaica was largely compliant or compliant in several areas, there were also several areas of non-compliance and partial compliance that needed to be addressed.

Table 3: Jamaica's Technical compliance ratings, January 2017

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	PC	LC	LC	LC	NC	PC	NC	C	PC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
PC	PC	C	PC	C	LC	PC	PC	PC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
PC	PC	PC	PC	PC	PC	PC	PC	LC	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	PC	LC	PC	LC	C	LC	C	PC

Key:

C	Compliant
LC	Largely compliant – There are only minor shortcomings
PC	Partially compliant – There are moderate shortcomings
NC	Non-compliant – There are major shortcomings
NA	Not applicable – A requirement does not apply, due to the structural, legal or institutional features of the country

Due to its identified shortcomings, Jamaica was placed in the FATF's monitoring process for jurisdictions with strategic deficiencies in their respective AML/CFT/CPF frameworks. This process is overseen by the FATF's International Cooperation Review Group (ICRG) and once an action plan is agreed between the jurisdiction and the FATF, the jurisdiction is then included in a list of countries subject to heightened monitoring, more commonly referred to as the grey list, and that list is published on the FATF's website. Jamaica was included on this grey list in February 2020 which signalled that there were gaps in the framework, although it should be noted that Jamaica's inclusion on the list was due in part to the redefinition of the financial assets threshold by FATF.

2.1.1 JAMAICA'S CURRENT STANDING WITH THE FATF'S 40 RECOMMENDATIONS AND 11 IMMEDIATE OUTCOMES:

Subsequent to the 2017 MER, Jamaica further committed to implementing measures to address money laundering, terrorist financing and proliferation financing and has made significant progress in its efforts to improve its AML/CFT/CPF framework. As a result, several amendments were made to Jamaica's suite of financial crimes legislation as well as its policies and procedures aimed at improving the country's

technical compliance ratings. These changes led to Jamaica successfully applying for re-rating of several recommendations at the CFATF’s December 2020 Plenary. In acknowledgement of all the work done by Jamaica, the country’s ratings improved in 12 of the 40 recommendations, while there was a downward revision in Recommendation 15 from “compliant” to “partially compliant.” Jamaica’s current standing is depicted in table 4 below.

Table 4: Jamaica’s Technical compliance with re-ratings - December 2020

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
PC	LC	LC	LC	LC	LC	PC	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	C	C	LC	PC	LC	LC	LC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	PC	PC	PC	PC	PC	PC	PC	LC	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	C	LC	PC	LC	C	LC	C	PC

NB: Ratings in blue denote improvements, while rating in red denotes deterioration. Ratings in black remained unchanged.

Key:

- C** Compliant
- LC** Largely compliant – There are only minor shortcomings
- PC** Partially compliant – There are moderate shortcomings
- NC** Non-compliant – There are major shortcomings
- NA** Not applicable – A requirement does not apply, due to the structural, legal or institutional features of the country

2.2 JAMAICA’S AML/CFT LEGISLATIVE FRAMEWORK:

Jamaica’s AML, CFT and CPF regime is governed by the following suite of legislations:

- The Proceeds of Crime Act, 2007 (POCA) and the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007.
- The Terrorism Prevention Act, 2005 (TPA) and the Terrorism Prevention (Reporting Entities) Regulations, 2005.
- The United Nation Security Council Resolutions Implementation Act, 2013 (UNSCRIA)

The aforementioned legislations have all been amended to ensure that the legislative framework is commensurate with the international standards on AML/CFT/CPF (the FATF Recommendations). The introduction of these pieces of legislation reflects Jamaica’s continuing commitment to combatting money laundering (ML), terrorism, terrorism financing (TF) and proliferation financing (PF). The three laws referred to above constitute the base for Jamaica’s AML/CFT/CPF framework.

The full details of these and other amendments to legislations can be found in Appendix 2 - Legislative Amendments.

2.2.1 KEY LEGISLATION: THE PROCEEDS OF CRIME ACT

The Proceeds of Crime Act (POCA) defines and criminalizes money laundering. In Jamaica, the offence of money laundering may be charged in any criminal proceedings where an acquisitive crime has been committed. Schedule 2 to the POCA sets out those offences where, if convicted, a defendant is regarded as having a criminal lifestyle. The POCA was passed in 2007, and since then there have been a series of

amendments including the extension of the list of offences for which an assumption that an individual has a criminal lifestyle can be made.¹

POCA has also created reporting obligations referred to as suspicious transaction reporting (STR), criminalised tipping off, mandated regulated businesses to conduct transaction monitoring for customers and businesses domiciled in certain territories, and further mandates that regulated businesses apply the requisite countermeasures, including terminating relationships, where necessary. Through the regulations under the POCA, regulated businesses are further mandated to implement the requisite preventive measures including both simplified customer due diligence (CDD) and enhanced due diligence (EDD), and implement preventive measures in a risk-based manner. Additionally, there must be accurate record-keeping, and businesses must ensure that internal policies and controls designed to monitor compliance with the preventive measures are in place.

Under POCA, financial institutions (FIs), designated non-financial institutions (DNFIs) and the holding companies of the groups in which FIs and DNFIs are held, are collectively identified as regulated businesses.

Where applicable, regulated businesses that are part of a corporate group structure are required to be subject to effective group-wide AML/CFT risk management. In this regard, there are no financial secrecy laws in Jamaica that impede this obligation and the recently passed Data Protection Act, (not yet in effect) has sufficient provisions to preserve regulatory and law enforcement access to information (this includes access with a view to sharing the information with regulatory or law enforcement counterparts).² Chapters 6 and 7 provides additional information on the AML/CFT framework that applies to these regulated businesses.

POCA places the responsibility of monitoring entities that are a part of the country's AML/CFT/CPF regime on competent authorities, who undertake this function by conducting risk-based examinations, issuing guidance and enforcing sanctions. The agencies designated to perform these functions are the Bank of Jamaica (BOJ), Financial Services Commission (FSC), Real Estate Board (REB), Betting Gaming and Lotteries Commission (BGLC), Public Accountancy Board (PAB) and General Legal Council (GLC). In 2013, the role of competent authorities was expanded to ensure that these authorities had the power to effectively monitor compliance with the obligations under POCA and the regulations issued under POCA, and mandates the maintenance of relevant statistics by these competent authorities. Competent authorities under POCA must undertake their AML/CFT/CPF oversight or supervisory role on a risk-based approach and in this regard are required to continually assess the ML, TF and PF risks relating to the sectors they oversee/regulate or supervise.

These competent authorities under POCA can therefore share information with regulatory counterparts and law enforcement agencies, both domestically and internationally. They can also require the FIs or DNFIs they regulate, supervise or oversee, to provide certain information to the competent authority. Non-compliance with a requirement or directive of the competent authority is an offence under the POCA, for which a custodial sentence can be levied on conviction. Recently, the level of penalties to be paid on conviction for breaches of certain preventive measure obligations under the POCA were revised

¹ 2009, 2010, 2013, 2019

² The Data Protection Act, 2020 (Ja)

<https://japarliament.gov.jm/attachments/article/339/The%20Data%20Protection%20Act,%202020.pdf>

upwards and the penalty regime revised so that these offences can also be answered by payment of a fixed penalty.

2.3 KEY LEGISLATION: TERRORISM PREVENTION ACT

The Terrorism Prevention Act (TPA) defines terrorism or terrorist activity and criminalizes acts of terrorism and the financing of terrorists and terrorism/terrorist activity.

Sections 3 – 13 of the TPA outline these offences, notably the penalty for committing an act of terrorism can, on conviction, result in life imprisonment. The TPA was passed in 2005, and since then there have been several amendments³ that serve to strengthen the counter-terrorism and counter-terrorism financing framework for Jamaica. An example of this was an amendment to the TPA to more clearly allow for the implementation of targeted financial sanction (TFS) without delay by differentiating the United Nations Security Council resolution 1269 requirements from the resolution 1373 requirements on combatting terrorism financing. The effect of the amendment was to expressly articulate that the asset freezing requirement was an explicit requirement of court orders for entities listed as terrorists and placed express time-bound communication obligations in respect of these court orders on competent authorities with regard to how quickly they were communicated to their respective FIs and DNFI which they oversee. It also introduced express procedures to allow Jamaica to propose persons to the United Nations Security Council (UNSC) for designation as terrorists and incorporated delisting mechanisms for persons who were named as terrorists in court orders of listed entities or in designations by the UNSC. The TPA was also amended to create criminal offences of leaving or attempting to leave Jamaica to support a terrorist group or to commit a terrorism offence or facilitating such behaviour.

The operating protocols for TFS have been developed by Jamaica to ensure they continue to be implemented without delay. Since 2020, Jamaica has been able to consistently obtain orders within an average time of 15 hours and 38 minutes, and on two occasions was able to obtain orders in less than four hours. Within the same 24-hour window, service of these orders on competent authorities and subsequent communication to regulated businesses under POCA and reporting entities have also been consistently achieved.

Under the TPA, FIs and DNFI are collectively identified as reporting entities. The TPA states that reporting entities are subject to reporting obligations in relation to the submission of STRs, (tipping off is also criminalised) and thrice-yearly reporting requirements in relation to asset holdings they may have that are linked to terrorism financing. Through regulations under the TPA, reporting entities are further mandated to implement the requisite TF preventive measures—many of which are similar to those outlined in regulations under POCA. Chapters 6 and 7 provides additional information on the AML/CFT framework that applies to these reporting entities.

In a similar manner to POCA, the TPA places the responsibility of monitoring reporting entities' compliance with these obligations and issuing guidance on the competent authorities. The Bank of Jamaica (BOJ) and the Financial Services Commission (FSC), were designated competent authorities for the sectors which they supervise, regulate or generally oversee. In relation to the CFT oversight of the DNFBPs by their respective competent authorities, revised guidance is being prepared by the Real Estate Board (REB), Betting Gaming and Lotteries Commission (BGLC), Public Accountancy Board (PAB) and General Legal Council (GLC), to reflect their obligations under the TPA. Finally, it should also be noted

³ 2010, 2011, 2013, 2019

that the TPA serves as Jamaica’s ratification of several international conventions on combatting terrorism.⁴

2.3.1 KEY LEGISLATION: THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS IMPLEMENTATION ACT

The United Nations Security Council Resolution Implementation Act, 2013 (UNSCRIA) allows Jamaica to implement the decisions of the UNSC on proliferation financing. The Act defines activities that are restricted or prohibited and describes the subjects of UNSC TFS designations as proscribed persons or entities. The enabling provisions for UNSCRIA lists those who are subject to the obligations contained within the Act. These obligations are primarily - reporting requirements, ensuring those named in the Act abide by its asset freezing provisions as well as honouring the provisions restricting dealings of any kind with proscribed persons or entities. It permits Jamaica to give effect to the UNSC’s designations of jurisdictions, persons or entities, through the issuance of implementing regulations. In this final respect, Jamaica has implemented regulations in relation to the Democratic People’s Republic of Korea (DPRK)⁵ and these are the only implementing regulations that have been issued under the UNSCRIA.

The TFS regime comprises of implementing regulations which prohibit dealings of any nature with the DPRK and a provision which permits the Attorney General to seek and obtain an injunction in relation to a person who has engaged, or is engaging, or is reasonably suspected of being about to engage in conduct that breaches the regulations in relation to the DPRK. Recently, the TFS regime was strengthened with the amendment to the UNSCRIA in 2019 to allow Jamaica to give effect to proliferation financing (PF) related designations by the UNSC by applying to the court ex parte for an order to designate as proscribed, a country, person or entity who is included on a PF related designation by the UNSC. Once the regulations in relation to such proscribed country, person or entity have been promulgated, the requirement for the court order will no longer apply. Notably, the amendments to the UNSCRIA include a requirement that such regulations be in place within 30 days of the date of a relevant UNSC designation which in this case would be a PF related UNSC designation.

Both FIs and DNFI are expressly included in the category of persons who are subject to the statutory reporting obligations under the UNSCRIA and regulations.⁶ In addition, FIs and DNFI are required to undertake CFT due diligence and preventive measures to assist with their monitoring activities and ensure that dealings are not inadvertently undertaken or facilitated with proscribed countries, persons or entities. In an identical manner to both POCA and the TPA, regulations under the UNSCRIA place the responsibility of monitoring compliance by FIs and DNFI with these obligations on their respective competent authorities, who must issue guidance to the FIs and DNFBPs they supervise to assist them in complying with the legislative requirements.

In addition to the legislative amendments made in 2019 to the UNSCRIA, some of the required guidance notes have been prepared. Currently, the regulations implementing additional UN Security Council Resolutions requirements in relation to the DPRK have been drafted and are to be finalized. Additional guidance documents and regulations to address outstanding issues are under consideration.

The full details of these and other amendments to legislations can be found in Appendix 2 - Legislative Amendments.

⁴ The Terrorism Prevention Act, First Schedule (Ja)

⁵ The United Nations Security Council Resolutions Implementation Act, 2013, Schedule

⁶ The UNSCRIA (Reporting Entities) Regulations, 2019 (Ja)

2.3.2 OTHER SUPPORTING LEGISLATIONS

In addition to the relevant money laundering and terrorism financing legislations, law enforcement agencies and competent authorities are governed by numerous other legislations. Some of the key agencies and the primary legislation guiding their activities are outlined in tables 5 and 6 below. The tables show that whilst there are the three core Acts outlined above (POCA/TPA/UNSCRIA), there is a suite of other legislation that provides a robust AML/CFT framework. As can be seen below, the legislation can be grouped into two large categories; those affecting law enforcement and those which pertain to the competent authorities.

Table 5: Law enforcement agencies and their primary legislation

Law Enforcement Agencies	Legislations
Financial Investigation Division	The Financial Investigations Division Act
Office of the Director of Public Prosecution	The Mutual Assistance (Criminal Matters) Act
The Jamaica Constabulary Force	The Constabulary Force Act
(Including the Counter Terrorism & Organised Crime Division and the– Constabulary Financial Unit)	The Terrorism Prevention Act
	The Interception of Communications Act
The Major Organised Crime & Anti-Corruption Agency	The Major Organised Crime and Anti-Corruption Agency Act
	The Corruption Prevention Act

Table 6: Competent authorities and their primary legislation(s)

Competent Authorities	Sectors	Legislations
Bank of Jamaica	Banking Sector	The Banking Services Act
		Bank of Jamaica Act
		Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism, Proliferation and Managing Related Risks
	Cambio & Remittance	Bank of Jamaica Act
		Operating Directions issued under the BOJ Act by BOJ under authority delegated by the Ministry of Finance and the Public Service
		Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism, Proliferation and Managing Related Risks
	Microcredit	Microcredit Act
Credit Unions	The Co-operative Societies Act	

Competent Authorities	Sectors	Legislations
Department of Cooperatives & Friendly Societies		The Co-operative Societies Regulations
Financial Services Commission	Life Insurance	The Financial Services Commission Act
		The Insurance Act
		Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation
	Securities Sector	The Financial Services Commission Act
		The Securities Act
		Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation
Real Estate Board	Real Estate Dealers	The Real Estate (Dealers & Developers) Act
		Anti-Money Laundering Guidance for Real Estate Dealers
Betting Gaming & Lotteries Commission	Gaming Lounges	The Betting, Gaming, and Lotteries Act
		The Betting, Gaming, and Lotteries Commission Guidance Notes for Gaming Lounge Operators
Companies Office	All	The Companies Act
Public Accountancy Board	Public Accountants	The Public Accountancy Act
General Legal Council	Attorneys	The Legal Profession Act

2.4 KEY PARTNERS

Several entities are integral to Jamaica’s AML/CFT/CPF regime. The Ministry of National Security and the Ministry of Finance and the Public Service are the two portfolio ministries with responsibility for POCA. The Minister of Finance and the Public Service exercises general oversight of Jamaica’s obligations with regard to FATF and CFATF.

The Financial Investigations Division

The Financial Investigations Division (FID), a division of the Ministry of Finance and the Public Service is the entity with responsibility for the implementation of the provisions of POCA. The FID, along with the Director of Public Prosecutions are two of the primary enforcing authorities under the POCA and the Chief Technical Director of the FID is the designated authority to whom the regulated sectors are mandated to file reports in compliance with the relevant laws. Jamaica’s Financial Intelligence Unit (FIU) engages directly with the reporting entities and disseminates relevant data to other units and agencies. The FIU is also a member of the Egmont Group and participates in the CFATF FIU cohort activities. It has

entered into a memorandum of understanding with eighteen countries in order to permit more effective sharing of information.

The Ministry of Foreign Affairs and Foreign Trade is the Ministry with responsibility for the TPA and the UNSCRIA.

The Office of the Director of Public Prosecutions

The Office of the Director of Public Prosecutions (ODPP) is Jamaica’s Central Authority pursuant to the Mutual Assistance (Criminal Matters) Act (MACMA) and is along with the FID, an enforcing authority for specified criminal proceedings pursuant to the POCA. Additionally, the ODPP is the authority responsible for applying to the court under the TPA and the UNSCRIA for orders in relation to terrorist and PF designations. Under the TPA, the ODPP is also the authority responsible for publishing court orders in the print media and reviewing the continued applicability of persons designated as terrorists in court orders under the TPA as well as making any application to the court for the revocation of such orders.

The National Anti-Money Laundering Committee

The National Anti-Money Laundering Committee (NAMLC) is responsible for giving effect to Jamaica’s strategic and policy objectives intended to address money laundering, terrorism financing and proliferation financing. The primary functions and responsibilities undertaken by the NAMLC are:

- Developing recommendations for key reforms in relation to national policies and proposed amendments and other legislative initiatives designed to increase the effectiveness of the national AML/CFT/CPF framework;
- Fostering and enhancing national/domestic cooperation and coordination amongst the AML/CFT/CPF competent authorities;
- Facilitating outreach for the public and private Sector on AML/CFT/CPF matters;
- Functioning as the central repository of information on the national AML/CFT/CPF framework; and
- Conducting the national risk assessment on a periodic basis.

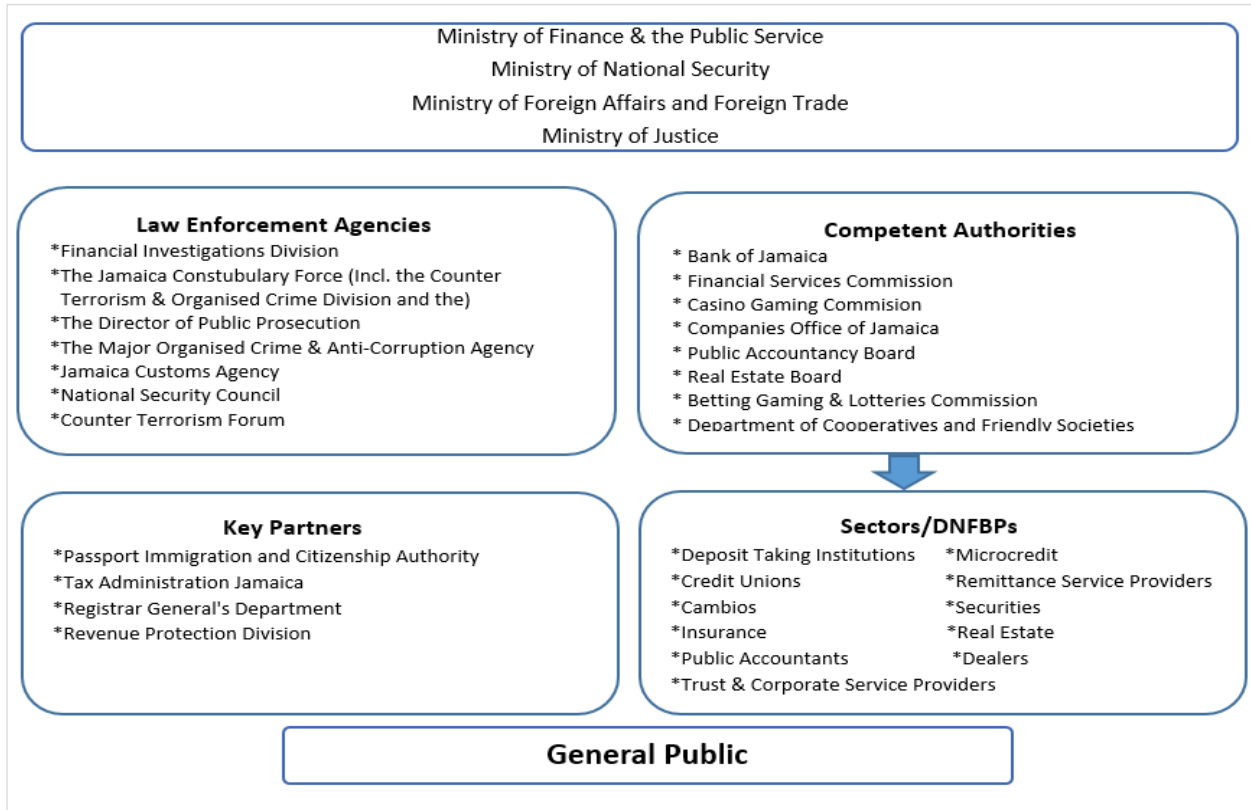
A key recommendation of this NRA is that the NAMLC should be established by statute to provide it with the necessary legislative support to allow it to more effectively perform its role.

The NAMLC is chaired by Jamaica’s prime contact to the Caribbean Financial Action Taskforce (CFATF). Since November 2019, the position of prime contact has been held by a Deputy Governor of the Bank of Jamaica. The prime contact reports directly to the Minister of Finance and the Public Service on all related AML/CFT/CPF matters.

The NAMLC membership comprises of several key stakeholders and includes all competent authorities, relevant ministries and departments of ministries together with law enforcement agencies (see Appendix 3 for the full membership of NAMLC). The multi-stakeholder approach is critical as it is only through the consistent engagement of partners and the sharing of skills, knowledge and experiences, that the country’s AML/CFT goals can be met.

Figure 5 below depicts the key stakeholders engaged in Jamaica’s AML/CFT/CPF regime from the level of the government to the general public:

Figure 5: Key Stakeholders in Jamaica’s AML/CFT/CPF Regime



2.4.1 MONEY LAUNDERING RELATED LAW ENFORCEMENT AGENCIES:

The Financial Investigations Division (FID), the Major Organised Crime and Anti-Corruption Agency (MOCA), Jamaica Customs Agency (JCA) and the Jamaica Constabulary Force’s (JCF) Constabulary Financial Unit (CFU) and the Counter-Terrorism and Organised Crime division (C-TOC), all work in concert in tackling money laundering, terrorism and terrorist financing. The strategies employed by these agencies is contained in chapters 3 and 4 of this assessment.

In September 2018 the FIU, which operates as a unit within the FID, introduced the online reporting platform goAML. The goAML system was developed by the United Nations Office on Drugs and Crime (UNODC) to facilitate real-time online statutory reporting by regulated businesses or reporting entities using a secure electronic portal. In September 2019, the system was expanded to include reporting pursuant to the TPA. The implementation of the goAML system has resulted in the phasing out of the manual reporting process that existed prior to its introduction.

The key functions/features of the goAML system include:

- An ability for the FIU to provide feedback to reporting entities immediately as the system automatically checks incoming data for completeness and accuracy;
- The ability of the FIU to readily identify high-risk areas for AML/CFT based on the reports that are submitted;

- The facility to automatically generate statistical reports or ad hoc statistics from the submitted reports;
- A reduction in the likelihood of errors in reports as they are now submitted electronically rather than being entered manually ;
- The capacity to enter requests for matches on a wide variety of criteria;
- Features that allow the FIU to conduct rules-based analysis by scanning for data that matches certain criteria that have been determined by the FIU;
- The ability of the goAML system to generate a read receipt which enables the designated authority and the FIU to confirm that communication to reporting entities have been received. For example, the dissemination of notifications in relation to TPA and UNSCRIA designations; and
- Allowing both the FIU and competent authorities to more easily assess compliance with reporting standards by reporting entities.

The acquisition and use of goAML have proved beneficial to the FIU as it better facilitates strategic analysis as well as the identification of new trends and typologies due to its enhanced analytical features. Information from the FID has also shown a significant increase in the number of intelligence-based case disclosures disseminated to law enforcement since 2020.

The new platform has also proven to be beneficial to the competent authorities who now have the ability to directly access statistical reports from the platform. This access allows the authorities to obtain information on such areas as to whether licensees are compliant with their reporting obligations, as well as the ability to identify and understand AML/CFT trends in the sectors they regulate, supervise or oversee.

The FID conducts significant outreach activities annually to members of law enforcement and the regulated sector as a means of updating those within these sectors on the suite of financial crimes legislation generally as well as amendments to the applicable legislation. It is also intended to increase compliance by the regulated sector and to encourage greater use of the available powers by law enforcement officers.

2.4.2 PROSECUTION AGENCIES

The Office of Director of Public Prosecution (ODPP) is Jamaica’s principal prosecuting authority in criminal proceedings pursuant to the POCA and the TPA. The ODPP works closely with clerks of court and law enforcement agencies in case preparation for complex money laundering and all terrorism and terrorist financing matters. This is in order to ensure that the correct investigative procedures are followed and the evidence that is obtained during the investigation is done in such a manner that it is admissible in any subsequent court proceedings.

Additionally, the ODPP conducts regular outreach sessions with law enforcement officers, the government of Jamaica legal officers, clerks of court and prosecutors on the prosecution of money laundering, terrorism and terrorism financing cases. The ODPP plays a significant role in giving effect to UN designations and have developed standard operating procedures to guide prosecutors on both the preparation of such applications and understanding what supporting documents are necessary during such an application. In its capacity as Jamaica’s central authority, the ODPP has also facilitated several ML investigations by international partners. To date, there has only been one request in respect of TF, and that matter concerned information requested by Singaporean authorities and two other countries

on a Singaporean national, who was jailed in 2019, for two-and-a-half years by a court in Singapore for financing terrorism. This case is discussed in more detail in Chapter 5.

2.4.3 COMPETENT AUTHORITIES:

There are six key competent authorities in Jamaica in relation to the FIs and DNFI. The two competent authorities for FIs are:

- The Bank of Jamaica (which exercises supervisory/regulatory authority over all deposit-taking institutions and financial holding companies under the BSA, money or value transfer services providers, credit unions. This will include the microcredit sector when the regime takes effect in the second quarter of 2021.
- The Financial Services Commission which exercises supervisory/regulatory authority over its licensees through the application of the Financial Services Commission, Insurance, Securities and Unit Trusts Acts on the activities. Those that is has supervisory responsibility for includes insurance companies, pension schemes, securities dealers, investment advisors and it will have responsibility for trust and corporate services providers once the legislation is enacted.

The Designated Non-Financial Institutions (DNFIs)/Designated Non-Financial Businesses and Professions (DNFBPs) are supervised by the following competent authorities:

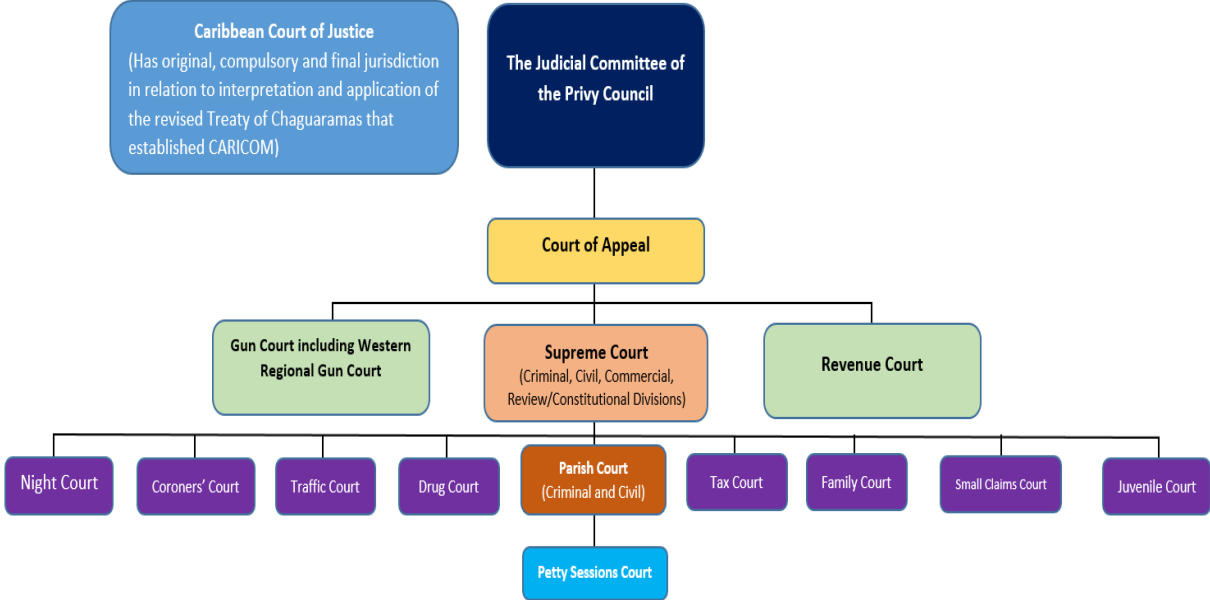
- The Real Estate Board is the competent authority for real estate dealers and salesmen;
- The Betting Gaming and Lotteries Commission is the competent authority for gaming machine operators;
- The Casino Gaming Commission is the competent authority for casino operators; and
- The General Legal Council is the competent authority for attorneys

In addition to the statutory powers aimed at exercising supervisory and regulatory functions over their licensees, the Fourth Schedule to Section 94 of POCA defines what constitutes a business in the regulated sector. Further, section 91(g) of POCA defines the role of a competent authority, whilst section 91A sets out its functions, which are to monitor compliance with POCA and any regulations made thereunder.

2.4.4 THE JUDICIARY

In Jamaica, money laundering matters can be tried at both the parish court and the Circuit Court Division of the Supreme Court, although in practice, most cases are tried at the parish court which is a second tier court within the court system. Cash seizure and forfeiture applications are also tried in the parish court. Post-conviction forfeiture matters are conducted in the Circuit Court Division of the Supreme Court and, where necessary, are committed from the parish court. In relation to terrorism, terrorism financing and proliferation financing these matters are dealt with by the Supreme Court and investigative orders pursuant to the POCA are also made at the Supreme Court. Figure 6 below depicts Jamaica's court structure.

Figure 6: Jamaica Court System Structure⁷



This chapter clearly demonstrates that Jamaica has an extensive AML/CFT/CPF legislative framework. There is also an extensive network of law enforcement and supervisory agencies that are adequately empowered by statute and are increasingly collaborating on ML/TF matters. The continuing review and amendments to the key legislations underpinning Jamaica’s framework also demonstrates a commitment to enhancing all aspects of the country’s AML/CFT/CPF framework. The effectiveness of this framework is explored in subsequent chapters of the NRA.

⁷https://supremecourt.gov.jm/sites/default/files/pdf_documents/Structure-of-the-Jamaican-Court-System.pdf

CHAPTER 3: MONEY LAUNDERING THREAT ASSESSMENT

3.1 CHAPTER OVERVIEW

This chapter provides details relating to Jamaica’s money laundering (ML) threat assessment garnered through an evaluation of the effectiveness of the various entities charged with detecting and mitigating the country’s ML risks. In determining the overall ML risk, stakeholders across law enforcement, the judicial system, as well as key partners such as the tax authorities and customs agency were engaged. This led to significant volumes of data being collected and analysed on both a national and sector basis in order to allow a determination to be made of Jamaica’s overall ML risk.

Based on the detailed analysis conducted the national ML threat score was assessed as **Medium-High**. Some of the main drivers for this score are detailed in this chapter.

3.2 KEY THREATS

In order to identify the key ML threats facing Jamaica, data on predicated offences, the origin of transactions, and economic data were analysed. Stakeholders were also engaged through multiple working group meetings. From the assessment of the data gathered, 23 key predicate offences were identified. Each predicate offence was analysed to determine the level of risk and the general trends related to those offences.

As seen in table 7 below, the key predicate offences that were determined to be high risk were narcotics trafficking, trafficking in arms, corruption/bribery, “lottery scamming”, fraud, cybercrimes, counterfeiting, and smuggling/customs offences. The extent of these crimes is provided later in this chapter. It is important to note at this point that, the prevalence of most predicate offences identified remains the same. However, increasing trends related to gang activity, narcotics trafficking, and cybercrimes were identified.

Table 7: Key Predicate offences and their threat level

Predicate Offences	ML THREAT	TREND
Lottery Scamming ⁸ (Advanced fee fraud)	MH	↓
Criminal Justice (Suppression of Criminal Organizations) Act 2014	H	↑
Terrorism financing	L	↔
Human trafficking	L	↔
Trafficking in narcotics (all offences other than simple possession)	H	↑
Trafficking in Arms (all offences involving firearms)	H	↔
Receiving stolen goods	L	↔
Corruption/Bribery	H	↔
Fraud (to include all descriptions of fraud under the Larceny Act including embezzlement)	H	↔
Cybercrimes breaches	H	↑
Counterfeiting and piracy of products including breach of copyright, patents and trademark	H	↔
Kidnapping	L	↓

⁸ This relates to criminal activities covered under the law Reform (Fraudulent Transactions) (Special Provisions) Act 2013

Predicate Offences	ML THREAT	TREND
Robbery	ML	↓
Larceny Act offences (excluding robbery, receiving stolen goods, extortion and fraud/embezzlement)	MH	↔
Smuggling/customs offences	H	↔
Tax crimes	ML	↔
Extortion	M	↔
Forgery	M	↔
Illegal gambling and gaming	L	↔
POCA 101A (Limit on cash transactions)	L	↔
Illegal cambio and illegal sale of US\$	M	↔
Breaches of Securities Act	L	↔
Cross Border - Cash Smuggling	MH	↔

Key:

ML THREAT	H – High	TREND	No Change	↔
	MH – Medium High		Increasing	↑
	M – Medium		Decreasing	↓
	ML – Medium Low			
	L - Low			

In 2014, Jamaica published its National Security Policy (NSP) and, whilst it is accepted that the document is due for review, it remains the key driver for the prioritisation of the varying types of crime that occur within Jamaica.⁹ Within the NSP threats are categorised as either being a Tier1, 2, 3 or 4 threat.

The Tier 1 threats are described as follows:

- Transnational organized crime (e.g. trafficking in narcotics, weapons and people, money laundering and cybercrime - including “Lottery scams”, identity theft and fraud);
- Gangs and domestic organized crime (e.g. intimidation, extortion, contract killing, kidnapping, money laundering and dealing in narcotics and illegal weapons);
- Facilitators who launder the proceeds of crime; and
- Links between the political system and organized crime (e.g. corruption of public officials, with public works contracts awarded to criminals).

Whilst offences such as robbery and larceny were evaluated, the available evidence indicated that the offences did not involve large sums of money and the benefits of the crime were swiftly dissipated. In relation to offences of kidnapping and human trafficking, whilst the seriousness of the offences is acknowledged, from an ML perspective they constituted a small number of offences and did not generate significant sums. The key offences detailed below were identified as posing the greatest threats:

⁹Government of Jamaica “A New Approach: National Security Policy for Jamaica – Towards a Secure and Prosperous Nation”, <https://cabinet.gov.jm/wp-content/uploads/2017/05/NATSEC-March-25-2014-1-1.pdf>

3.2.1 TRAFFICKING IN NARCOTICS

The United States International Narcotics Control Strategy Report (INCSR) 2019 indicated that Jamaica was again designated as one of 22 major drug transit or illicit drug producing countries under section 706(1) of the Foreign Relations Authorization Act. This was based on the amounts of marijuana that is produced in Jamaica that is then exported to the US, with the most common route being via the Bahamas.

The INCSR notes that Jamaica remains the largest marijuana-producing country in the Caribbean and a significant transit point for cocaine trafficked from South America to North America and other international markets. Traffickers smuggle Jamaican-grown marijuana out of the country via commercial shipping and small watercraft.

The aggregation of the number of cases investigated during the relevant period of 2016 to 2019 are detailed in table 8 below. It should be noted that the table below provides aggregated data for the period 2016 to 2019 due to limitations in data capture by the relevant authority.

Table 8: Trafficking in Narcotics and Related Money Laundering Investigations (2016-2019)

	Number of Cases Detected or Investigated	Number of Cases Prosecuted	Number of Convictions (Cases)	Number of Persons Convicted
Trafficking in Narcotics (All Offences Other Than Simple Possession)	1079	1063	838	835
ML Cases Arising From Narcotics Investigations	94	29	4	4

Trafficking in narcotics is estimated to generate proceeds of J\$12.84 billion or 40 per cent of total proceeds from predicate offences. In relation to cocaine, the 2019 World Drug Report noted that the Caribbean accounted for just one per cent of the total global quantity of cocaine intercepted and most of these seizures were made by the Dominican Republic, reflecting the fact that Jamaica is no longer an important transshipment point.¹⁰ It would appear from the available statistics that there is a slight increase in narcotics cases, but the increase is not believed to be significant.

The ML investigations that have been undertaken by the FID into ML matters related to narcotics trafficking, as well as post-conviction confiscation investigations, have not revealed a sophisticated level of ML. Most of the assets appear to be expended upon receipt, but there are limited instances where proceeds are used to acquire motor vehicles, deposited in financial institutions, or used to buy real estate for domestic rather than investment purposes. Whilst the FID, in conjunction with MOCA has undertaken a high profile investigation into ML by an attorney on behalf of a narcotics trafficker,¹¹ these offences were charged in 2013 and similar cases have not been identified subsequently. This would seem to reflect both the diminishing role of Jamaica as a transshipment point for cocaine and the fact that a lot of the marijuana that Jamaica grows is linked to the guns for drugs trade, an area that is expanded on in the next section.

¹⁰ World Drug Report 2019 (United Nations publication, Sales No. E.19.XI.8).
https://wdr.unodc.org/wdr2019/prelaunch/WDR19_Booklet_4_STIMULANTS.pdf

¹¹ "Attorney, 5 co-accused plead not guilty to money laundering", *Jamaica Observer*, October 20, 2017,
https://www.jamaicaobserver.com/latestnews/attorney,_5_co-accused_plead_not_guilty_to_money_laundering

3.2.2 TRAFFICKING IN ARMS

The illicit trafficking in arms has been a longstanding problem in Jamaica and this trade can be traced back to at least 2008.¹² In a 2009 Amnesty International report, it was calculated that 79 per cent of murders in 2007 were committed using firearms and 78 per cent in 2008.¹³ Similarly, the Jamaica Constabulary Force (JCF) reported that in 2009 firearms were used to commit 77 per cent of murders whilst in 2016 the figure was approximately 81 per cent.¹⁴ This is significant given Jamaica’s high murder rate, hence the need for all elements of law enforcement, including those involved in ML matters, to make it an area of focus even though the sums involved do not appear to be significant.

Given the vulnerability of Jamaica’s border (see Chapter 4), there has been an influx of arms into the country. The International Narcotics Control Strategy Reports (INCSR) notes that marijuana grown in Jamaica is exported to other countries for illicit firearms and other contraband. A thriving “guns for ganja (marijuana)” trade continues between Jamaica and Haiti, as evidenced by seizures in 2018 of illegal firearms traced to Haiti and marijuana shipments prepared for embarkation from coastal Jamaica. This trade, which is effectively a form of bartering, has been reported on extensively and it appears to be an offence that is increasing although statistics, due to the nature of the crime, are difficult to collate.¹⁵ Firearms are also frequently smuggled into the country through the main ports of entry and also appears to be continuing problem.¹⁶

Whilst there has been a limited number of trafficking in firearms investigations during the relevant period there have been no corresponding ML investigations and table 9 below provides details of the number of investigations undertaken.

Table 9: Trafficking in Arms (all offences involving firearms) (2016-2019)

Number of Cases Detected or Investigated	Number of Cases Prosecuted	Number of Convictions (Cases)	Number of Persons Convicted
11	7	2	2

¹² “Jamaica battling guns for drugs trade”, BBC Caribbean.com, October 27, 2008, http://www.bbc.co.uk/caribbean/news/story/2008/10/081027_gunsdrugs.shtml

¹³ Amnesty International, “Public Security Reforms and Human Rights in Jamaica” (UK: Amnesty International, 2009) 8

¹⁴ “Working paper submitted by Jamaica - Effects of gun crime on Jamaica: the case for the comprehensive review of the Programme of Action and the International Tracing Instrument”, *Third United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects A/CONF.192/2018/RC/WP.5* (June 2018) <https://s3.amazonaws.com/unoda-web/wp-content/uploads/2018/06/A-CONF.192-2018-RC-WP.5-Jamaica.pdf>

¹⁵ There are many examples available but for reasons of space, two reports supporting this contention are illustrated here

Seth Robbins, “Jamaica and Haiti Swap Drugs and Guns”, *InSight Crime*, June 23, 2020 <https://insightcrime.org/news/analysis/jamaica-haiti-drugs-guns/>

Emma Wibooi, “Criminality and Resistance, Rocky Point, Jamaica”, *Global Initiative*, February 20, 2020 <https://globalinitiative.net/analysis/criminality-resilience-jamaica/>

¹⁶ Horace Hines, “Six High Powered Rifles Among 19 Seized at Wharf”, *Jamaica Observer*, January 13, 2021 https://www.jamaicaobserver.com/news/six-high-powered-rifles-among-19-guns-seized-at-wharf_212047

3.2.3 CORRUPTION/BRIBERY

In 2019, Jamaica ranked 74 on Transparency International’s Corruption Perception Index (CPI), down four places when compared to the previous year. The CPI ranks 180 countries and territories by their perceived levels of public sector corruption, according to experts and business people. It uses a scale of zero to 100, where zero is highly corrupt and 100 is very clean, with a CPI score of below 50 indicating that a country has a corruption problem. Jamaica recorded a CPI score of 43/100, slightly below the 44 recorded in 2018. Notably, the CPI score for 2020 was 44/100, the same score recorded in 2018.

Based on the Global Corruption Barometer Latin America and the Caribbean 2019 publication¹⁷, 49 per cent of residents were of the view that corruption had increased over the previous 12 months, 17 per cent of people who use public services paid a bribe.

Over the period under review for the NRA, 82 offences relating to corruption/ bribery were prosecuted, resulting in five convictions and only seven were prosecuted as ML offences. At the time that the data used to populate the NRA was compiled all matters were still before the courts hence the absence of any convictions. During the course of these investigations, assets valued at over J\$282 million have either been frozen or seized. However, these clearly are only a fraction of the amounts being stolen.

In trying to assess the sums involved in corruption offences it has been necessary to rely on open-source research. Jamaica’s corruption watchdog, National Integrity Action (NIA), noted that corruption costs the country J\$100 billion per annum.¹⁸

CASE EXAMPLE

In October 2019, as a result of a joint operation involving the Financial Investigations Division (FID), the Major Organised Crime and Anti-Corruption Agency (MOCA), and the Constabulary Financial Unit, Mr. X – *a senior government official*, his wife and daughter, Mr. Y, and Councillor, Mrs. Z were arrested and charged for various illegal acts. These included breaches of the Corruption Prevention Act (CPA), Conspiracy to Defraud, Misconduct in a Public Office at Common Law and ML offences under the Proceeds of Crime Act (POCA).

Through their attorney, the accused argued that officers from the FID had no authority to arrest or bring charges against the accused. However, in February 2021, the Chief Parish Judge ruled that all the above have a fraud case to answer and the matter is to proceed to trial.

The investigation and ongoing prosecution of this ML case, involves a high-ranking political figure, demonstrating that Jamaica is willing to identify, investigate and prosecute ML offences irrespective of the perceived power, or the rank, political or economic power of the individuals involved.

3.2.4 CYBERCRIMES

Cybercrimes are criminal activities executed by individuals or organisations that target or use a computer, a computer network, or a networked device to commit a crime. The cross-border reach of this illicit activity makes it a lucrative crime as offenders do not have to physically enter a jurisdiction to commit this offence. Cybercriminals have in the past targeted local businesses by hacking their databases and requesting ransom for the safe release of the hijacked data. Payment of ransom is usually requested via wire transfers.

¹⁷ Coralie Pring, Jon Vrush, “Global Corruption Barometer Latin America & The Caribbean 2019”

https://images.transparencycdn.org/images/2019_GCB_LatinAmerica_Caribbean_Full_Report_200409_091428.pdf

¹⁸Prof Trevor Munroe, “Let Manchester convictions mark a new beginning in combatting corruption - National Integrity Action”, *Jamaica Observer*, May 16, 2020

http://www.jamaicaobserver.com/latestnews/Let_Manchester_convictions_mark_a_new_beginning_in_combatting_corruption_-_National_Integrity_Action_?profile=1228

The head of the Major Organised Crime and Anti-Corruption Agency (MOCA) estimated the loss to cybercrime in 2016 as at least J\$12 billion. According to the 2018 Financial Stability Report there were 62 counts of internet banking fraud in Jamaica totalling J\$38.2 million in losses between January and September 2018 with an average loss per month of J\$4 million.¹⁹

As ever with crimes of this nature, the methodology used by the criminals is continually evolving, however, the more prevalent types of cybercrimes experienced throughout the period were phishing, malware and third-party transfers. Of note, only 7.7 per cent of these incidents were reported to law enforcement by deposit-taking institutions due to difficulties cited in pinpointing perpetrators. Given the limited number of matters that were referred to the FID for assistance in relation to the ML aspects of the investigation as well as post-conviction confiscation, it has not been possible to identify an overarching typology in relation to the dissipation of assets derived from cybercrime. An MOU is due to be signed by the FID with the JCF and it is anticipated that this will lead to an increase in referrals. Given that cybercrime is increasing worldwide generally,²⁰ it is inconceivable that Jamaica will be immune from this trend and this is an area of crime that continues to be an important focus of anti-money laundering (AML) efforts within the country.

To ensure that the relevant legislation is in place to prosecute cybercrimes, the Cybercrime Act, 2010 was passed²¹. The Act criminalizes the misuse of computer systems or data. The emergence of this area as high risk is underscored by the 1,539 cases that were detected and investigated during the review period, which represents 8 per cent of all detections/investigations over the period under review. The number of detections/investigations in this area outnumbered other high-risk offences such as trafficking in arms (11), counterfeit and piracy (322), and trafficking in narcotics (1,079). The proceeds from cybercrimes in Jamaica were estimated at \$100 million. Full details of the cases prosecuted and the corresponding ML investigations that were undertaken is presented in table 10 below.

Table 10: Cybercrime Investigations (2016-2019)

	Number of Cases Detected or Investigated	Number of Cases Prosecuted	Number of Convictions (Cases)	Number of Persons Convicted
Cybercrime Investigations	1539	111	26	21
ML Cases Arising From Cybercrime Investigations	2	2	1	3

¹⁹Nadine Wilson-Harris, "Cyber thieves run rampant - Jamaica suffering billions in losses from online crime", *The Gleaner*, June 30, 2019

<https://jamaica-gleaner.com/article/lead-stories/20190630/cyber-thieves-run-rampant-jamaica-suffering-billions-losses-online>

²⁰ Cybercrime to Cost the World US\$10.5 trillion by 2025

<https://cybersecurityventures.com/hackerpocalypse-cybercrime-report-2016/>

Steve Morgan, "Cybercrime To Cost The World \$10.5 Trillion Annually By 2025", *Cybercrime Magazine*, November 13, 2020

²¹ [Cybercrimes Act.pdf \(moj.gov.jm\)](#)

3.2.5 ADVANCED FEE FRAUD

The proceeds generated from fraud were estimated at \$3,042.81 million. One of the most prevalent frauds in Jamaica is an advance fee fraud known colloquially as the “lottery scam” and it is this offence that is the focus of this section. In committing the offence, offenders convince their victims (primarily elderly citizens resident in the United States), that they have won a lottery, but winnings will not be released without upfront payment of fees or taxes. These criminal activities have largely been concentrated in the Western parishes in Jamaica. It is of particular concern to law enforcement within Jamaica as it is believed to have replaced drug trafficking as the principal offence by which Jamaican criminals generate illicit benefits and also responsible for the increasing murder rate.²² As an offence, it has increased exponentially over the last twenty years.

To combat this crime, legislation has been enacted to prosecute fraudsters and to increase cooperation and coordination between local and overseas agencies by way of the Law Reform (Fraudulent Transactions) (Special Provisions) Act.²³ Section 10 of the Act criminalizes the possession of identity information and, states that, "a person commits an offence where that person knowingly obtained or possesses identity information of any other person in circumstances which gives rise to reasonable inference that the information has been used or is intended to be used to commit an offence under this or any law." Section 10(2) of the Act also makes it an offence to sell, transmit or make available or offer for sale any identity information. Identity information includes name, address, date of birth, signature, credit and debit card number, tax registration number, and driver's licence number. The penalties for breaching the provisions of the Act are strongly dissuasive and range from a low of 15 years imprisonment to a high of 25 years imprisonment.

To foster cooperation among relevant agencies, the Jamaica Operation Linked to Telemarketing (JOLT) was created to provide real-time information on targets and victims of “lottery scamming” (fraud).²⁴

Table 11 below provides a breakdown of the offences that have been investigated during the relevant period together with the number of ML investigations that have been undertaken where this particular fraud has been the key predicate offence.

²² “Lottery Scams Prey on the Vulnerable and Help Fuel Violence in Jamaica”, *The Guardian*, April 2, 2017

<https://www.theguardian.com/world/2017/apr/02/jamaica-lottery-scam-violence-corruption-crime>

²³ “The Law Reform (Fraudulent Transactions) (Special Provisions) Act” (Ja)

<https://moj.gov.jm/sites/default/files/laws/The%20Law%20Reform%20%28Fraudulent%20Transactions%29%28Special%20Provisions%29%20Act.pdf>

²⁴ Personnel are drawn from JCF, FID, USICE, US Postal Inspection. Meetings are held monthly or more frequently depending on the cases.

Table 11: Law Reform (Fraudulent Transactions) (Special Provisions) Act Investigations (2016-2019)

	Number of Cases Detected or Investigated	Number of Cases Prosecuted	Number of Convictions (Cases)	Number of Persons Convicted
Law Reform (Fraudulent Transactions) (Special Provisions) Act Investigations	1,562	1,168	260	296
ML Cases Arising From Law Reform (Fraudulent Transactions) (Special Provisions) Act Investigations	94	15	6	10

3.2.5.1 ELECTRONIC BANKING FRAUD

Internet banking fraud refers to the use of online technology to illegally remove funds from a bank account. Internet banking fraud is a form of identity theft and is usually made possible through techniques such as phishing. Internet banking fraud is an emerging area of risk in Jamaica. The Bank of Jamaica conducted a thematic study in 2019 on money laundering risk exposures in deposit-taking institutions and credit unions over 12 months. The study found that internet fraud was the third most prevalent type of fraud reported. This type of fraud also accounted for 6.4 per cent or J\$43.57 million of reported fraud losses, making internet fraud the third most costly fraud in the sectors assessed. Additionally, a large deposit-taking institution reported that its fraud loss experience was J\$750.00 million in 2018 and a significant component of this was internet banking fraud.²⁵ It is expected that fraud in this area will continue to increase, as banks digitize their delivery channels. Data from the BOJ indicates that from January 2018 to September 2018, there were 62 counts of internet banking fraud in Jamaica totalling J\$38.20 million²⁶.

3.2.6 COUNTERFEITING AND PIRACY OF PRODUCTS

The counterfeit and pirated goods trade in Jamaica has become a major challenge as illegitimate traders seek to pass off fake goods as genuine products. The counterfeit and pirated goods trade not only affects the copyright holder, but it also impacts government revenues as these goods are usually sold at a lower cost (than the original) and are often traded outside of the formal economy.

A large number of counterfeit goods are imported into Jamaica on an annual basis. In the years between 2016 to 2019, the Jamaica Customs Agency (JCA) seized J\$2.40 billion in counterfeit goods. During the 2017/2018 fiscal year, over J\$376.00 million worth of counterfeit goods were seized at the nation’s ports by the JCA in collaboration with the Counter-Terrorism and Organized Crime Investigation Branch (C-TOC).²⁷ Also, in April 2018, a total of J\$600.00 million in counterfeit goods were seized in Kingston. C-

²⁵ Nadine Wilson Harris, “\$750m bank fraud - Rackets surge as most scammers go unpunished”, *The Gleaner*, May 19, 2019 <https://www.gleaner.com/story/750m-bank-fraud-rackets-surge-as-most-scammers-go-unpunished> | Lead Stories | Jamaica Gleaner (jamaica-gleaner.com)

²⁶ Bank of Jamaica, “Financial Stability Report”, 2019 (Ja) https://www.boj.org.jm/uploads/pdf/finstab/finstab_2018.pdf

²⁷ Latonya Linton, “\$376 Million Worth of Counterfeit Goods Seized”, *Jamaica Information Service*, May 1, 2018

TOC also seized fake goods valued at more than J\$100 million during operations at two establishments in downtown Kingston.²⁸

It is estimated that the value of proceeds generated from the importation of counterfeit and pirated products totals J\$5.0 billion, but the amount seized totals J\$2.5 billion which indicates that there is the possibility that half of these crimes remain undetected by the customs authorities. The majority of these counterfeit goods were imported from China, Panama, and the United Arab Emirates.

Over the period under review, 249 convictions were obtained for the importation of counterfeit goods, however, none of these cases resulted in ML prosecutions.

3.2.7 CASH SMUGGLING

Section 209 (1) of the Customs Act creates an offence where 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. The same section allows the JCA to impose a penalty not exceeding J\$500,000 or treble the value of the goods to which the offence relates for failing to make the declaration. It would appear that JCA officers are using this power rather than undertaking a cash seizure or referring the matter to the FID to allow them to undertake a ML investigation. The limited use of referrals is a weakness in the approach being adopted by the JCA in relation to investigations of cash being smuggled into Jamaica.

Although this has been identified as a weakness, it must be noted that the JCA has undertaken cash seizures and initiated ML investigations through the activities of its Border Protection Unit (BPU) who, since its inception, have also undertaken operations with local and international partners.

Between the years 2016-2019 cash being transported into and taken out of Jamaica was seized by the JCA at both international airports—Sangster’s International Airport and Norman Manley International Airport. In assessing the methods that are used to transport cash both into and out of Jamaica, it was revealed that they have ranged from more complex measures such as swallowing cash wrapped in latex in a manner similar to that used for narcotics offences, cash has also been contained within shampoo bottles and sewn into the actual luggage. However, the vast majority of cases seem to be quite unsophisticated and involve a passenger merely placing cash either in their carry-on luggage or their checked luggage. Table 12 below shows that the majority of cash being smuggled was denominated in USD.

Table 12: Amount of Smuggled Cash Identified

Year	Number of smuggling on entry	Total \$ amount smuggled on entry
2016	108	USD\$762,790.00; GBP\$2,930.00; CAD\$104,760.00; TT\$20,583.00
2017	114	USD\$699,675.57; GBP\$19,020.00; CAD\$7,700.00
2018	230	USD\$462,687.77; CAD\$27,830.00; T&T30,000.00; £\$4,394.00; BAR\$1,200.00

[J\\$376 Million Worth of Counterfeit Goods Seized – Jamaica Information Service \(jis.gov.jm\)](https://jis.gov.jm)

²⁸“More than \$600 million worth of counterfeit goods seized by the police in the last two weeks is believed to be a fraction of such illegal items in Jamaica”, *Kairi FM*, April 18, 2018

<https://kairifm.com/more-than-600-million-worth-of-counterfeit-goods-seized-by-the-police-in-the-last-two-weeks-is-believed-to-be-a-fraction-of-such-illegal-items-in-jamaica/>

According to Section 101 of the POCA, prior disclosure must be made to the Designated Authority (the FID) when cash exceeding ten thousand United States dollars (US\$10,000.00) or its equivalent in any other currency is being transported. For the period under review, there were 55 instances where cash over US\$10,000 was seized, but only two were referred to the FID to for ML investigation. The absence of referrals to the FID demonstrates the need for a greater commitment to Jamaica’s overall anti-money laundering and countering the financing of terrorism programme by the JCA as well as greater cooperation between the agencies. An MOU between the FID and the JCA is currently being finalised and it is anticipated that this, combined with inter-agency training, will allow this shortcoming to be addressed to ensure that when smuggled cash is discovered it is dealt with in a manner that will permit greater opportunities for ML prosecutions.

3.3 MONEY LAUNDERING OFFENCES AND PROSECUTIONS

3.3.1 PREDICATE OFFENSES

As indicated in the previous section, 23 key predicate offences were identified as a part of the NRA exercise. Table 13 below provides details on the number of investigations, prosecutions, and convictions. Though there is no central repository for data associated with these predicate offences and there are data gaps, where the data was available, the J-dollar value of the proceeds seized or frozen is also included in the table. Robbery accounted for the largest number of cases investigated (4,186) followed by tax crimes (3,785) and fraud (2,299). The highest number of convictions (838) related to trafficking in narcotics.

Table 13: Predicate Offence Investigations, Prosecutions and Convictions

Predicate Offences	Number of cases investigated	Number of cases prosecuted	Number of convictions (cases)	Number of persons convicted	Amount of proceeds seized or frozen	ML THREAT
Law Reform (Fraudulent Transactions) (Special Provisions) Act 2013	1,562	1,168	260	296	24,344,190.85	MH
Criminal Justice (Suppression of Criminal Organisations) Act 2014	132	107	2	2	626,640.00	H
Terrorism financing					314,500.00	L
Human trafficking	12	12	6	6	549,800.00	L
Trafficking in narcotics (all offences other than simple possession)	1,079	1,063	838	835	427,605,593.00	H
Trafficking in Arms (all offences involving firearms)	11	7	2	2	2,148,000.00	H
Receiving stolen goods	155	137	31	53		L
Corruption/Bribery	109	82	5	6	282,064,481.00	H
Fraud (to include all descriptions of fraud under the Larceny Act including embezzlement)	2,299	753	199	101	9,449,573.00	H
Cybercrimes breaches	1,539	111	26	21		H
Counterfeiting and piracy of products including breach of copyright, patents and trademark	322	285	249	256	282,000.00	H

Predicate Offences	Number of cases investigated	Number of cases prosecuted	Number of convictions (cases)	Number of persons convicted	Amount of proceeds seized or frozen	ML THREAT
Kidnapping	21	21	5	5		L
Robbery	4,186	812	276	293		ML
Larceny Act offences (excluding robbery, receiving stolen goods, extortion and fraud/embezzlement)	1,326	525	296	264	211,000.00	MH
Smuggling/customs offences	46	43	23	28	1,230,000.00	H
Tax crimes	3,785	22	17	17		ML
Extortion	23	14	2	0	309,950.00	M
Forgery	337	66	49	39		M
Illegal gambling and gaming	253	226	210	274	385,000.00	L
POCA 101A ²⁹ (Limit on cash transactions)	12	7		1	1,460,000.00	L
Illegal cambio and illegal sale of US\$						M
Cross Border - Cash Smuggling	945	317			83,840,047.00	MH
TOTAL	18,154	5,756	2,501	2,504	834,820,774.85	

Key:

ML THREAT H – High
 MH – Medium High
 M – Medium
 ML – Medium Low
 L - Low

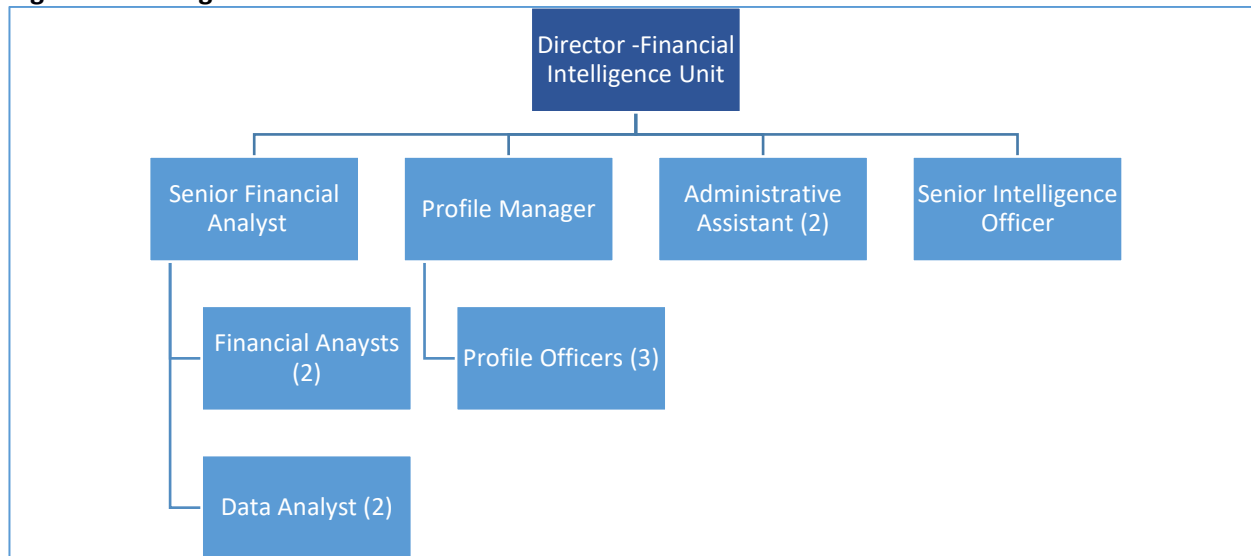
3.3.2 ANALYSIS OF SUSPICIOUS TRANSACTION REPORTS

The receipt of suspicious transaction reports (STRs) is undertaken by the financial intelligence unit (FIU), whose FIU core function is the receipt, analysis, and dissemination of information received from reporting entities and other persons who have submitted reports based on observing unusual and/or suspicious activity in the normal course of their business. Additionally, information is received from other FIU’s and is subjected to the same process.

The overall established staff complement for the FIU is 13 staff members as illustrated in figure 7 below. It should, however, be noted that at present the unit only has ten staff members.

²⁹ Section 101A makes it an offence for persons who are not specifically named in the section as “permitted persons” or who do not have a Ministerial Exemption issued under that section to conduct cash transactions where the transaction or a series of transaction which appear linked exceed Jamaican One Million dollars (J\$1,000,000.00) or its equivalent in any other currency.

Figure 7: FIU Organizational Chart



In September 2018 the UNODC goAML system for the electronic reporting of STRs was introduced; prior to this reports were submitted manually either on data devices or paper. The introduction of goAML has allowed for a more detailed analysis of reports to be undertaken through the utilisation of key features of the system such as its ability to score the submitted reports, provide graphical representation of associations and transactions and run complex queries. All of this has allowed the FIU to more effectively identify those reports which needed to be prioritised for analysis in accordance with the FIU standard operating procedure.

Table 14 below shows that the remittance services reported the majority of STRs filed between the years 2016 – 2019. This was attributable to high levels of defensive filing by those reporting in that sector. Consequently, the high number seen, particularly in 2016 and 2017, does not depict the true state of the industry as such reporting has greatly diminished with the introduction of goAML and the strictures it places on reporting entities especially through its ability to allow for more effective cross referencing which permits greater identification of persons with similar name. Another key element of goAML is that it allows the FIU to provide immediate feedback on reports as well as the ability to undertake quality assurance checks both more expeditiously as well as upon a large sample.

Additionally, in relation to the remittance agencies, prior to the introduction of goAML the FIU recorded STR figures on the basis of individual transactions rather than the activities of an individual suspected of being engaged in ML. Consequently, if an individual engaged in 50 transactions under the previous regime this was recorded as 50 STR reports. Under the new system, this would be recorded as one STR and is a more accurate reflection of the level of suspicious activity being identified. With the advent of goAML in September 2018, the FIU is now in a position to indicate the number of reports that have been used in producing a disclosure.

To ensure that reporting entities are correctly identifying and reporting suspicious transactions, significant work has been undertaken by the FID to train licensees and their respective competent authorities in identifying such activity. The combined effect of the practical use of goAML, a revised

recording system and an effective outreach programme with reported entities has led to a reduction in STRs filed by remittance services between 2018 and 2019 as illustrated below in table 14.

Table 14: STRs filed by sector

<i>Regulated Entities</i>	2016	2017	2018	2019	TOTAL
<i>Remittance Services</i>	131,368	113,157	52,069	4,178	300,772
<i>Cambios</i>	19,382	12,566	6,750	730	39,428
<i>Commercial Banks</i>	776	1,031	644	1,373	3,824
<i>Credit Unions</i>	374	105	87	148	714
<i>Securities Dealers</i>	55	25	23	32	135
<i>Insurance</i>	32	28	30	21	111
<i>Building Societies</i>	825	44	23	13	905
<i>Merchant Bank</i>	5	4	0	0	9
<i>DNFI – Gaming Lounges</i>	10	23	71	30	134
<i>DNFI – Real Estate Dealers</i>	0	0	0	2	2
<i>DNFI –Attorneys-at-law</i>	1	0	0	0	1
TOTAL	152,828	126,983	59,697	6,527	346,035

3.3.3 CASE DISCLOSURES

Money laundering investigations are usually initiated from case disclosures, which may rely on information drawn from several reports that have been filed by one or more reporting entities. The FID indicated that the key reasons provided by reporting entities for suspicion were related to what was seen as underlying domestic predicate offences such as, “lottery scamming”, fraud, drug trafficking, corruption, and tax evasion giving rise to the suspicion that money laundering was taking place. Some reporting entities also indicated that a stand-alone money laundering offence was the reason for the disclosure, but this was primarily in instances where the entity could not specify a linked suspected predicate offence. Table 15 below identifies both standalone money laundering and money laundering linked to “lottery scamming” as the most common reasons cited by reporting entities for case disclosures.

Table 15: Reasons for Case disclosures

<i>Criminal Activities</i>	2016	2017	2018	2019	TOTAL
<i>Money Laundering (standalone)</i>	30	21	13	25	89
<i>Lottery Scamming</i>	15	22	5	9	51
<i>Other Fraud</i>	8	6	8	10	32
<i>Drug Trafficking</i>	6	10	6	1	23
<i>Corruption</i>	4	1	7	0	12
<i>Tax Evasion</i>	1	1	2	4	8
TOTAL	64	61	41	49	215

Whilst it is clear that a large number of STRs were filed in 2016 and 2017, the figure reduced significantly in 2018 and 2019 as a combination of the introduction of the goAML system and a more proactive approach by the FIU in its engagement with reporting entities bore fruit. Despite a large number of STRs being filed by reporting entities, only a small number (less than 1 per cent), led to ML investigations. It is envisaged that with the introduction of goAML, which has a feature requiring a report trigger or indicator to be selected by the reporting entities, the conversion rate will be improved. The trigger helps the senior financial analyst to better identify cases that fit the criteria of sensitivity, for example reporting involving politically exposed persons (PEPs). In addition, the revised method by which STRs are recorded will lead to a greater percentage of STRs being used to initiate investigations and the figure of 1 per cent is expected to rise consequentially. Finally, whilst the figure of 1 per cent is low it is worth noting that the director of the Association of Certified Anti-Money Laundering Specialists (ACAMS) has observed that only between 1-3 per cent of STRs are used by law enforcement, so the FID figure is commensurate with that noted by ACAMS³⁰.

Table 16 below shows that the majority of investigations were triggered by STRs from the remittance sector. However, the majority of cases that were prosecuted involved the real estate/ construction sector. It should be noted that there are anomalies contained in table 16 and 17 below. This is due to the fact that a case can be related to more than one sector. In addition, there are a number of cases where it is difficult to assign a sector and this is particularly true in relation to cases that only involve the possession of cash.

Table 16: Number of investigations vs prosecutions and convictions by sector

SECTORS	STR	ML Investigations	ML Prosecutions	ML Convictions	Other Information
<i>Banking</i>	3,833	79	5	1	3 non ML convictions
<i>Securities</i>	135	11	0	0	0
<i>Building Societies</i>	905	9	3	3	
<i>Credit Unions</i>	714	7	0	0	0
<i>Insurance</i>	111	5			
<i>Remittance</i>	300,772	65	3	1	0
<i>Cambios</i>	39,428	7	0	0	2 non ML convictions
<i>Microfinance</i>	0	2	0	0	0
<i>Gaming</i>	134	14	2	0	0
<i>Real estate/ Construction</i>	2	15	14	4	3 PPO ³¹
<i>Dealers in precious metals and stones</i>	0	0	0	0	0
<i>Auditors and accountants</i>	0	0	0	0	0
<i>Attorneys</i>	1	2	0	0	0
<i>Legal Persons</i>	0	32	0	0	0
<i>Motor Vehicle Industry</i>	0	28	14	5	0
TOTAL		276	41	14	0

³⁰ Carl Brown, "Not Enough Needles and Too Much Hay: The Problem with Suspicious Activity Reports", *GRC World Forums*, February 2, 2021
<https://www.grcworldforums.com/financial-crime/not-enough-needles-and-too-much-hay-the-problem-with-suspicious-activity-reports/719.article>

³¹ Pecuniary penalty order

Table 17 below, indicates that the ML cases investigated and prosecuted originated in Jamaica and in foreign jurisdictions equally. The majority of proceeds seized also came from offences committed in foreign jurisdictions, as did the majority of forfeitures.

Table 17: Number investigations vs prosecutions and convictions by the source of proceeds

	Number of cases investigated	Number of cases prosecuted	Number of convictions (cases)	Number of persons convicted	Amount of proceeds seized or frozen J\$	Amount of proceeds FORFEITED J\$
<i>Offenses committed within the home jurisdiction</i>	141	21	1	2	328,904,030.53	37,508,558.00
<i>Offenses committed in foreign jurisdictions</i>	150	31	14	18	499,402,051.75	464,690,018.00
<i>Offenses committed both in home and foreign jurisdictions</i>	6	10	2	4	2,487,400.00	0
<i>Origin country cannot be identified</i>	72	5	0	0	32,011,348.00	21,302,190.00
TOTAL	369	67	17	24	862,804,830.28	523,500,766.00

3.4 CONCLUSION

This chapter identified several predicate offences that ultimately lead to money laundering activities. As was demonstrated above, “lottery scamming” was the primary predicate offence identified. This is despite significant efforts locally and internationally to stem this activity. The growth in cybercrime was also identified as a dominant threat that requires specialist knowledge, skills and resources as well as strong partnership between financial institutions and law enforcement agencies to curb this threat. Additionally, Jamaica must address trafficking in narcotics and gang-related activities, which present a continuing challenge to law enforcement agents.

The assessment was impacted by significant data challenges attributable to poorly designed and implemented databases. There were also concerns in relation to cooperation between law enforcement agents, particularly between the Jamaica Customs Agency and the Financial Investigations Divisions. It, therefore, took an inordinate amount of time to collate the data, as law enforcement agencies did not collect or store data in a manner that was readily accessible. In some cases, physical files had to be reviewed in order to get the required data. This deficiency must be addressed to facilitate ongoing risk assessments.

Based on the collation and analysis of all requisite data, the national threat level was assessed to be **Medium-High**.

CHAPTER 4: MONEY LAUNDERING VULNERABILITY

4.1 CHAPTER OVERVIEW

This chapter provides details relating to Jamaica’s money laundering (ML) vulnerability garnered through an assessment of the various sectoral susceptibilities, as well as the country’s ability to detect and mitigate ML vulnerability. As was undertaken in determining the threat assessment, stakeholders across law enforcement, the judicial system, as well as key partners such as the tax authorities and customs agency were engaged to determine Jamaica’s ML vulnerability.

Based on the detailed analysis, Jamaica’s vulnerability score is 0.60, which represents marginally **Medium-High** vulnerability.

4.2 THE JAMAICAN CONTEXT:

4.2.1 SOCIO-ECONOMIC CONTEXT

4.2.1.1 ECONOMIC CONTEXT

The Jamaican economy is characterized by limited economic growth, significant levels of unemployment, high rates of poverty, and a very high debt-to-gross domestic product (GDP) ratio. In fact, over the last three decades, Jamaica’s GDP has grown on average by less than one per cent per year. The economy is in large part a service economy with 70 per cent of GDP emanating from services activities.

A significant portion of Jamaica’s foreign exchange earnings emanates from tourism and remittance inflows, which account for approximately 15 per cent of GDP.³²

The labour force participation rate in Jamaica has been relatively stable over the past decade and averaged 60 per cent per year, the most recent available data shows this figure at 64.5 per cent (2019)³³. Jamaica has also had relatively high unemployment rates with figures frequently surpassing 10 per cent; in fact, unemployment was as high as 16.5 per cent in 1997 and had declined to 7.2 per cent in 2019³⁴.

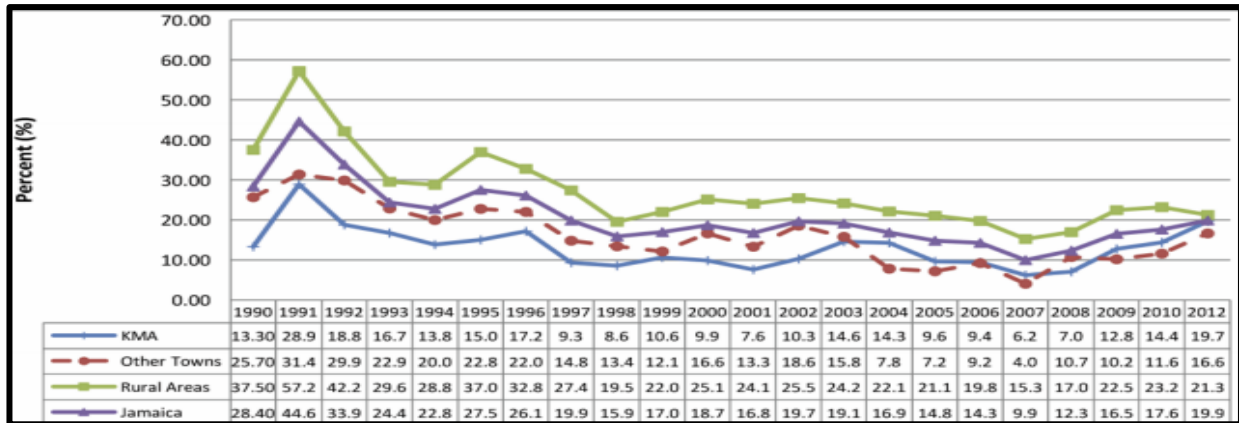
Jamaica has also had high rates of poverty, but there have been significant declines in poverty since the 1990s. As seen in figure 8 below, the poverty rates in rural areas are significantly higher than in urban areas, but the gap between rural and urban areas has been narrowing.

³² *International Monetary Fund (IMF)*, <https://data.imf.org>.

³³ “2019 Annual Review, The Jamaica Labour Force Survey,” *Statistical Institute of Jamaica*, (2020): 07– 26.

³⁴ “2019 Annual Review, The Jamaica Labour Force Survey,” *Statistical Institute of Jamaica*, (2020): 10.

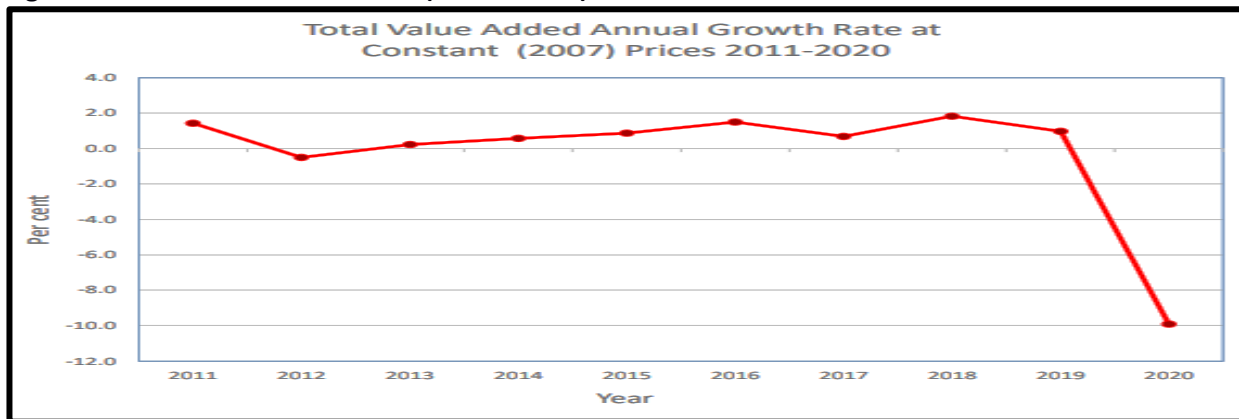
Figure 8: Prevalence of Poverty in Jamaica by Region



4.2.1.2 IMPACT OF COVID-19

After decades of limited economic growth, the Jamaican economy had started to see modest rates of growth in recent years. This is in large part due to structural reforms undertaken under an IMF facility as well as the support of all major stakeholders who supported a debt exchange programme and significant legislative changes. The COVID-19 pandemic has had a significant negative impact on Jamaica’s economy. In fact, the economy has contracted by 10 per cent due to a combination of the pandemic and containment measures implemented by the government. Throughout the 2020 period, production fell in both the services and goods-producing industries by 11.8 per cent and 4.5 per cent respectively. Additional severely impacted industries include the Hotels & Restaurants (approx. 54 per cent decline), Other Services (approx. 24 per cent decline), and Mining & Quarrying (approx. 22 per cent decline).³⁵ Construction was, however, buoyant despite the pandemic and this phenomenon will be explored in more detail in the section of the NRA related to the real estate sector. As seen in figure 9 below, Jamaica’s GDP contracted by 10 per cent in 2020 due to the COVID-19 pandemic.

Figure 9: The trend in Annual GDP (2011 – 2020)³⁶:



The pandemic has also led to a simultaneous contraction in Jamaica’s labour market and increased unemployment. According to the Planning Institute of Jamaica (PIOJ), year-over-year changes revealed an approximate 3 per cent (or 51,500 persons) decline in the labour force participation rate. The negative

³⁵ “October – December 2020, Quarterly Gross Domestic Product,” *Statistical Institute of Jamaica*, 19 (4) (2021), 20 – 24.

³⁶ “October – December 2020, Quarterly Gross Domestic Product,” *Statistical Institute of Jamaica*, 19 (4) (2021), 20.

effects of the pandemic on the economy have the potential to increase the incidents of predicate offences and therefore can negatively impact the country's vulnerability to ML. Of note, however, is the fact that the economy is projected to grow between 4 per cent and 8 per cent over the 2021/2022 fiscal year.

4.2.1.3 HIGH CRIME RATE

Jamaica has one of the highest murder rates in the world; 1,323 murders in 2020 (for a population of approximately three million. This is linked to the operation of numerous drug traffickers as well as transnational and domestic criminal networks. In 2019, the Jamaica Constabulary Force (JCF) estimated that they had identified 389 criminal gangs in Jamaica. In addition to murders, there are significant numbers of shootings, robberies, and break-ins.

4.2.2 GEOGRAPHIC LOCATION & BORDER CONTROL

Jamaica has throughout its history benefitted from its location as a key transshipment point positioned along key trading routes from South America to North America. While this location and the distinction of having the seventh-largest natural harbour in the world has led to Jamaica being a key logistics and shipping centre in the region, this advantageous geographic location is the source of a major ML vulnerability.

Jamaica's proximity to high-risk ML and drug trafficking regions, such as North, Central, and South America, and the Caribbean, makes it extremely susceptible to the smuggling of bulk cash, firearms, and counterfeit goods, among others.

Jamaica has 14 official sea ports of entry and three international airports. In addition, in recent years, the authorities have identified over 140 active unofficial ports of entry. Of these, nine are known for illicit trade, including drugs, un-customed goods, wild and endangered animals, and human trafficking. Several of these unofficial ports are located in communities along the coast of Jamaica with limited road access, which provides opportunities for the concealment of illegal cross-border smuggling and makes detection and monitoring by law enforcement officials difficult. Despite efforts by the Jamaica Defence Force (JDF) and the JCF to neutralize these ports through the blasting and barricading of the identified illegal ports as well as aerial surveillance, the numerous unofficial port facilities remain an area of increased vulnerability. The lack of resources, both in terms of personnel and air and maritime craft and equipment, has resulted in limited surveillance of these ports. Table 18 identifies the items smuggled into the country and the border breached to smuggle these items. The table shows that items are usually smuggled to and from North America.

In relation to human smuggling/trafficking, in 2018 the authorities identified 13 confirmed trafficking victims. Twelve were exploited in relation to labour trafficking and one for sex trafficking; compared to eight confirmed victims in 2016. All but one identified victim were Jamaican.

Table 18: Items likely to be smuggled and the border breach to smuggle these items

Items smuggled	Border breach, most likely	Countries smuggled from	Countries smuggled to
Cash	Airport	USA, England, Canada & Bahamas	USA, China, Panama
Precious metals		Guyana	
Counterfeit goods	Seaport	China, Panama & UAE	Transiting to Belize & Curacao
Illicit Drugs	Airport & Seaport	South & Central America, Guyana, Trinidad & Suriname	USA, Europe, Canada, Barbados, Trinidad, Haiti, Costa Rica, Honduras & Nicaragua
Firearms	Seaport	USA, Haiti & South & Central America (Costa Rica, Honduras & Nicaragua)	
People	Seaport & airport	China, India, South & Central America	USA via Bahamas
Petrol Lobster Conch	Seaport (Pedro Cays)	Honduras	Jamaica Honduras Honduras
Wildlife	Seaport	Honduras & Belize	

Several agencies are responsible for border control and protection in Jamaica and significant work has been undertaken to improve the neutralization of illegal landing strips and to identify new illegal ports of entry. There is, however, a need to improve coordination and the sharing of information among these agencies as they all maintain separate and unlinked databases. Consequently, there is limited ability for border security entities to share information in real-time as well as limited coordination between all agencies sharing similar mandates.

4.2.3 INFORMALITY OF THE ECONOMY

According to the National Financial Inclusion Technical Secretariat (NFITS)³⁷ of the Bank of Jamaica and the International Labour Organization (ILO), the informal economy represents approximately 43 per cent of GDP. This estimate included the operations of micro, small and medium-sized enterprises (MSMEs)³⁸ and excluded illegal activities. The NFITS also notes that approximately 65 per cent of employees in Jamaica receive their wages in cash and approximately 80 per cent of all transactions conducted in the economy were performed using cash. The Private Sector Organization of Jamaica (PSOJ) indicated that it has proven difficult to value the informal economy. For the financial year 2019/2020, the PSOJ estimated the value of the informal economy to be approximately 50 per cent of GDP as cited by the NFITS.³⁹ This level of informality has significant negative repercussions such as increased corruption, slower economic growth, as well as limited financial inclusion.

³⁷ "National Financial Inclusion Strategy 2016 - 2020," Bank of Jamaica, https://boj.org.jm/wp-content/uploads/2019/07/Jamaica_NFIS_Final_Draft.pdf.

³⁸ The economic sectors in which MSMEs operate include furniture manufacturing, agriculture (subsistence farming), personal care and household services, automotive maintenance and repairs, home maintenance and services (eg: gardening, plumbing, etc.)

³⁹ NFITS NRA Questionnaire Response – August 2020

This sector of the economy consists of small businesses, micro-enterprises, self-employed individuals as well as participants in illegal activities. All of which generate revenue that is not reported to the tax authorities.

The NFITS has developed a matrix⁴⁰ identifying key actions which are to be undertaken to address a number of these issues as well as the relevant Agencies/Ministries/Departments which are responsible for each and this is outlined in table 19 below.

Table 19: Matrix identifying key actions which are to be undertaken to promote financial inclusion

Theme	Proposed Action	Implementing Entities Primary entities
Financial Access and Usage		
Access Points and Payments Infrastructure	Frame an access policy to facilitate a fair and open payments infrastructure	BOJ
Basic Accounts	Evaluate, design and implement a policy framework for opening transaction accounts with graded KYC requirements.	
Government Payments	Design a strategy to shift government payments, including direct benefit transfer schemes, wages and supplier payments, from cheques to retail electronic payment products	MOFPS, AGD, MLSS
Remittances	Review and revise the regulatory framework to facilitate the development of financial products linked to remittances, including remittance-based payment cards	BOJ
Financial Resilience		
Savings, Insurance, Pensions	Develop a legal and regulatory framework for micro-insurance	FSC
	Promote the development and use of more savings products, inclusive of commitment savings products, to respond to the needs of the low-income population.	BOJ
	Promote a retirement product for low-income and informally employed, with low fees and easy contributions and a focus on payments infrastructure, product design and eligibility.	MOFPS
Financing for Growth		
Agriculture Finance	Evaluate options for strengthening or restructuring the NPCB and enhance the regulation and supervision of the NPCB	MICAS
	Support banks, credit unions, NPCB and MFIs to develop lending programmes to sustainably serve the agricultural sector	Interested private entities, MICAS
	Promote the private financing of risk-coping investments (water harvesting, ponds, greenhouses)	MICAS
Housing Finance, MEGAJC	Design and deploy housing finance solutions for lower and informal income households, e.g. housing microfinance	NHT, OPM
	Review and strengthen NHT's role in providing liquidity to lenders, including credit unions	NHT
	Assess the size and operations of the mortgage insurance fund and determine need for resources	JMB
MSME Finance	Revamp the PCG scheme to provide adequate incentives for lenders to participate	DBJ
	Review/revise the legal, regulatory, and tax framework for assignment of receivables (Factoring)	
	Review/revise the legislative framework and/or develop leasing law as necessary	
	Develop the legal, regulatory framework and infrastructure for the development of venture capital	DBJ, FSC

⁴⁰ "National Financial Inclusion Strategy," *Bank of Jamaica*, 2019, https://boj.org.jm/wp-content/uploads/2019/07/NFIS_Brochure.pdf.

Theme	Proposed Action	Implementing Entities Primary entities
Responsible Finance		
Consumer Protection	Ensure the appropriate legal framework and mechanisms for market conduct supervision of DTIs, credit unions and microfinance institutions	BOJ, FSC
	Strengthen FSC's capacity for market conduct supervision of the insurance, pension and securities sectors	
	Strengthen FSC's existing complaints handling and dispute resolution mechanisms	FSC
	Compile and widely disseminate information periodically on fees and charges levied by banks and nonbanks	BOJ, CAC
	Establish an independent dispute resolution scheme for consumers of DTIs, credit unions and microfinance institutions	
Financial Capability	Develop a comprehensive National Financial Literacy Action Plan	MOEYI, MOFPS, BOJ, FSC, CAC, JDIC
Supporting Infrastructure		
AML/CFT	Review and revise AML/CFT framework to ensure an adequate balance between financial inclusion and financial integrity	Ministry of National Security, FSC, MOFPS, BOJ
Enabling regulatory and supervisory framework	Adopt the Micro-Credit Act and the Credit Union Regulations	BOJ, MOFPS, MICAS
Financial Sector's financial inclusion plans	Encourage DTIs and other financial institutions to develop individual financial inclusion plans	BOJ
Informality	Undertake an assessment of measures needed to reduce informality	MICAS
Land registration and titling	Accelerate land titling efforts and measures to facilitate the use of land tenure rights and other agricultural assets as collateral	OPM, Municipalities, MOFPS
Secured Transactions	Review and enhance as necessary collateral registry regulations	Collateral registry (Companies Office of Jamaica), MICAS

Several challenges, such as complex laws and regulations, have led to some businesses not being registered, which exposes the wider economy to the risk of financial instability. In addition, many unregistered businesses are not able to access financing from regulated financial institutions, as they do not possess the necessary information and documentation required to access these facilities. Areas of emerging risk, as well as ML typologies and examples of cases, have been included in the sector assessments.

4.2.4 LEVEL OF CASH ACTIVITY IN THE ECONOMY

The Tax Authority of Jamaica (TAJ) notes that “almost 80 per cent of all transactions conducted in Jamaica are done using cash.”⁴¹ The NFITS⁴² cites anonymity of users, challenges with opening bank accounts, convenience, trust and confidence in banknotes and coins, and distrust of commercial banks as drivers for the high usage of cash. Low financial literacy was also highlighted as a contributory factor.

⁴¹ TAJ NRA Questionnaire Response - September 2020

⁴² NFITS NRA Questionnaire Response – August 2020

4.2.5 CROSS BORDER CASH MOVEMENT

4.2.5.1 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 mutual evaluation report (MER) highlighted that the Jamaica Customs Agency (JCA) collects cross-border cash and bearer negotiable instruments (BNI) declarations, which are provided to the financial intelligence unit (FIU) on a weekly basis. Cash smuggling was cited as a major problem at airports. The report notes that the FIU provides secure data storage for these forms, supporting documents, and all other information collected from the forms.

The MER also noted that to address the rising occurrence of cash smuggling, the JCA collects intelligence from the Passport and Immigration Control Agency (PICA) and its Automated System for Customs Data (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 was therefore 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.

4.2.5.2 CASH DECLARATIONS

Pursuant to Section 101 of POCA, travellers to and from Jamaica are required to declare cash in excess of US\$10,000.00. This declaration is made to the Financial Investigations Division (FID) using the FID's "Division Cross Border Form" and to the Jamaica Customs Agency on the "Immigration/Customs Declaration Form". Section 101 (3) of the POCA states that where a person fails to make a declaration he commits an offence and is liable on summary conviction to a fine not exceeding two hundred and fifty thousand (\$250,000) dollars or treble the cash transported, whichever is greater or to imprisonment not exceeding three months or both fine and imprisonment.

Passengers are also required to complete the Immigration/Customs C5 form on entry to the island and sign the declaration with the understanding (as printed on the form) that the failure to make a full declaration is an offence and may result in fines, forfeiture of the goods and/or imprisonment.

For the period 2016 to 2018⁴³, 493 declarations were made by incoming passengers at the Sangster International Airport. However, no declarations were made by outgoing passengers.⁴⁴ Table 20 below shows the breakdown by year, the number of declarations made and the amount declared (Sangster International only).

⁴³ 2019 data was not available at time of writing.

⁴⁴ The other major airport did not provide data on the level of cash declarations. There is also a lack of adequate signage at the airport prompting declarations when entering or leaving the country.

Table 20: Declarations made by passengers arriving and leaving Sangster’s International airport (2016 to 2018)

Year-end	Number of declarations on entry	Total \$ amount declared on entry	Number of declarations on leaving	Total \$ amount declared on leaving
2016	180	US\$1,621,329	0	0
		CAD798,015		
		£61,220		
		€96,850		
		J\$40,000		
2017	191	US\$2,379,709	0	0
		CAD296,005		
		£105,060		
		€12,880		
2018	122	US\$1,666,952	0	0
		CAD 369,073		
		£30,570		

Customs officers have similar powers to law enforcement officers of the JCF 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. In instances where passengers are travelling with cash in excess of US\$10,000 that is not declared these funds will be seized once they are detected. Under Section 75(1) of the POCA, an authorized officer may seize any cash if the officer has reasonable grounds for suspecting that the cash is recoverable property or intended for use in unlawful conduct. Additionally, section 55 of the POCA, defines the minimum amount as J\$100,000 or equivalent in a foreign currency.

Case Example – Traveller Complaint

February 16, 2020, XX, a Jamaican national, arrived in Jamaica via Sangster International Airport after spending five months in the United States. In her possession was US\$5,339 that she received as a gift for herself and family members. Upon entering Customs, she was searched and the money she was carrying was confiscated.

She was given 72 hours to have family members produce the following documents: picture ID, notarised bank statement, letter stating the money given and the purposes for its intended use, and the beneficiaries.

According to the Jamaica Customs Agency (JCA), the investigation shows that the answers given to the Customs officer, aroused suspicion and resulted in the money being seized. In response to the complaint, Jamaica Customs stated:

“With regards to XX from whom US\$5,339 was seized in 2020. The cash was seized under Section 75(1) of the Proceeds of Crime Act (POCA) 2007 as the officer had reasonable grounds for suspecting that the money was recoverable property. Additionally, Section 55 (1) of the POCA speaks to “minimum amount” cash or its equivalent to J\$100,000.

The officer arrived at this suspicion based on the interview conducted with the passenger and subsequent answers provided. The Investigations Unit has had several cases where passengers, who are aware of the US\$10,000 declaration minimum, intentionally carry less than that amount in an effort to evade Customs controls. The money is sometimes a few thousand dollars less than US\$10,000, or in some cases the money is split between two passengers. The money has been seized pending proof of source of funds.”

4.2.5.3 NON-DECLARATION OF CASH

Despite no cash in excess of US\$10,000 being officially declared by outgoing passengers, the FID revealed that through investigations, it was found that a significant amount of undeclared cash is regularly transported from Jamaica to a regional jurisdiction, known to be high risk for money laundering and drug trafficking activities. From 2016 to 2019, cash amounting to US\$2.5 million was transported undeclared from Jamaica but was, however, declared in the destination country. Table 21 below shows that there were 86 instances of cash over US\$10,000 not declared upon departure from Jamaica between 2016 - 2019. This highlights the lack of communication to outgoing passengers at the ports on their obligation to declare cross-border cash movements when departing the island. *Table 4 below shows the number of instances where cash was not declared in Jamaica, but declared in another jurisdiction:*

Table 21: The number of instances where cash was not declared in Jamaica, but declared in another jurisdiction

Year	# of Non-Declarations	Amounts – US\$
2016	26	891,418.00
2017	18	616,139.00
2018	17	461,833.00
2019	25	545,025.00
Total	86	2,514,415.0

4.2.5.4 CASH SEIZURES

From 2016 to 2018, there were 452 instances of cash being smuggled into Jamaica. Table 22 below shows statistics on the amount of cash seized from passengers entering Jamaica between 2016 and 2018. The table further highlights that there were no instances of cash being seized that was being smuggled out of the country. Given the confirmation that cash is being smuggled through the official ports of entry, this indicates that tighter detection measures should be put in place by customs officials.

Table 22: Cash seized that were being smuggled into and out of Jamaica (2016 – 2018)

Year-end	Number of smuggling on entry	Total \$ amount smuggled on entry	Number of smuggling on exit	Total \$ amount smuggled on exit
2016	108	USD\$762,790.00 CAD\$104,760.00 GBP\$2,930.00 TT\$20,583.00	0	0
2017	114	USD\$699,675.57 CAD\$7,700.00 GBP\$19,020.00	0	0
2018	230	USD\$462,687.77 CAD\$27,830.00 GBP\$4,394.00 T&T\$30,000.00 BAR\$1,200.00	0	0

According to the FID, during 2016 – 2018, 55 seizures involving a significant amount of cash that was concealed and smuggled into Jamaica were not subsequently subject to ML investigations by the JCA or referred to the FID for investigations. Instead, the JCA treated these seizures as civil matters resulting in offenders only being required to forfeit the money, as ML investigations were not pursued by JCA. This shortcoming, and measures to address it, were discussed in more detail in chapter three.

4.3 INVESTIGATIVE FRAMEWORK.

4.3.1 THE FINANCIAL INVESTIGATIONS DIVISION

Pursuant to the Proceeds of Crime Act (POCA) and the Financial Investigations Division Act (FIDA), the Financial Intelligence Unit (FIU), a unit of the Financial Investigations Divisions (FID). The title 'Financial Investigations Division' is the nomenclature used in Jamaica as it is a Division of the Ministry of Finance. Similar entities regionally and internationally are known as a Financial Intelligence Unit (FIU) and in some cases an Asset Recovery Agency (ARA). In legislative terms, the FID is referred to as the ARA. The FID has sufficient independence and authority to perform its function.

The main objectives of the FID are to:

- Investigate allegations of money laundering, financial crime and corruption in tandem with other national regional law enforcement agencies;
- Detect, deter and aid the prosecution of offences committed under the various acts dealing with financial crimes, thereby causing a reduction of the actual and expected profits that would evolve from such corrupt activities; and
- Collaborate with international bodies in responding to transnational crimes under the Mutual Legal Assistance (Criminal Matters) Act.

The FID investigations are managed through regular case reviews. Matters involving influential persons and assets are designated significant cases and subjected to greater scrutiny. These matters are reviewed by the chief technical director (CTD), members of the Executive Office, Principal Director and Director of Constabulary Financial Unit (CFU) which consists of officers from the JCF attached to the FID. There is an established rubric for such designations, which include PEPs and the value of the sums involved.

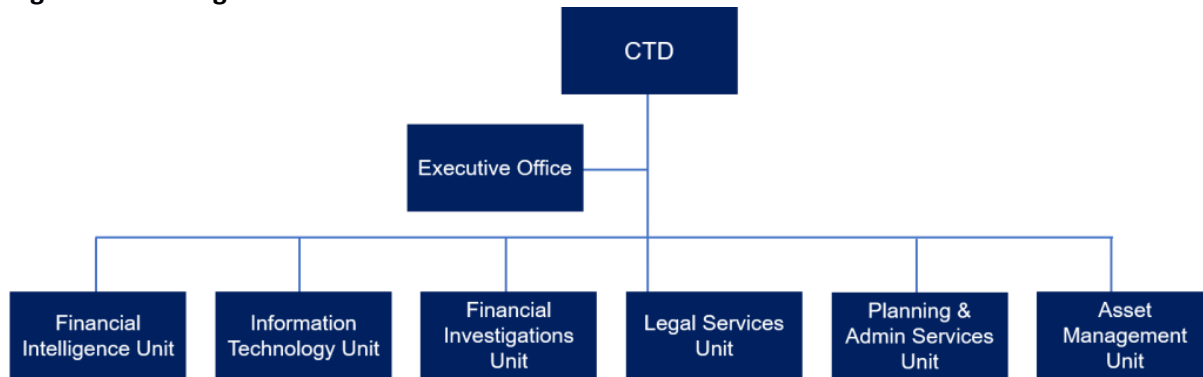
The investigators are able to apply for court orders ex parte and assess the information without the suspect being aware. It should be noted that several investigations have been initiated and completed without the person being aware that they were the subject of an investigation. In conducting its investigations, the FID has access to a number of databases, including those relating to:

- Tax Administration Jamaica (TAJ) (Stamp duty and transfer tax etc.)
- National Motor Vehicle Registration (NMVR)
- National Land Agency (NLA)
- Companies Office of Jamaica
- Credit Bureau
- Jamaica Customs (Importation and Exportation)
- World-Check

Information from these databases is used solely for intelligence purposes and is chiefly accessed by the FIU Profiling Unit. If the information is required as evidence, it is requested from the originating department or agency.

The FID has an approved complement of 22 Forensic Examiner posts with 16 of them currently filled. On average, there were about 16 to 17 filled positions over the review period 2016 to 2019. The FID usually operates at about 75 per cent of its capacity, with most of the unfilled positions at entry-level. The staff are suitably qualified and trained. Everyone at the managerial level holds a Master of Science degree as do five of the Assistant and Forensic Examiners. Figure 10 below shows the organization of the Division.

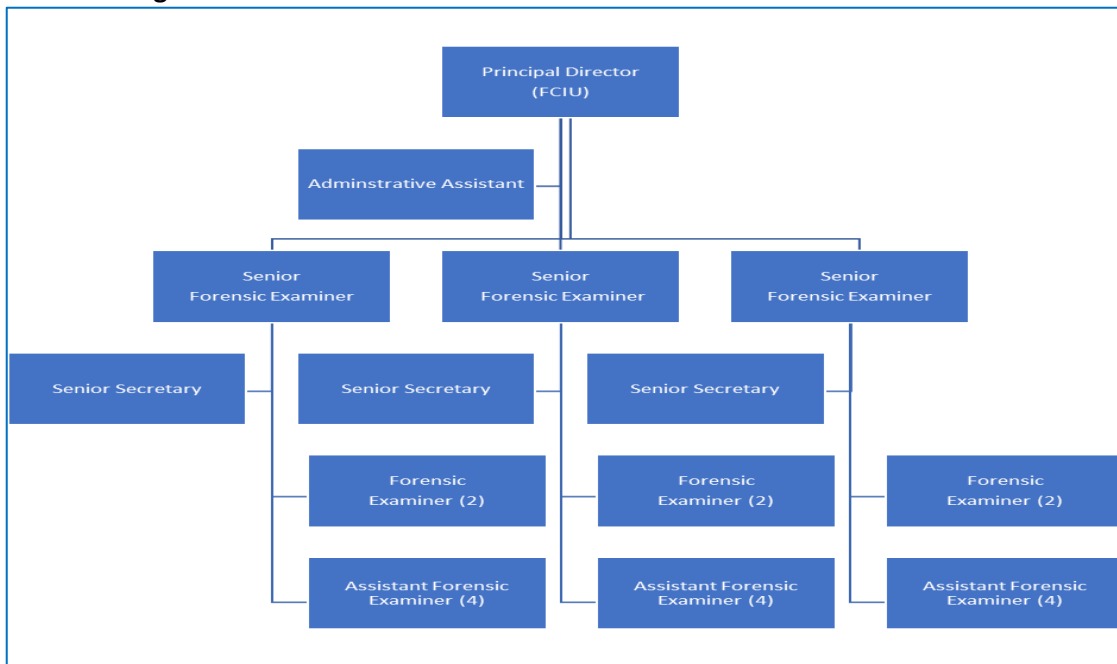
Figure 10: FID Organisation Chart



4.3.1.1 FINANCIAL INTELLIGENCE UNIT (FIU)

As depicted in figure 10 above, the FIU is a unit within the FID and is also the hub of the FID. The core function of the FIU entails receiving, analysing, obtaining, and disseminating information received from reporting entities, other FIUs, and other persons who report based on observing unusual and/or suspicious activities. Investigations are also conducted without interference from external and internal parties as ML investigations are usually done covertly to prevent the leakage of information. Figure 11 below illustrates the structure of the FIU.

Figure 11: FIU Organization Chart



The FIU can obtain information by writing to agencies such as PICA and the Registrar General Department (RGD). The information obtained is used in the preparation of financial profiles/disclosures disseminated to law enforcement for investigations.

The FIU’s independence is set out in Section 4 of the FIDA. Section 5 (1d) of the Act enables the CTD, where he considers it necessary, to disseminate information relating to financial crimes and reports received from the regulated sector to the Competent Authorities (BOJ and Financial Services Commission

(FSC) amongst others), Attorney General, Director of Public Prosecutions, Integrity Commission, the Commissioner of Police, the Revenue Commissioners and any other body designated by the Minister.

The only potential area of non-independence relates to the fact that the CTD for the FID is required to seek approval from the Minister of Finance and Public Services before entering into any contract, MOU, or other agreement, with public bodies in Jamaica and foreign financial intelligence departments. This provision may be viewed as political interference. While this has not been seen in practice, as the Minister has not objected to any recommendation from the FID, it would be good practice to make the FID a fully autonomous body.

Further, the appointment of the CTD, who is the designated authority, may be viewed as a political appointment, as the CTD's tenure and removal procedures are determined by the Minister of Finance and Public Services. The appointment protocols for the CTD should therefore be amended to bring it more in line with the practice of other FIUs globally.

4.3.2 OTHER INVESTIGATIVE AGENCIES

The FID works with several other investigative units. Key among these are the Constabulary Financial Unit, the Major Organized Crime and Anti-Corruption Agency (MOCA), and the wider Jamaica Constabulary Force. There have been significant levels of cooperation between these entities. In addition to these agencies, Jamaica Customs Agency and the Passport, Immigration and Citizenship Agency conduct investigations relating to border control.

The major challenge being faced by these agencies is their inability to retain employees, as experienced team members are often attracted to other organizations that offer more competitive remuneration. Notably, despite this retention issue, the quality of investigations was not impacted upon.

Details on the resource constraints and the organization of each agency are outlined below:

4.3.2.1 CONSTABULARY FINANCIAL UNIT (CFU)

The FID collaborates with the CFU, an arm of the Counter-Terrorism and Organized Crime Investigations Division (C-TOC). The CFU was established in July 2010 to conduct money laundering and asset forfeiture investigations, pursuant to the POCA, 2007. The CFU is housed at the FID within the Ministry of Finance and Public Service. The CFU officers also work closely with the forensic examiners in investigative teams. The unit is called the Financial Investigation Team (FIT). Up to mid-2018, there were three FITs; however, based on the high attrition rate of police officers within the CFU, the teams were reduced to two investigative teams, whilst the forensic examiners maintain the three teams. The situation is further compounded by vacation leave allocations to the CFU officers, which in some instances resulted in officers taking vacation leave for up to 70 days at any one time. Due to limited human resources, officers are not able to take their vacation leave annually. As such, when vacation leave is finally granted, the officers are allowed to take extended time off, which puts an additional strain on the already limited human resources.

Investigative teams are divided into three groups and are led jointly by detective sergeants and senior forensic examiners. The CFU has also created a team called the Intelligence Development Team (IDT). The main purpose of this team is to exploit intelligence in the public sphere for development into potential investigations to be undertaken by FID. The team initially had three members, led by a sergeant;

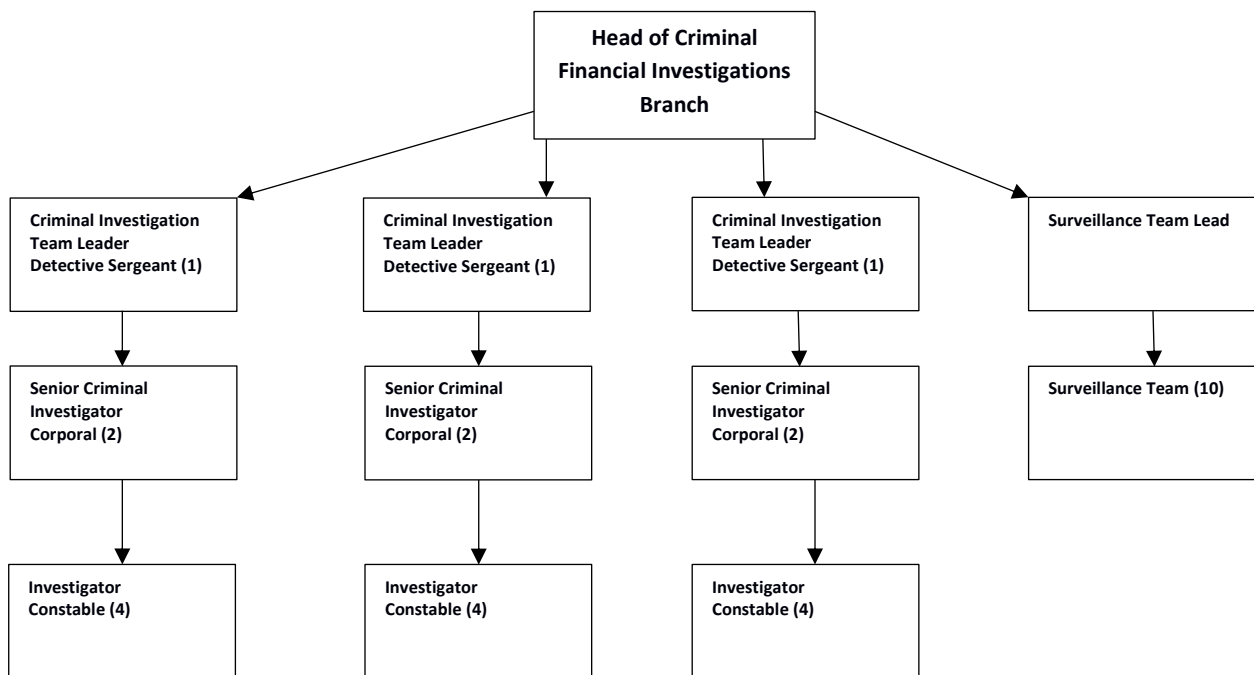
however, based on the attrition rate, two of the members had to be transferred to investigative teams, leaving only the sergeant.

The investigative teams undertake investigations in two broad categories of financial crime matters, namely criminal (money-laundering investigations) and civil investigations (asset forfeiture). Its main functions are to investigate offenders for money laundering and related predicate offences and to recover tainted property.

The Assistant Commissioner of Police in charge of C-TOC is responsible for the administration of the CFU, while the FID is responsible for operational matters. The original number of police officers attached to the unit was 25, headed by a superintendent of police; however, the current staff complement of the unit is 16 and is headed by an inspector. The budgetary allocation of the CFU is deemed sufficient to execute its function through an annual budgetary allocation and grants of J\$100 million.

The proposal is for the CFU team to be increased from 25 to 33 full-time members of staff attached to the FID. This would be an increase of eight upon the original complement and seventeen additional members of staff based on the current levels. The proposed structure of the CFU is outlined below in figure 12 and negotiations are currently underway between the JCF and the FID to achieve this proposed increase in staff.

Figure 12: CFU Proposed Organizational Chart



In addition to the staffing needs, the unit does not have an integrated case and document management system to aid with the management of the numerous investigations and prosecutions that it undertakes. Instead, Microsoft Excel is currently being used. This is considered inadequate given the caseload of the unit. To address this, the FID is currently in dialogue with a UK based company called Altia to purchase a

case and document management system called Smartcase. Currently, the discussions are around the system requirements of the FID and a number of staff are working together on this project.

4.3.2.2 MAJOR ORGANIZED CRIME AND ANTI-CORRUPTION AGENCY (MOCA)

MOCA is mandated to investigate money laundering, corruption, fraud, and major transnational crime and was established in August 2014 through the merger of the JCF's Anti-Corruption Branch and the Major Organized Crime Task Force into one agency.

The FID is usually involved in investigations conducted by MOCA if it involves money laundering. MOCA is in the process of becoming an agency, following the passage of the Major Organised Crime and Anti-Corruption Agency Act, and until that occurs it is not able to recruit staff independent of the JCF. Similar to the FID, MOCA lost some of its staff to the private sector and other staff have returned to the JCF. The proposal is for MOCA to have a complement of approximately 500 members, inclusive of 200 investigators when it becomes independent. However, MOCA is currently staffed with 39 investigators.

One of MOCA's core functions is to investigate crimes for profit, and in furtherance of this, they have created an Economic Crimes Investigation Unit (ECIU) which is responsible for investigating all crimes for profit, including money laundering. The number of investigators in the unit fluctuates between seven and nine persons. The ECIU consists of one gazetted officer who has immediate managerial oversight, one inspector who is the senior investigator and other ranks from sergeants to constables. The number and rank of each officer is not static and changes over time and each sergeant may be responsible for a sub-team. Members of the ECIU has received training in how to undertake financial investigations and those into asset forfeiture. In addition to this, members of the unit receive a period of on-the-job mentoring from experienced financial investigators. To become a member of the ECIU, recruits must be designated as an authorized financial investigators by the Commissioner of Police. Although it is not a requirement, the majority of the investigators have tertiary level education, some holding a bachelor's degree, and master's degree.

CASE EXAMPLE

This case is currently before the St. Catherine Parish Court.

A government-owned entity, which was established in 2015, engaged the services of ABC Limited to work on 19 sites between October 2017 and July 2018. ABC Limited was formed in June 2017 and was paid over J\$12 million, as approved by then Operations Engineer, without a contract in place. ABC Limited supposedly worked, without a written contract, despite there being very specific government procurement procedures that must be followed.

The Operations Engineer at the government-owned entity and a mechanic are facing corruption-related charges following a multiagency investigation that culminated with the seizure of J\$85 million in cash and four luxury vehicles. In June 2018, the two men were charged with money laundering, possession of criminal property, and breaches of the Corruption Prevention Act. They were both charged with bribery after they allegedly offered investigators J\$20 million during two operations when the cash and the luxury vehicles were seized. The vehicles include a BMW X6 and an Audi sports utility vehicle.

The Constabulary Financial Unit, the Counter-Terrorism and Organised Crime Division, and the Financial Investigations Division led operations, probing claims that millions of dollars have been defrauded from the government-owned entity via the awarding of contracts and associated kickbacks.

The board at the government-owned entity allowed the Operations Engineer to sign cheques for seven months after his stint as acting chief engineer ended in November 2017. According to company policy, he should have been removed as a signing officer after the Chief Engineer, returned from leave.

In November 2018, another employee of the government-owned entity, a supervisor, was charged under the Larceny Act and breaches of the Proceeds of Crime Act with causing money to be paid out by the company by means of false pretence.

This case demonstrates the level of domestic cooperation and coordination between agencies and the willingness to pursue Money Laundering cases involving government-owned entities.

4.3.2.3 JAMAICA CONSTABULARY FORCE (JCF)

The JCF has island-wide responsibility to investigate financial crimes including money laundering. However, because of resource constraints, the JCF only occasionally conducts investigations of this nature, as reliance is placed on the CFU to undertake these types of investigations. However, the JCF has the power to initiate ML investigations and over the review period, the Narcotics Division of the JCF arrested and charged 40 persons for breaches of POCA. The breakdown in table 23 below shows majority significant number of ML related charges by the JCF were laid in 2017.

Table 23: ML Charges by Non-CFU Police Officers

ML Charges by Non CFU Police Officers				
Year	2016	2017	2018	2019
No. of arrests	0	17	10	13

4.3.2.4 JAMAICA CUSTOMS AGENCY (JCA)

The Border Protection Unit (BPU) of the JCA became operational in April 2009. The main objective of the Unit is to enable the JCA to be more proactive in its approach to eliminating or reducing illegal activities which threaten the stability and economy of the country and to increase revenue collection.

The BPU plays an important role in the country’s overall security through the interdiction of illicit drugs and firearms, while at the same time combating instances of intellectual property rights infringements, lottery scamming, money laundering, and other general trade corruption.

Structure

This BPU is intelligence-driven and is built around a structure that facilitates intelligence gathering, analysis, and dissemination in a confidential and controlled environment.

The unit is comprised of six sections:

The Contraband Enforcement Team

The Contraband Enforcement Team (CET) is the operational arm of the BPU. Their main task in collaboration with the other units within BPU is to anticipate, pre-empt, detect and deter threats to our borders. Additional responsibilities are to seize contraband and illegal imports and exports. The unit operates on a 24-hour basis at the major air and seaports and their operations are mainly intelligence-driven.

The Intelligence Analysis Unit

The Intelligence Analysis Unit (IAU) acts as the information hub of the BPU and is responsible for the analysis and conversion of information into actionable intelligence that is mainly used by the CET and the wider BPU operations in the fight against illicit activities affecting Jamaica's borders.

The Investigation Unit

The investigation unit (IU) is responsible for investigating matters or cases of alleged breaches of customs laws and regulations, as well as matters relating to proceeds of crime. This unit works closely with the IAU and CET.

The Internal Affairs Unit

Similar to the IU, the internal affairs unit (also IAU) is tasked with the investigation of alleged breaches of customs laws and regulations by customs personnel. It has the responsibility to ensure that the integrity of customs personnel is maintained through investigations.

The Risk Management Unit

The risk management unit (RMU) is responsible for the planning, organizing, and implementation of long-term and short-term strategic risk plans and programs that will allow for the identification of imports and exports that present the greatest risk of non-compliance.

Cargo Imaging Unit.

This unit interprets scanned images at all official ports of entry.

4.3.2.5 PASSPORT IMMIGRATION & CITIZENSHIP AGENCY (PICA)

PICA is an executive agency under the Ministry of National Security and was established on June 1, 2007, having evolved from the former Immigration, Citizenship and Passport Services Division following a modernization programme that started in 2005. PICA accepts and processes passport applications, manages the island's immigration processes and handles citizenship matters including the renunciation of Jamaican citizenship.

PICA's functions are integral to Jamaica's border security system and investigate offences committed in any of the areas regulated by PICA. The laws that govern the operations of PICA are:

- The Jamaican Constitution
- The Immigration Restriction (Commonwealth Citizen) Act
- The Jamaica Nationality Act
- The Alien's Act
- The Passport Act and Regulations
- The Foreign Nationals and Commonwealth Citizens (Employment) Act
- The Caribbean Community (Free Movement) of Skilled Persons Act
- The Executive Agencies Act 2002
- The Financial Administration and Audit Act

As part of the efforts to protect its borders, Jamaica has fully implemented an advanced passenger information (API) system. As a result, Jamaica receives timely passenger information from commercial airlines, cruise lines, civilian aircraft, and marine vessels. Jamaica also issues machine-readable passports and participates in the Airport Communication Programme (AIRCOP), a multi-agency project based on cooperation between the United Nations Office on Drugs and Crime (UNODC), The International Criminal Police Organization (INTERPOL), and the World Customs Organisations (WCO). It is aimed at strengthening the capacities of participating international airports in Africa, Latin America, the Caribbean

and the Middle East to detect and intercept drugs, other illicit goods and high-risk passengers in both origin, transit and destination countries with the overall objective of disrupting the illegal criminal networks.

Under Section 4 (1) h of the Immigration Restriction (Commonwealth Citizens) Act, immigrants include any person who, based on reliable information or advice, is deemed to be an undesirable inhabitant of or visitor to Jamaica may be denied entry to the island. Despite having the systems to detect individuals on sanction lists, in 2015 sanction landing privilege was granted by immigration authorities to Zi Lieberman (see Lieberman case in Chapter 6), who is on the UN Sanctions List. He was also able to flee the country without being detected. This incident highlights deficiencies in immigration control in Jamaica.

4.4 EFFECTIVENESS OF PROSECUTIONS

Prosecutorial independence and integrity are enshrined in the Constitution of Jamaica. As such, prosecutors are allowed to independently execute their function, free of interference from the executive and judicial branches of government and other external parties (such as the accused). Prosecutorial powers reside with the Office of the Director of Public Prosecutions (ODPP), clerk of court, FID, MOCA, and JCA. However, in practice, prosecutions are primarily within the remit of the ODPP and the clerks of court. This is largely due to the fact that the FID, MOCA, and JCA must apply to the ODPP for written authority to prosecute criminal matters. This process is followed as by law the ODPP is empowered to take over and continue any criminal proceedings instituted by any person or authority.

The independence of the ODPP and the Director of Public Prosecutions (DPP) is guaranteed in its legal framework. The role of the ODPP and the DPP themselves are also enshrined in Jamaica's Constitution.

The ODPP and the clerks of court conduct the prosecution of money laundering cases with some support from legal officers assigned to MOCA and FID. In some significant high profile matters, ODPP may give a fiat to external counsel to lead the prosecution. In these instances, a prosecution team comprising of the external counsel, prosecutors of ODPP, legal officers of MOCA/FID usually jointly prosecute the matters.

The financial crime prosecutors have been afforded training on the prosecution of money laundering matters as well as asset recovery post-conviction through collaboration between their organizations and other bodies, including foreign governments. Some of these training sessions have been organized by the UK government through both the Caribbean Criminal Asset Recovery Programme (CCARP) and its successors the Caribbean Anti-Corruption Programme (CACAP) and the Serious and Organised Crime and Anti-Corruption Programme (SOCAP). Additionally, the ODPP has provided in house training to both its own staff, the clerks of court and the wider body of financial crime prosecutors. This has been undertaken by senior prosecutors with a background in prosecuting these matters who have been able to share their knowledge with less experienced colleagues. Finally, the FID has specifically received and organised extensive local and international training in asset forfeiture (AF) for its prosecutors. Some of these officers have been dispersed to other government agencies spreading the knowledge base throughout state agencies.

It should be noted that there have been no instances of disciplinary action against any prosecutor involved in ML or AF cases. This demonstrates a high level of integrity in the profession.

In order to further improve the quality of ML prosecutions steps have been taken to identify at least two clerks in each of the 14 parishes for specialized anti-money laundering and asset forfeiture training. This training is expected to commence before the end of this fiscal year and is undertaken on a quarterly basis. Its provision is a reflection of the fact that, with the exception of the FID, financial crime prosecutors are not specialized and there are limited opportunities for such focussed training.

Once they have received this training, it is envisioned that these clerks will form a primary team of specialized AML/AF prosecutors in the parish courts. In support of this, a pilot scheme is currently being tested in the Corporate Area Parish Court and the St. James Parish Court where certain days are reserved for hearing financial crime matters. Once an evaluation of this pilot has taken place it will inform the way forward.

For effectiveness, intelligence and information are shared proactively among investigators, FIUs, regulators, regulated sectors, intelligence bodies (JDF and Jamaica Constabulary Force- National Intelligence Bureau (JCF-NIB), Tax Authorities (RPD, TAJ and JCA) when required. On a case-by-case basis, several entities (government or private sector) who hold relevant information and intelligence may be called upon to share information to progress an investigation.

4.4.1 FINANCIAL CRIME PROSECUTORS

Understaffing is the primary concern affecting the prosecutors of financial crimes in Jamaica. Currently, there are only 39 attorneys across five groups/agencies dedicated to prosecuting ML/TF crime. These agencies are the clerks of court, Office of the Director of Public Prosecutions, Major Organized Crime and Anti-corruption Agency, Jamaica Customs Agency, and Financial Investigations Division. The judiciary is also resourced with 50 clerks assigned to courts across the nation. All of the agencies referred to above acknowledge that there are staff shortages that impinge on their ability to operate effectively and all are taking steps to address this deficiency. It should be noted that there is no evidence of any prosecutor being involved in any integrity breaches and they enjoy an unblemished reputation.

Over the review period, 41 cases were prosecuted and 14 convictions were obtained. It should be noted that convictions may have related to cases that commenced prior to the start of the 2016 review period.

With respect to financial crime prosecutions, in interviews with current prosecutors, it was revealed that documents are generally supplied expeditiously by law enforcement officers and the quality of the documents is of sufficient standard that they are able to prosecute matters successfully. Prosecutors do have the power to instruct investigators, through their respective commanders, to procure information and evidence deemed necessary for the successful prosecution of a case.

The FID has a cadre of trained forensic examiners that are fully integrated into its operations and play a critical role in complementing the work of the financial crime prosecutors at the FID. Few investigations outside of the FID are of such complexity that they require the assistance of a forensic examiner, but where such cases exist the FID will provide assistance to other partner agencies. The shortcomings of the FID in relation to staffing are elucidated on elsewhere in this chapter.

4.5 EFFECTIVENESS OF THE JUDICIARY

The integrity of the Jamaican judiciary is grounded in its independence, a principle which is safeguarded by the Constitution. The constitutional provisions are found in Chapter 7 and dictate the qualifications for a judge, the method of appointment, roles of the Judiciary, securing judge's salaries and pensions,

safeguards against removal from office and the abolishment of an occupied office. These provisions taken collectively provide a security of tenure which facilitates the judiciary's independence. Additionally, judges are governed by the judicial code of conduct and training sessions are regularly held which emphasize that judges manage their affairs and those with whom they associate in order not to bring either their name and/or office into disrepute.

The Judicial Conduct Guidelines were published in August 2014 and are applicable to judges of the Parish Court, Supreme Court and Court of Appeal. The guidelines outline the principles of judicial independence, integrity and propriety along with commentaries, which serve as a timely reminder to the judiciary. Further, the Bangalore Principles of Judicial Conduct serves as a guide to the Jamaican judiciary.⁴⁵ In addition, the appointment, removal, and exercise of disciplinary powers over the Judiciary are governed by the Judicial Services Commission (JCS),⁴⁶ which is entrenched in the Jamaican Constitution.⁴⁷ To ensure that judges retain their independence they receive training in this area to allow them to understand how to retain their impartiality.

Judges have demonstrated their ability to act independently and impartially based on judgments delivered against the government⁴⁸, powerful members of society, and high-profile criminals. Jamaican courts have overseen a number of cases involving defendants deemed as powerful or high profile and examples include a former Minister,⁴⁹ a popular Jamaican entertainer,⁵⁰ another former Minister, along with the professor of a university,⁵¹ gang members,⁵² police officers,⁵³ municipal employees,⁵⁴ attorneys-at-law,⁵⁵ and government employees.⁵⁶ It is possible to put this independence in a historical context as in the 1990s a judge found a former Minister of Labour guilty of fraud charges and sentenced him to five years imprisonment indicating that this independence has been grounded over many years.

⁴⁵ "The Bangalore Principles of Judicial Conduct," *Judicial Group on Strengthening Judicial Integrity*, November 2002, https://www.unodc.org/pdf/crime/corruption/judicial_group/Bangalore_principles.pdf.

⁴⁶ The Judicial Service Commission comprise of: The Chief Justice, President of the Court of Appeal, Chairman of the Public Service Commission; and Three (3) members appointed in a similar manner as members of the Public Service Commission.

⁴⁷ Jamaica (Constitution) Order in Council, 1962, No. 1550, 111-113.

⁴⁸ Supreme Court ruled that: a) the National Identification and Registration Act was unconstitutional- Julian Robinson v The Attorney General of Jamaica [2019] JMFC Full 04; b) detentions under the Emergency Powers Act were unconstitutional in Everton Douglas, et al v The Minister of National Security, et al [2020] JMFC Civ 267; and c) presigned and undated resignation letters by Senators at the time of their appointment was unconstitutional- Arthur Williams v Andrew Holness [2015] JMFC FC

⁴⁹ "Kern Spencer Trial Timeline," *The Gleaner*, March 25, 2014, <http://jamaica-gleaner.com/gleaner/20140325/lead/lead3.html>.

⁵⁰ "Vybz Kartel: From 'teacha' to prisoner - a timeline of events," *Loop Jamaica News*, April 3, 2020, <https://www.loopjamaica.com/content/vybz-kartel-dancehall-hero-prisoner-timeline-events>; "DPP outlines case that conquered Ninjaman," *Loop Jamaica News*, November 21, 2017, <https://www.loopjamaica.com/content/dpp-outlines-case-conquered-ninjaman>.

⁵¹ "UPDATE: Ruel Reid, wife and Fritz Pinnock among five arrested in corruption probe," *The Gleaner*, October 9, 2019, <http://jamaica-gleaner.com/article/lead-stories/20191009/update-ruel-reid-wife-and-fritz-pinnock-among-five-arrested-corruption>.

⁵² "Uchence Wilson, 8 other convicted gang members to be sentenced today," *Loop Jamaica*, November 30, 2020, <https://www.loopjamaica.com/content/uchence-wilson-other-convicted-gang-members-be-sentenced-today>.

⁵³ "DPP orders cops charged for Shrewsbury murders," *The Gleaner*, August 15, 2013, <http://jamaica-gleaner.com/gleaner/20130815/lead/lead5.html>

⁵⁴ Hykel Nunes, "5 Persons Found Guilty in Manchester Parish Council Fraud Trial Sentenced," *Nationwide Radio Jamaica*, July 27, 2020, <https://nationwideradiojm.com/5-persons-found-guilty-in-manchester-parish-council-fraud-trial-sentenced/>.

⁵⁵ "Attorney, 5 co-accused to go on trial for money laundering," *Jamaica Observer*, July 15, 2017, http://www.jamaicaobserver.com/latestnews/attorney,_5_co-accused_to_go_on_trial_for_money_laundersing_.

⁵⁶ "Engineer, mechanic charged with corruption, money laundering," *Loop Jamaica News*, June 15, 2018, <https://www.loopjamaica.com/content/engineer-mechanic-charged-corruption-money-laundersing>.

Within Jamaica, judges do not specialise in relation to certain types of criminal offences that they try. The cases that are assigned to members of the judiciary are made based on their complexity and type of matter and not on individual judges. The nature of the selection process means that judges are omniscient and able to deal with all matters allocated to them, whatever the nature of the offence. Prior to being selected as a judge, the names of the interested candidates are circulated amongst the Jamaica Bar Association (JBA) and the Judicial Services Commission (JSC) ensuring that feedback is received on the candidate. A series of background checks are conducted and the candidates, if they have successfully passed the initial stages, undergo a rigorous interview process. Once selected candidates, like all government servants, sign and are bound by the Official Secrets Act.

Using three ML cases as a sample, on average it took three years for these ML cases to go through the court system. The duration was attributed to a lack of resources, which has resulted in backlogs and delays in the progression of court matters. The matter is further compounded by the fact that the court systems also have other cases on which to adjudicate. To remediate the issue the Ministry of Justice in conjunction with the Chief Justice has taken active steps to reduce the backlog by increasing the number of judges, court staff, and courtrooms to make a significant impact on the speed at which matters progress and to improve the justice system. At the end of the 2019 fiscal year, the backlog had been reduced by 40 per cent.⁵⁷ The Chief Justice stated that as part of the key strategic objectives of the business plan for the judiciary, by 2023, backlogs within the courts should be significantly reduced, as 95 per cent of the cases coming into the courts should be disposed of within 24 months from the date of filing.⁵⁸

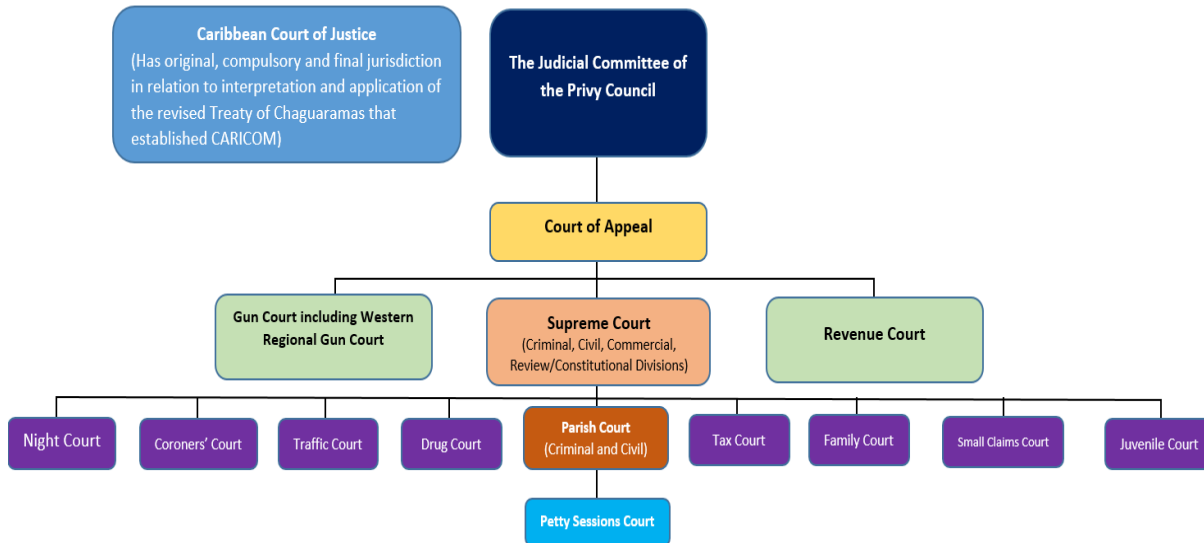
The Chief Justice has also pointed out that due to the implementation of the court statistical system there has been an improvement in the understanding of the pace at which matters progress through the courts and as a consequence 85 per cent of all cases are disposed of in 12 months. The Chief Justice noted that to facilitate quicker conclusions of cases and efficient use of resources, judges sometimes drop charges. As a result of the introduction of the Plea Negotiations and Agreements Act, 2017 judges will seek to use this legislation to formalise these arrangements.

Figure 13 below shows the structure of the Jamaican court system where money laundering offences are tried either in the parish court or in the Supreme Court as prescribed by POCA.

⁵⁷ Latonya Linton, "Consistent Reduction in Criminal Case Backlog," *Jamaica Information Service*, May 23, 2019, <https://jis.gov.jm/consistent-reduction-in-criminal-case-backlog/>; "Courts on track to eliminating case backlog – Sykes," *Radio Jamaica News*, September 23, 2019, <http://radiojamaicanewsonline.com/local/courts-on-track-to-eliminating-case-backlog-sykes> (September 2019).

⁵⁸ Edmond Campbell, "Ambitious court road map - Chief justice rolls out plan to make judiciary number one in the Caribbean," *The Gleaner*, February 1, 2020, <https://jamaica-gleaner.com/article/lead-stories/20200201/ambitious-court-road-map-chief-justice-rolls-out-plan-make-judiciary>.

Figure 13: Structure of the Jamaican Court System



4.6 CONCLUSION

Jamaica’s geographical location coupled with the porosity of its border makes it vulnerable to money laundering. The country’s sizeable informal economy and the high use of cash in the society can also be exploited by criminals, and be used to launder the proceeds from their crime. Jamaica also has a high crime rate which coupled with the threats identified in Chapter 3 also makes the country vulnerable to money laundering.

In relation to domestic cooperation, several competent investigative agencies collaborate to a fair extent, to investigate and arrest persons who commit predicate and money laundering offences. Investigators are well trained as is seen in the high demand for these individuals, evidenced by the high attrition rate. Jamaica also has a strong tradition of prosecutorial and judicial integrity and there have been several efforts to increase judges and clerks of court knowledge in regards to money laundering offences.

The trajectory from investigations to prosecution is in many cases too lengthy, which signals a need for increased resources. Therefore, more resources should be provided to both law enforcement agencies and the judiciary, to reduce the length of time that it takes for cases to be investigated and prosecuted. There are already such efforts in train but these improvements must be accelerated.

Based on all of the assessments conducted Jamaica’s money laundering vulnerability was scored at **Medium-High**.

CHAPTER 5: TERRORISM FINANCING RISK

5.1 CHAPTER OVERVIEW

This chapter assesses the level of terrorism financing risk exposure in Jamaica over the 2016 to 2019 review period. Jamaica, having strong relationships with regional and international partners, is well placed to receive tactical and strategic intelligence on terrorism matters. To date, there has been no material evidence available to suggest any active terrorist organisations or individuals are operating within Jamaica's borders.

5.1.1 METHODOLOGY

Using the World Bank's NRA tool, the terrorism financing risk for Jamaica was assessed on the basis of the terrorism threat to the country and the impact of that threat on the financing of terrorism, as well as the vulnerability, based on the country's available terrorism financing controls and country context factors.

A key element of the preliminary approach to the assessment involved stakeholder engagements in order to ascertain the extent to which quantitative data was available to support the assessment. Through these engagement sessions, it was determined that there were no investigations relating to terrorism nor terrorism financing activities. In the absence of quantitative data, the assessment prioritized a more extensive qualitative approach of measuring Jamaica's vulnerabilities, with the subsequent assessment of a **Low** level of threat risk within the country.

There was broad analysis of Jamaica's vulnerabilities through an examination of available intelligence generated by both domestic and international partners. This was supplemented by a review of open source material, Jamaica's Mutual Evaluation Report (MER), and meetings with key partner agencies who were engaged in monitoring terrorist threats to Jamaica, most notably the CT-Forum, whose role will be discussed later in this chapter.

In considering all of the available evidence, the level of risk in relation to the extent to which Jamaica is engaged in funding domestic or international terrorism, or is considered a transit point for the latter, the level of terrorism financing vulnerability has been assessed as **LOW**. Similarly, in the absence of either intelligence or evidence, the assessment of the terrorism financing threat has been determined as **LOW**.

5.1.2 CONTEXT

As noted in Jamaica's National Security Policy (NSP), Jamaica is a popular tourist destination, with a considerable number of foreign visitors entering the country annually, which creates a vulnerability as individuals engaged in terrorist activity could access the island by this means. Jamaica has not suffered any terrorist attacks and there is no evidence of support for terrorist causes, save and except for an isolated incident involving an individual who has since been extradited to the United States. Given the importance of the tourism sector to the Jamaican economy, the country has made efforts to mitigate against the potential impact of a terrorist attack. However, like any other country, Jamaica is vulnerable to possible terrorism financing, which could have a significant impact.

Jamaica has benefited from several projects and programmes that have provided additional resources to allow it to increase its capacity to investigate TF related matters. Jamaica has also taken measures to increase both domestic and international cooperation to ensure that there is effective use of intelligence that is germane to terrorism and financing of terrorism investigations.

5.2 TERRORISM THREAT ASSESSMENT

During the period under review (2016-2019), one case of funds being remitted to Jamaica, potentially for terrorism purposes, was identified. This involved an Islamist preacher, who had been deported to Jamaica from Britain.⁵⁹ The case involved close associates of the preacher accepting funds from a Singaporean national.

In August 2017, the preacher was arrested on behalf of the United States.⁶⁰ At the time of his arrest he was found in possession of J\$524,000 and £1,850, which was seized under POCA and an investigation into its origins initiated. Subsequently, a successful application was made for its forfeiture based on the premise that it was to be used in relation to terrorism offences, and the money was forfeited in August 2020, prior to his extradition.

Additionally, on the 17th October 2019, a Singaporean national was jailed for two-and-a-half years by a court in Singapore for financing terrorism, having been convicted of sending Sg\$1,146 (US\$840) through Western Union to the preacher. The Singaporean national had reached out to the preacher after watching videos on his website and YouTube channels, in which he preached support for the Islamic State group.

Information regarding terrorism related matters is shared with the competent authorities, supervisory authorities and designated authorities. Jamaica has also collaborated with several international agencies and enquiries have been made both of, and from Jamaica, involving countries from the Caribbean, Africa, Europe, South East Asia and the United States. Further details on the extent of cooperation with domestic and foreign agencies are discussed later in this chapter.

5.3 IDENTIFIED VULNERABILITIES WITHIN JAMAICA

As previously outlined, Jamaica has undertaken a full assessment of its vulnerabilities to both terrorism and terrorism financing. As detailed below, certain key areas of susceptibility to exploitation by financiers of terrorism were considered. Terrorism financing vulnerability in Jamaica was assessed as **Low**.

5.3.1 GEOGRAPHIC LOCATION

With 497 miles of coastline to police, it has been calculated that in addition to the 14 official points of entry to Jamaica, a further 140 illegal sites where entry is possible have been identified. The proximity of Jamaica to other Caribbean islands, North America and South America, makes it an important transshipment hub for prohibited goods given the porous nature of its borders. Criminals have historically taken advantage of this porosity to smuggle illicit goods into Jamaica⁶¹ and the country is cognisant of

⁵⁹ El-Faisal was jailed for seven years in Britain in 2003 after calling for the murders of non-Muslims and was deported to his native Jamaica after serving four years of his sentence.

⁶⁰ In August 2017, El-Faisal was arrested on an extradition warrant issued by the United States in relation to charges of conspiracy as a crime of terrorism, two counts of soliciting or providing support for an act of terrorism, and two counts of attempted soliciting or providing support for an act of terrorism. He has since been extradited to the United States in connection with this matter where he is currently awaiting trial.

⁶¹ Examples include:

Seth Robbins, "Jamaica and Haiti Swap Drugs and Guns", *InSight Crime*, June 23, 2020
<https://insightcrime.org/news/analysis/jamaica-haiti-drugs-guns/>

Emma Wibooi, "Criminality and Resistance, Rocky Point, Jamaica", *Global Initiative*, February 20, 2020
<https://globalinitiative.net/analysis/criminality-resilience-jamaica/>

the fact that this area could be exploited for terrorism and terrorism financing purposes; however, there is no evidence or intelligence available to indicate this is occurring.

5.3.2 VISITOR INFLOWS

As a popular tourist destination, Jamaica has a considerable number of foreign visitors entering the country annually, which creates a vulnerability as individuals engaged in terrorist activity could access the island by this means. Given the importance of the tourism sector to the Jamaican economy⁶², Jamaica is well aware of the impact that a terrorist attack could have, especially by a single actor targeting a tourist area. Accordingly, Jamaica continues to undertake all possible steps to mitigate such an event.⁶³

The Overseas Security Advisory Council (OSAC) has previously noted that whilst there was a moderate risk from terrorism in Jamaica, a combination of lax immigration controls, porous borders, and the ease with which fraudulent travel documents can be obtained, make the country an attractive target for potential terrorists⁶⁴. In order to mitigate this risk, the Passport, Immigration and Citizen Agency (PICA) utilises a combination of mechanisms, including information and intelligence sharing, risk management technology and travel document fraud detection to reduce opportunities for terrorist mobility.

As part of its strategy to ameliorate the level of risk, Jamaica has implemented an advanced passenger information (API) system, which permits it to receive prompt information from commercial airlines. It also participates in the Airport Communication Programme (AIRCOP) and machine readable passports have been introduced. In addition, the Immigration Restriction (Commonwealth Citizens) Act permits an undesirable inhabitant of, or visitor to, Jamaica to be denied entry to the island. Whilst there were no instances of persons being refused landing due to terrorism related grounds during the review period, previously in 2014, Yasin Abu Bakr⁶⁵ and Gerald Perreira⁶⁶ were refused entry due to their association with groups involved in terrorism.

5.3.3 MITIGATING MEASURES TO IDENTIFIED POTENTIAL THREATS

Although the current terrorism threat level has been assessed as low, Jamaica is conscious of the need to address the problem constantly and, reflecting this awareness, has adopted several initiatives intended to mitigate against the threat posed by a terrorist attack.

5.3.3.1 RADICALISATION

Whilst there are individuals in Jamaica who have expressed an interest in radicalisation, there is no evidence that this has translated into any discernible action. A key group, perceived as being vulnerable

⁶² In 2018 tourism was calculated to have contributed 22 per cent to Jamaica's GDP

⁶³ In the immediate aftermath of the terrorist attacks in September 2001, air arrivals to Jamaica from the US fell by 41 per cent. Similarly, in the light of the Dahab and Sharm El Sheikh attacks in 2006, Egypt experienced a drop in 2006 of 8% in foreign tourism receipts. If Jamaica experienced a 10% loss of tourist numbers following a terrorist attack it would represent a J\$52.5bn loss.

⁶⁴ "Jamaica Crime and Safety Report", OSAC, June 16, 2020

<https://www.osac.gov/Country/Jamaica/Content/Detail/Report/d4b8403a-3feb-427b-bd36-18f1af0b746a>

⁶⁵ Yasin Abu Bakr was refused entry to Jamaica on the 16th October 2014. Bakr is the leader of the Jamaat Al Muslimeen group, which attempted to overthrow the government of Trinidad and Tobago on July 27, 1990. At least 24 people, including one legislator, Leo Des Vignes, were killed during the six-day insurrection that ended on August 1, 1990. Bakr led more than 100 men in trying to overthrow the government of then Prime Minister ANR Robinson.

⁶⁶ Gerald Perreira, a Guyanese Muslim who is chairman of the Black Consciousness Movement (Guyana), was ordered off a flight on Friday 14th October 2014 in Antigua, on his way to Jamaica, where he had been invited by Minister Louis Farrakhan to participate in the 19th anniversary of the 'Million Man March'. He was removed from the flight because he had been refused permission to land in Jamaica.

to exploitation are youths within the more deprived areas of Jamaica. Although there is no evidence that any individuals have become radicalised, the situation is constantly monitored.

Prisons have also been identified as a fertile recruitment ground for those who seek to radicalise young men. Notably, the Counter Terrorism and Special Investigation Unit (CTSIU), based within the Counter-Terrorism and Organised Crime branch (C-TOC), are tracking this development. Whilst they are aware that a number of prison inmates are vulnerable, there is no evidence that they have become radicalised. The situation is constantly monitored through a joint initiative between law enforcement agencies (LEA) and the Department of Correctional Services (DCS), which allows them to identify radicalisation to take necessary steps to negate the impact.

The importance of preventing radicalisation in prisons is evidenced by the inclusion of the subject as an agenda item at the 12th conference of the Association of Caribbean Heads of Corrections and Prison Services (ACHCPS) in 2018.⁶⁷ Additionally, the SIB has joined with the Commonwealth Secretariat (CS) to provide training surrounding this issue. In June 2019 and January 2020, workshops were conducted involving DCS personnel from a broad range of disciplines, representatives of the CS, and law enforcement agencies. The purpose of the training was to sensitise staff on the issue of radicalisation in prisons.

5.3.3.2 RETURNING FOREIGN TERRORIST FIGHTERS

To date, Jamaica has not designated a national as a terrorist nor identified a national as a returning foreign terrorist fighter (RFTF). However, CARICOM nationals are known to be returning from conflict zones where they may have been exposed to violent jihadist ideologies and consequently seek to radicalise vulnerable individuals. Given Jamaica's proximity to Trinidad and Tobago and Guyana, where this poses the greatest risk of occurring in the region, it has been identified as an ongoing threat. However, there is no evidence of RFTF's being present in Jamaica.

5.4 LEGAL FRAMEWORK

Jamaica is also party to all sixteen of the international counter terrorism instruments including the International Convention for the Suppression of the Financing of Terrorism, the United Nations Convention against Transnational Organized Crime, and the United Nations Convention against Corruption. The principal legislation relating to the criminalisation of terrorist financing (TF) in Jamaica is the Terrorism Prevention Act (TPA), which was introduced in 2005. Supporting legislation includes the United Nations Security Council Implementation Act (UNSCRIA), Mutual Assistance Criminal Matters Act (MACMA), Extradition Act, Financial Investigation Division Act (FIDA), Cybercrime Act, and the Proceeds of Crime Act (POCA).

As noted in Jamaica's 2017 MER, terrorism financing is criminalised according to the UN Convention, irrespective of whether or not the terrorist act was carried out. The concept of criminal liability also extends to legal persons and, under sections 4 to 12 of the TPA, a body corporate shall be liable upon conviction to a fine.

Offences under the TPA are contained within ss3013, and include the financing of terrorism. Section 2(1)(b) extends to inchoate offences of conspiring, attempting to commit, aiding and abetting, procuring,

⁶⁷The Association of Caribbean Heads of Corrections and Prisons Services Conference – ACHCPS
<https://icpa.org/the-association-of-caribbean-heads-of-corrections-and-prisons-services-conference-achcps/>

or counselling, an offence under ss4-8 and 10-12 of the TPA. Section 4 of the TPA creates the offence of providing financial or other related services, knowing or intending that they will be used to facilitate terrorist activity or benefit a terrorist group. Given the wording of the legislation, activity usually referred to as 'wilful blindness', would be covered by the wording of the offence. Section 5 makes it an offence to use or possess property for that purpose, whilst Section 6 establishes offences appertaining to knowingly dealing with property owned or controlled by a terrorist group. Where offences are identified that involve criminal activity but are not related to terrorism financing matters there is a comprehensive array of offences contained within the Proceeds of Crime Act

The TPA contains a number of investigatory powers that assist in the investigation of terrorism financing offences. Under s19 the Financial Investigations Division (FID) and the Office of the Director of Public Prosecutions (ODPP), acting in their capacity as the relevant authority, may make an application for a monitoring order. This directs a financial institution to disclose information or to produce documents concerning an account held by a person who has or is about to commit a terrorism offence.

There is provision under s21 for the relevant authority to make an application for a production order. This authorises information or documents to be made available for examination, if a terrorism offence has been committed or is likely to be committed. There is power under s23 to apply for a search warrant to identify applicable property, defined as anything used in the commission of a terrorist offence, including the financing of terrorism and s24 permits the seizure of property associated with a terrorism offence. In relation to applicable property, s28 allows the Supreme Court to order the forfeiture of applicable property. Finally, s35 allows the restraint of applicable property where the defendant is convicted or charged with a terrorism offence.

Ministerial orders were issued in 2017 and 2019 pursuant to section 15(2) of the TPA for Accountants, Casinos, Gaming Lounges, Real Estate Dealers and Attorneys-at-law, designating these persons as reporting entities. More specifically, these are:

- The Terrorism Prevention (Reporting Entities) (Accountants) Order 2017
- The Terrorism Prevention (Reporting Entities) (Casinos) Order 2017
- The Terrorism Prevention (Reporting Entities) (Gaming Lounge Operators) Order 2017
- The Terrorism Prevention (Reporting Entities) (Real Estate Dealers) Order 2017
- Terrorism Prevention (Designated Reporting Entity) (Attorneys-at-law) Order, 2019.

In 2019, the TPA was amended through the introduction of the Terrorism Prevention (Amendment) Act 2019 (TPAA) which allowed Jamaica to address deficiencies identified by the Caribbean Financial Action Task Force (CFATF) mutual evaluation report (MER). These included clarifying definitions in relation to the competent and designated authority and financial institutions undertaking business under the Insurance Act in order to make the language consistent with POCA. The definition of the incitement offence in relation to terrorism offences and incorporating additional measures to ensure compliance with the TFS obligations under R6 was also clarified. Thus the listing process in relation to designated entities has been clarified and streamlined and the relevant competent authorities have developed and implemented procedures by which Jamaica can designate a terrorist entity and communicate this designation to the financial sector (i.e. FIs and DNFI) without delay.

Other amendments to the TPA included making it a criminal offence to incite another to commit a terrorist act as well as criminalising the travel of foreign terrorist fighters, including the financing of such travel. Overall, the effect of both the previous legislation and the recent 2019 amendments have been

to give Jamaica a coherent body of legislation that allows it to effectively investigate the financing of terrorism.

5.5 COOPERATION WITH DOMESTIC AND FOREIGN STAKEHOLDERS

As was indicated earlier, Jamaica is also party to all sixteen of the international counter terrorism instruments including the International Convention for the Suppression of the Financing of Terrorism, the United Nations Convention against Transnational Organized Crime, and the United Nations Convention against Corruption. The country is a state party to the main United Nations human rights treaties which ensures that counter-terrorism laws, policies, and measures comply with international law, including international human rights law, international refugee law, and international humanitarian law.

5.5.1 COOPERATION WITH DOMESTIC AGENCIES

There is significant sharing of information by the competent authorities with other competent authorities, supervisory authorities, designated authorities, or a foreign authority exercising similar functions in terms of terrorism related matters. There are certain exceptions where, for example, information is protected from disclosure or there is a risk of compromising an investigation. Taken in conjunction with other measures that permit the sharing of information, Jamaica has an effective intelligence sharing machinery in place.

Jamaica has also taken measures to increase both domestic and international cooperation to ensure that there is effective use of intelligence that is germane to terrorism and financing of terrorism investigations. Outlined below are the key steps Jamaica has initiated to ensure improved coordination with all partners concerning terrorism and terrorism financing matters.

5.5.1.1 COUNTER-TERRORISM FORUM (CT FORUM)

The Ministry of National Security (MNS) established the Counter Terrorism Forum (CT Forum) in December 2015 to provide a strategic and tactical framework for Jamaica's efforts in tackling, amongst other areas, the problem of terrorist financing. The Strategic Intelligence Branch (SIB) of the MNS coordinates the activities of the CT Forum, which meets monthly, and provides the secretariat function. Members of the CT Forum use a combination of open source material together with intelligence and information supplied to them from a wide variety of partner agencies to allow them to identify threats and trends as well as determine areas requiring further assessment.

CT Forum core members include the SIB, the Jamaica Defence Force (JDF) Military Intelligence Unit (MIU), The Passport Immigration and Citizenship Agency (PICA), Major Organised Crime and Anti-Corruption Agency (MOCA), both the Jamaica Constabulary Force (JCF) National Intelligence Bureau (NIB) and C-TOC, together with the Financial Intelligence Unit (FIU). The CT Forum also collaborates with other agencies such as the Jamaica Customs Agency (JCA), Registrar General's Department (RGD), Hazardous Substances Regulatory Authority (HSRA), and the Civil Aviation Authority (CAA). Although the FIU of the FID is a member of the CT Forum, the FIU cannot itself share information with the CT Forum, as it is not formally recognized in any official regulations, laws, or guidelines.

The work of the forum is guided by a policy document that details its systems and processes, and is regularly updated by its membership. The forum is currently developing a national security strategy concerning terrorism, which is being guided by both Jamaica's National Security Policy (NSP) as well as CARICOM's Counter Terrorism Strategy. A significant element of this work is the development of an

Integrated Response Readiness Plan (IRRP) that will outline both organisational as well as individual responsibility in response to a terrorist attack.

It should be noted that the National Security Policy only tangentially references Terrorism Financing. Therefore, the NSP should be updated to clearly identify the TF risks in Jamaica.

Although the mandate of the CT Forum is clearly outlined, it is not formally recognised through either policy, regulations, or legislation, limiting its effectiveness. This is reflected in the fact that due to its lack of statutory status the FIU cannot share information with the CT Forum as a coalition. It is recommended that this deficiency be remedied through the formal establishment of the CT Forum as the strategic advisory body to the National Security Council on terrorism and terrorism financing issues.

5.5.1.2 TACTICAL COMMITTEE MEETING

The Joint Tactical Committee holds meetings every two weeks and attendees include MOCA, JCF, FID, and international partners. This meeting focuses on major interdiction cases involving narcotics and arms trafficking, and includes terrorism related matters where necessary.

5.5.2 COOPERATION WITH FOREIGN AGENCIES

Jamaica has collaborated with several international agencies to ensure that maximum utility is made of financial intelligence concerning terrorism financing. In furtherance of this, several MOUs have been entered into to achieve a more effective sharing of information. The CT Forum maintains robust partnerships with agencies such as the US Federal Bureau of Investigations (FBI), the Regional Intelligence Fusion Centre (RIFC), the Joint Regional Communication Centre (JRCC), Interpol, and the Joint Intelligence Unit of the Royal Cayman Islands Police Service.

Due to the key role it plays in the investigation of terrorist financing, the FID, including the FIU, has a full range of powers that allows it to share information with its international partners. Additionally, the Minister of National Security is able, upon the recommendation of the CTD, to enter into a similar agreement with a government or international organisation as well as an intelligence body to share information concerning a financial crime. As the FID is a member of the Egmont Group, the FIU is able to share intelligence via this forum.

There have been enquiries both of, and from Jamaica involving countries from the Caribbean, Africa, Europe, South East Asia and the United States. These enquiries have predominantly been in respect of terrorism offences, but there have been some enquiries in relation to terrorism financing matters. Use has been made of the Criminal History Information Sharing (CHIS) memorandum, which allows Jamaica and the USA to share records containing immigration and criminal histories of Jamaican nationals being repatriated from the United States.

In addition, there have been a number of enquiries conducted with other Caribbean countries via the Regional Intelligence Fusion Centre (RIFC). There is also informal cooperation on a police-to-police basis, in relation to both terrorist and terrorism financing cases, with partner agencies who have a presence in Jamaica. Although these requests have been made and received, no actionable intelligence nor evidence was obtained as a consequence of them, other than the case of Al-Faisal. Tables 24 and 25 below represent these requests. Table 24 shows that from 2016 to 2020 requests were received from the United States. While table 25 shows that Jamaica made requested assistance mainly from other Caribbean Country and the United States

Table 24: Number of international assistance requests received

Year	Country	Detail legislation used or regulations/agreement (formal/informal) request made under
2016	USA	Informal
2016	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)
2017	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)
2018	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)
2019	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)
2020	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)

Table 25: Number of international assistance requests sent

Year	Country	Detail legislation used or regulations/agreement (formal/informal) request made under
2016	Multiple Caribbean countries	Regional Intelligence Fusion Centre (RIFC)
2016	Nigeria	Interpol
2016	United Kingdom	Interpol
2016	Albania	Interpol
2016	United States of America	Interpol
2016	Guyana	Regional Intelligence Fusion Centre (RIFC)
2016	Trinidad	Regional Intelligence Fusion Centre (RIFC)
2016	Netherlands	Interpol
2018	India	Interpol
2020	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)
2019	USA	Criminal History Information Sharing (CHIS) memorandum/Terrorism Prevention Act (TPA)

5.5.2.1 MUTUAL LEGAL ASSISTANCE

The Mutual Legal Assistance (Criminal Matters) Act, 1995 (“MACMA”) is the primary domestic legislation that guides Jamaica’s mutual assistance to foreign countries on terrorist financing. The MACMA allows Jamaica to facilitate overseas law enforcement agencies by assisting in investigations and proceedings regarding a criminal matter. Under the MACMA, the country requesting assistance from Jamaica should be either a designated Commonwealth country or a treaty country. Although the necessary legislation is in place there has been no necessity by Jamaica to use the powers contained within the legislation in relation to a terrorism financing case although it did receive requests for information from Singapore and two other countries. This was in relation to Ahmed Hussein Abdul Kadir Sheik Uduman who was convicted in Singapore of sending money to El-Faisal for terrorism purposes.

5.6 RESOURCE ALLOCATION

Due to budgetary constraints, Jamaica has to strategically manage the resources apportioned to law enforcement. The agencies involved in TF investigations (C-TOC, MOCA, and the FID) utilizes their budget allocation primarily to cover staff costs, but also to acquire cyber forensics and financial analysis software. The budgetary allocation from the government has also been supplemented by projects and programmes sponsored by overseas agencies such as the UK Foreign, Commonwealth and Development Office; EU; and USAID; although it is important to stress that this funding is in addition to, and not a replacement for government support.

As noted earlier, the JDF has a unit dedicated to collating information on terrorism matters and this is contained within the Military Intelligence Unit (MIU). Members of the MIU have undertaken courses at the Caribbean Regional Drug Law Enforcement Training Centre (REDTRAC) in relation to financial investigation as well as those held under the auspices of the International Association of Law Enforcement Intelligence Analysts (IALEIA). Within C-TOC, the Counter Terrorism and Special Investigation Unit (CTSIU) has responsibility for collating intelligence on TF matters. Like the MIU staff, members of the CTSIU have completed financial investigation and analysis courses.

In 2017, the MNS collaborated with the Caribbean Maritime University (CMU) to deliver a Post Graduate Diploma in Strategic Counter Terrorism Management for 44 personnel from a variety of agencies involved in mitigating the threat of terrorism to Jamaica, including two representatives from the private sector.

Although C-TOC is deputised to investigate terrorism matters, any investigations into TF are undertaken in conjunction with the FID, which due to its practice in conducting financial investigations, has the necessary experience to ensure that such matters are effectively investigated.

Jamaica has benefited from several projects and programmes that have provided additional resources to allow it to increase its capacity to investigate TF related matters. Key to this has been various iterations of a project sponsored by the UK Foreign, Commonwealth and Development Office (FCDO), previously the UK Department for International Development (DFID) since 2012. The UK funding has allowed the FID to purchase cyber forensics and financial analysis software, which can be used for TF investigations. The project has also funded the Financial Investigation Training and Accreditation Programme (FITAP) which has facilitated officers to acquire necessary skills to undertake ML investigations.

In November 2015, training focusing specifically on how to investigate TF offences was provided by former police officers from the UK National Terrorist Financial Investigation Unit (UK NTFIU). There was also input from the private sector on how law enforcement and the financial services industry can work more harmoniously together. Further training, provided by the UK, is now planned for the latter part of 2021, having been delayed due to restrictions imposed by the COVID pandemic.

5.7 SCREENING SYSTEMS

The ability to make suspicious transaction reports (STRs) related to TF is provided in s16 of the TPA, where such reports should be made to the designated authority, which, for POCA, TPA, and UNSCRIA is the CTD of the FID.

Financial institutions such as commercial banks and money value transfer services (which include remittance services) are considered vulnerable for TF given their ability to facilitate the movement of funds across borders. To reduce this vulnerability, the TPA mandates these entities to conduct customer due diligence and to report any suspicion of terrorist financing. These institutions also have mechanisms in place to screen their data against the international sanctions list. Jamaica's MER established that all the financial institutions were aware of the legislative obligations to freeze terrorist assets without delay, and use the UN consolidated and OFAC lists to screen customers and file Terrorism Prevention Reports (TPR).

The MER further noted that Jamaican financial institutions have a good understanding of ML/TF risks, and have implemented preventive measures to mitigate them, including the adoption and implementation of group compliance programmes and internal audit and compliance functions. Whilst

it noted that effective implementation of AML/CFT measures and other mitigating measures vary between the DTIs, insurance companies and securities companies, this is being addressed by an ongoing programme of training in this area.

The Bank of Jamaica (BOJ), as the supervisory authority, commissioned a thematic review in 2020 on the adequacy of DTIs' sanction screening programmes. The findings from the review showed some areas for improvement in sanction screening for some DTIs (This is discussed in Chapter 6).

The Financial Services Commission (FSC) is the supervisory authority for the securities dealers, insurance companies and intermediaries. Whilst the securities dealers and insurance companies were largely compliant with the demands of the counter terrorism financing framework, the insurance intermediaries were less so. However, the insurance intermediaries became reporting entities under the Terrorism Prevention (Amendment) Act, November 2019 by the inclusion of this sector in the definition of financial institutions under the TPA. By virtue of section 15(1) of the TPA, financial institutions are reporting entities with specific statutory obligations. Consequently, the TPA requirements are new to this sub-sector and this in part explains the low level of compliance. It is anticipated that compliance will improve over time.

The FSC found that the larger security dealers all have automated screening solutions, while most of the smaller institutions have not acquired software to assist with the screening requirements, instead using manual systems that are not as effective, tend to be time consuming, and may not produce accurate results.

The FSC identified that a number of regulated financial institutions did not have any procedures for the application of targeted financial sanction (TFS). To address this issue, the FSC provided training to insurance companies and intermediaries in September 2020, specifically on counter proliferation financing and TFS requirements. It is anticipated therefore that any future assessment of compliance with TFS requirements will show improvements in this area.

Although a low number of STRs related to TF were received from the DNFBPs, it is important to note that they have only recently (in 2017 and 2019)⁶⁸ come under the TPA regime and measures are currently being implemented by the relevant competent authorities to ensure greater compliance. Accordingly, the filing rate is deemed appropriate with an expected increase in compliance anticipated as they become more cognisant with these requirements.

5.8 SUSPICIOUS TRANSACTION REPORTING AND INVESTIGATIONS

The FID is the designated authority with which STRs under the TPA and under POCA are filed. The reports are received and managed by the FIU who have developed a written strategy and specific standard operating procedures (SOP) for the effective management of sensitive STRs and information requests. The types of reports subject to the policy are those concerning corruption, high-risk individuals (HRI), politically exposed persons (PEP), high value transactions and terrorist financing. The adoption of this process ensures that such reports are prioritised and dealt with in an appropriately confidential and expeditious manner.

⁶⁸ It should be noted that both amendments took effect only six months after affirmation in Parliament.

The FIU is improving the quality of its financial intelligence following the acquisition and introduction of goAML, which was funded by the United States. Its introduction has streamlined Jamaica's receipt of STRs as well as providing for a more efficient and effective analysis of the data obtained.

The acquisition of the goAML platform was aimed at allowing the electronic filing of reports under POCA. In September 2020, the functionality was extended to include submission of reports under the TPA, and the FIU is therefore able to receive STRs under both POCA and the TPA automatically. This will greatly assist Jamaica's ability to identify intelligence pertinent to the financing of terrorism. Table 26 below detailed the regulated entities that filed STRs over the review period.

Table 26: Listed Entity Reports by Sector

Regulated Entities	2016	2017	2018	2019
Remittance Services	26 (100%)	27 (100%)	20 (100%)	20 (100%)
Cambios	141 (87%)	150 (82%)	130 (79%)	119 (72%)
Commercial Banks	11 (100%)	20 (100%)	14 (100%)	24 (100%)
Building Societies	9 (100%)	7 (100%)	6 (100%)	6 (100%)
Merchant Banks	6 (100%)	5 (100%)	3 (100%)	3 (100%)
Credit Unions	94 (91%)	82 (79%)	71 (79%)	65 (80%)
Securities Dealers	111 (79%)	109 (75%)	105 (75%)	98 (64%)
Insurance	41 (82%)	38 (76%)	43 (76%)	44 (68%)
Designated FI - EXIM Bank	3 (100%)	3 (100%)	2 (100%)	2 (100%)
DNFI - Accountants	0	0	0	2 (50%)
DNFI – Gaming Lounges	0	0	8 (67%)	24 (75%)
DNFI – Real Estate Dealers	0	0	144 (41%)	361 (41%)
DNFI –Attorneys-at-law	0	0	0	0
TOTAL	442	441	546	768

It should be noted that although the DNFI figures are low, they only became subject to the reporting requirements in 2018 and their progress is viewed as satisfactory in relation to this aspect of the obligations on these sectors. Training is ongoing and it is anticipated that compliance rates will improve.

Over the review period, seven STRs were filed in relation to TF and in all cases these filings resulted in investigations being undertaken by the FID. To date, none has resulted in a prosecution, although two matters are still under investigation. Whilst the regulated institutions screen customers against the UN Sanction list, none of the reported STRs had a match on the UN Sanction list, although matches came from other sanction listings. This demonstrates how assiduously reporting entities undertake their role as gatekeepers and reflects positively on their endeavours. Table 27 below shows the breakdown of the sectors from which the reports were made.

Table 27: Sector Breakdown of STR under the TPA

Regulated Entities	2016	2017	2018	2019
Remittance Services	0	0	0	1
Cambios	0	0	0	0
Commercial Banks	3	1	1	0
Building Societies	0	0	0	0
Merchant Banks	0	0	0	0
Credit Unions	0	0	0	0
Securities Dealers	0	0	0	0
Insurance	1	0	0	0
DNFI 0 Accountants	0	0	0	0
DNFI – Gaming Lounges	0	0	0	0
DNFI – Real Estate Dealers	0	0	0	0
DNFI –Attorneys0at0law	0	0	0	0
TOTAL	4	1	1	1

5.9 CONCLUSION

The vulnerability and threat level vis-à-vis terrorism financing has been assessed as **LOW**. This is due to the fact that despite Jamaica’s high rate of crime and several investigations, there has been no significant terrorism activity or terrorism financing activity detected in the country. Nevertheless, the authorities continue to engage in domestic and international cooperation to understand Jamaica’s changing vulnerability and threat environment.

In relation to training, significant strides have been made through the creation of training and development opportunities for agencies involved in terrorism financing investigations. This training, combined with the experience of the FID, has equipped staff to undertake terrorism financing investigations, should the need arise.

CHAPTER 6: FINANCIAL SERVICES

6.1 CHAPTER OVERVIEW

This chapter provides an assessment of the money laundering (ML) and terrorism financing (TF) risks in the financial services sector in Jamaica. The key financial institutions (FIs) under Jamaica’s anti-money laundering (AML), countering financing of terrorism (CFT) and countering proliferation financing (CPF) regime are deposit-taking institutions (DTI’s) (which includes banks, merchant banks, and building societies), credit unions, life insurance companies, securities dealers, and money services businesses—that is remittance companies and cambios. Although the microcredit sector is not yet included under Jamaica’s AML/CFT/CPF regime, a preliminary assessment of the sector was conducted, to identify the risks within the sector, given that the legislative process to include this sector under the AML/CFT/CPF regime is at an advanced stage.

In conducting assessments of the subsectors, a mix of qualitative and quantitative data was collected from both competent authorities and licensees in the respective subsectors. In addition, corroborating data was obtained from the Financial Investigations Division (FID) and other key agencies involved in the country’s AML/CFT/CPF framework as well as other official statistics. The data and information gathered, was inputted into the World Bank’s NRA tool to determine the risk ratings for each subsector, as well as in some instances for the key products offered in the sub-sector.

The overall risk score for the financial sector is **MEDIUM**.⁶⁹ In terms of the specific ratings for each sector, table 28 below shows the overall risk score for each of the sub-sectors assessed. Details of these ratings will be provided in the respective sections of this chapter. As seen in the table, there is some variability in the sectors as ratings range from medium-low to high risk. The main area of concern was therefore the remittance space due to the high threat level seen in relation to this sector.

Table 28: Financial Sector Vulnerability Ratings

Sector	Sector’s Vulnerability to ML	Sector’s ML Threats	Overall Sector Risk Score
Deposit Taking Institutions (DTIs) (including banks)	Medium	Medium	MEDIUM
Securities	Medium	Medium	MEDIUM
Insurance Companies	Medium	Low	MEDIUM-LOW
Remittance Companies	Medium-High	High	HIGH
Cambios	Medium	Medium	MEDIUM
Credit Unions	Medium-Low	Low	MEDIUM-LOW

6.2 FINANCIAL SECTOR OVERVIEW

Jamaica has a well-developed financial services sector that comprises of participants across a range of services and vary from very small operations to large multinational entities. Over the review period, the financial services sector's contribution to GDP remained relatively constant, moving from 11.1 per cent in 2014 to 11.3 per cent in 2019.⁷⁰

⁶⁹ The NRA team did a simple weighted average score calculation. The composite score for the sector was calculated at 0.56 which represents medium risk.

⁷⁰ “Finance and Insurance Services” in *Economic and Social Survey Jamaica 2019*, (Pear Tree Press: Planning Institute of Jamaica, 2020) 9.6

Based on asset size, the deposit-taking sector (commercial banks, building society and building societies) accounted for the largest portion of GDP of all the entities in the sector. As seen in table 29 below, in 2018 and 2019, the banking subsector accounted for the largest share of the financial sector asset base accounting for 74.0 per cent and 77.6 per cent respectively.

Table 29: Asset Base of Selected Financial Institutions

Institutions	31-Dec-18			31-Dec-19		
	No of Entities	In billion (J\$)	% of GDP	No of Entities	In billion (J\$)	% of GDP
Commercial Banks	8	1,489.07	74.0%	8	1,646.62	77.6%
Merchant Banks	1	2.57	0.1%	1	5.03	0.2%
Building Societies	2	145.05	7.2%	2	157.82	7.4%
Total Deposit Taking Institutions	11	1,636.70	81%	11	1,809.46	85%
Credit Unions	26	114.19	5.7%	25	123.92	5.8%
Life Insurance Companies	6	322.78	16.0%	7	343.74	16.2%
Securities Firms (<i>Core Dealers</i>)	31	518.09	25.7%	30	650.60	30.7%
Total	74	2,591.76		73	2,927.20	

Jamaica entered into two International Monetary (IMF) programmes in recent years; an Extended Fund Facility (EFF) in 2013 and the subsequent precautionary Stand-By-Arrangement in 2016. The key goals under these two successive IMF-supported programmes were to restore economic stability while pursuing policies that provided the long-term foundation for sustainable growth and job creation while protecting the most vulnerable. Since 2013, Jamaica’s public debt ratio has reduced significantly—from 145 per cent of GDP to about 96 per cent in 2019. Jamaica’s unemployment also improved moving from 15.25 per cent in 2013 to an all-time low of 8 per cent in 2019.⁷¹

6.2.1 FINANCIAL GROUPS

It should be noted that there is significant interconnection between the various companies in the financial sector as they invariably operate as a part of a financial group structure. In recognition of this reality and in keeping with global trends, the regulators responsible for the supervision of financial institutions have increasingly focused on group-wide consolidated supervision. Under the Banking Services Act (BSA), 2014, for example, once a (DTI is not a stand-alone entity, a financial holding company must be established to hold the DTI and other financial entities in that corporate group or structure and the supervision of that group is undertaken on a consolidated basis (See Part XIV of the BSA).

Under the Proceeds of Crime Act (POCA), financial holding companies are included in the definition of “regulated business” and have specific statutory obligations to implement AML preventive measures. This involves, for example, customer due diligence (CDD) measures (enhanced and simplified); risk-based approach to operations and risk mitigation measures to address dealings with high-risk countries, compliance with targeted financial sanctions (TFS) obligations and filing of STRs and threshold transaction reports (TTRs).

The financial holding companies under the BSA have the responsibility of undertaking group-wide AML risk management measures and should have no difficulty accessing information throughout the group.

⁷¹ “The Labour Market” in *Economic and Social Survey Jamaica 2019*, (Pear Tree Press: Planning Institute of Jamaica, 2020) 21.6

This is reflected in the statutory provisions in place to facilitate this function (See BSA 9th Schedule paragraph (n)); and The Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019 – regulation 4 which amends regulation 5(2)(e) of the Proceeds of Crime (Money Laundering Prevention) Regulations to permit disclosure of information within the group for, inter alia, risk management purposes.

Pursuant to section 69 of the BSA, a financial holding company is to be established, and consolidated supervision applied where two or more financial institutions operating in Jamaica are members of the financial group and one of them is a deposit-taking institution. As at 31 December 2019, there were nine such financial groups with the asset base for these groups totalling approximately J\$3,689.0 billion, an increase of J\$2,923.0 billion from the previous year. The increase in the asset base was attributable to the acquisition of an overseas insurance group by one entity.

6.2.2 ENSURING FINANCIAL SECTOR STABILITY

As a part of the country’s overall growth and competitiveness reform agenda, Jamaica has embarked on several legislative reforms to address weaknesses in the financial sector. For example, work is underway to implement a special resolution regime, which is a private-sector-centric approach for treating with failed or failing financial institutions that may pose a threat to financial system stability without there being severe systemic disruption which would also have the potential to expose taxpayers to losses. In relation to deposit-taking institutions, the regulator has embarked on capital reforms through the implementation of aspects of Basel II and III Accords, starting with the liquidity coverage ratio to strengthen the shock absorptive capacity of these institutions. To reduce information asymmetries, the Credit Reporting Act was passed in 2010, which enables the collection of credit information.

In 2021, the Microcredit Act was also passed, which enables the supervision of microcredit lenders for prudential and conduct supervision. The Credit Unions (Special Provisions) Bill is being developed to establish the prudential supervisory framework of credit unions.⁷² The country has also embarked on a financial inclusion strategy to promote greater access to and use of financial products and services aimed at promoting financial literacy.

The Financial System Stability Committee (FSSC) was created in 2015 pursuant to the Bank of Jamaica Act to formally place the responsibility of maintaining the stability of the financial system with the central bank.

The financial sector is therefore not only one of the most advanced in legislative reforms undertaken in recent years, but it is also one of the most advanced sectors in relation to its AML/CFT framework as will be demonstrated in the sections in this chapter.

⁷² The statutory regulator is the Department of Friendly and Co-operative Societies and this regulator currently oversees – matters of incorporation including approval of establishment Rules; submission of accounts, resolution of disputes and dealing with insolvent credit unions. BOJ is however the Competent Authority with responsibility for monitoring compliance of credit unions with their AML/CFT/PF responsibilities.

6.3 DEPOSIT-TAKING INSTITUTIONS

6.3.1 SECTOR OVERVIEW

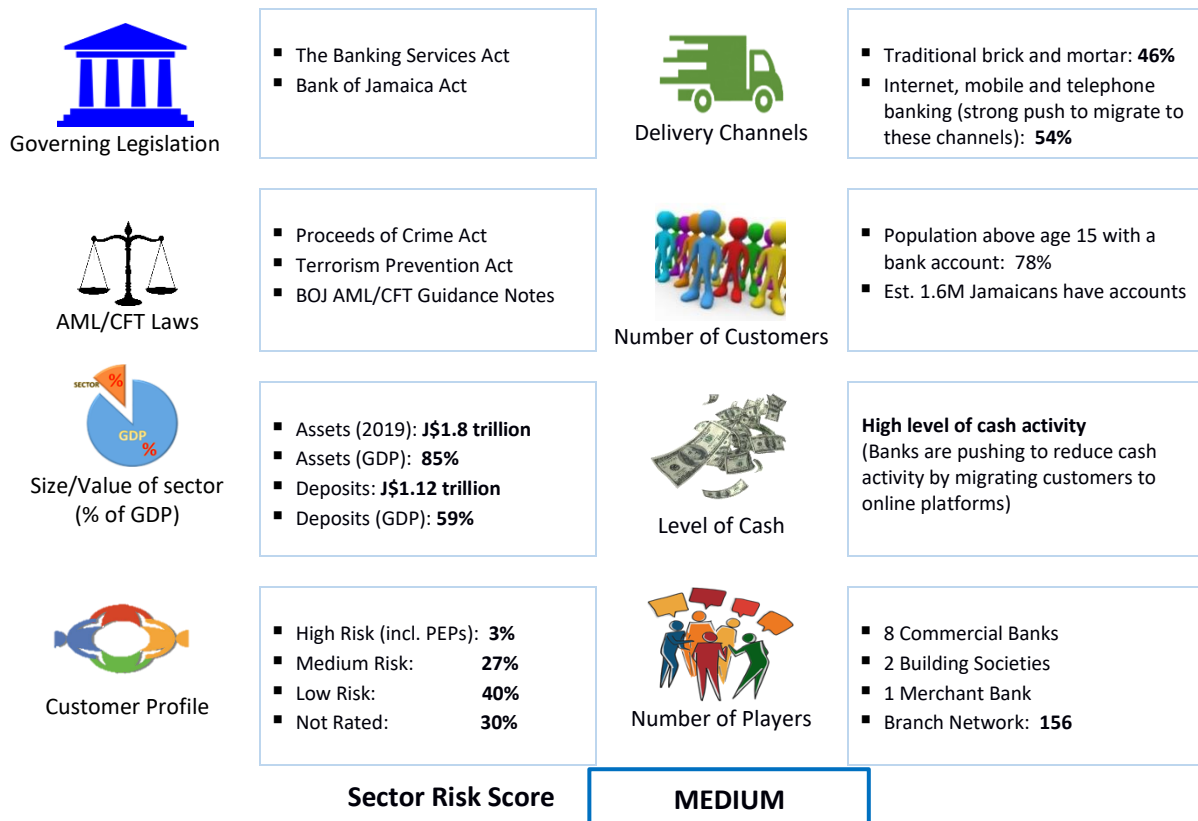
The competent authority for the DTI sector, the BOJ, is advanced in the implementation of risk-based supervision and has developed a sophisticated risk-based offsite monitoring tool. There are, however, concerns regarding the low level of staffing in the AML/CFT department which has resulted in low levels of onsite examinations. The regulator, however, utilized offsite examination tools, such as thematic papers to monitor the risk within the sector and was able to positively influence DTIs' behaviour based on the findings from these thematic papers.

For the most part, DTIs' compliance programmes were assessed as adequate and were evidenced by examination reports and the quality of the STR's submitted. There were however concerns relating to the identification of PEPs due to the lack of a centralized PEP registry or database. This was an issue found across all financial institutions.

The majority of products and services offered by DTIs are distributed through their brick-and-mortar branches located across the island with the products and services offered found to be generic and did not offer any complex features.

Further details on the findings from the assessment of this sector are provided below.

6.3.2 SECTOR AT A GLANCE



6.3.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 mutual evaluation report (MER) noted that the banking sector's AML/CFT framework was more advanced than what obtained in other sectors. It noted that during the 2008 to 2014 period, there were general improvements in the AML/CFT governance frameworks seen in banks and this was directly a result of the BOJ's examination programme.

The MER further noted that the BOJ was in the process of implementing risk-based AML/CFT supervision beginning with the development of a risk assessment tool to assess the inherent risk of the sector using a wide range of information based on international standards and best practices as well as risks that had been identified by local law enforcement authorities.

At the time of the MER, the BOJ's AML/CFT department had conducted two risk-based examinations of DTIs. The assessors indicated that there was a lack of human resources and this staffing deficiency adversely affected the AML/CFT Department's ability to effectively carry out its supervisory mandate. In assessing this sector for the NRA, the findings of the MER were considered and the assessment, therefore, aimed to determine the extent to which the AML/CFT framework had improved.

6.3.4 INHERENT VULNERABILITIES

The deposit-taking sector through its intermediation function plays a crucial role in the development of the economy. At the end of 2019, the deposit-taking subsector consisted of eight commercial banks, two building Societies, and one merchant bank delivering their products and services from a network of 156 branches. The total number of customers served by the sector is estimated at 1.6 million and the asset base of the sector as at end 2019 was over J\$1.8 trillion, which is equivalent to 85 per cent of the country's GDP.

6.3.4.1 DISTRIBUTION CHANNELS

The majority of products and services offered by DTIs are distributed through their brick-and-mortar branches located across the island. There is limited use of agents and where agents are used, the services offered are, in accordance with section 108 of the BSA and the Banking Services (Deposit-Taking Institutions) (Agent Banking) Regulations, 2016. The range of allowable services are limited to deposits, withdrawals, payments of bills, loan repayments, electronic transfer of funds, account balance enquiries, and the collection of know your customer (KYC) and customer due diligence (CDD) documentation on behalf of the DTI. Additionally, agents do not have direct access to a DTI's banking platform. Pursuant to Section 55 and 108 of the Banking Services Act, 2014, the BOJ issued a Standard of Sound Practice on Agent Banking, in 2017, which provides guidance on the statutory requirements that must be in place for DTIs to use agents as a delivery channel.⁷³ Since the introduction of the agent banking framework, only one small DTI has applied and is currently using this delivery channel.

6.3.4.2 MIGRATION TO ONLINE PLATFORMS

DTIs are increasingly migrating routine transactions to online platforms (non-face-to-face) to reduce expenses. This trend has intensified during the COVID 19 pandemic given the need to also facilitate customers' access to their funds whilst complying with the related national measures on social distancing and business operating hours.

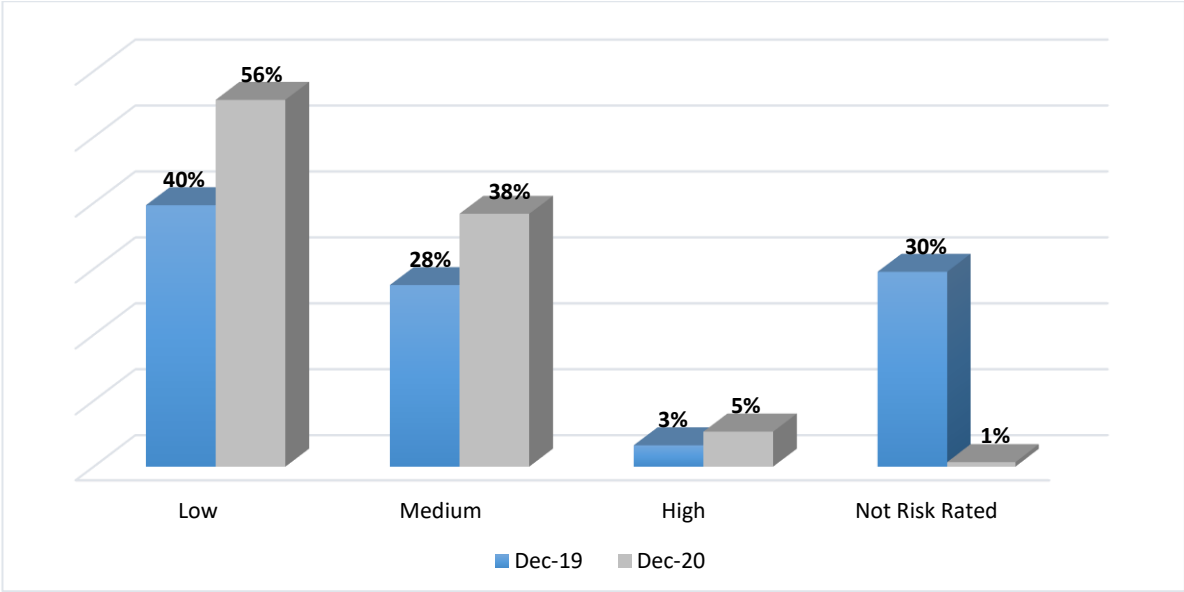
⁷³ Bank of Jamaica *Standard of Sound Practice on Agent Banking* (Bank of Jamaica 2017) https://e2gobqetsqs.exactdn.com/wp-content/uploads/2020/02/Standard_of_Sound_Practice_on_Agent_Banking_issued_-_May_2017.pdf

The thrust to move towards online banking may increase the sector’s exposure to fraud and other operational risks as electronic platforms are more vulnerable to these risks. As seen in Chapter 4, cyber fraud has been an increasing area of concern as the number of incidents has increased each year. The efforts to migrate customers to online channels has, however, been negatively impacted by Jamaica being a largely cash-based society, with high volumes of transactions conducted below the cash threshold of J\$1 million. As detailed in Chapter 4, approximately 65 per cent of employees in Jamaica receive their wages in cash and approximately 80 per cent of all transactions conducted in the economy were performed using cash. Additionally, the informal economy, excluding illegal activities, was estimated to be approximately 50 per cent of GDP over the 2019/2020 fiscal year.

6.3.4.3 CUSTOMER PROFILES

All DTIs have undertaken some risk profiling of their customers and data from all of the banks indicates that as at December 2019, the majority of customers that have been assessed (40 per cent) were rated low risk for ML/TF. In addition, 27 per cent of customers were rated medium risk and three per cent were deemed high risk (which included PEPs). However, 30 per cent of customers were not yet risk-rated by the DTIs as the process of risk rating all customers were still in progress. It should be noted that there were no PEPs included in the pool of customers not yet risk-rated. The 2020 data on customer risk profiling shows notable improvements as 99 per cent of customers across the DTIs were risk rated.

Figure 14: DTI’s Risk Profiling of Customers



6.3.4.4 PRODUCT ASSESSMENT

The following products and services were assessed as part of the NRA and were rated as follows:

Table 30: The NRA Risk Rating of Products/ Services offered by the DTIs

Products/ Services	Risk Rating for ML/TF
Private Banking	Medium
Current Account/ Retail Deposits	Medium
Corporate Deposits	Medium
Wire Transfers (Incoming and Outgoing)	Medium
Online Banking	Medium
Credit Cards	Medium Low
Debit Card & Point-of-Sale	Medium

As seen in table 30 above, all products and services offered by DTIs were assessed as medium-low or medium risk as the products and services offered by the DTIs are quite generic and do not include sophisticated financial products and services. For instance, in developed financial centres, private banking services are usually offered to high net worth customers and include sophisticated financial products and services. However, in the Jamaican context private banking merely represents an elevated customer experience (being able to avoid lines, assigned a personal banker, etc.) as the products offered to these customers are the same as those offered to the wider customer base. Additionally, only three of the 11 DTIs offer this service.

In relation to wire transfers, a thematic study conducted by the competent authority covering April 2018 to March 2019 revealed that approximately 70 per cent of these transactions originated or terminated in developed financial markets with mature AML/CTF frameworks; these countries include the United States, Canada and the United Kingdom. Only 1.9 per cent of wires were conducted with high risk countries such as Haiti, Trinidad and Tobago and Panama.

Jamaica's Fintech Framework

Similar to other jurisdictions, fintech has been identified by several businesses in Jamaica as a tool to accelerate growth in areas such as financial inclusion, development and efficiency. The Covid-19 pandemic has also created increased interest in this area, as banks and other institutions seek to find innovative ways to deliver their products and services. Despite the advantages of fintech, it also poses significant risks to financial stability and integrity as the technology can disrupt existing ways of doing business. Additionally, there are gaps in the regulatory framework for fintech solutions and the regulatory framework is not moving in tandem with the pace at which the sector is evolving.

FinTech Regulatory Sandbox

To better understand fintech products, services and business models and inform the relevant framing of new regulations or amendment of existing regulations, the Bank of Jamaica (BOJ) introduced a *FinTech Regulatory Sandbox*. The sandbox is a controlled environment for the deployment and testing of financial technology in Jamaica. The objectives of the sandbox are to provide a platform to encourage innovations in financial services, promote competition and promote financial inclusion while protecting consumers and mitigating risks associated with digital financial services.

The sandbox is open to entities regulated by the BOJ and the Financial Services Commission (FSC), fintech companies in partnership with a DTI for delivery of payment services or such other financial services and entities invited by BOJ to provide technology solutions.

The sandbox came into effect on 16 March 2020 and the testing period or duration in the sandbox shall not exceed 24 months from the participant's start date unless it can be demonstrated that an extension is necessary to respond to specific issues or risks identified during the initial testing period.

Lessons learnt and regulatory insights gained from the sandbox will aid in the application of laws and regulations applicable to new financial technologies and business models.

New Product Approvals

Prior to the launch of a new payment and/or settlement product, including fintech related, approval must be granted by the BOJ pursuant to Section 3 of the Payment, Clearing and Settlement Act, 2010. Once an application is received, BOJ assesses the risk inherent in the product and determines if the controls that are in place to mitigate the risks are adequate prior to the granting of a non-objection/ approval.

In relation to fintech products and services that are not classified as payment and settlement products, institutions regulated by the FSC and the BOJ must seek approval from their respective regulator prior to the launch of a new product.

Notwithstanding the regulatory framework around the offering of new products and services, there is a need for improved regulatory guidance from the regulators on the type of controls and risk management systems that should be in place prior to the launch of these products and services.

6.3.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

The banking sector's principal act, the Banking Services Act, 2014 (BSA), empowers the competent authority—the BOJ—to put measures in place to understand the risks within the sub-sector. Under the BSA, licensees are required to take measures to properly identify, assess and manage their operating and intergroup relationship risks as well as risks posed by external factors affecting the financial group.⁷⁴ Under the POCA and Terrorism Prevention Act (TPA), banks (and other DTIs under the BSA) are required to establish risk profiles for customers and undertake the requisite due diligence to ensure transactions are consistent with their knowledge of their respective customers' trade, profession, risk profiles and sources of funds.⁷⁵ Developing a risk profile for customers requires an understanding of the nature of the customer including its ownership and control structure as the first point of establishing a customer's profile.

A key feature in understanding and profiling the customer is understanding not only who owns the business (all the way up to the natural ultimate beneficial owner), but also how it is structured (which includes understanding the business model and its operations in all areas and jurisdictions in which those operations reside). This comprehensive profile is the basis for a bank's ongoing monitoring which allows transactions and behaviours that fall outside the expected parameters, to be readily identified. This in

⁷⁴ The Banking Services (Amendment) Act, 2018, section 71 (Ja)

⁷⁵ POC(MLP) Regulations and POC(MLP)(Amendment) Regulations, 2019 regulation 7A (Ja)

TP(Reporting Entities) Regulations and TP(Reporting Entities) (Amendment) Regulations, regulation 6A (Ja)

turn will signal when the customer risk is changing or evolving and will prompt a review as to whether an investigation of whether a transaction is unusual or suspicious should be undertaken and whether a suspicious activity report (SAR) or suspicious transaction report (STR) should be filed. Given the foregoing, it is fair to say that as per the BSA, the POCA and TPA, licensees are required to implement an AML/CFT programmes and policies that are quite robust.

To ensure licensees are aware of their obligations, the BOJ provides guidance to the sector through meetings with the compliance arm of licensees, responding to queries, participating in industry led conferences and importantly, through the issuance of the “BOJ Guidance Notes on the Detection and Prevention of Money Laundering and Terrorist Financing Activities,” which was revised in 2018. The revised guidance note now addresses licensees’ obligations to apply a risk-based approach to their respective AML/CFT/PF programmes. The BOJ also ensures that entities are compliant with POCA and TPA by conducting onsite and offsite reviews of licensees’ AML/CFT frameworks.

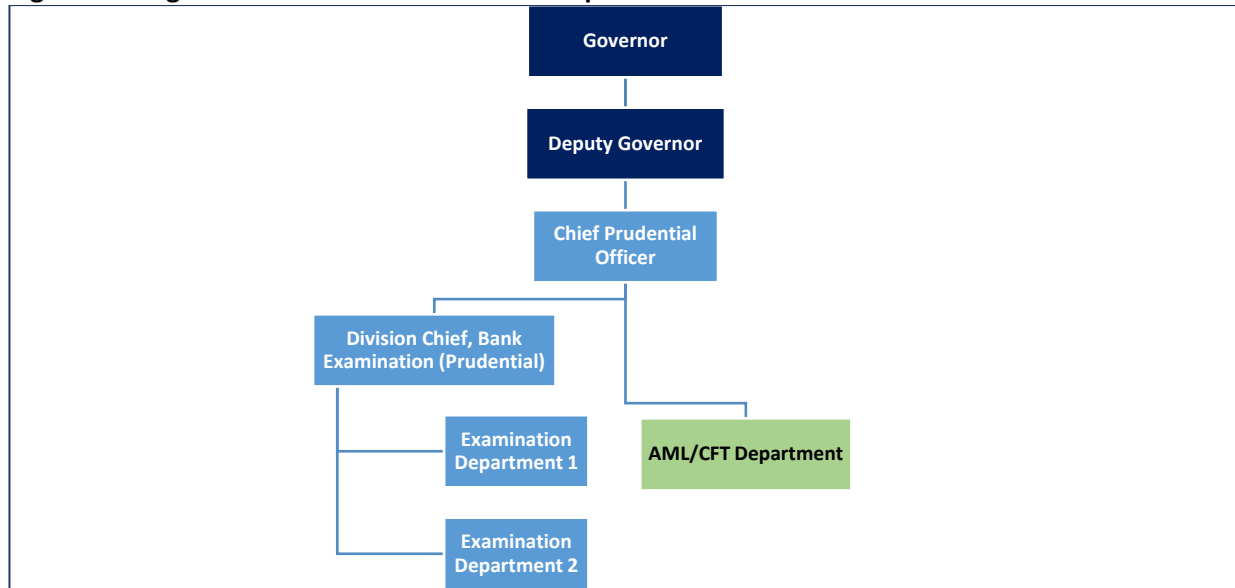
Also embedded in the laws are adequate sanctions for FIs should they fail to comply with the relevant laws and regulations. These sanctions range from warning letters to revocation of licence, monetary fines, or even imprisonment. In 2019, penalties under POCA were strengthened to include stiffer penalties for non-compliance and some offences can now be addressed by payment of a fixed penalty instead of prosecution.

6.3.6 EFFECTIVENESS OF SUPERVISION

As noted in Jamaica’s 2017 MER, the banking sector’s AML/CFT framework was robust and was commensurate with the risk within the sector. The BOJ is the designated competent authority with respect to AML/CFT supervision of the deposit-taking sector and it applies a risk-based approach to its supervisory activities.

AML/CFT supervision is undertaken by the AML/CFT department of the BOJ, which was established in 2015. During the period of review, the department had on average a staff complement of five individuals, with extensive AML/CFT training and experience with responsibility for the monitoring of 11 DTIs and 25 credit unions. The department is headed by a director who reports directly to the Chief Prudential Officer (See figure 15 below).

Figure 15: Organizational Chart for BOJ AML Department and Prudential Examination Team



Over the 2016 to 2019 period, the AML/CFT unit conducted onsite examinations of 50 per cent of the banking sector. It should, however, be noted that the use of an offsite assessment tool developed in conjunction with the IMF has facilitated more robust offsite monitoring of the sector. This has served to mitigate against some of the concerns related to the small number of staff in the AML/CFT Unit as well as the modest number of onsite examinations conducted over the period.

As it relates to the AML/CFT Department’s offsite risk assessment tool, information regarding each DTI operation is inputted into the tool on a semi-annual basis and the net risk AML score of each DTI is computed. DTIs are then placed into different risk categories. The parameters for the tool include:

- **Institutional/Structural Factor**
Information regarding DTI size, ownership and group structure and culture of compliance.
- **Lines of Business Risk**
This parameter considers information regarding the entity’s products and services. That is deposits, loans, foreign exchange transactions, and wire transfers. It also considers the level of risk emanating from transactions based on customer type, distribution channel and geographic location.
- **Internal Control Environment**
This section is based on qualitative information relating to the strength of the entity’s AML/CFT internal control framework. This includes the adequacy of the entity’s corporate governance and risk assessment systems; compliance function; policies, procedures and practices; identification, analysis, and reporting systems; independent review (internal and external audits); and AML/CFT training programs.

The inherent risk is calculated by aggregating the risk emanating from the institutional/structural factors and business line activities. The strength of the internal control environment is then added to arrive at the resultant or net risk. In addition to risk rating entities, the tool also serves to highlight areas of focus and is used in pre-examination planning. Entities that are rated as high risk are examined more

frequently. However, due to limited resources, the unit has not been able to increase the frequency of examination of high-risk entities. In an effort to supplement the onsite and offsite examinations, the BOJ's AML/CFT Department also conducted thematic studies to better understand key risks facing the sector. These thematic studies were focused on wire transfers as well as the effectiveness of sanctions screening.

6.3.6.1 IMPACT OF BOJ'S SUPERVISION

The BOJ has not sanctioned any of its licensees for non-compliance with AML/CFT requirements. Instead, reliance is placed on moral suasion in the form of examination reports and communication (verbal and written) with licensees to correct deficiencies. This approach has worked as deficiencies are usually remediated within the time specified in offsite monitoring reports and onsite examination findings reports issued to the inspected institution. In addition to moral suasion (warning letters and meetings), the BOJ ladder of enforcement includes administrative and criminal sanctions, voluntary board undertaking and revocation of licence.

Case Example: Wire Transfers

In 2019, the Bank of Jamaica conducted a thematic study on the deposit-taking institutions' wire transfers network in an effort to deepen banking sector knowledge in relation to the level of inherent ML/TF risks derived from wire transfers. The study examined the ways in which the deposit-taking institution (DTI) systems may be exposed to ML/TF risks emanating from other jurisdictions throughout the April 2018 to March 2019 fiscal year (FY2018/29), given the high degree of openness of the economy.

Wire Transfers Network of Jamaica FY2018/19

Figure: Showing the Concentration of Transactions (by Frequency) Across Originating Countries [April 2018 - March 2019]

Originating Country	Percentage of Transactions
US	38.5%
GB	17.9%
CA	6.9%
All Other Countries	36.7%

Findings from the study emphasized persistently strong relations between Jamaica and established financial markets, namely the United States, Great Britain and Canada, as direct senders and/or facilitators of flows to the island (see figure above). Throughout the FY2018/19, these three countries collectively accounted for 66.3 per cent of total transactions, valued at US\$3.6B. The integration of the corruption perception index in the analysis as an indicator of ML/TF risks allowed for the identification of notable flows from perceived high-risk jurisdictions including Haiti, Trinidad & Tobago, and to a lesser extent Panama and the Dominican Republic. These transactions totalled US\$0.14B over 489 transactions and represented approximately 1.9 per cent of total number of incoming flows. In addition to the relatively low incidences of these transactions, it was also noted that these transactions were channelled primarily through the United States and Great Britain over the period, tempering the level of ML/TF exposures to Jamaica.

The study also highlighted notable counterparty risks in the deposit-taking institutions due to limited correspondent banking relations among a few domestic banks. It was found that two banks reflected larger exposures to de-risking owing to their heavy reliance on a few foreign banks in the US for correspondent banking services. This was however tempered for the other banks as a result of their multiple correspondent banking relationships.

Results from the thematic study prompted a review of the internal control environment among deposit-taking institutions in relation to cross-border flows and by extension, the review of the sanction screening mechanisms employed. These reviews were conducted via a sanction screening thematic study which led to remedial actions across vulnerable institutions. Follow up reviews were also carried out by the BOJ six months after the conclusion of the thematic paper.

This case demonstrates that the BOJ employs several tools including thematic papers that allow for a greater understanding of key elements of the DTI system. These papers also highlight areas to be addressed by the DTIs and have the potential to identify any emerging trends in the sector.

6.3.7 COMPLIANCE FRAMEWORK

On-site examinations included a review of the compliance functions of DTIs. In general, these onsite examinations indicated that the compliance functions in the subsector were largely adequate. More specifically, the onsite examinations revealed the following:

- Banks had appointed a sufficiently competent Nominated Officer at a senior management level with appropriate authority and independence;
- The existence of AML/CFT policies and procedures that aim to mitigate the DTI's ML/TF risk exposure and PF exposure;
- The adoption of a risk-based methodology to AML/CFT in DTIs;
- The implementation of systems for the detection, monitoring, and reporting of suspicious and threshold transactions;
- Training of employees to ensure they are aware of their AML/CFT obligations
- Independent examination/review of the AML/CFT compliance programmes

Despite the robustness of the AML/CFT framework employed by DTIs relative to other sectors, examination findings for some licensees revealed that client profiles were not being updated frequently which has impacted their ability to adequately identify unusual and reportable transactions. Also, similar to other sectors, PEP screening across the industry is not as robust as required as there is no centralized database of domestic PEPs against which to screen clients.

The BOJ commissioned a thematic review in 2020 on the adequacy of DTIs' sanction screening programmes, specifically in relation to transaction sanction screening, customer sanction screening, and PEP screening. The study was conducted by AML Analytics via a live evaluation of DTIs' screening over a period of 48 hours. The tests were conducted using two main techniques, control basis, and manipulated basis.⁷⁶ The results show deficiencies in the sanction screening framework for some DTIs.

The findings from the thematic review also revealed that all DTIs have a screening programme that enables customer on-boarding and transaction screening; 90 per cent (or 9 out of 10) of DTI screening solutions are automated and can be calibrated to identify low-quality matches (aliases and miss-spelling);

⁷⁶ "Control basis" means names as they appear on the relevant sanctions list

"Manipulated basis" means names that have been slightly adjusted using algorithmic manipulation.

and 90 per cent of entities screen against up-to-date and/or comprehensive sanctions lists. Only one small entity used a manual screening process. The results of the study were presented to all DTIs and they were asked to conduct reviews to identify the causes for the deficiencies. As a result of the study, most DTIs contacted their respective AML screening tool service providers and conducted root-cause analyses. In most instances, DTIs opted to update their AML-screening solutions either by upgrading to a later model of their current screening solution or to acquire and implement a new screening solution. The DTI that conducted screening on a manual basis indicated an intention to automate the screening process in short order.

Level of Market Pressure to Meet AML Standards

Correspondent banking relationships connect local banks with the international financial system and are essential to making cross-border payments, particularly for international trade, remittances and foreign direct investments. These variables are key components to the sustainability of economic growth, especially among countries within the Caribbean, evidenced by the significant portion of GDP that the sector represents. Resultantly, the region, is placed in a particularly vulnerable position to due to de-risking/de-banking practices. In a 2017 Inter-American Development Bank (IDB) study, Jamaica and Belize reported that over 75 per cent of their commercial banking sectors were impacted by correspondent banking terminations.

There are generally three direct drivers of de-banking practices: (i) a fear of reputational loss (ii) rising compliance costs and (iii) rising fines and penalties. Reputational loss refers to the loss associated with negative publicity. Concerns surrounding these drivers can be the direct influential factors on a correspondent bank to end a specific relationship with a deposit-taking institution. Throughout the 2017 to 2019 period, domestic banks experienced a 12.5 per cent reduction in correspondent banking relationships through termination. Reasons cited for termination included reputational risk issues and change in risk appetite. Given the de-risking/de-banking actions experienced by Jamaican banks within the past three years, critical criteria to establishing and maintaining these relationships, are Anti-Money Laundering and know-your-customer compliance.

Given the significant share of transactions facilitated through correspondent banks (approximately 67 per cent) during the FY2018/2019, DTIs have spent significant sums of money hiring staff for their Compliance Units, upgrading or acquiring technological solutions to conduct transaction monitoring and client screening to consistently meet international standards in AML/CFT and to pass muster with their correspondent bankers on whom they rely. Local DTIs have also stopped offering some products/ services to some customers that are deemed high risk (e.g. cambios are prohibited from depositing foreign currency cash to their accounts).

DTIs are not only required to budget for AML/CFT compliance expenses, but they must also abide by restrictions imposed by correspondent banks. In a DTI survey conducted, banks indicated that the actions taken or consideration given to de-bank/un-bank higher-risked unlicensed and unregulated non-bank financial institutions, such as remittance companies, cambios, marijuana-related businesses and gaming operators were driven by directives from their correspondent bankers.

6.3.8 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

Entities in the DTI sector have a more robust system in place when compared to other sectors for the monitoring, detection, and reporting of suspicious transactions (save for the detection of domestic PEPs). Suspicious monitoring systems are integrated into the core banking systems of most DTIs, which facilitates transaction monitoring. Ninety percent of core banking systems facilitated automated

transaction monitoring, while the remaining 10 per cent (representing one small bank) utilized manual transaction monitoring systems. With the exclusion of STRs received from money services businesses, the banking sector accounted for the largest number of STRs filed over the period under review. Figure 16 below shows that 83 per cent of the STRs were from the deposit-taking sector. This demonstrates the robust nature of suspicious activity reporting in the sector. Figure 17 shows that since 2017, the majority of STRs filed was done by commercial banks.

Figure 16: Distribution of STRs filed by the financial sector (2016 – 2019)

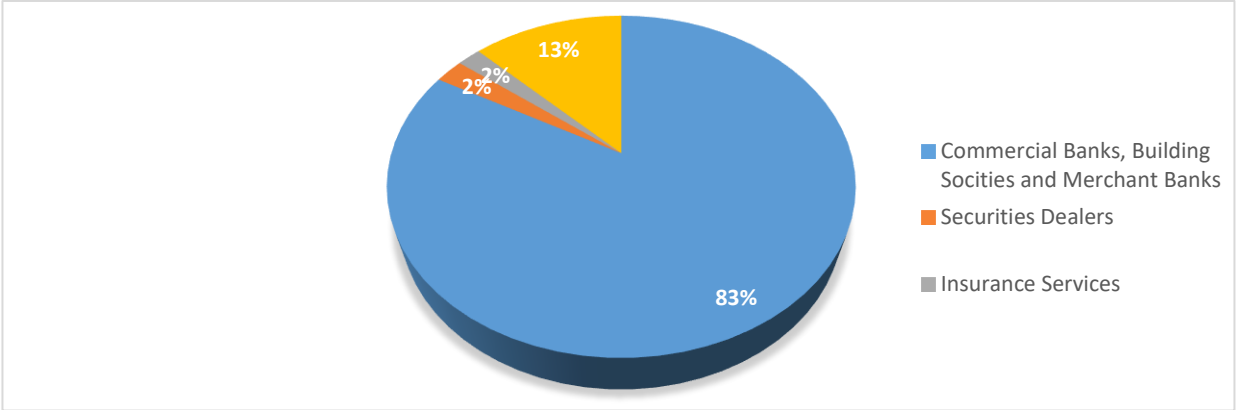
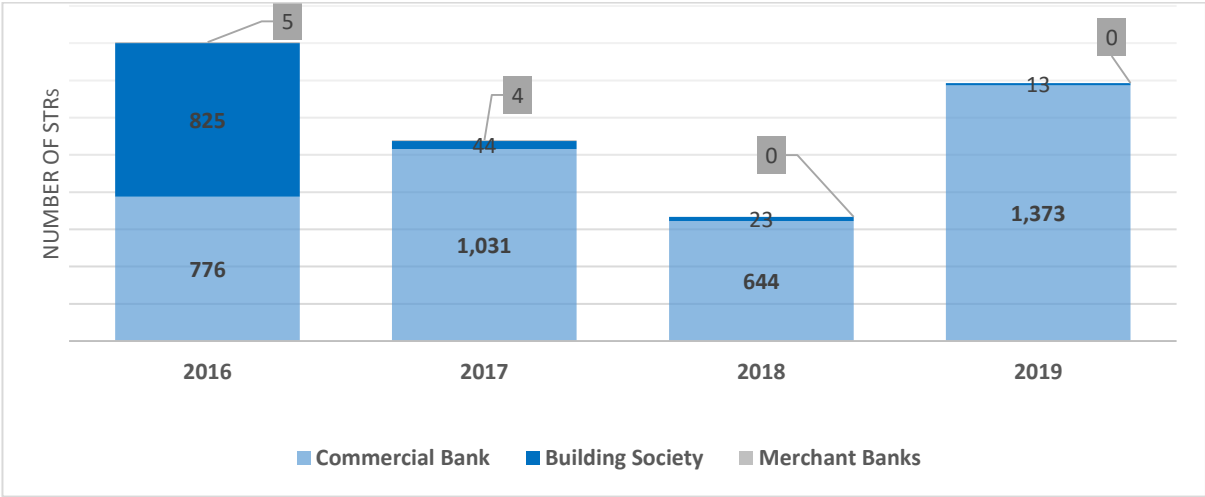


Figure 17: Number of STRs filed by DTIs:



6.3.9 DTI SECTOR RISKS

The deposit-taking overall risk score was **MEDIUM**. This is consistent with the overall assessment of the sector conducted through reviews of the supervisory framework and extensive surveys administered to the licensees in the sector. The AML framework is quite advanced, but the supervision of the sector remains affected by the lack of human resources, which has resulted in a low number of onsite examinations. The sector has, however, in an attempt to mitigate against this concern, developed a sophisticated offsite monitoring tool that is able to analyse significant amounts of quantitative and qualitative data to determine the level of ML risks associated with licensees. In addition, there is good use of thematic papers to gain greater understanding of specific areas of relevance.

Other Financial Institutions in Jamaica

Several other financial institutions operating in Jamaica were not assessed as part of the NRA. The nature and functions of these entities are known and they are mainly geared towards the provision of developmental assistance to individuals and specified sectors. These institutions are operated by the Government of Jamaica and are funded through statutory deductions or grants from multilateral agencies or a mixture of both. These entities usually partner with DTIs to on-lend funds to targeted customers. Based on the operations of these entities, their ML vulnerability and threats were deemed low. These agencies include:

The National Housing Trust (NHT)

The NHT is established to lend money at low-interest rates to first-time homeowners and contributors who wish to build or buy a house or who wish to buy or build on their lot, as well as the provision of home improvement loans to existing homeowners. The NHT also develops low-income home solutions that are sold to eligible contributors. Private housing developers may also apply to the NHT for funding for up to 100 per cent of the construction costs for their development at concessionary interest rates. Before funds are disbursed to private developers, the NHT assess their business plans to ensure that their projects are viable and approved by the Real Estate Board.

The NHT is primarily funded by deductions from employers and the self-employed as well as from employees and voluntary contributors. In relation to employed individuals, contributions are deducted by their employer and paid over to the NHT.

As at end-March 2019, NHT's total asset was reported at J\$291.64 billion (2016: J\$236.97 billion) of which core business of loans receivables accounted for J\$239.09 billion or 82 per cent.

Housing Agency of Jamaica (HAJ)

The HAJ is a wholly-owned, self-funding government entity and falls under the portfolio responsibility of the Ministry of Economic Growth and Job Creation. The HAJ's main activities include property development, the construction, and sale of housing solutions for low to middle-income earners and the regularization of tenure on land through titling services.

Jamaica Mortgage Bank (JMB)

The Jamaica Mortgage Bank (JMB) was established to finance affordable housing. The JMB mobilizes financial resources for on-lending to private and public sector developers and financial institutions, developing an active secondary mortgage market and providing mortgage indemnity insurance.

The JMB's current operations fall into the following categories:

- **Primary Market:** The granting of short-term financing for construction and infrastructure development.
- **Secondary Market:** The buying of mortgages and securitizing into mortgage-backed securities (MBS) for sale on the capital markets.
- **Mortgage Insurance:** The insuring of residential and commercial mortgage loans.
- **Diaspora Home Building Service:** The provision of Project Management services to persons from the diaspora desirous of building a home in Jamaica.
- **Technical Support Service:** The provision of Project Management assurance for Financial Institutions lending to Developers for Housing or Commercial Construction

As at end-March 2019, the asset base of the JMB was J\$2.41 billion (2016: J\$2.63 billion), of which loans accounted for J\$1.66 billion or 69 per cent.

Development Bank of Jamaica Limited (DBJ)

The DBJ is a wholly-owned Government institution and its only shareholder is the Accountant-General. The DBJ provides funding and technical assistance to large projects and micro, small and medium-sized enterprises (MSME).

The DBJ provides development loans through partner institutions, direct lending through co-financing with other financial institutions; and management and privatization of national assets and investments. It manages its risk by on-lending funds to deposit-taking institutions and require these institutions to conduct risk assessments before the disbursement of loan proceeds.

The operations of the DBJ is funded by the GOJ and through grants from multilateral agencies.

The DBJ's total assets stood at J\$31.93 billion (2016: J\$27.12 billion) at the end of the 2018 financial year, of which loans accounted for J\$19.42 billion or 60 per cent.

The National Export-Import Bank of Jamaica (EXIM Bank)

The National Export-Import Bank of Jamaica (EXIM Bank) is a trade financing institution. The EXIM Bank plays an important role in national development by offering a range of financing instruments to the country's productive sector.

The mandate of the EXIM Bank is to assist business ventures to become viable and competitive in international markets. Specific focus is placed on small and medium-sized entities (SMEs) entities involved in non-traditional exports, such as Tourism, Manufacturing, Agro-processing, Mining, the Service Industry, Information Communication and Technology and the Creative Industries.

The bank also recognizes that linkage service companies that are connected to exporting and manufacturing entities play a vital role in the growth of these sectors, so they are also included in the bank's group of qualified borrowers. These include farmers who provide fresh produce to agro-processors; professionals such as Haulage Contractors, Mechanical and Electrical Engineers who support the bauxite industry; Tourism linkage companies such as operators of attractions, in-bond merchants and persons providing ground transportation services, as well as companies in the service industry.

Prior to loan disbursements, the EXIM Bank assesses potential beneficiaries' business plans to ensure that they fall in the bank's group of qualified borrowers.

The EXIM Bank is funded by the GOJ and multilateral agencies through grant funding.

Exim Bank's total assets stood at J\$7.96 billion (2016: J\$8.16 billion) at the end of the 2019 financial year. Of which loans accounted for J\$2.80 billion or 35 per cent.

DEVELOPMENTS SINCE JAMAICA'S 2017 MER

Since the 2017 MER, the following developments have taken place:

- The BOJ's AML/CFT unit continues to strengthen its risk-based supervisory framework. The unit has finalised its risk rating tool with assistance from the International Monetary Fund's (IMF) AML/CFT experts. Since the introduction of the risk rating tool, all banks have been risk rated and categorised as High, Above Average, Moderate or Low Risk.
- The competent authority has increased the use of thematic studies in its supervisory framework to strengthen its overall knowledge of the sector. Particular focus is placed on high-risk areas. Thematic papers undertaken were:
 - Fraud (2019)

- Wire transfers (2019)
- Sanction and PEP screening (2020)
- In 2019, the BOJ gazetted its revised Guidance Notes on Money Laundering and Terrorism Financing Prevention. The document provides enhanced guidance to its licensees in implementing a risk-based compliance framework.

TYPOLOGIES IN THE DTI SECTOR

Whenever a DTI identifies a customer whose activity or behaviour resembles any known method of money laundering, it is expected that these suspicious transactions will be referred to the nominated officer for further investigation to determine whether a suspicious transaction report is to be filed. The following are some observed methods used by criminals to launder money within Jamaica's DTI sector.

1. Prospective customers attempting to open accounts with fraudulent documents to disguise their true identity, source of funding or purpose for account.
2. Customers establish accounts that are meant for use by third parties (who are sometimes unknown to the customer). This is commonly referred to as "account renting", as the account holder keeps a portion of the funds that pass through the account as means of payment for the use of the account.
3. Customers making frequent cash deposits each below the cash threshold reporting requirement, but cumulatively, well above the threshold. Commonly referred to as structuring or smurfing.
4. Customers taking loans and repaying those loans well in advance of the repayment date, and are unable to provide a reasonable explanation for the early repayment. Their known employment/income details do not support the transaction.
5. Customers making large deposits of cash that cannot be supported by their income or economic activity.
6. Clients making frequent deposits of foreign currency cash but are not operating a business or receiving income from a source that generates foreign currency.

6.4 SECURITIES SECTOR

6.4.1 SECTOR OVERVIEW

The supervision of the securities sector is conducted by the Financial Services Commission (FSC), the designated competent authority, and is appropriately empowered by statute to conduct supervision of the sector. In fulfilment of its responsibility, the FSC created a specialist AML/CFT Department in 2018. Despite the creation of this department and the adoption of a risk-based supervisory framework, the number of onsite examinations being conducted by the FSC was assessed as low. This was attributed to staffing concerns, as the AML/CFT Department is staffed with only four officers and conducts examinations for both the securities sector and the life insurance sector.

The assessment found that the products/services offered by securities dealers are not very complex or diversified and consist mainly of repurchase agreements and collective investment schemes. Additionally, the majority of customers served by the sector were rated as having low or moderate risk (85.2 per cent) and the use of cash within the sector was low. Further details on the assessment of this sector are provided below.

6.4.2 SECTOR AT A GLANCE



6.4.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Findings from Jamaica's 2017 MER noted the following:

- Securities companies, at the time of MER review, indicated challenges with the identification of family members and close associates of PEPs and in some cases, the recognition of newly formed

PEPs among the existing client base. This excluded instances of subsequent reviews of existing relationships and/or self-declaration by the client.

- The underreporting and defensive reporting of STRs were raised by assessors, given the asset size of the securities sector. It was noted that filings were sometimes influenced by their intermediary relationship with banks as well as the existence of overlap in filing (where persons with multiple licenses file as one entity and not separately based on activity). Further investigations and subsequent corrective measures to enhance STR reporting were recommended.
- In relation to the competent authority of the sector, the FSC, the MER highlighted the need for a deeper understanding of sector-specific ML/TF risks in addition to threats and vulnerabilities facing the securities sector through the use of AML/CFT thematic reviews. The report also points to the inability of the Commission’s licensing regime in identifying the ultimate beneficial owner(s) of securities companies, owing partly to the absence of this requirement in the Securities Act.
- The Securities Sector, based on its asset size, appears to be underreporting STRs and also appears to be engaged in defensive reporting.

6.4.4 INHERENT VULNERABILITIES

The asset base for the securities dealers sector totalled J\$650.6 billion as at December 2019. The Funds Under Management (FUM) portfolio for the 39 licensees in the market totalled J\$1,826.0 billion as at December 2019. Of the 39 securities licensees, three are insurance companies with a FUM portfolio of J\$416.0 million.

For the risk assessment of securities dealerships, the FUM portfolios being managed by insurance companies were not included as these entities are trading on their ‘own account’ in accordance to their Asset-Liability Matching “ALM” policy (i.e. approved by the Appointed Actuary and monitored by the FSC). The insurance companies have no facilities to offer retail securities products to individuals and perform their investment activities to meet reserve requirements for future insurance liabilities as they fall due. The risk assessment is concentrated on core securities dealers to prevent the analysis from being skewed by the FUM of the insurance companies. The AML/CFT risk for Life Insurance Companies will be assessed later in this chapter.

As seen in table 31 below, of the 36 dealers, the top five largest players in terms of FUM accounted for J\$974 billion or 69 per cent of total FUM and all five dealers managed funds in excess of J\$100.00 billion. The remaining 31 operators accounted for 31 per cent or J\$435.0 billion of FUM.

Table 31: Classification of Funds Under Management in the Securities Sector (December 2019):

Classification	No. of Institutions	Total Amount (billion)
FUM over J\$100.00 billion	5	J\$974 .0 billion
FUM over J\$50.00 billion	3	J\$185 .0 billion
FUM over J\$10.00 billion	9	J\$225.0 billion
FUM under J\$10.00 billion	19	J\$26.0 billion
Total	36	J\$1,410.0

Large securities dealers have more developed compliance frameworks relative to small dealers. These large dealers’ compliance frameworks includes a nominated officer independent of line duties and also

independent external AML/CFT audits. The compliance framework for the sector will also be expounded upon in further detail later in this chapter.

6.4.4.1 RISK PROFILE OF ENTITIES

The FSC has risk-rated all its licensees using its offsite risk rating tool. Entities are put into categories of low, moderate, above average or high risk. Table 32 shows that 28 of 36 securities dealers, which accounts for 85 per cent of the market, were categorized as having either low or moderate risk profiles.

Table 32: FSC’s Risk Profiling of Licensees in the Securities Sector

Categorization of Risk Profiles			
Category	Number of SD	Funds Under Management	Share of Market
High	1	\$106.0 billion	7.60%
Above Average	7	\$108.0 billion	7.60%
Moderate	7	\$932.0 billion	66.10%
Low	21	\$264.0 billion	18.70%
TOTAL	36	J\$1,410.0	100%

6.4.4.2 COMPLEXITY AND DIVERSITY OF THE PORTFOLIO OF THE SECURITIES SECTOR

The portfolios of securities dealers are not very complex or diversified. The main products offered by securities dealers include repurchase agreements (Repos), collective investment schemes (CIS), real estate, stocks, bonds and structured products. The two key products offered by securities dealers are Repos and CIS. Assets backing repos are generally Government of Jamaica instruments, BOJ instruments and approved corporate bonds. Collective investment schemes invest in the main products offered in the securities market as well as products offered in the international markets. The value of the repo portfolio amounted to J\$418.2 billion as at December 2019, while the value of the CIS portfolio was J\$386.9 billion.

6.4.4.3 LEVEL OF CASH ACTIVITY

Securities dealers are not designated as permitted entities under section 101A of the POCA. As such, they are prohibited from conducting cash transactions in excess of JS1 million dollars or its equivalent in any other currency. However, there is no regulation prohibiting securities dealers from conducting cash transactions that are less than J\$1 million. Notwithstanding this, several dealers have decided to prohibit cash transactions and instead require their clients to deposit funds into their designated bank account. Seventy per cent of securities dealers in response to the FSC’s annual questionnaire (2019) indicated that they did not conduct cash transactions. Given the restriction on cash use above J\$1.0 million and the decision made by several players not to accept cash, there is limited use of cash in the sector.

6.4.4.4 CUSTOMER BASE AND RISK PROFILING

As at end 2019, the total number of customers in the sector was 644,251. The client base consists of retail clients, high-net-worth individuals and institutional investors such as corporate entities and pension funds. Pension funds (J\$508.2 billion) and other institutional investors who are also banked by deposit-taking entities accounted for a significant amount of FUM. Institutional investors consist of government agencies and institutions that fall within a regulatory framework. Generally, there are six types of institutional investors: endowment funds, commercial banks, mutual funds, hedge funds, pension funds, and insurance companies.

Entities have started to conduct risk profiling of their customers, however, this process is ongoing as the risk rating for 13.1 per cent (84,488) of the sector’s customer base was not risk-rated as at end 2019. Table 33 below shows that the majority of customers (79.6 per cent) were rated as having low risk and only 1.6 per cent were rated as high risk.

Table 33: Licensees Risk Rating of their Customers

Category	No of Customers	Percentage
High	10,107	1.6%
PEPs	1,053	0.2%
Above Average	97	0.0%
Moderate	35,960	5.6%
Low	512,546	79.6%
Not Rated	84,488	13.1%
Total	644,251	100.0%

6.4.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

The securities sector is governed by the Securities Act as well as the Financial Services Commission Act (FSC Act) and the Proceeds of Crime Act (POCA). The Securities Act seeks to formalize the sector through the standardization of requirements relating to licensing, conduct, administration and enforcement of companies supervised by the FSC, which includes, the stock market, securities business, investment schemes, and compensation funds. In 2007, the FSC was designated as the Competent Authority by the Minister of Finance, in accordance with section 91 (g) of POCA, to provide AML supervision and regulation for dealers and investment advisers under the Securities Act as well as CFT measures in 2015.

The FSC is empowered, by the FSC Act, to supervise and regulate prescribed financial institutions and to promote the adoption of procedures designed to control and manage risk, pursuant to section 1 of the Act. This is facilitated through annual on-site and off-site examinations of licensees, aimed at ensuring compliance with AML/CFT standards. The FSC also provides AML/CFT guidance to its licensees through the issuance of its guidance notes, which are updated periodically.

In 2019, the FSC updated its guidance notes to include requirements for licensees to adopt a risk-based approach to their respective AML/CFT framework involving the development of customer risk profiles, the de minimis amount and a heightened focus on PEPs. Of note, in the event of noncompliance, remedial actions can be taken in the form of letters, monetary fines, imprisonment or revocation of licenses, against a licensee.

6.4.6 EFFECTIVENESS OF SUPERVISION

Supervisory activities throughout the review period were guided by the FSC’s “AML/CFT Department’s Policies and Procedures Manual”, the Securities (Conduct of Business) Regulations, as well as the industry’s Guidelines for Anti-money Laundering and Counter-Financing of Terrorism. These legal provisions include the conduct of on-site and off-site AML/CFT audits, examination cycles as well as other monitoring tools. Additionally, as recommended in the 2017 MER, the FSC made efforts to deepen its knowledge of the securities sector through the implementation of a risk-based approach to supervision (evidenced in the development of risk profiles of licensees), the conduct of general risk analysis and a recent thematic study geared at assessing securities dealer’s compliance with STR obligations.

In 2018, the FSC established an AML/CFT Department that was tasked with supervising securities and insurance companies that are assessed as having or above-average risk. Securities companies assessed

as having low or moderate ML/TF risk are monitored by the Securities Department. This division of labour can be problematic and the preferred approach would be for all AML/CFT supervision to be conducted by the specialized AML/CFT Department. This would enable the FSC to better monitor risks in the sector as they evolve. The AML/CFT Department consists of four staff members: one Chief Compliance Officer; one AML Surveillance Analyst; one AML Examiner; and one Data Coordinator. Given the under-resourced nature of the AML/CFT Department to supervise approximately 88 licensees, employees assigned to the Securities Division, Investigation Division and Enforcement Division are often included in AML/CFT supervisory activities in an effort to bridge the resourcing gap. The combined resources across all departments total 11 members. The number of staff in the AML/CFT department was deemed inadequate to supervise the number of licensees as evidenced by the low number of examinations conducted during the review period.

6.4.6.1 RISK-BASED SUPERVISION

In 2018, the FSC adapted a risk-based approach to AML/CFT supervision consisting of on-site and off-site components, conducted through scheduled cycles and periodic spot checks. The genesis of this supervisory approach was marked by the development of licensee-specific risk profiles through the collation of findings from annual self-assessment questionnaires, on-site examinations and external sources. Thereafter weighted scores were assigned and ranked between low risk and high risk using the FSC’s proprietary offsite monitoring tool (the tool will be explained later in this chapter). Table 34 shows that 28 of the 36 securities dealers, which accounts for 85 per cent of the market, were categorized as having either low or moderate risk profiles.

Table 34: FSC’s Categorization of Securities Dealers Risk Profile December 2019

Categorization of Risk Profiles			
Category	Number of SD	Funds Under Management (J\$ Billion)	Share of Market
High	1	\$106.00	7.60%
Above Average	7	\$8.00	7.60%
Moderate	7	\$932.0	66.10%
Low	21	\$264.00	18.70%
TOTAL	36	\$1,410.00	100%

These risk profiles served as a guide to the frequency of on-site examinations [*Low Risk – 5 years, Moderate Risk – 4 years, Above Average Risk – 3 years, High Risk – 2 years*] and are updated on an annual basis. Of note, periodic spot checks are also conducted in the event that the FSC has received adverse information from parties such as the FID and law enforcement agencies or follow-up audits.

The risk assessment tool

FSC’s proprietary risk assessment tool relies on a combination of information to determine an entity’s risk profile. Sources of information include the following:

- onsite inspections;
- responses from questionnaires;
- interviews; and
- adverse information from another Competent Authority, the Designated Authority or law enforcement

Onsite examinations are the largest determinant of a licensee’s risk profile. However, in the absence of onsite examinations and for the purpose of periodic updates, the FSC relies on the licensees’ responses

to AML/CFT self-assessment questionnaires that are administered via an online platform. The platform has built-in parameters against which responses are weighted and an overall score is assigned. The questionnaire includes topics related to:

- i. **Licensee’s business line** activities/size and structure, including the size of FUM; asset base; ownership structure; customer base; the number of branches and geographic location.
- ii. **The strength of licensees’ AML/CFT framework**, including AML/CFT policies and procedures, board oversight, the nominated officer; customer due diligence and enhanced due diligence; detection, monitoring and reporting; independent reviews; the compliance function; know your employee; and employee AML/CFT awareness (Training).

The risk rating tool consists of two main sections, an impact assessment section and a likelihood assessment section. The section on impact focuses on business factors while the likelihood assessment looks at the strength of the AML/CFT framework. And the overall risk rating is determined by assessing the interaction between the inherent risks emanating from the business activity and the controls contained in the entity’s AML/CFT framework.

As mentioned earlier in this chapter, the FSC has risk-rated all its licensees using the offsite risk rating tool. Based on the risk assessment conducted on core securities dealers, 21 were rated as low risk, seven as moderate, seven as above average, and one as high risk. Based on the risk assessment and the FSC’s AML/CFT supervisory framework, eight entities (above average and high-risk entities) are supervised by the AML/CFT Department, and the remaining 28 (low and moderate risks) are supervised by the Securities Department.

6.4.6.2 ONSITE AND OFFSITE MONITORING

Throughout the 2016 to 2019 review period, the FSC conducted 93 off-site examinations and 15 on-site examinations (see table 35 below). Notable increases in off-site examinations in 2018 were as a result of the development of an off-site monitoring tool and, to a lesser extent, the establishment of an AML/CFT Department. However, as a result of the under-resourced nature of the AML Department, insufficient on-site examinations were conducted.

Off-site monitoring for the period was aided by the offsite risk assessment tool. As indicated earlier in this chapter, the tool incorporates data gathered primarily from self-assessment questionnaires to establish/update risk profiles of licensees. Other off-site monitoring tools included telephone interviews, reviews of internal/external AML/CFT audit reports and a thematic review of the sector.

Table 35: Off-site and On-site AML Examinations Conducted by FSC in the Securities Sector

Type of Examination	2016	2017	2018	2019	TOTAL
Off-site	5	5	41	42	93
On-site	6	5	3	1	15

6.4.7 COMPLIANCE FRAMEWORK

Examination findings revealed that some licensees had strong AML/CFT policies and procedures that were documented and approved by the licensees’ boards of directors. A common theme among the majority of licensees’ is the requirement to conduct annual ML/TF risk assessments of the company as well as ongoing risk assessments and classifications of customers. The policies also sought to ensure:

- High standards of employee integrity and employee awareness of their AML obligations;
- Verification of customer identity and proof of address;
- Implementation of systems for detection, monitoring and reporting of suspicious transactions; and
- Independent reviews of the effectiveness of their AML/CFT frameworks

Despite having comprehensive AML/CFT policies, examination findings highlighted inadequacies in the implementation of these policies among a few institutions; some areas of the policies were not implemented or only partially implemented. The following deficiencies in the AML/CFT framework of licensees were identified over the period:

- Inadequate or improper risk classification of high-risk customers
- Inadequate record-keeping practices
- Weak transaction monitoring practices
- Failure to appoint a competent Nominated Officer at a senior management level who reports directly to the board.

The deficiencies were not pervasive across the industry as most institutions demonstrated AML/CFT measures that were commensurate with their ML/TF risk exposures. The analysis of the sector also revealed that the size and structure of security dealerships also affected their ability to implement some AML/CFT measures. A large portion of security dealerships are small in size and thus do not benefit from economies of scale that would enable them to afford to implement measures such as:

- Automated transaction monitoring and screening systems
- Appointment of a nominated officer that is independent of business line duties
- Digital customer information and transaction record keeping.

In such cases, supervisory forbearance was practised by the FSC, which is in line with a risk-based approach. Larger entities have, however, been implementing more stringent internal controls. It was noted that larger security dealers all have independent nominated officers and automated transaction monitoring and screening solutions. The four largest companies accounted for 47.5 per cent of the fund under management within the sector.

It must be noted that examination findings revealed that the risks identified among securities dealers were not pervasive and were addressed by licensees within the specified time required by the competent authority. Table 36 below identifies the risk found and measures that were taken by securities dealers to address the issues found.

Table 36: Main Risks Identified in the Securities Sector based on Examinations Conducted by the FSC and measures taken to address issues identified

Risks Identified in the Securities Sector	Measures taken by Securities Dealers
Illicit funds being used to purchase securities	Development of appropriate software to enhance transaction monitoring.
Income tax evasion activities being accommodated	Training initiatives
Inability to verify the provenance of the asset	Placement of alerts on accounts
Customers' accounts being used for illicit third-party transactions	Enhanced customer screening procedures
Funds being "passed through" investment accounts	Utilization of international databases such as World Check

Remedial actions utilized by the FSC include letters of directions, warnings, cease/desist, suspension or revocation of licenses and moral suasion. Throughout the 2016 to 2019 period, the FSC issued three letters of direction, six letters of deficiency and two warning letters. These actions were taken to remedy issues surrounding customer identification measures, the appointment of qualified nominated officers and the establishment of a compliance function.

6.4.8 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

The 2017 MER highlighted apparent issues of underreporting of suspicious transactions among institutions in the securities sector. Underreporting in institutions can be linked to deficiencies found in on-site monitoring, namely in transaction monitoring systems employed, AML knowledge of staff and, to an extent, the AML/CFT training programmes. Additionally, findings from the NRA Licensees' Survey revealed the sector's susceptibility to high levels of human error with approximately 53 per cent of respondents having manual transaction monitoring systems while 47 per cent utilized a combination of automated and manual monitoring.

Table 37: Number of STRs filed by the Securities Sector[2016 - 2019]

Year	No. of STRs
2016	55
2017	25
2018	21
2019	32
Grand Total	133

A total of 135 STRs were filed by companies in the securities sector from 2016 to 2019 (see Table 37). The level of reporting by securities firms was low relative to the DTI sector. This observation is corroborated by FSC's examination findings which identified weak systems for the detection, monitoring and reporting of suspicious transactions.

6.4.9 SECURITIES SECTOR RISKS

The securities sector overall risk score was assessed as **MEDIUM**. This score solidifies the fact that while there is a robust AML framework in the sector, there are, however, some deficiencies in staffing at the competent authority and in terms of the compliance frameworks for smaller securities firms.

Developments Since Jamaica's 2017 MER

The following key developments have occurred since the January 2017 MER:

- In 2018, the Financial Services Commission established an AML/CFT Department for the purposes of AML supervision of institutions within the securities and insurance sectors.
- In 2018, the Financial Services Commission adapted a risk-based approach to AML/CFT supervision consisting of on-site and off-site components.

In 2019, the Commission updated its guidance notes which included requirements for licensees to adopt a risk-based approach to their respective AML/CFT framework.

Typologies in the Securities Sector

As a result of more stringent controls introduced by banks, criminals are constantly looking for alternative ways to legitimise their proceeds from crime. Due to the substantial transaction volumes and short execution and settlement deadlines the securities market is seen as an attractive alternative means of money laundering. The following are some observed trends in the abuse of securities dealers to attempt to launder illicit funds.

1. Clients co-mingling of personal funds with funds generated from their business. Clients use personal accounts for the investment of funds derived from cash-intensive business activities (e.g. wholesales).
2. Clients who deposit cash into accounts to be invested at a later time but before any investment is made request their funds, which are normally paid directly to a bank account or a cheque is drawn.
3. Clients whose investments cannot be supported by their income or economic activity.
4. Clients making frequent foreign currency investments but are not operating a business, or receiving income, which generates foreign currency.

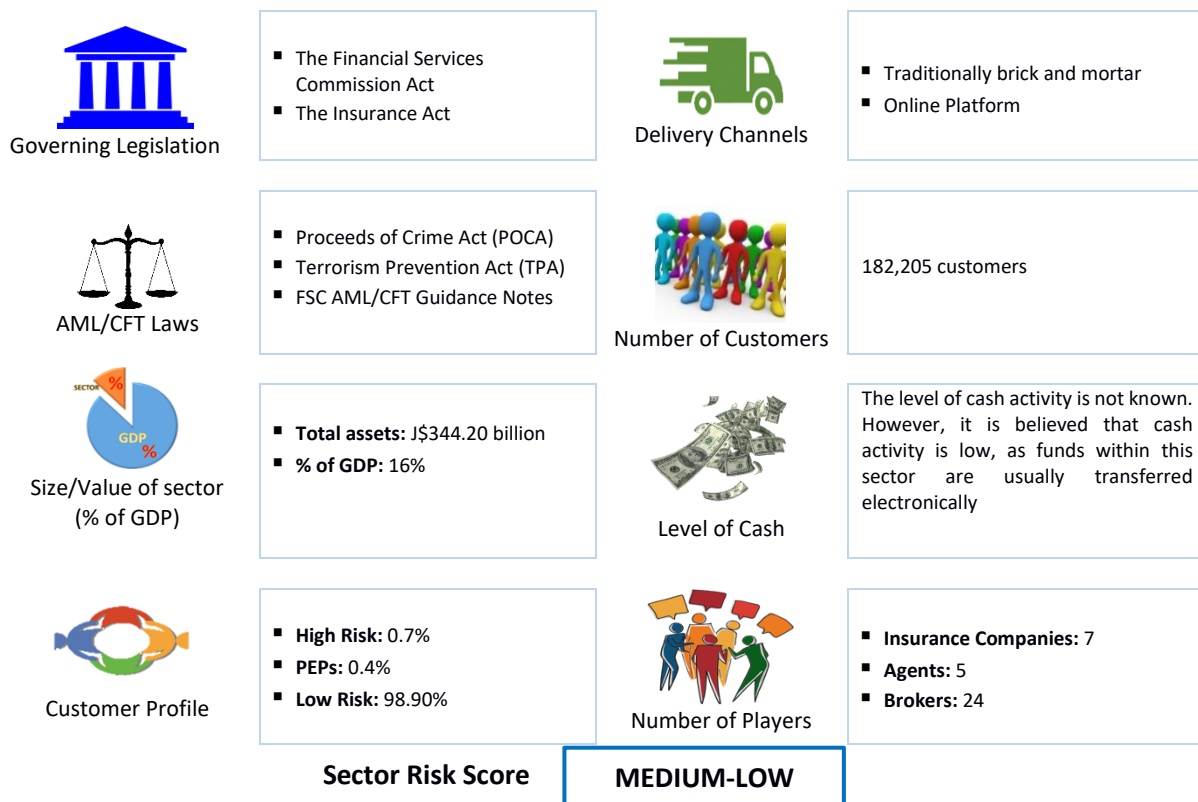
6.5 LIFE INSURANCE SECTOR

6.5.1 SECTOR OVERVIEW

The assessment of the life insurance sector found that the products and services offered are generic and they do not offer complex features. The majority of products are group-based life insurance products, such as retirement schemes that are usually administered by a trustee and the preponderance of customers served by the sector are rated as having a low risk (98.9 per cent). Additionally, the competent authority, the FSC, rated players in the sector as having low (5 entities) and moderate risks (2 entities).

As mentioned in the assessment of the securities sector, the competent authority is appropriately empowered by statute to conduct supervision. And in fulfilment of its responsibility, created a specialist AML/CFT department and adopted a risk-based approach to supervision in 2018. However, due to resource constraints, the number of onsite examinations being conducted was low. The details on the risk assessment of the life insurance sector are outlined below.

6.5.2 SECTOR AT A GLANCE



6.5.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 MER noted the following:

- The regulator of the life insurance sector—the FSC—has a wide enough range of powers to sanction; including administrative fines for breaches of the Insurance Act. However, the only sanctions applied to insurance companies are in the form of letters advising entities of concerns that should be

addressed. It also noted that the FSC revised its guidance to insurance companies to incorporate a risk-based approach to AML/CFT.

- The report also highlight challenges faced by licensees in identifying close associates and family members of PEPs due to the lack of requisite information. The MER also noted that the FSC did not utilize thematic studies as a supervisory tool, which would aid in the competent authority understanding of sector-specific threats and vulnerabilities and the overall ML/TF risks facing the sector.
- The need for FSC’s licensing regime to incorporate the ultimate beneficial owners of insurance companies was also noted as a recommendation. This recommendation appears to be an anomaly as the FSC is empowered under section 11(1)(e) and Section 73 (2) (e) of the Insurance Act to assess during the registration process whether persons managing or controlling an insurance company is a fit and proper person. This requirement extends to individuals and entities owning 10 per cent or more of any licensee.
- The report further recommends that the beneficiary of a life insurance policy should be considered as a relevant risk factor in determining whether enhanced due diligence (EDD) is applicable. Also, the report stated that no evidence was provided to indicate that financial institutions were required to determine whether beneficiaries are PEPs and to conduct the necessary EDD before the pay-out of policy proceeds.

6.5.4 INHERENT VULNERABILITIES

As at end 2019, the total assets for the sector were J\$344.20 billion or 16 per cent of GDP and total gross premium income totalled J\$68.28 billion. Customers are served by seven insurance companies that offer their products through five agents and 24 brokers, mainly through face to face interaction. Only one insurance company currently onboards customers using digital channels.

The FSC categorizes life insurance companies into four risk categories; low, moderate, above average and high. As at end 2019, five of the seven life insurance companies were rated as having low risk. The remaining two companies were rated as above average. In relation to the customer base, the majority of customers, 98.9 per cent (180,214) in the sector were assessed as low risk, while 0.68 per cent (1,239) and 0.44 per cent (799) of life insurance customers were categorized as high risk and PEPs respectively.

The products offered by the sector are individual life insurance products, group life and health and annuities products. These products ranked based on total actuarial liabilities as at December 2019 are outlined in table 38 below. The vulnerabilities in these products are assessed in table 39 below.

Table 38: Life Insurance Product Distribution Based on Actuarial Liabilities (December 2019)

Products/ Services	Actuarial Liabilities (J\$'000)	Distribution (%)
Individual Life	6,089,800.00	7%
Individual Sickness & Health	5,404,807.00	6%
Group Life & Health	7,774,045.00	8%
Individual Annuities	14,466,425.00	16%
Group Annuities	58,627,672.00	63%
Total	92,362,749.00	100%

Life insurance products offered in Jamaica are generic in nature as they do not offer complex features that would make them attractive to money launderers. As indicated in table 39 below, the vulnerability in the majority of the insurance products is low risk. This risk level is also complemented by the fact that these products did not feature in ML investigations and prosecution. Additionally, the quality of the STR's submitted by the sector was adequate (details on STRs will be assessed later in this chapter).

Table 39: Vulnerabilities Assessment of Life Insurance Product/ Services

Products/ Services	Vulnerability Assessment
Individual Life	<ul style="list-style-type: none"> ▪ Individual life insurance products are purchased by individuals usually for themselves or a family member. ▪ Individual life insurance products that allow customers to deposit funds and subsequently withdraw funds are vulnerable to money laundering as it allows launders to withdraw significant sums with little to no change in value. ➤ <i>Risks that may emanate from this product is managed through ongoing monitoring of customer transactions by insurance companies. Additionally, premiums are usually paid via electronic transfers directly from contributors' bank accounts or salary deductions (for individuals). The on-boarding of customers is also done mainly through face-to-face interactions, where CDD is conducted and documentation verified.</i>
Individual Sickness & Health	<ul style="list-style-type: none"> ▪ Individual sickness and health insurance products are purchased by individuals usually for themselves or a family member. ➤ <i>The ML vulnerability in this product is deemed low as premium payments are usually made through salary deductions and proof of sickness/death is usually required before large lump sum payments are made. Additionally, payments are usually disbursed directly to a medical provider. Given the purpose of the products and the controls in place, they are not attractive to launder and therefore have a low ML risk.</i>
Group Life & Health	<ul style="list-style-type: none"> ▪ Group life insurance products are negotiated by companies for the benefit of their employees. ▪ Premium payments are made through electronic transfers and proof of illness or death must be produced before large lump sum payments are made. ▪ <i>Given the structure of these vehicles, they are usually unattractive to money launders and therefore have a low ML risk.</i>
Individual Annuities	<ul style="list-style-type: none"> ▪ Individual annuities allow the insured to make payments over a predetermined period (accumulation phase), after which the beneficiary is guaranteed a fixed stream of income. ➤ <i>Given the structure of this type of annuity, it is vulnerable to money laundering as it could be used by launders to layer funds and allow them to receive income that appears to be legitimate. Notably, there are no reports of this product being used by launders in Jamaica.</i>
Group Annuities	<ul style="list-style-type: none"> ▪ Group annuities are usually sponsored by an employer and provides a stream of income to beneficiaries (employees) when they retire. ▪ Premium payments are usually made by the employer through wire transfers and the product is administered by a trustee. ➤ <i>Given the structure of this product, they are usually unattractive to money launders and therefore have a low ML risk.</i>

6.5.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

In 2007 the FSC was designated, by the Minister of National Security, as the ‘Competent Authority’ to supervise and monitor – for AML purposes – “persons engaging in insurance business or who perform services as an insurance intermediary within the meaning of the Insurance Act (IA).” By this designation, the FSC’s mandate to conduct AML compliance supervision of the relevant insurance industry players is outlined in section 91 A of the POCA.⁷⁷ Additionally, section 6 (2) (f) of the Financial Sector Services Commission Act (FSCA) requires the FSC to implement “measures designed to reduce the possibility of a prescribed financial institution being used for any purpose connected with an offence involving fraud, theft, or money laundering” and section 6(2) (b) (i) of the FSCA requires the FSC to conduct at a minimum annual examination of its regulated entities to ensure compliance with the FSCA and any relevant laws, which includes the POCA.

The FSC is further empowered to impose a wide range of sanctions for failure to comply with relevant legislative requirements such as restricting the scope of business of regulated entities; issuing cease and desist orders; issuing directions; limiting business activities and the removal of any director or manager. Section 6(2) (c) (ii) of the FSCA also empowers the competent authority to suspend, cancel or revoke any license or registration. The FSC also has authority under section 91A (5) of POCA to sanction licensees that fail to comply with its directives as it relates to money laundering.

6.5.6 EFFECTIVENESS OF SUPERVISION

The FSC’s AML/CFT supervisory framework is documented in “The AML/CFT Department’s Policies and Procedures Manual”, which provides a comprehensive approach for conducting AML/CFT supervision. Areas covered in the manual include Standard Operating Procedures (SOP) for conducting AML/CFT audits, details of off-site monitoring tools, and a description of the supervisory cycle, inter alia. It also outlines the elements of a risk-based AML/CFT supervisory framework and the steps that should be taken when conducting these examinations. The overall supervisory framework utilized by the FSC includes the creation of a risk profile for registrants, which informs risk-based audits; cooperation and coordination between external agencies/groups; thematic studies (for example, the study on the general insurance sector); issuance of industry guidance; and the ladder of enforcement. The inclusion of thematic reviews by the FSC, though infrequent, represents a broadening of its supervisory tool as the lack of thematic review was identified as a deficiency in Jamaica’s 2017 MER.

6.5.6.1 RISK-BASED SUPERVISION

Since 2018, the FSC has incorporated a formalized risk-based approach in its AML supervisory framework, which is documented in its internal policy guidance. An integral component of the FSC’s risk-focused supervision is developing a risk profile for each licensee and registrant. These risk profiles are developed through an assessment of AML/CFT controls mainly through self-assessment questionnaires; findings from onsite examinations; and assessing external sources such as the media, law enforcement agencies, and other regulatory authorities. Based on input from these sources, a weighted score is generated which is then ranked using a four-point scoring system, of high, above average, moderate, and low with the risk profiles being reviewed at least annually. Based on the FSC’s risk profiles of licensees, the frequency of

⁷⁷ Section 91 A POCA (Ja)

“Such supervisory powers include carrying out or directing a third party to carry out inspections or verification procedures as may be necessary; issuing directions requiring businesses to employ measures for prevention, detection and reducing the risk of money laundering or terrorist financing; examining and taking copies of documents or information in possession of business and sharing information pertaining to examinations conducted.”

on-site AML audit cycles are determined as follows: low risk – 5 years, moderate risk 4 years, above-average risk -3 years, and high risk - 2 years.

6.5.6.2 ONSITE AND OFFSITE MONITORING

FSC’s supervisory framework for the insurance sector incorporates both onsite and offsite monitoring. Table 40 below indicates that over the period under review, 20 AML on-site audits were conducted, of which six were conducted after the 2018 establishment of the AML/CFT Department. Table 40 also shows that over the review period, 86 off-site AML audits were conducted, however, none were conducted in 2017 and 2019 due to the adoption of risk-based supervision by the Insurance Department (which is responsible for onsite AML examinations and wider prudential examination), and therefore resources were assigned to riskier sectors being supervised by the FSC. Notably, the AML/CFT Department is tasked with supervising both securities and life insurance companies that are assessed as having risks of high or above-average using the offsite monitoring tool.

Life insurance companies assessed as having low or moderate ML/TF risk are monitored by the Insurance Department. As mentioned earlier in this chapter, the assessors are concerned with the division of labour as it relates to AML/CFT supervision and would suggest that the specialist AML/CFT Department be charged with the supervision of the entire life insurance sector. This would enable the FSC to better monitor risks in the sector as they evolve. The AML/CFT Department consists of four staff members: one Chief Compliance Officer, one AML Surveillance Analyst, one AML Examiner and one Data Coordinator. The combined resources across all departments total 11 members. The number of staff in the AML/CFT department was deemed inadequate to supervise the number of licensees as evidenced by the low number of examinations conducted during the review period.

Off-site monitoring includes thematic review; meetings with Nominated Officers and other senior staff; telephone interviews; reviews of internal and external AML/CFT audit reports and primarily, a self-assessment questionnaire.

Table 40: Onsite and Off-Site AML Examinations Conducted by the FSC in the Life Insurance Sector

Type of Examination	2016	2017	2018	2019	TOTAL
On-site	6	7	6	1	20
Off-site	0	0	47 (including intermediaries)	39 (including intermediaries)	86

Based on the FSC’s ongoing monitoring, universal life insurance policies were identified as posing the greatest AML/CFT risks within the sector. These policies are inherently risky as they are investment-type products that allow customers to deposit and subsequently withdraw large sums with little to no change in value of the policy. Additionally, the main risks identified in the AML/CFT risk assessments of registrants for the year 2019 were “fraudulent documents submitted by applicants for business; fraudulent transactions and cash transactions.” Table 41 below highlights the AML/CFT risks identified by the FSC in the life insurance sector and for registrants during the period under review as well as measures undertaken by the FSC to mitigate those risks:

Table 41: Risks identified by the FSC in the Life Insurance Sector and Measures taken by the FSC

Risks identified in the life insurance sector	Measures taken	Risks identified in registrants	Measures taken
Illicit funds being used to finance a single premium insurance policy	Guidance on typologies provided to the sector	Inadequate verification of source of funds, therefore, providing opportunities for facilitating illicit funds in the formal financial sector	Deficiency letters issued to registrants
Cash transactions	Guidance to registrants on the provisions of POCA section 101A – Restrictions on cash transactions	Weaknesses in onboarding procedures	Deficiency letters issued to registrants
Fraud – misuse of credit cards	Guidance on typologies provided to the sector	Failure to conduct risk assessments on customers and products	Deficiency letters issued to registrants
		Gaps in procedures for identification of beneficial owners	Deficiency letters issued to registrants

Thematic Study: Removal of General Insurance Companies from AML/CFT Legislation

In 1998, general insurance companies were designated as financial institutions under the then Money Laundering Act (MLA), which was subsequently replaced by POCA in 2007. This designation brought life insurance companies under the local AML/CFT/CFP legislative framework. The inclusion of general insurance companies under the AML/CFT/CFP regime was not in keeping with the FATF Recommendations of financial institutions that were required to be brought under this framework. The guidance from FATF concerning the insurance sector was focused on persons who engage in the “underwriting and placement of life insurance and other investment-related insurance (applies to both insurance undertakings and insurance intermediaries [agents and brokers])” which did not include general insurance.⁷⁸

To better inform its position, the FSC conducted a thematic study between 2017 and 2018 which confirmed that the risk within the general insurance sector was low. Given the low risk of the sector, a recommendation was made by the competent authority for them to be removed from the POCA as a reporting entity. Subsequent to this recommendation, Section 2 of POCA, TPA and UNSCRIA were amended in November 2019 allowing for the removal of general insurance companies from

⁷⁸ FSC *Identifying Risk Elements in the General Insurance Sector to provide a Guide to the Sector in Adapting to its Proposed Removal from the AML/CFT Legislative Framework* (FSC June 2019)
[Identifying Risk Elements in the General Insurance Sector to provide a Guide to the Sector in Adapting to its Proposed Removal from the AML/CFT Legislative Framework \(fscjamaica.org\)](https://www.fscjamaica.org/identifying-risk-elements-in-the-general-insurance-sector-to-provide-a-guide-to-the-sector-in-adapting-to-its-proposed-removal-from-the-aml/cft-legislative-framework)

Jamaica's AML/CFT legislative framework. Notably, the amendments do not apply to any general insurance company that functions as a financial holding company within a financial group.

6.5.7 COMPLIANCE FRAMEWORK

Under Regulation 5 of the Proceeds of Crime (Money Laundering Prevention) Regulations, licensees and their intermediaries are mandated to establish and implement programs, policies, procedures, and controls commensurate with the size and nature of their operations. Paragraph 321 of the FSC's "Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation" requires regulated businesses to establish and implement programmes, policies, procedures, and controls as may be necessary for preventing or detecting money laundering.

Further, both the Proceeds of Crime (Money Laundering Prevention) Regulations and the FSC Guidelines require registrants to conduct risk assessments of products and customers, among other areas. Based on the response from surveys administered, during the period under review 13 risk assessments of registrants' customers, products/services, transactions, delivery channels, and geographic areas were reported by four registrants. This indicates that the majority of registrant's AML compliance programmes are not commensurate with the level of risk posed. Notwithstanding the small number of comprehensive risk assessments, registrants have conducted less formalized risk assessments, as respondents were able to identify products and services rated as low risk, moderate and high risk; risk posed by different categories of customers; and risks associated with payment channels.

The adequacy of compliance controls is verified during on-site examinations. This process includes verifying that a qualified Nominated Officer is appointed and assessing compliance manuals to ensure they provide adequate guidance to staff and incorporate requirements outlined in the FSC's guidance notes. Despite the requirement for AML/ CFT programmes, some licensees (17 per cent) indicated that they had no system in place to review the compliance of employees with AML/CFT requirements. This highlights deficiencies in the compliance framework of some entities and calls into question the comprehensiveness of the FSC's audit checks. A total of 87.5 per cent of respondents stated that they had an AML/CFT policy approved by their board of directors in place. Even though the positive results indicate a level of confidence in the system, two entities stated that they had no policy in place while a further two entities did not respond to the question.

Despite insurers being mandated by law to conduct annual reviews of their AML/CFT compliance programme, these reviews are not being consistently undertaken. A review of the survey responses relating to internal and/or external AML audits conducted by the insurance sector revealed that 6.3 per cent (i.e. 1 respondent) conduct reviews quarterly, while 50.0 per cent of the respondents conduct annual reviews. The survey responses are also consistent with FSC's examination findings, which indicate that the frequency of annual audits was an issue, mainly for less sophisticated and/small or medium-sized entities. The FSC identified the cost associated with independent AML/CFT audits as the reason for the deficiency. It also noted that plans are in place to make submission of AML/CFT reviews compulsory, to ensure compliance within the sector, and promote accurate risk profiling. Despite the FSC being aware of the violation no sanctions to foster full compliance by the sector were levied.

6.5.8 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

Based on section 94 (2) and (3) of POCA, regulated businesses are required to make disclosures of suspicious transactions to the designated authority (Chief Technical Director of the FID). Appropriate mechanisms for reporting suspicious transactions include the appointment of a Nominated Officer with

responsibility for receiving STRs and making a determination on whether disclosures should be made to the designated authority, and ensuring appropriate information management and record-keeping systems are in place. For the period under review, the FID indicated that 111 STRs were filed by persons within the insurance sector. Of the 111 STRs filed, seven were rejected because of poor reporting quality, and 13 were submitted to law enforcement agents for investigation. Of these 13 STRs, one resulted in a prosecution that is currently ongoing. Based on the proportion of rejected STRs, it was determined that the quality of STRs being filed by the sector was adequate.

6.5.9 LIFE INSURANCE SECTOR RISKS

The overall risk score for the insurance sector was **MEDIUM-LOW**. This rating is commensurate with the fact that the majority of customers are low risk and there is also limited use of cash in the sector. There are, however, concerns regarding the level of staffing in the competent authority's AML/CFT Department as well as the level of compliance in some insurance companies with AML guidance from the FSC.

DEVELOPMENTS SINCE JAMAICA'S 2017 MER

- The November 2019 amendments to POCA (MLP) Regulations and the Terrorism Prevention Regulations requires the identification and conduct of CDD on beneficiaries of life insurance policies.
- In 2019, the FSC incorporated thematic studies in its supervisory framework for the insurance sector to enhance its understanding of sector-specific ML/TF risks and its understanding of threats and vulnerabilities facing the insurance and securities sectors. The continued use of these tools should enhance the supervisors understanding of the risk in the sector.
- Effective 12 August 2019, the FSC revised its "*Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation*". The revised guidance outlines the requirement for its licensee to adopt a risk-based approach to their respective AML/CFT framework; develop risk profiles for all customers with corresponding KYC and CDD requirements; incorporate the cash transaction limit requirements of POCA; a heightened focus on PEPs; and highlight the increasing usage and normalization of virtual assets and its associated risks.

ML TYPOLOGIES IN THE LIFE INSURANCE SECTOR

The following are indicators of money laundering in the life insurance sector that can result in the filing of a suspicious transaction report. Please note that these examples are not exhaustive.

1. Clients provide false or counterfeited documentation in order to access the service.
2. A client takes out a life insurance policy with an investment feature. The client subsequently invests significant funds using this vehicle. This product is particularly attractive as customer value is usually preserved over extended periods.

MONEY SERVICE BUSINESSES (REMITTANCE BUSINESSES AND CAMBIOS)

6.6 REMITTANCE SUBSECTOR

6.6.1 SECTOR OVERVIEW

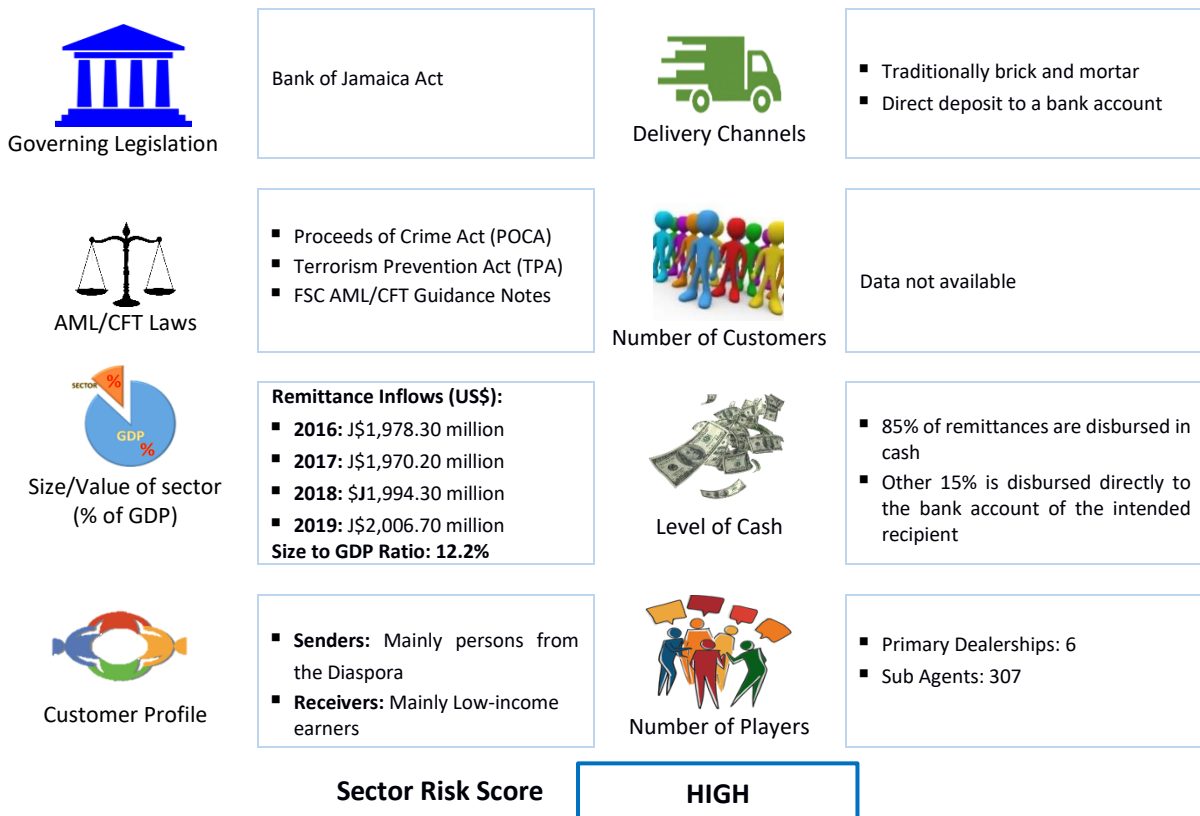
The remittance sector was assessed as having the highest risk of all sectors reviewed. This is largely attributable to the significant use of this channel by individuals engaged in the “lottery scam.” It is, however, important to put this threat level in perspective. One recent assessment of the remittance sector found that inflows from perceived high-risk countries represented less than 1 per cent of total incoming remittances in 2020. The assessment further indicated that inflows into Jamaica are mainly from countries with large Jamaican diaspora communities, which also have a lower perception of corruption, such as the United States, Canada and United Kingdom.

Although the majority of inflows were found to be legitimate, the “lottery scam” remains a serious area of concern. It must, however, be noted that in response to “lottery scamming”, remittance operators have implemented EDD measures aimed at preventing their operations from being used to remit proceeds from “lottery scamming”. Law enforcement agents have also collaborated extensively with their overseas partners to investigate and prosecute offenders of “lottery scamming”.

The assessment also found that the average transaction size for remittances across all parishes was relatively small and averaged approximately US\$200.00.

The details of the assessment on the sector are presented in this chapter.

6.6.2 SECTOR AT A GLANCE



6.6.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT (MONEY SERVICE BUSINESSES)

The 2017 MER noted that the supervision of remittance business and cambios did not incorporate risk-based supervision and the frequency of reviews was driven by the annual renewal dates of licenses and not by levels of ML/TF risk. It is important to note that BOJ is developing and implementing a risk-based supervisory framework with technical assistance from the International Monetary Fund (IMF).

The MER also indicated that Section 22D of the Bank of Jamaica Act imposes a penalty on summary conviction of a fine not more than US\$431.00 and/or imprisonment for a term of not more than one year and on conviction a fine not more than US\$862.00 and/or imprisonment for not more than five 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 MER further noted that the monetary sanctions are low and are not dissuasive.

The MER acknowledged that remittance companies and cambios are required to be licensed to operate, however, the competent authority's inability to identify and sanction unlicensed or unregistered cambios was identified as a deficiency. It should be noted that the rating of PC reflected in the 2017 MER was, however, re-rated to *Largely Compliant (LC)* in 2020 based on clarifications provided in relation to how the oversight regime for cambios works and the low opportunities for persons to operate illegally.

6.6.4 INHERENT VULNERABILITIES

As at end 2019 remittance inflows totalled US\$2,006.70 million, which represent 12.2 per cent of GDP. Table 42 below showed that over the review period on average, 85 per cent of remittance inflows were sent through remittance companies, with deposit-taking institutions accounting for the other flows.

Table 42: Jamaica's Remittances Inflows (2017-2019) USD\$ million

	Remittance Company		Other Remittance (DTIs)		Total
	USD	Percentage	USD	Percentage	USD
2017	1,970.2	85%	335.1	15%	2,305.3
2018	1,994.3	85%	351.5	15%	2,345.8
2019	2,006.7	83%	398.9	17%	2,405.6
Total	5971.2	85%	1,085.5	15%	7,056.7

It should also be noted that remittance inflows are also significantly larger than outflows. From 2017 to 2019, annual inflows were nine times greater than outflows.

As well as identifying the United States, Canada and the United Kingdom as the principal sources for remittance inflows to the Jamaica, the 2019 thematic study also noted that the Cayman Islands, which also has a sizable Jamaican diaspora was a major source country for remittance inflows. Although small, the study also shows inflows from territories such as Iraq, Haiti, and South Korea signalling exposure to

ML/TF risk by way of these countries' adverse Corruption Perception Index ratings (Refer to wire transfers case example detailed earlier in this chapter under the DTI sector).

A similar study was also conducted in 2020 and covers a two year period (2019 – 2020), the study found that inflows continue to originate mainly from the Jamaican diaspora. The details of the study are outlined in the case example below.

Case Example: Remittance Thematic Review (Initial Review)

In 2021, the Bank of Jamaica conducted a thematic study on incoming remittance flows to Jamaica. The study was geared towards identifying the ML/TF risks emanating from other jurisdictions over a two year period. This investigation is premised on the notion that remittance flows are susceptible to ML risks due to its cross border nature.

Total remittance inflows for the 2020 period amounted to US\$2.4B, accounting for approximately 17 per cent of Jamaica's GDP. These inflows were largely emanating from the United States, Great Britain, Canada and the Cayman Islands, collectively accounting for approximately 96 per cent of total inflows over the two-year period.

The US remained the largest source of flows, accounting for an average of 66 per cent of inflows in excess of US\$1.2B throughout the review period. In 2020, remittance inflows were initiated in all states in the US, particularly in New York, Florida and Minnesota. This was consistent with the diaspora population in the USA, estimated at 1.1M. The largest diaspora community for the corresponding period was located in the metropolitan areas of New York, New Jersey and Connecticut, followed by concentrations in the southeast region [mainly in Florida, Georgia and Texas] and fewer numbers in the West and Midwest regions.⁷⁹ Of note, higher average values were observed in states such as Washington and Wyoming as a result of relatively lower senders comparable to total remittance value flows originating from these areas.

Total flows found at the 99.9th percentile was also concentrated in the New York and Florida states, accounting for 48 per cent (US\$10M) of high-value inflows and 0.4 per cent of total inflows for the corresponding period. This was consistent with the relatively dense population among the diaspora in these areas. Notably, there were high average value inflows estimated at US\$9,000.00 that originated from the state of Ohio, which is not known to traditionally have a high concentration of Jamaican migrant population. Notably, the average flows were impacted by total inflows of US\$35,804, sent by three dependents.

Remittances were disbursed mainly to residents living in the capital city Kingston, and parishes of St. Catherine and St. Andrew, which are in close proximity to the capital. These parishes collectively accounted for 34 per cent (US\$825M) in remittance inflows in 2020. In the 2020 period, average incoming flows were approximately US\$200 across all parishes.

High-value transactions found at the 99.9th percentile represented roughly 1.9 per cent (or US\$46.2M) of total remittance inflows as at December 2020 comparable to 1.8 per cent (or US\$35.4M) in prior year. These transactions ranged between US\$2,904 and US\$63,301 with averages between US\$4,000 and US\$5,000. The US, GB and CA were the dominant sources of high-value inflows, collectively

⁷⁹ Ministry of Foreign Affairs and Foreign Trade *Draft Jamaica National Diaspora Policy Working Document* (June 2019) <https://mfaft.gov.jm/jm/wp-content/uploads/2019/03/Revised-DRAFT-NATIONAL-DIASPORA-POLICY-Jamaica-Version-11-June-2019.pdf>

accounting for 93 per cent of total inflows at the 99.9th percentile. These flows were also concentrated in the parishes of St. Catherine and St. Andrew.

Throughout the 2019 to 2020 period, cash was perceived as the preferred method of payment to receivers in the remittance space. Cash disbursements for the review period were in excess of US\$1.7B (or average 87 per cent) of inflows. Of note, for high-value transactions at the 99.9th percentile, funds were largely disbursed via bank accounts (approx. 64 per cent of funds).

The Corruption Perception Index (CPI) reported by Transparency International features countries across the world, rated between 100 (very clean) and 0 (very corrupt) on an annual basis. Given Jamaica's strong economic relationships with countries having lower perceptions of corruption such as the United States, Canada and Great Britain, the country's susceptibility to ML risks, as it relates to inflows originating from these countries, might be tempered.

The dominating countries throughout the review period were the United States, Canada, Great Britain and the Cayman Islands. Collectively, these countries accounted for 95 per cent of total inflows. Notably, inflows from countries with low CPIs were also featured in the remittance space, including countries such as Haiti, the Democratic Republic of Congo, Iraq, Nicaragua and Cambodia. These inflows from perceived high-risk countries were valued at US\$0.3M in 2020 and US\$0.5M in 2019, representing less than 1 per cent of total values for corresponding periods.

For flows exceeding the 99th percentile (roughly 11,646 transactions valued at US\$ 81M), strong relationships were found between Jamaica and the United States, United Kingdom and to a lesser extent the Cayman Islands. While inflows were also highlighted from Iraq and Haiti these transactions were each from a single occurrence in 2020, valued at US\$3,502 and US\$3,109 respectively.

This case demonstrates that the majority of remittance inflows are from countries that are perceived to have a lower perception of corruption and from the diaspora.

Remittance companies are the most frequent medium through which Jamaicans send and receive funds internationally; 85 per cent of funds are paid out by agents as physical cash, and the remainder is disbursed directly to the bank accounts of intended recipients. There are currently six companies that have been approved by the BOJ to operate as remittance companies and are designated as primary agents.⁸⁰ Of the six primary agents, 55 per cent (or US\$1,081.83 million) of remittance inflows was remitted through one primary agent. Inflows from the remaining four primary agents ranged from US\$72.76 million to US\$375.89 million.

Agents are allowed to offer remittance services through sub-agents; in 2019, 307 sub-agents were operating from 496 locations across Jamaica. Of the six remittance companies, 54 per cent (or 166) of sub-agents are contracted by the two largest players (by remittance inflows and asset size). The remaining four players averaged 35 agents (or 11 per cent). Before being allowed to offer remittance services, primary agents must apply to the BOJ seeking approval for a sub-agent to be used as a delivery channel. Prior to authorizing the use of a sub-agent, the BOJ conducts a fit and proper assessment for each director and significant shareholder (ownership of 10 per cent or more) and ensures that registration and incorporation documents are updated. All of the six remittance companies are part of financial groups and are subject to additional supervision by the BOJ and the FSC. Four of these financial groups include a deposit-taking institution and are therefore subjected to group-wide supervision by the BOJ.

⁸⁰ "Primary agents" are licensees that are allowed to enter into relationships with international remittance companies and are therefore allowed to conduct international inbound and outbound transfers.

6.6.4.1 LOTTERY SCAMMING

Data from law enforcement databases indicated that the majority of “lottery scamming” proceeds coming into Jamaica are received through remittance businesses, which constitutes a key threat to the sector. Remittance operators in conjunction with their overseas providers have implemented several control measures to prevent their business from being used as a vehicle to remit proceeds from scamming. Some of the measures implemented are highlighted in the case example below.

CASE EXAMPLE

In 2017, the Financial Investigation Division and the United States Postal Inspection Services commenced a joint investigation in relation to an alleged case of fraud perpetrated against an 83-year-old citizen of the United States. As a result of the investigations, “Mr. X” and “Ms. Y”, both from the parish of Hanover were arrested on 17 November 2017.

Between 2010 and 2017, the US citizen had sent approximately US\$148, 000 via cashier cheques, Western Union, Money Gram, and Green Dot cards to Jamaica. The victim indicated that she was contacted in 2010 via telephone and told she had won the lottery and a motor vehicle by a caller who identified himself as “Mr. C” – CEO of XYZ International. She was coerced by Mr. C to send money, using various means to offset numerous taxes and fees associated with her winnings.

The investigation revealed that the telephone numbers used to contact the US citizen were registered to Mr. X who was also in possession of the numbers at the time of his arrest. It was also discovered that Mr. X and Ms. Y received several remittances from the US citizen. It was further established that their family members, both locally and in the United States, also received monies from the victim.

Mr. X and Ms. Y were sentenced in the St. James Parish Court on 17 December 2020 for the offences of Obtaining Property through False Pretence and Possession of Identity Information. The pair pleaded guilty to the offences when they appeared in court on 16 September 2020.

Mr. X, was sentenced to 12 months’ imprisonment at hard labour or a fine of J\$600,000 for Possession of Identity Information. For the charge of Obtaining Property through False Pretence he was sentenced to 9 months’ imprisonment at hard labour to run consecutively if the aforementioned fine is not paid. Ms. Y, was fined J\$200,000 or 12 months’ imprisonment at hard labour for the crime of Possession of Identity Information.

Both persons are now before the Supreme Court where proceedings related to an application by the Asset Recovery Agency (ARA) for the forfeiture of assets they acquired as a result of the scamming have begun under the Proceeds of Crime Act.

The case indicates how frauds are committed and money is obtained by false pretences using the remittance system. The funds however seem to be genuine payments made to retrieve supposed winnings, which in fact did not exist.

In this case, it is the use of the benefits derived from the commission of the predicate offence (i.e. the acquisition of assets etc.) that would constitute the ML offence.

Additionally, this case demonstrates effective collaboration between local and foreign law enforcement partners.

The anonymous use of remittance services is not allowed, as each customer must be identified before the remittance service can be accessed to send or receive remittances. Instead of cash payments, recipients may choose to receive funds directly to their bank accounts, but only after a relationship has been established via face-to-face interaction, as the non-face-to-face establishment of relationships is not allowed.

6.6.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

The AML legal framework for the sector is outlined in the POCA and the attendant POCA (MLP) Regulations. These provisions were assessed as comprehensive (refer to Chapter 2).

In addition to the BOJ Act, which outlines the broad enabling provisions for the sector to be regulated, specific operating directions are issued by the BOJ on the basis of authority delegated by the Ministry of Finance and the Public Service pursuant to section 22B(5) of the BOJ Act. These directives are quite detailed. The fit and proper checklist and due diligence processes are robust and the Act also outlines provisional measures that can be applied to ensure compliance, the ability to revoke licences for non-compliance, as well as reviews of all agreements entered into with overseas counterparts.

In 2018 the BOJ issued amended comprehensive guidance notes, “Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism, Proliferation and Managing Related Risks which took full effect in the first quarter of 2019.

The objective of the guidance notes is to outline the minimum standards for the effective management of financial institutions’ AML/CFT risks, expected behaviour with regards to their responsibilities under the applicable legislation, as well as outline the best practices in the areas of AML and CFT techniques. It should be noted that it took over six months for the guidance notes to be formally published in the Jamaica Gazette. This delayed full reliance on the revised guidance notes as only guidance that has been published in the Jamaica Gazette will be taken into consideration by a court when looking at whether or not a person/entity has complied with the law.

6.6.6 EFFECTIVENESS OF SUPERVISION

Supervision and regulation of the sub-sector is conducted by the Cambio and Remittance Licensing & Monitoring Department (CRLMD) of the Financial Markets Infrastructure Division (FMID) within the Bank of Jamaica (BOJ). The CRLMD has the power to grant and revoke licences and supervises the industry through a mix of the following:

1. Fit and proper assessments of key employees, directors and holders of 10 per cent or more of the voting shares of the licensee;
2. Onsite monitoring focused mainly on primary agents. Onsite examination is done for each licensee at least once per year, regardless of risk level. Examination findings indicate high levels of compliance within the sub-sector
3. Offsite monitoring through the review of data submitted to the CRLMD, analysis of information shared by other competent authorities (*the Financial Institution Supervisory Authority – BOJ*).

The Remittance Unit has a total of 11 staff members. Six of these individuals are dedicated to onsite supervision while three are dedicated to the offsite monitoring of remittance businesses; including the

Head of the CRLMD who is charged with managing the day-to-day operations of the CRLMD, and the Deputy Governor in charge of Financial Markets is charged with management oversight. Current staff members all have university degrees and the average number of years of AML/CFT supervision experience within the department is currently 7 years. Based on analysis of the quantity and quality of supervision the staff complement was assessed as adequate to do the types of assessments currently done.

The CRLMD does not have a comprehensive procedure or policy manual for onsite or offsite supervision; instead, the department relies on a Compliance Review checklist. The department is currently developing and implementing a risk-based supervisory framework with technical assistance from a team of AML/CFT specialists from the IMF. It is expected that a risk-based supervision tool and manual will be developed as a component of the output from this technical assistance. The implementation of the risk-based approach to supervision will require a review of the existing staff complement and skills. Currently, the Remittance Unit examines all remittance companies at least annually and larger entities are examined twice per year.

6.6.7 COMPLIANCE FRAMEWORK

Remittance companies are mandated under the Proceeds of Crime (Money Laundering Prevention) Regulations (POC (MLP) Regulations) and the BOJ AML/CFT guidelines to have AML/CFT measures in place. Regulation 5 of the POC (MLP) Regulations mandates financial institutions including remittance companies to “establish and implement such programs, policies, procedures, and controls as may be necessary, taking into account the size and nature of the business concerned, for the purpose of preventing or detecting money laundering”. Under the regulation it is expected that an AML compliance programme should include:

- establishment of procedures to ensure high standards of integrity;
- development of a system to evaluate the personal employment and financial history of those employees;
- establishment of procedures for the continuous training of employees concerning their responsibilities under the POCA;
- arrangement for independent audits to ensure that the programmes are being implemented; and
- in the case of a regulated business that is a member of a group, the establishment of group-wide programmes, policies, procedures and control for preventing and detecting money laundering.

Based on ongoing monitoring of licensees compliance programme, it was concluded that all licensees have a reasonable understanding of their ML/TF risk exposure. Remittance inspectors, as a part of their annual AML/CFT review of the licensees, also assessed the AML/CFT policy manuals of all remittance companies and determined that remittance companies were amending their manuals to address issues/weaknesses identified in BOJ’s previous inspections or identified through entities internal review.

All licensees are required to implement an effective compliance regime. In that regard, the on-site inspection process includes assessments to determine whether institutions meet the required standards. The inspections showed that licensees generally possess an internal compliance function that is commensurate to their risk exposure. The following were identified as the main findings from the inspections conducted for the period under review:

- Failure to adhere to AML regulations: In particular, source of funds information was not always recorded and maintained for outbound transfers of US\$1,000 and above or its equivalent in any other currency.

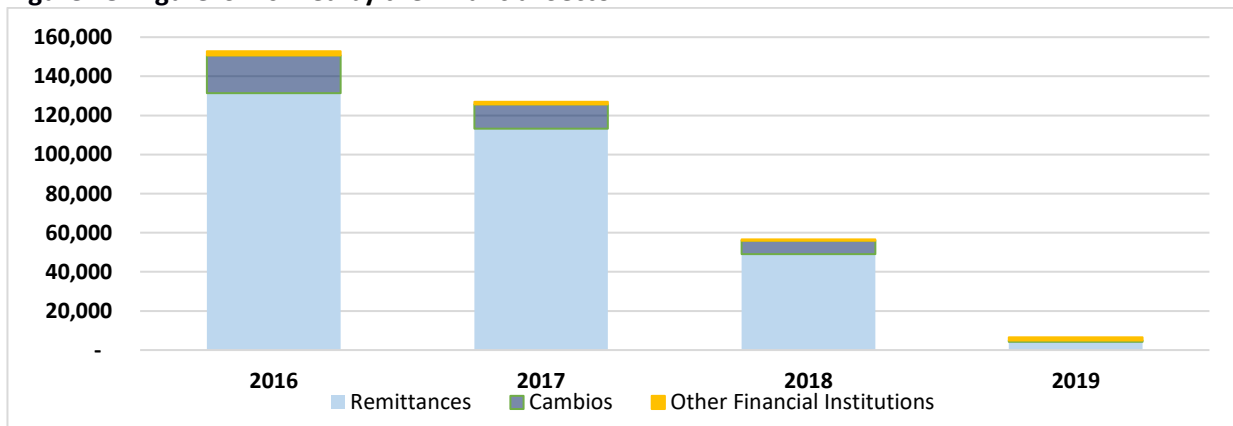
- Inadequate record keeping: In particular, some remittance service providers did not consistently maintain records to confirm relevant customer due diligence was done for all applicable clients.
- Weaknesses in AML/CFT regime: In particular ensuring that an annual AML/CFT compliance audit is conducted by an independent body.

6.6.8 SUSPICIOUS TRANSACTION REPORTING

The transaction monitoring systems utilized by remittance companies are sophisticated and have the capability to monitor client transactions and compare transactions against clients’ profiles. However, most clients are one-off customers, therefore the companies face challenges in their ability to establish customer-specific profiles for every client. Companies have put measures in place to identify PEPs and sanctioned persons. However, licensees currently rely on the honest disclosure of clients that are PEPs or have affiliation with PEPs because there is no single system in this jurisdiction that can provide information on PEPs.

Remittance companies have been identifying complex, unusual large transactions and have filed STRs where necessary as the result of this oversight on their part. Remittance companies accounted for the highest numbers of STRs filed over the review period but it was noted that there were high levels of defensive reporting by the remittance companies in 2016 and 2017 (see figure 19 below). This issue was, however, ameliorated after training and meetings held with the sector and their competent authority and the quality of STRs filed improved significantly and is depicted in filings in 2018 and 2019. Figure 18 below, illustrate the reduction in STRs filed by remittance companies over the review period.

Figure 18: Figure STRs filed by the Financial Sector



Case Example

Remittance service businesses feature heavily in “lottery scamming” in Jamaica, as the victims of the crime, often elderly United States residents, are instructed to remit funds through these businesses.

In August 2012, in response to the “lottery scamming” phenomena, in Jamaica’s largest remittance service business made the decision to close all of its 14 locations in Montego Bay, St James; the area with the highest incidence of “lottery scamming”. The decision was taken at the time because of the high number of suspected fraudulent transactions being reported. The operator then implemented new security measures before the re-opening of these locations. However, as part of its overall response, whenever any of its locations report a high incidence of suspected fraudulent transactions,

those locations are shut down until an investigation is completed and the operator is satisfied that adequate additional anti-fraud measures have been implemented.

In direct response to “lottery scamming”, other remittance operators have also applied enhanced due diligence to customers remitting funds to Jamaica. Customers are asked to disclose if the funds being remitted were in response to a lottery, the purpose of the transfer, and the sender's relationship with the recipient.

This case demonstrates the commitment from entities in the sector to implement safety measures to detect and prevent “lottery scamming”.

Case Example

Law Enforcement Response

On April 26, 2017, the governments of Jamaica and the United States extradited eight Jamaicans to face federal charges related to the international “lottery scamming”. These individuals were apprehended through the combined efforts of the Jamaican Operations Linked to Telemarketing (JOLT) taskforce. JOLT is a bilateral operation that brings together 10 agencies from the United States and Jamaica to combat this multimillion-dollar crime. These agencies include the Ministry of Justice, the Ministry of National Security, the Jamaica Constabulary Force (JCF), the Counter-Terrorism Organized Crime Branch (CTOC), the Major Organized Crime and Anti-Corruption Agency (MOCA), the Jamaica Fugitive Apprehension Team (JFAT), the Financial Investigations Division (FID), the FBI, the US Postal Inspection Service, Homeland Security Investigations (HIS), U.S. Immigration and Customs Enforcement (ICE) and the U.S. Marshals Service

This case illustrates the cooperation between law enforcement officials, both local and overseas in combatting the issue of “lottery scamming”. The FID has indicated that in more than 90 per cent of “lottery scamming” cases it investigated the remittance sector filed STRs on the individual investigated.

6.6.9 REMITTANCE SECTOR RISKS

The insurance sector overall risk score was assessed as **HIGH**. This rating is commensurate with the fact that the majority of customers are low risk and there is also limited use of cash in the sector. There are, however, concerns regarding the level of staffing in the competent authority’s AML/CFT Department as well as the level of compliance in some insurance companies with AML guidance from the FSC.

DEVELOPMENTS SINCE JAMAICA’S 2017 MER

- In direct response to the findings of the 2017 MER, which states that monetary sanctions concerning the operation of an unlicensed remittance or cambio is low and is not dissuasive, the BOJ issued a consultative paper in October 2020 regarding proposed amendment to the BOJ Act. The proposed amendment seeks to increase the penalty for the operation of an unlicensed remittance or cambio to J\$7.5 million. The proposed amendment to the Act also considers giving BOJ the power to sanction unlicensed remittance and cambio operators.

- Despite the competent authority not having a formal risk-based methodology, aspects of risk-based supervision are incorporated in its supervisory framework. This is evidenced by the competent authority's understanding of the risk associated with products and services, delivery channels, and the customer base of money service bureaus (MSBs). Based on this knowledge larger (more riskier) MSBs receive more frequent onsite examinations. The competent authority is currently developing its more formal risk-based supervisory methodology. To this end, they are receiving technical assistance from the IMF.

ML TYPOLOGIES IN THE REMITTANCE SECTOR

The following are indicators of money laundering in the remittance sector. The following scenarios are methods used to launder money.

1. Customers receiving funds do not know the basic details of the transaction (including, name of the sender, the amount to be collected or the location from which the funds are sent).
2. The customer does not appear to have a relationship with the sender of the funds.
3. The customer has no relation to the country from which he/she receives remittances and cannot sufficiently explain why money is being received.
4. Use of relatives and friends to collect proceeds.
5. The customer is accompanied by others who take custody of the funds collected.
6. Customer receiving funds originating from several locations (in the United States) in a short timeframe.
7. Use of several remittance companies to collect funds.
8. The size or frequency of the remittance is not consistent with the normal activities of the customer.

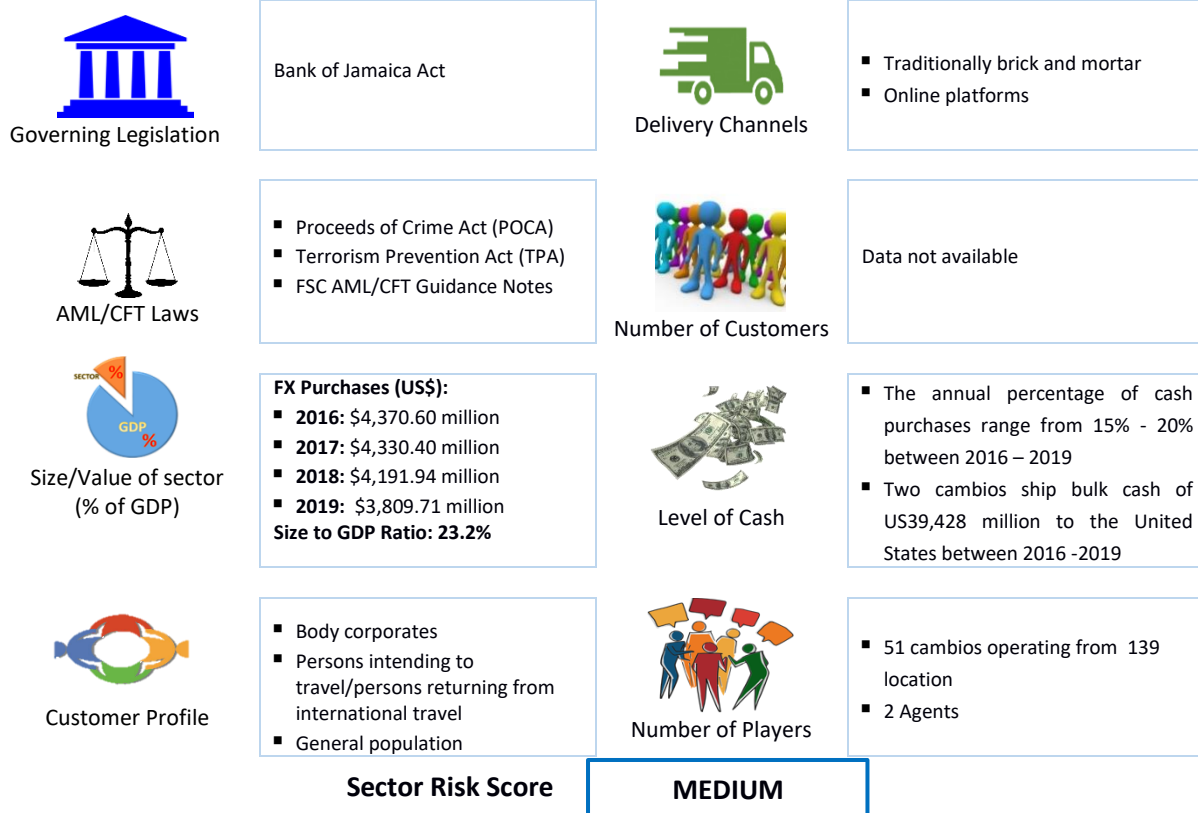
6.7 CAMBIOS

6.7.1 SECTOR OVERVIEW

The assessment of the cambio sector found that the competent authority effectively used its supervisory powers to positively influence the behaviour patterns of licensees. This was evidenced by improvements in its licensees' AML/CFT compliance framework over the review period and reduction in the number of AML/CFT deficiencies found during onsite examinations over the review period.

The assessment also found that the competent authority has not finalized its risk-based supervisory framework, however, elements of risk-based supervision is being applied in the existing framework as larger cambios are examined at least twice per year, while smaller operators are examined once per year. Details on the full assessment on cambios are outlined below.

6.7.2 SECTOR AT A GLANCE



6.7.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

The recommendations from the 2017 MER for cambios are the same as the ones for remittance businesses and will not be repeated here as they were already expounded upon in the section on remittance businesses.

6.7.4 INHERENT VULNERABILITIES

Jamaica is a small open economy that is reliant on imported goods. As a result of this the country has recorded a negative trade balance for the past 25 years. As at end 2019, the trade balance was negative

US\$2.16 billion (-13.11 per cent of GDP). There is therefore significant demand for foreign currency, particularly United States dollars, in Jamaica.

Hard currency in the form of cash is normally injected into the economy by tourists, visitors from the diaspora, locals returning home from trips overseas and foreign contract workers (student work and culture exchange programs and seasonal labour employment).

The Bank of Jamaica Act prohibits persons from participating in the business of buying, selling, borrowing, or lending foreign currency or foreign currency instruments in Jamaica unless authorized as a cambio or authorized dealer. There are currently 51 cambios operating from 139 locations island-wide, with Kingston and St Andrew accounting for the majority of the market share with 32 per cent which consists of 40 locations. The client base for cambios includes body corporates, locals travelling overseas, and tourists.

As at end 2019, cambios accounted for 35 per cent of foreign exchange purchases while Authorized Dealers (Deposit-Taking Institutions) accounted for the remaining 65 per cent. Table 43 below shows that for the period under review, purchases of currency from cambios ranged from US\$3.8 billion to US\$4.3 billion per year, which averaged 38 per cent of the entire Foreign Exchange Market.

Table 43: Jamaica's foreign exchange purchases via cambios:

	Total Purchases USD (M)	Share of FX Market (%)
2019	4,370.60	35.18
2018	4,330.40	38.14
2017	4,191.94	37.97
2016	3,809.71	39.51

The majority of foreign exchange transactions undertaken through cambios are executed using intra-country wire transfers and to a lesser extent cheques. Table 44 below shows that year over year, cash purchases ranged from 15 per cent - 21 per cent of total transactions over the period under review.

Table 44: Percent of cash vs non-cash (wires) purchases transactions in the cambio sector:

Purchases (%):	2016	2017	2018	2019
Cash	21	17	18	15
Wire Transfers & Cheques	79	83	82	85

Transactions between cambios and their customers are conducted locally. In addition to foreign exchange transactions, two cambios currently ship bulk foreign cash to the United States. As shown in table 47 below, at the end of 2019, cambios shipped bulk cash of US\$26.98 million, which represents 20 per cent of total cash shipped. The proceeds from cash shipped are credited to the cambios' accounts held in the United States.

Cambios started to ship bulk cash overseas because local commercial banks stopped accepting foreign cash deposits from cambios due to de-risking concerns. Notably, commercial banks allow cambios to maintain foreign currency accounts although they are prohibited from depositing foreign currency cash into those accounts. Before bulk cash is shipped, a report must be filed with the FID and the JCA is empowered to verify the amount being shipped.

Table 45 below shows the total volume of foreign currency cash shipped out of the country and the amount that was shipped by cambios. It must be noted that the volumes over the period under review have remained fairly constant. The remainder of bulk cash shipped was executed by DTIs.

Table 45: Bulk Cash Shipment

Bulk Cash Shipments	2016 (US\$ M)	2017 (US\$ M)	2018 (US\$ M)	2019 (US\$ M)
Total Cash Remitted Abroad- Cambios & DTIs	898.74	963.80	1,106.67	1,331.02
Cash Remitted Abroad by Cambios	310.90 (34.59%)	301.48 (31.28%)	301.85 (27.28%)	268.98 (20.21%)

As outlined in chapter 4, the Jamaica Customs Authority (JCA) does not inspect and verify outgoing bulk cash to ensure that the actual amount being remitted reconciles to the amount declared to the FID.

Cambios are not required to conduct KYC procedures on customers conducting transactions below U\$250 or its equivalent in any other currency. This practice means that some transactions are not being monitored, which may enable some customers to structure transactions below the statutory de minimis amount to avoid detection as they seek to legitimize the proceeds of crime. Licensees are aware of structuring risks and are specifically monitored in this regard. The examination reports, however, do not indicate that there is specific review of the systems to ascertain the extent to which licensees’ systems are detecting structuring activities.

6.7.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

The AML/CFT legal framework for cambios is similar to the framework for the remittance sub-sector, as the supervisory department for both sub-sectors is the same (refer to Remittance Section above). The CRLMD is separated into two units, the cambio Unit and the Remittance Unit. The legal framework was assessed as comprehensive as it was grounded in POCA and the Proceeds of Crime (Money Laundering Prevention) Regulations. The remittance sector is also provided with guidance, through the “The Gazetted BOJ Guidance Notes on the Prevention of Money Laundering and Countering the Financing of Terrorism, Proliferation and Managing Related Risks” that was last revised in June 2018.

6.7.6 EFFECTIVENESS OF SUPERVISION

The supervisory framework employed by the CRLMD team concerning cambios is similar to the one used for supervising the remittance companies, as the competent authority for both sub-sectors is the same (refer to Remittance Section above). The Cambio Unit conducts its supervisory role through the granting and revocation of licenses as well as conducting fit and proper assessments of key employees (both for agents and sub-agents) and onsite and offsite monitoring focused mainly on primary agents.

The Cambio Unit has a staff complement of 12 members; seven are dedicated to onsite supervision and three are dedicated to offsite monitoring; including the Head of the CRLMD who is charged with managing the day-to-day operations of the CRLMD, and the Deputy Governor in charge of Financial Markets is charged with management oversight. Current staff members all have university degrees and the average years of AML/CFT supervision experience for the department is 6 years.

The Cambio Unit’s supervisory activities consist of both on-site and off-site monitoring. Although the department has not finalized its risk-based supervision framework, the department practices elements of risk-based supervision, as larger cambios are supervised twice per year based on the size and

complexity of their operations. On-going offsite assessments of all licensees is conducted to verify and analyse reported data, conduct fit and proper assessments of relevant operators, and process the renewal of licences. In addition to routine inspections, periodic spot checks/targeted examinations are conducted on the request of the designated authority or law enforcement agents to aid investigations.

The BOJ has effectively used its supervisory powers to positively influence the behaviour patterns of licensees, as is evidenced by improvements in its licensees' AML/CFT framework and a downward trend in deficiencies found by BOJ's inspectors during onsite inspections from 2016-2019.

The 2017 MER noted that there was inadequate identification of unlicensed cambios. However, the BOJ issued a consultation paper in 2020 soliciting feedback in relation to amending the BOJ Act to give the BOJ the power to penalize unlicensed cambios. There is also greater collaboration between the FID and the BOJ in identifying and prosecuting illegal cambio operators in Jamaica.

CASE EXAMPLE

Following the receipt of information that "Company ABC", which was owned and operated by "Mr. X" was operating as an illegal cambio, the police undertook an investigation. As part of the investigation, four test purchase operations were conducted over a number of days where police officers used Jamaican currency to buy United States dollars. The fourth transaction was performed by "Ms. Y" who issued a receipt to the officer.

After the fourth purchase a search was conducted shortly afterwards and during that search, the marked Jamaican dollars that were used to the purchase the US dollars were found, together with receipt books and other documents linked to the illegal exchange of United States dollars. This evidence showed that Mr X was responsible for the operation of the illegal cambio.

Mr. X and Ms. Y were subsequently charged with four and one count respectively of selling foreign currency without being an authorised dealer, contrary to section 22 (a) (2) of the Bank of Jamaica Act. The member of staff who performed the first three transactions could not be identified. Ms Y pleaded guilty and was fined JA\$10,000. Mr. X pled not guilty but was subsequently convicted on all four counts and sentenced to a JA\$50,000 fine on each count. The matter is now subject to a confiscation hearing under POCA although this has been stayed as Mr. X is appealing his sentence.

6.7.7 COMPLIANCE FRAMEWORK

Cambios are mandated under the Proceeds of Crime (Money Laundering Prevention) Regulations and the Bank of Jamaica AML/CFT guidance note, to have AML/CFT measures in place that are commensurate with the level of risk the business is exposed to. Examination findings revealed that 98 per cent of licensees appointed an independent AML compliance officer who operated at the senior management level. Also, the majority of cambios performed periodic internal and/or external AML audits, this was evidenced by the 96 per cent compliance rate in this area. The deficiencies identified in BOJ examinations revealed that gaps in licensees' AML/CFT framework have been trending down since 2016 (see figure 19 above).

6.7.8 SUSPICIOUS TRANSACTION REPORTING

The screening of customers by cambios is aided by automated transaction systems that identify and monitor customer transactions for suspicious activity. As seen in aggregate STR data, cambios accounted for the second highest number of STRs filed over the period under review. The high level of reporting,

mainly in 2016 and 2017, was attributable to defensive filing by reporters in the cambio sub-sector. To address the issue, the FID trained reporters in the sub-sector and their competent authority on suspicious transactions detection and filing. As seen in table 46 below, there was a reduction in the number of defensive filings as evidenced by the reduction in STRs filed in 2018 and 2019.

Table 46: STR’s Filed by Reporting Sectors 2016-2019

Sector	2016	2017	2018	2019	Total
Cambio	19,382	12,566	6,750	730	39,428
Remittance	131,368	113,157	52,069	4,178	300,772
All Other Financial Institutions	2,078	1,260	879	1,619	5,836
Total	152,828	126,983	59,698	6,527	346,036

6.7.9 CAMBIO SECTOR RISKS

The overall risk score for the cambio sector was **MEDIUM**. The main contributing factors to this assessment include the strong AML framework as well the effectiveness of the supervisory activities. There remain concerns regarding illegal cambios, but this situation is constantly monitored and there is closer collaboration between the FID and the competent authority.

ML Typologies in the Cambio Sector

The following are indicators of money laundering in the cambio sector. Please note that these examples are not exhaustive.

1. Wholesales and other cash intensive business purchase foreign exchange from the general public. This provide an avenue for persons with illicit funds to convert to local currency which can then be easily used given the high use of cash in the local economy.
2. An unusually large (cash) transaction based on the customer profile.

6.8 CREDIT UNIONS

6.8.1 SECTOR OVERVIEW

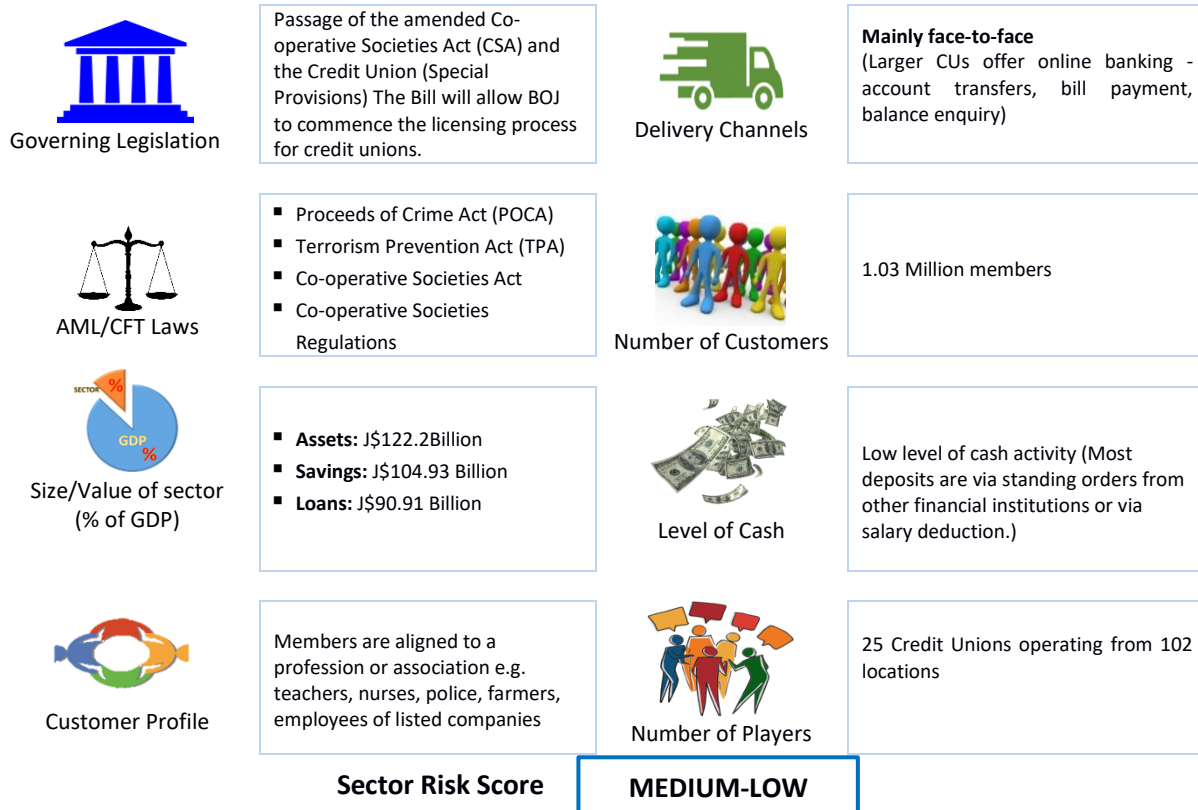
The BOJ was designated as the competent authority for credit unions under POCA and TPA respectively, and is therefore charged with AML/CFT monitoring of this sector. Despite this designation, the BOJ has only conducted one examination of the sector. This was attributable to staffing concerns and the prioritization of more complex financial institutions supervised by the BOJ.

The products and services offered by credit unions are standard (deposits and loans). Also funds deposited are made primarily via salary deductions or standing orders from commercial banks where members hold accounts and through which their salaries are paid.

The Jamaica Cooperative Credit Union League (JCCUL) formed in 1942, of which all credit unions are members has been operating as the de facto self-regulator for credit unions. JCCUL has over time carried out onsite reviews/assessments, however, these reviews do not include AML/CFT examinations.

AML/CFT monitoring of credit unions is also impacted by the BOJ not being designated as the prudential supervisor for the sector, as the interaction between prudential supervision and AML/CFT supervision is necessary for the regulator to understand the risk within the sector.

6.8.2 SECTOR AT A GLANCE



6.8.3 INHERENT VULNERABILITIES

Credit unions are financial co-operatives organized for the sole purpose of providing service to their members. The difference between credit unions and licenced deposit-taking institutions lies in how they are organized. The institutions are member-owned and are controlled democratically by all members without regard to the amount of money that any single member has deposited in the credit union. They are also directed by a board that is made up of a group of volunteers selected from within the membership, and business is only conducted with members.

The Department of Co-operatives and Friendly Societies (DCFS) is the registrar of credit unions and its objectives are to facilitate the establishment and development of co-operative societies, friendly societies and industrial and provident societies.

Jamaica's credit union rules identify members as individuals who are a part of an affinity group. These affinity groups range from a person who lives or works in the parish/community where the credit union operates, or work at the sponsor company (eg. National Commercial Bank, Grace Kennedy, the Lascelles group, RJR Group), or are part of a professional group or association (eg. Jamaica Teachers Association, Jamaica Defence Force, Nurses Association of Jamaica).

Over the period under review, as seen in table 47, the number of credit unions operating in Jamaica declined from 37 in December 2016 to 25 in September 2019. The reduction was attributed to the merging of several credit unions as they attempt to strengthen their capital base in preparation for prudential supervision by the BOJ. The table below depicts the change in the number of credit unions from 2016 to 2019. The 25 credit unions serve their members from 102 locations across Jamaica. Credit unions do not offer their product and services through agents.

Table 47: Number of credit unions in operation (2016 – 2019)

Indicator	Dec 2016	Sep 2017	Sep 2018	Sep 2019
Total number of credit unions	37	29	26	25

As at Sept 2019, the asset base of credit unions represented 5.8 per cent of GDP (Dec 2016: 5.1 per cent), significantly lower than the banking and securities dealer sector (see table 48 below). As reported in the BOJ's 2019 Annual Report, the asset base of credit unions increased by J\$7.8 billion (6.9 per cent) to J\$122.2 billion in 2019, a slowdown from the growth of 9.7 per cent recorded in 2018 and 10.3 per cent in 2017. Similar to previous years, the 2019 increase in assets was primarily attributed to loans, which grew by J\$7.3 billion and is the dominant asset category on credit union's balance sheet.

Table 48: Breakdown of selected financial sectors as per cent of GDP:

Sector	Indicator	Dec 2016	Sep 2017	Sep 2018	Sep 2019
Banking	Bank deposits/GDP (%)	50.4	52.7	55.1	55.1
	Bank assets/GDP (%)	77.9	80.4	83.4	85.3
Securities Dealers	Securities dealers' assets/GDP (%)	33.3	32.3	30.2	31.6
Credit unions	Credit unions' assets/GDP (%)	5.1	5.6	5.6	5.8

Although credit unions accept cash deposits from members, the majority of funds deposited are made via salary deductions or standing orders from commercial banks where members hold accounts and through which their salaries are paid. The majority of withdrawals by members are done through face-

to-face interaction. However, larger credit unions do offer online banking services (account transfers, bill payment, and balance enquiry). Of the just over 1 million members, approximately 200,000 have a Credit Union Movement Access Plus debit card which has daily limits established for ATM (J\$20,000.00) and POS (J\$60,000.00) transactions. The average transaction rate for members is two transactions per month for each cardholder, which supports the finding that members' credit union accounts are not their primary transaction account.

6.8.4 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

Credit unions were designated "specified financial institutions" under the Bank of Jamaica Act in 1999 as an interim measure that provides the legal basis through which BOJ collects information on the sector. In 2007 and 2015 BOJ was specified as the competent authority under POCA and TPA respectively, for credit unions and is therefore charged with monitoring the compliance of this sector with their obligations under the AML/CFT laws. Credit unions are included in the list of financial institutions reflected in the POCA and the POCA (MLP) Regulations, TPA and TP(Reporting Entities) Regulations and are therefore mandated to implement the requisite AML/CFT preventive measures. These include complying with STRs, TTRs and quarterly asset holdings report under the TPA and the UNSCRIA, undertaking CDD (simplified and enhanced) and complying with targeted financial sanctions obligations under the TPA and UNSCRIA.

The passage of the Credit Unions (Special Provisions) Bill, will bring credit unions completely under the Bank of Jamaica's prudential supervisory regime.

6.8.5 EFFECTIVENESS OF SUPERVISION

For the purpose of supervisory oversight, the Minister of Finance and the Public Service designated credit unions as 'specified financial institutions' under The Bank of Jamaica Act. However, the BOJ has not yet commenced its full supervision of the sector as the law (The Credit Unions (Special Provisions) Act) is not in place.

As a prelude to the pending supervision of the sector, BOJ has been conducting prudential examinations of credit unions. During the period January 1, 2016 to December 31, 2019, eight credit unions were examined. The monitoring regime generally includes:

- Physically visiting locations to assess operations as to readiness for licensing as well as the extent of any weaknesses/deficiencies highlighted by prudential and audited financial data review.
- Providing feedback and using moral suasion to get corrective action taken for issues discovered.
- Updating the "readiness for licensing" assessments by conducting offsite monitoring of financial indicators and trends within the sector, using prudential data, audited financial statements as well as management reports and responses received.

Over the period under review, the AML/CFT Department of the BOJ conducted an examination of only one credit union between April 13-24, 2015, and May 18-22, 2015 and the exit interview was conducted on 14 October 2015 and the accompanying examination findings report issued on 4 January 2017. The following were the findings arising from that examination:

- Failure to identify high-risk customers, including PEPs and non-residents
- Weaknesses in board/management oversight
- Absence of a comprehensive review of the AML/CFT program by external auditors
- Limitations in the scope of internal audit reviews
- Weaknesses in the AML/CFT policy framework

- Absence of a comprehensive retrospective due diligence program

To date, the credit union continues to report to the BOJ on progress made on its retrospective due diligence plan.

Steps remaining to bring the credit union sector under the supervision of BOJ are the tabling and passage of two companion pieces of legislation through Parliament. These are the Credit Union (Special Provisions) Bill and an amended Co-operative Societies Act (CSA). Passage of both pieces of legislation, once brought into effect, will allow the Bank of Jamaica to commence the licensing process for credit unions and enable them to conduct wider prudential examinations.

6.8.6 COMPLIANCE FRAMEWORK

Over the review period, BOJ conducted one AML inspection of the credit union sector due mainly to resource constraints. There are 7 credit unions that do not have the resources to have a dedicated risk and compliance officer, so the role is conducted by an existing officer. Overall, the sector was viewed as having low AML/CFT risk relative to the banking sector.

6.8.6.1 LATEST DEVELOPMENTS

The Jamaica Cooperative Credit Union League (JCCUL) was formed in 1942. All credit unions in Jamaica are members, and up to 2013, it was a full-service league providing services, including legislative review and advocacy, onsite and offsite supervision and research and development to its member credit unions. In 2013 and 2014, the JCCUL transitioned into a Trade Association and Holding Entity with three subsidiaries: The Centralized Strategic Services Limited (a shared services company), the Credit Union Fund Management Company Limited (a financial services company) and Quality Network Co-operative Limited (an information technology co-operative). The JCCUL has over time carried out many onsite reviews/assessments of credit unions including examinations for regulatory purposes. It therefore acts as a de facto self-regulatory body.

To ensure the risk in the sector is being managed, in the second half of 2021 and 2022, the JCCUL plans to fund the independent assessment of all credit unions' Enterprise Risk Management framework and provide assistance to close any gaps identified.

6.8.7 SUSPICIOUS TRANSACTION REPORTING

The FID reported that over the review period, 714 STRs were filed by the sector and the quality of STRs filed was satisfactory. A breakout of STRs filed is broken down by year in the table 49 below.

Table 49: STRs filed by Credit Unions (2016 – 2019)

	2016	2017	2018	2019
No. of STRs filed	374	105	87	148

The JCCUL identified the lack of automated transaction monitoring software by some credit unions as a deficiency. To address the issue, in 2019, JCCUL arranged demos by five software providers of transaction monitoring systems and provided monetary support to members to procure this software. Sixteen of the 25 credit unions accepted the offer and are now at varying stages of implementation. Some of the smaller, single branch credit unions still find the cost of acquiring the software prohibitive and the level of risk associated with these credit unions was deemed low as they are usually (employee-based credit unions).

6.8.8 CREDIT UNION RISKS

The overall risk score for credit unions was **MEDIUM LOW**. The sector is relatively small and the activities are not particularly risky. There is, however, a lack of adequate AML supervision by the competent authority, but despite this deficiency, the sector has taken steps through self-regulation to implement an AML/CFT programme.

ML typologies in the Credit Union Sector

Credit Unions face some of the same money laundering risks identified in the typologies section in the assessment on Deposit-Taking Institutions. The following scenarios are methods used to launder money.

1. Individuals attempting to open accounts with fraudulent documents to disguise their true identity, source of funding or purpose for account.
2. Members establish accounts that are meant for use by 3rd parties or allow their accounts to be used by unknown 3rd parties. This is commonly referred to as “rent account”, as the owner of the account (member) keeps a portion of the funds that pass through the account as means of payment for the use of the account.
3. Members making frequent cash deposits each below the cash threshold reporting requirement, but cumulatively, well above the threshold.
4. Members applying for loans and repaying those loans well in advance of the repayment date, and are unable to provide a reasonable explanation for the early repayment. Their known employment/income details do not support the transaction.

6.9 MICROCREDIT SECTOR

6.9.1 SECTOR OVERVIEW


In January 2021, the Microcredit Act was passed, which signalled the initial steps to bring the microfinance sector under the AML/CFT regime of the country. Once the Act is operationalized, licencing of players in the sector will commence by the designated competent authority, the BOJ. The BOJ will be responsible for both prudential and AML/CFT supervision. In anticipation of this role, the BOJ has commenced the building out of a framework to supervise the sector.

As a result of the sector not currently being regulated, the barrier to entry was found to be low. However, once the Microcredit Act is in force, all players that fall under the framework will be held to the same entry criteria.

There are concerns regarding the source of funds used as start-up capital, particularly among smaller institutions (including suitcase operators).

The findings from the preliminary risk assessment conducted on the sector are presented below.

6.9.2 SUMMARY OF THE SECTOR

 Governing Legislation	The Microcredit Act [January 2021]	 Delivery Channels	<ul style="list-style-type: none"> ▪ Face-to-face Transactions ▪ Websites/Mobile Apps ▪ Telephone
 AML/CFT Laws	Currently being developed in conjunction with the regulations for the sector.	 Number of Customers	Data Not Available
 Size/Value of sector (% of GDP)	As at December 2019, total sample sector assets equated to \$27B.	 Level of Cash	Data Not Available
 Customer Profile	<ul style="list-style-type: none"> ▪ Primarily salaried individuals, namely Civil Servants ▪ Other customers: Barbers, Hairdressers, Shopkeepers, Farmers etc. 	 Number of Players	<ul style="list-style-type: none"> ▪ Registered Companies: 260 ▪ Registered Business Names: 850 ▪ Suitcase Operators: Unknown

6.9.3 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 MER noted that microfinance institutions were not regulated and they were susceptible to ML/TF abuse. The report highlighted that growth in the sector outpaced growth in other sectors in the economy and recommended that the sector should be regulated under the AML/CFT/CFT regime of the country.

6.9.4 INHERENT VULNERABILITIES

Microcredit institutions have been in operation in Jamaica since as early as 1984 [New Era Finance Limited, otherwise known as O.B.F Finance Company began operating that year] and have significantly increased their presence within the sector in recent years. In 2019, there were roughly 200 microcredit institutions registered with the Companies Office of Jamaica, the larger among them according to the Development Bank of Jamaica are JN Small Business Loans, Access Financial Services, and WorldNet Investment Company Limited. One of the larger companies, Access Financial Services is listed on the Jamaica Stock Exchange and has been expanding through the acquisition of smaller entities.⁸¹ Also, JN Small Business Loans is a part of a financial group that houses a commercial bank. There remains however, an unknown number of microcredit institutions that are not registered. The president of the Jamaica Microfinance Association (JaMFA) estimated in 2014 that there were “approximately 120 block-and-steel microfinance companies operating in Jamaica, (however) if you throw the ‘suitcase operator’ in the mix that figure could double.”⁸²

Of the total number of registered microcredit institutions, approximately 13 per cent (or 33 institutions) of institutions are active members of JaMFA as at October 2019. The Jamaica Association for Microfinancing (JAMFIN) is an umbrella organization, formed by three institutions⁸³, which seeks to formalize, protect and educate the microcredit sector through member-focused training, private/public sector intercessions, transaction facilitation⁸⁴, and, if required, legal assistance. Membership in the association has since increased by 15 per cent (5 institutions) and now total 38 members⁸⁵ as at May 2020.

As at December 2019, a sample of the microcredit sector profile, represented approximately 1.3 per cent (or J\$27 billion) of Jamaica’s annual GDP in total assets. Large and medium-sized businesses represented approximately 99 per cent (J\$27 billion) of total sample sector assets, followed by small and micro-businesses.

Figure 19 below illustrates that the average loan portfolio composition is comprised of three main categories of loans; Personal Loans, Loans to MSMEs, and Loans to other businesses. Personal loans accounted for at least 43 per cent of microcredit loans across all business types with heavy concentrations in micro-sized institutions. This was followed by loans to MSMEs, representing between 4 per cent - 18 per cent of microcredit loan books while remaining loans were distributed to other businesses.

⁸¹ Steven Jackson, “Access still looking for businesses to acquire”, *The Gleaner*, September 15, 2019

<https://jamaica-gleaner.com/article/business/20190915/access-still-looking-businesses-acquire>

⁸² Arlene Martin-Wilkins, “Loan shark label unfair, says Microfinance Association”, *Jamaica Observer*, March 26, 2014

https://www.jamaicaobserver.com/news/Loan-shark-label-unfair--says-Microfinance-Association_16332543

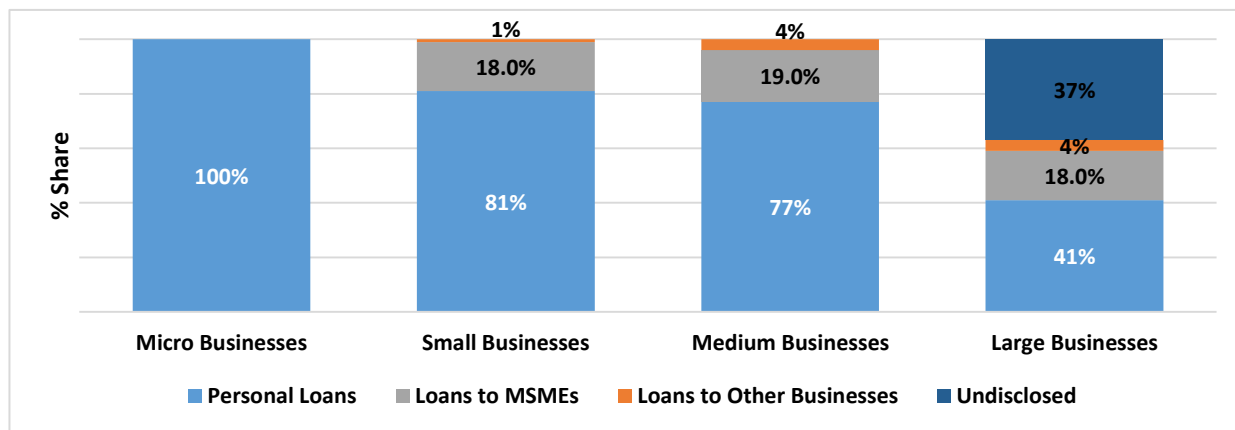
⁸³ JAMFIN formed by Worldnet Investments Limited, Kris An Charles Investments Limited and First Union Finance Limited

⁸⁴ The facilitation of salary deductions for clients from government entities for smaller institutions for a fee of 2.5 per cent of receipts. Sourced from a meeting held with representatives from the Jamaica Microfinancing Association on October 02, 2019.

⁸⁵ Karena Bennett, “\$8b micro manoeuvre – To survive, payday lenders willing to issue low-interest loans”, *The Gleaner*, May 20, 2020

<https://jamaica-gleaner.com/article/business/20200520/8b-micro-manoevure-survive-payday-lenders-willing-issue-low-interest-loans>

Figure 19: Average Loan Portfolio Composition by Business Size in the Microcredit Sector (December 2019)



Smaller microcredit institutions usually fund their operations using owner’s resource (equity), while larger players funding source includes a combination of debt and equity. Besides banks, accredited microcredit institutions can also access funding from the Development Bank of Jamaica (DBJ). The DBJ is a government-owned institution which provides funding and technical assistance to large projects and MSMEs via the dispersion of funds channelled through approved financial institutions⁸⁶. There are 13 accredited microcredit institutions accredited under this facility.

The inherent vulnerabilities within the microcredit sector were assessed as **LOW**.

6.9.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

Throughout the 2016 to 2019 review period, there was no AML legal framework for the microcredit sector. However, microcredit institutions were subject to the Moneylending Act of 1938 geared at protecting consumers from excessive interest rates and predatory lending practices⁸⁷.

In February 2019, the Government tabled the draft Microcredit Bill in the Houses of Parliament aimed at licensing and regulating the microcredit sector, combatting excessive interest rates and predatory lending practices, as well as mitigating against money laundering/terrorist financing. The Microcredit Act 2021 was passed in January 2021 and it is anticipated that it will be brought into effect in the second quarter of 2021. Existing operators will have a one year transition period or longer, as prescribed by the Minister to apply for a licence under the Act.⁸⁸

The passage of the Microcredit Act and the provision for microcredit companies to be classified as a financial institutions under the POCA, TPA, and UNSCRISA after being licensed, satisfies the an observation made in the 2017 MER, which recommended that the sector be regulated.

The consequential amendments to the POCA, TPA and UNSCRISA can be found in the 6th Schedule to the Act. The Sixth Schedule includes wording to amend the definition of “financial institution” in the POCA,

⁸⁶ Approved financial institutions include commercial banks, merchant banks, the Jamaica Credit Union League, the National People’s Cooperative Bank, the National Export-Import Bank and microfinance institutions.

⁸⁷ Under The Moneylending Act, section 3 (1) Excessive interest rates are defined as rates found to be greater than the prescribed rate (determined by the Minister) of 20 per cent per annum.

⁸⁸ Microcredit Act 2021 s10.64 (Ja.).

TPA and UNSCRIA to include references to “microcredit institutions”. Financial institutions in the POCA, are included in the term regulated business (in the 4th Schedule to the POCA) which is the category of persons with specific obligations to apply preventive measures such as CDD, enhanced and simplified CDD, risk-based approach to operations and risk mitigation measures to address dealings with countries subject to Recommendation 19 (higher risk countries) requirements and compliance with TFS obligations and filing of STRs and TTRs. Financial institutions in the TPA, are included in the term reporting entities (at section 15(2)) which is the category of persons with specific obligations to apply preventive measures such as CDD, enhanced and simplified CDD, risk-based approach to operations and risk mitigation measures to address dealings with countries subject to R19 requirements and compliance with TFS obligations and filing of STRs and quarterly asset holdings reports. Financial institutions in the UNSCRIA are included in the category of persons reflected at section 5(2) with specific obligations to comply with TFS obligations and filing of STRs and quarterly asset holding reports.

6.9.6 EFFECTIVENESS OF SUPERVISION

There was no evidence of effective transaction monitoring and reporting throughout the 2016 to 2019 review period.

With the passage of the Microcredit Bill in January 2021, BOJ (which is the regulatory authority under the Act) will be responsible for the general administration and supervision of microcredit institutions. Pursuant to part 2 section 4 of the Microcredit Act 2021, the BOJ, through the Supervisor⁸⁹ and the Supervisory Department will undertake the following:

- Formulate procedures for the licensing and regulation of microcredit institutions.
- Develop standards of practice, codes of conduct, and guidance for the general operation of licensees.
- Monitor licensees on an ongoing basis by way of off-site and on-site examination, in the manner and frequency deemed fit by the Regulatory Authority, in accordance with the risk profile of the licensees, to determine whether the licensees are operating in compliance with the Act.
- Impose sanctions for the identified breaches of the provisions of the Act, and any regulations made under the Act.
- According to the risk profile of a licensee, provide a comprehensive report to the board and management of the licensee on the results and findings from ongoing monitoring of the licensee, including, where applicable, requirements for remedial action to be taken within given timelines.
- Prescribe the type of returns and other information that licensees are required to file with the Supervisor as well as the intervals for the filing of such returns and other information.
- Advise the Minister on matters of general policy relating to microcredit institutions.
- Perform such other functions as may be assigned to the Regulatory Authority in relation to licensees, from time to time, by the Minister or by or under the Act.

Of note, the Supervisor will be required to submit to Parliament, through the Minister, an annual report relating generally to the execution of these functions. Additionally, the Supervisor will be subject to performance reviews at least every three years by qualified, independent experts.

The BOJ will also be empowered, with the approval of the Minister, to make rules surrounding the operations of the microcredit sector, in relation to:⁹⁰

⁸⁹Under the Banking Services Act, 2014 Section 2, a Supervisor means the Governor of the Bank acting in the capacity as the Supervisor of banks, financial holding companies and other specified financial institutions under section 34B of the Bank of Jamaica Act.

⁹⁰ Microcredit Act 2021 s10.59 (Ja.).

- The governance of licensees
- The form of applications and notices
- Anti-money laundering, counter financing of terrorism, and the prevention of the proliferation of weapons of mass destruction.
- The preparation and presentation of returns and other reporting requirements including the manner of filing such returns and other information
- The outsourcing of key aspects of the operations of a licensee
- Such other matters as the BOJ considers necessary for the administration of the Microcredit Act 2021.

These powers will be exercised after consultation with licensees and any other relevant stakeholders.

6.9.7 COMPLIANCE FRAMEWORK

The compliance framework for the sector could not be determined as the sector was unregulated over the review period and the Microcredit Act was only passed in 2021.

There was also no evidence of transaction monitoring and reporting throughout the 2016 to 2019 review period. However, approximately 82 per cent of microcredit institutions surveyed have indicated the inclusion of suspicious activity monitoring and reporting in their policies, however, the depth and effectiveness of these policies remain unknown.

6.9.8 MICROCREDIT RISKS

As the microcredit sector was not included under Jamaica's AML/CFT/CPF framework during the period under review, the sector was therefore not scored in the manner that was done for the other areas in the financial sector. The largest three players in the sector account for approximately 51 per cent of the total assets in the sector. These large companies are either part of a financial group or they are listed on the Jamaica Stock Exchange. They are funded by a mix of development bank funds, equity, and loans from financial institutions. They also maintain bank accounts that are subject to the rigorous due diligence requirements.

The main area of concern relates to the small operators who often operate in an informal manner. These operators are not the subject of any fit and proper assessment and the source of funds to start these operations, which could have been the result of illicit activities, is not declared to any authority. As a result of this vulnerability, the authorities should take step to understand the extent of this issue and implement an appropriate response grounded in an understanding of the risk in the area.

Developments since Jamaica's 2017 MER

In January 2021, the Microcredit Act was passed. The intention is to bring the Act into effect by end 2021. BOJ has established a Microcredit Department and has a Head of Department in place. Engagement activities with the Sector commenced in 2019 and intensified after the Head of Department came on board. Guidance to assist with the licensing process is being developed and additional sensitisation sessions are being planned for the sector after quarter three of 2021, when the Act should be in effect.

ML typology in the Microcredit Sector

1. The use of illicit funds to start small microcredit companies.
2. Insistence to make loan payments in cash rather than standing order from an account held with a financial institution
3. Loan payments are made by a person other than the person who took out the loan.

CHAPTER 7: DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS (DNFBPs)

7.1 CHAPTER OVERVIEW

This chapter provides details relating to industries and professions designated as non-financial institutions under the Proceeds of Crime (Designated Non-Financial Institution) Order, 2013. The chapter also outlines the important progress that has been made in implementing a regulatory and supervisory framework for each of the designated businesses and professions. In determining the overall money laundering (ML) and terrorist financing (TF) risk within each DNFBP, extensive stakeholder engagement and data collection was done with relevant competent authorities, private sector entities, and bodies across law enforcement.

The overall average risk rating for the DNFBPs sector was **MEDIUM**.⁹¹ In terms of the specific ratings for each sector, table 50 below shows the overall rating for each DNFBP assessed, of which the majority were rated as medium, with the exception of public accountants who were rated as Medium-Low. Details of how these ratings were determined are provided further on in this chapter.

Table 50: DNFBPs Sector Vulnerability Rating Based on World Bank tool

Sector	Sector's Vulnerability to ML	Sector's ML Threats	Overall Sector Risk Score
Real Estate Dealers	Medium	Medium-Low	MEDIUM
Gaming	Medium	Medium-Low	MEDIUM
Public Accountants	Medium-Low	Low	MEDIUM-LOW
Attorneys	Medium	Medium	MEDIUM

This sector has been slow to implement elements of risk-based supervision. As will be seen in the discussion, these DNFBPs are significantly behind the financial institutions (FIs) in the development of robust supervision frameworks as well as the development of relevant thematic papers. In the private sector, there are deficiencies in suspicious transaction reporting as is reflected in the under-reporting throughout the various professions. While considerable improvements have been seen over the period under review, there is still room for significantly more enhancements in the areas of supervision, thematic papers, and suspicious transaction reporting.

7.2 DESIGNATIONS UNDER THE PROCEEDS OF CRIME ACT

To strengthen the local AML framework and satisfy recommendation 22 of the FATF Guidelines, the Proceeds of Crime (Designated Non-Financial Institution) Order, 2013 was passed. The Order applies to any person/profession designated as a non-financial institution for the purposes of the Act. As seen in table 51 below, Jamaica has designated gaming machine operators, casino operators, real estate dealers, public accountants and attorneys-at-law.

⁹¹ The NRA team did a simple weighted average score calculation using the sector results from the World Bank NRA tool. The composite score for the sector was calculated at 0.56 which represents Medium risk.

Table 51: Designations under the Proceeds of Crime Act

ORDER	EFFECTIVE DATE	ACTIVITIES
The Proceeds of Crime (Designated Non-Financial Institution) (Gaming Machine Operators) Order, 2013	1st day of April, 2014	Applies to any person who operates twenty or more gaming machines pursuant to a licence under the Betting, Gaming and Lotteries Act.
The Proceeds of Crime (Designated Non-Financial Institution) (Casino Operators) Order, 2013	1st day of April, 2014	Applies to any person who operates a casino pursuant to a licence issued under the Casino Gaming Act.
The Proceeds of Crime (Designated Non-Financial Institution) (Real Estate Dealers) Order, 2013	1st day of April, 2014	Applies to any person who is issued a licence under the Real Estate (Dealers and Developers) Act authorizing that person to engage in the practice of real estate business in the capacity of a real estate dealer.
The Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, 2013	1st day of April, 2014	<p>Applies to any person registered as a public accountant under the Public Accountancy Act, and who carries out any of the following activities on behalf of any client</p> <ul style="list-style-type: none"> (a) purchasing or selling real estate; (b) managing money, securities or other assets; (c) managing bank accounts or savings accounts of any kind, or securities (as defined by the Securities Act) accounts; (d) organizing contributions for the creation, operation or management of companies; (e) creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); or (f) purchasing or selling a business entity.
The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-law) Order, 2013	1st day of June, 2014	<p>Applies to any person whose name is entered on the Roll of attorneys-at-law pursuant to section 4 of the Legal profession Act, and who carries out any of the following activities on behalf of any client (</p> <ul style="list-style-type: none"> (a) purchasing or selling real estate; (b) managing money, securities (as defined by the Securities Act) or other assets; (c) managing bank accounts or savings accounts of any kind, or securities accounts; (d) organizing contributions for the creation, operation or management of companies; (e) creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); or (f) purchasing or selling a business entity.

DESIGNATED NON-FINANCIAL INSTITUTIONS:

7.3 REAL ESTATE DEALERS

The real estate sector in Jamaica is vibrant, reflecting the growing construction and demand across the island. The sector is regulated by the Real Estate Board (REB) which authorizes persons to engage in the practice of real estate business in the capacity of real estate dealers or salesmen. Licenses issued specify the areas in which the licensee may work and the duration of the license.

This section will look at the real estate sector, examining its vulnerability to money laundering (ML) and terrorism financing (TF) risk.

7.3.1 SECTOR AT A GLANCE



7.3.2 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

The 2017 mutual evaluation report (MER) noted that Jamaica's National Security Policy (NSP) indicated that the real estate sector was a facilitator of money laundering. However, the exposure was being managed as the assessors noted that the real estate sector appears to have a better understanding of anti-money laundering (AML) and countering the financing of terrorism (CFT) issues when compared to all other DNFBPs. This included:

- a greater understanding of its ML/TF risk;
- a better understanding of the difference between ownership of shares and beneficial ownership; and

- a better understanding of the information that is required as it relates to the identity of spouses, children, business activities, source of funds, and geographic risk of politically exposed persons (PEPs).

The MER noted that the guidelines for the REB, which were still in draft form at the time, included requiring a risk-based approach to supervision, although it was not being carried out. The assessors recommended that all DNFBPs, including real estate agents and dealers, should be subjected to effective risk-based AML/CFT supervision.

7.3.3 INHERENT VULNERABILITIES

Real estate dealers and salesmen are regulated by the REB. It must be noted that the REB also regulates real estate developers, but developers are not designated under the Proceeds of Crime (Designated Non-Financial Institution) (Real Estate Dealers) Order, 2013, which requires licenced real estate practitioners to implement AML/CF policies and to file suspicious transaction reports (STRs). As a result, the REB's training and monitoring mechanism in relations to the Proceeds of Crime Act (POCA), is directed mainly towards real estate dealers and salesmen

The records of the REB reflect that a total of 1,072 real estate dealers and 3,377 salesmen have been licenced during the period under review (2016 – 2019).

Real estate transactions are normally initiated by real estate practitioners, but are in most instances, completed by attorneys-at-law. This does not remove the practitioners' responsibility to conduct identification procedures as it relates to AML/CFT on their clients.

7.3.4 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

Real estate dealers and salesmen in Jamaica were designated non-financial institutions under the Proceeds of Crime (Designated Non-Financial Institution) (Real Estate Dealers) Order, 2013. As a result, the sector is governed by the POCA and the POCA (MLP) Regulations. The sector also falls under the following Acts and Regulations:

- The Terrorism Prevention Act, 2005
- The Terrorism Prevention (Reporting Entities) Regulations, 2010
- The Real Estate (Dealers and Developers) Act

In 2019, the REB gazetted its AML/CFT Guidance Notes for Real Estate Dealers. The guidance notes promote the implementation of a risk-based AML/CFT framework by licensees. The key areas of guidance provided by the document include:

- Licensees reporting obligations under POCA
- The requirement to implement internal AML/CFT controls
- ML offences and related penalties.
- The requirement for licensees to conduct ongoing risk assessment of their customer and apply enhanced due diligence where necessary.

The guidance notes are comprehensive and complement existing AML/CFT laws by outlining the provisions within the applicable legislation.

7.3.5 EFFECTIVENESS OF SUPERVISION

The REB's supervisory framework is aimed at ensuring that the following are effectively implemented:

- AML/CFT Training of staff;
- AML/CFT Inspections of real estate dealers and salespersons;
- Establishing and disseminating AML/CFT guidelines;
- Establishing an Examination Regime; and
- Documentation and retention of records in relation to AML/CFT policies and procedures.

The REB's Inspectorate Department is staffed by, a manager and six inspectors. All six Inspectors conduct AML inspections, however, only two of these inspectors are charged with the main responsibility to test AML compliance levels within the industry.

The REB is currently developing its onsite examination manual, which is in a draft format. Through its ongoing onsite and offsite monitoring, the REB has sought to gain an understanding of the ML/TF risk within the sector.

As a first step to developing an understanding of the risk within the sector, the REB initiated a risk assessment exercise in 2020. Data for the risk assessment were garnered from the responses to a self-assessment questionnaire administered to licensees. The questionnaire consisted of nine sections, namely:

- Dealership information
- Customer base
- Cash transactions
- Internal procedures for reporting suspicious transactions
- Employees
- Staff training
- Self-audits
- The nominated officer
- Customer due diligence

Responses were manually recorded in an Excel spreadsheet and licensees were then scored based on their responses and placed into categories of low, medium or high risk. This risk assessment covered a total of 134 dealers, which represented 39 per cent of licenced real estate dealers. The results, though very limited, are now being used to inform some aspects of implementation of risk-based supervision within the sector.

From the results generated, the methodology employed needs to be adjusted slightly to be effective for the sector. Points are assigned to each response (responses are not verified), which are then totalled to achieve the overall score and risk rating for each licensee. For example, licensees were asked to indicate the number of clients originating from a list of countries provided. The points assigned were 2 points for 1 to 20 clients and 8 points for more than 20 clients. The spreadsheet showed dealers scoring across a range, from a low of 4 out of 100 to a high of 97 out of 100, suggesting gaps in the methodology.

Between 2017 and 2019, the REB inspectorate conducted on average, just over 100 onsite inspections per year. This represented approximately 87 per cent of the targeted 120 examinations per year. Findings from the examinations revealed continued deficiencies in customer due diligence (CDD) as well as the

lack of internal audits among dealers. Where adverse findings have been identified, these were communicated to the respective dealers. However, timelines to have the matters resolved were not included in those communications. This represents a gap whereby deficiencies may go unresolved for extended periods.

7.3.6 COMPLIANCE FRAMEWORK

A significant portion of licenced real estate dealers operate as sole proprietors. As a result, compliance functions are often viewed by these dealers as cost centres and are therefore not prioritized. Often the nominated officer is the qualifying director/owner of the business who has several other duties to perform.

7.3.7 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

A review of initiated ML cases indicated that real estate transactions are featured in the majority of ML investigations. Despite this fact, only four STRs were filed by dealers over the period. The disparity between the number of ML investigations that featured real estate transactions and the number of STRs filed signals that dealers may not be adequately screening their clients for suspicious transactions and are instead relying on banks and attorneys-at-law to screen their clients.

7.3.8 REAL ESTATE DEALERS: RISK LEVEL

The overall risk score for real estate dealers was **MEDIUM**. The main contributing factors to this assessment include the fact that dealers do not engage in cash transactions and the supervisory framework is fairly robust. There is, however, concern regarding the very low level of suspicious transaction reporting by dealers.

DEVELOPMENTS SINCE JAMAICA'S 2017 MER

Since Jamaica's 2017 MER the REB has taken several steps to improve its supervisory practices geared towards the adoption of a risk-based approach to supervision. The following are some of the key initiatives that the REB has undertaken:

- Gazetting of AML/CFT guidelines in August 2019 which requires licensees to implement a risk-based AML/CFT framework.
- In 2020, the REB conducted risk assessments of 39 per cent of its licensees with the objective of categorizing the risks identified to aid in the monitoring of the sector utilizing a risk focused approach
- The REB is currently seeking to amend the Real Estate (Dealers & Developers) Act to strengthen areas regarding beneficial ownership and source of funds information.
- Between 2018 and 2019 the REB increased its training offered to the industry to include updating the industry on emerging risks as well as their legal obligation in filing reports with the designated authority.

TYOLOGIES AMONG REAL ESTATE DEALERS

The following are potential avenues for money laundering among real estate dealers:

1. A prospective purchaser attempts or offers to purchase real estate using cash.
2. A client purchases a home with unexplained source of funds
3. A purchaser or vendor is willing to settle on a price that is significantly above or below the market value of the real estate.

7.4 GAMING LOUNGES AND CASINOS

Having no licensed casinos in operation, Jamaica is not considered a major gaming destination. However, there is a viable market for gaming operators, with over 7,000 machines in operation across

the island. The Betting Gaming and Lotteries Commission registers, licenses and approves the activities of gaming operators.

This section will look at the gaming sector, examining its vulnerability to ML/TF risk.

7.4.1 SECTOR AT A GLANCE

 <p>Governing Legislation</p>	<p>The Betting, Gaming, and Lotteries Act</p>	 <p>Delivery Channels</p>	<p>Face-to-face Engagements</p>
 <p>AML/CFT Laws</p>	<ul style="list-style-type: none"> ▪ Proceeds of Crime Act (POCA) ▪ Terrorism Prevention Act (TPA) ▪ The BGLC also published its Guidance Note 	 <p>Number of Customers</p>	<p>In 2018 there were 38,678 clients reported across gaming lounges</p>
 <p>Size/Value of sector (% of GDP)</p>	<p>Throughout the 2019 to 2020 period, sales generated from the gaming sector totalled approx. \$118.93B.</p>	 <p>Level of Cash</p>	<p>As at November 2019:</p> <ul style="list-style-type: none"> ▪ approx. 70% of transactions were done using cash as a preferred method of payment. ▪ 91% reliance on cash as a payout method.
 <p>Customer Profile</p>	<ul style="list-style-type: none"> ▪ Domestic (99%) ▪ Foreign National (1%) <i>(Domestic and foreign clients of which 98% were classified as Other Individuals, 2% as High-Rollers and 0.1% as PEPs)</i> 	 <p>Number of Players</p>	<p>As at March 2020, there were:</p> <ul style="list-style-type: none"> ▪ DNFBPs: 13 licensed gaming machine operators and 18 prescribed premises operators. ▪ Non-DNFBPs: 521 licensed gaming machine operators with up to 19 machines and 16 technical service operators.
<p>Sector Risk Score</p>		<div style="border: 2px solid blue; padding: 5px; display: inline-block;">MEDIUM</div>	

7.4.2 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

The findings from Jamaica's 2017 MER in relation to the gaming sector, included matters concerning:

- The absence of legislative requirements for the determination of the ultimate beneficial owner at the time of licensing or thereafter;
- The Betting, Gaming and Lotteries Commission (BGLC) did not conduct any examinations during the period of the MER review [2015];
- The lack of applicability of the Terrorism Prevention Act (TPA) to DNFBPs including gaming operators, and the filing of STRs and suspicious activity reports (SARs) related to terrorist financing;
- The absence of measures to identify, as well as verify the identity of the Beneficial Owner.

7.4.3 INHERENT VULNERABILITIES

The customer base of gaming lounges are categorized into two broad categories, domestic clients and foreign nationals. Table 52 below demonstrates the concentration of local clients in the sector for the 2018 period, which accounted for approximately 99.3 per cent of clients, while the remaining 0.7 per cent represented foreign nationals. Roughly 2.1 per cent (or 798) of clients were considered high-risk, being either high-rollers or PEPs. Of note, while local's maintained dominance in number, greater contribution to the sector was skewed towards foreign nationals with average spending of US\$1,119.26 compared to local average spending of US\$71.47.

Table 52: Gaming sector customer profile – 2018:

Client Profile (2018)	No. of Clients	% of Clients
Foreign Clients:		
<i>High-Rollers</i>	216	0.56%
<i>PEPs</i>	8	0.02%
<i>Other</i>	30	0.08%
Total Foreign	254	0.66%
Domestic clients:		
<i>High-Rollers</i>	549	1.42%
<i>PEPs</i>	25	0.06%
<i>Other</i>	37,850	97.86%
Total Domestic	38,424	99.34%
TOTAL CLIENTS	38,678	100%

Technical service providers (TSPs), specifically the manufacturers of locally made gaming machines, were noted as a potential area of vulnerability to money laundering within the gaming sector. Prior to April 2019, the purchase of local gaming machines and/or parts were not adequately monitored, potentially increasing the sector's attractiveness to fraudulent activities, especially for manufacturers who are also gaming machine operators. This loophole was, however, addressed through the introduction of mandatory technical standards licences by the BGLC in April 2019, for operators who manufacture or assemble local gaming machines. As a result, all new local gaming machines must be purchased from a licensed TSP otherwise be forfeited and destroyed. TSPs are mandated to report a sale/lease transaction within seven days, and the details of the purchaser(s)' licensing status is cross-referenced with the Licensing and Registration Division of the BGLC.

7.4.4 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

Gaming operators in possession of 20 or more gaming machines on any prescribed premises are subjected to supervision by the BGLC pursuant to POCA and the Proceeds of Crimes (Money Laundering Prevention) Regulations and its amendments. The BGLC has also published in the Jamaica Gazette in 2020, revised guidance notes as a supervisory tool. Revisions to the BGLC's guidance notes incorporated recent legislative amendments and supervisory practices in line with the FATF's recommended risk-based approach.

The AML/CTF legal framework also encompasses the following Acts:

- The Terrorism Prevention Act 2005, 2011, 2013 and 2019 Amendments;
- The Terrorism Prevention (Reporting Entities) Regulations 2005, 2010, 2011, 2013 and 2019 Amendments;
- The United Nations Security Council Resolution Implementation Act, 2013;

- The United Nations Security Council Resolution Implementation (Asset Freeze — Democratic People’s Republic of Korea) Regulations, 2013;
- The United Nations Security Council Resolution Implementation (Reporting Entities) Regulations, 2019;
- The Terrorism Prevention (Designated Reporting Entities) (Gaming Machine Operators) Order 2017.

Customer Due Diligence

Licensed gaming operators are obligated to develop and implement a customer due diligence (CDD) and know your customer (KYC) policy detailing the procedures and steps to be taken for the identification and verification of customer information as well as the monitoring of their accounts. Standard procedures for CDD among gaming operators must be done in accordance with regulation 7 of the Proceeds of Crime (Money Laundering Prevention) Regulations which includes a requirement to collect the following customer information: (a) Full Name (b) Current Address (c) Taxpayer Registration Number or other Reference Number (d) Date and Place of Birth (or Date of Incorporation). In the event that a business relationship or one-off transaction is determined to be low-risk, gaming operators may apply simplified due diligence, given the prescribed conditions outlined in section 5B of Regulation 7 are met.⁹² Where an operator is unable to verify a customer’s identity, gaming operators are required to discontinue the transaction or business relationship, or in the case of a one-off transaction, not to proceed any further.

While the legal framework was deemed effective in the supervision of designated gaming operators, those operators with up to 19 machines are not captured under the framework, and this was identified as a gap. Additionally, there were instances where operators had over 20 machines in aggregate across multiple locations, but falling below the supervisory parameters as the regulations apply to a single location.

7.4.5 EFFECTIVENESS OF SUPERVISION

There are four types of on-site examinations conducted by the BGLC (Routine Examinations – conducted annually, Follow-up Examinations, Random Examinations, and Special Examinations), which cover seven general areas:

- Effectiveness of the overall AML/CFT compliance programme
- Adequacy of the documented internal AML/CFT policy and procedure manual
- Record keeping procedures and systems
- Adequacy and effectiveness of AML/CFT training programme
- Adequacy and effectiveness of detection, reporting and monitoring procedures
- Employee awareness and integrity
- Adequacy and effectiveness of customer due diligence process and enhanced due diligence measures.

Between 2016 and 2017 there were three examination cycles conducted by the BGLC that covered all relevant gaming lounges. The result from these examinations revealed that approximately 67 per cent (8 lounges) of gaming lounges displayed moderate to high levels of effectiveness and compliance while the remaining 33 per cent (4 lounges) of gaming lounges were found to be non-compliant. Instances of ineffectiveness and non-compliance for the period were rooted in insufficient policies and procedures,

⁹² Proceeds of Crime (Money Laundering Prevention) Regulations, 2007, 2013 and 2019 Amendments, section 7 (5 (c)).

inexperienced or unqualified staff, poor record keeping, ineffective transaction monitoring and a lack of risk-based assessments. Consequently, the BGLC administered a maximum 45 days corrective period to non-compliant licensees for which licence renewal was later denied for two gaming lounges based on continued non-compliance.

The BGLC initiated the transition to a risk-based supervisory regime in May 2019 through the use of an online tool to determine risk profiles based on responses and documents submitted by gaming operators. The risk assessment tool is a web-based application, which allows the BGLC to send each gaming operator, via email, a unique link and code to access an online questionnaire to be completed. The application also allows the gaming operators to submit supporting documents via upload through the same platform and facilitates the BGLC's monitoring and tracking to completion.

The questionnaire covers 12 areas; entity profile information, policies and procedures, employees, AML/CFT training, ongoing monitoring, reporting, record keeping, products and services, customers, geography/country, payment/transaction.

Once the questionnaire, which contains over 160 questions, is completed, the information is uploaded to the BGLC's gaming management system and validated. After validation, the system calculates the risk score and assigns each respective operator the appropriate risk category based on the scoring method programmed into the system. Gaming lounge operators are rated as high, medium or low risk.

The methodology employed appears effective for the sector. Weights were applied to calculate the risk rating for each section assessed as well as contribute to the overall risk rating for each licensee. The scores were then averaged to provide an overall risk score for each licensee. The results saw ten of eleven 11 licensees being categorized as medium risk, while one was classified as high risk. This information is used in planning and executing AML/CFT examinations.

Additionally, updates have since been made to the AML Gazetted Guidance Notes to include the requirement for gaming operators to adopt a risk-based approach to their respective AML/CFT/CPF frameworks, develop risk profiles for all customers with corresponding KYC and CDD requirements, and a heightened focus on PEPs which has been in effect since September 25, 2020.

The BGLC's supervisory staff consisted of five members [Head of Compliance and Regulatory Division, AML/CFT Compliance Manager (Team Leader), two AML/CFT Compliance Officers, and a Clerical Worker]. Based on the number of operators in the industry, the staffing was deemed inadequate. Supervisory activities were primarily conducted using Microsoft Word and Microsoft Excel. There were also no data mining nor analytical tools employed by the BGLC.

Over the review period, the BGLC did not have a documented supervisory manual to guide its supervisory activities. However, the BGLC is currently working on its supervisory manual, which is expected to be completed by the end of 2021.

7.4.6 COMPLIANCE FRAMEWORK

The effectiveness of the compliance framework in licensed gaming operations over the review period was deemed unsatisfactory. Findings from on-site examinations by the BGLC revealed that approximately 67 per cent of licensees displayed non-compliance or partial compliance in relation to the appointment and effectiveness of the nominated officers employed in these businesses. This is because many smaller businesses do not have staff with the requisite skills and knowledge to effectively implement adequate compliance frameworks.

7.4.7 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

Employees of a gaming lounge are legally obligated to make reports of activities or transactions to their nominated officer where they suspect or have knowledge that such activity involves the proceeds of crime⁹³. This internal report should be made by employees to the nominated officer as soon as is reasonably practicable and, in any event, within 15 days after knowing about the suspicious activity. Thereafter, the nominated officer will determine whether there are reasonable grounds for filing an STR with the FID pursuant to part 5 section 94 of the Proceeds of Crime Act.

Several deficiencies were identified in relation to some gaming operators identifying suspicious transactions and the screening of customers against sanctions lists (such as the United States Office of Foreign Assets Control [U.S. OFAC] and the United Nations Security Council Consolidated List). The deficiencies were specifically identified among smaller gaming operators that had a small staff complement and did not have the resources to invest in a dedicated compliance function. As a result, these firms were not filing STRs with the designated authority, which constitutes a gap in the framework. In addition to deficiencies among smaller operators, low STR filing across the sector was also attributed to a culture of fear and/or lack of faith and trust in law enforcement. Following interviews with the BGLC, it was revealed that this fear and lack of trust was prevalent particularly in the 2016 to 2017 period based on feedback from interactive sector sessions. This was however tempered as a result of targeted efforts made by the BGLC and nominated officers in the form of increased training on STR filing as well as the creation of accommodative environments through the installation of drop boxes in areas without camera surveillance such as lunch areas and bathrooms.

Over the review period, a total of 134 STRs were filed by gaming lounges. While efforts made by the BGLC and nominated officers were considered contributing factors to the improvement in suspicious transaction report filing, greater efforts are still needed in increasing the overall filing rate given that only 45 per cent of gaming lounges are filing STRs.

⁹³ "Anti-Money Laundering Guidance Notes for Gaming Lounge Operators", The Betting, Gaming and Lotteries Commission (Gazetted 2016):22¹²A.

CASE EXAMPLE

In early 2015, Mr. X entered the island via airplane and was granted access to the island by the immigration authorities. His place of stay was at a hotel in the corporate area. Mr. X's inclusion on the UN Sanctions List went unnoticed until he attempted to engage in business activities, initially with a gaming lounge, then a cambio. Thereafter, both institutions filed suspicious transaction reports (STRs) to the Financial Investigations Division (FID).

Prompt investigative action was undertaken by the FID and disclosures were made to the United States of America, United Kingdom and Canada. Further investigations from the FID revealed the following details surrounding Mr. X:

- The hotel booking was conducted via a third party using a credit card belonging to another person.
- His stated purpose of stay at the hotel was solely for gambling.
- He was in possession of three separate passports, one of which was in braille.
- At the time of his departure, a different passport was used to flee the country from the one used upon his arrival.

In light of this, Jamaica's terrorism prevention mechanisms, particularly in the filing of STRs, were proven effective on the part of the gaming lounge, cambio and the FID. The level of general effectiveness can be measured by the identification of the suspicious person and prompt report filing from separate institutions, coupled with the timely responsive actions taken by the designated authority. Of note, the incident also highlights deficiencies in immigration screening.

7.4.8 GAMING LOUNGES: SECTOR RISK

The overall sector score for the gaming lounges was **MEDIUM**. The main contributing factors to this assessment include the absence of a supervisory manual, a low STR reporting rate for licensees as well as deficiencies in the compliance functions in smaller gaming lounges.

DEVELOPMENTS SINCE JAMAICA'S 2017 MER

- On January 26, 2016, the BGLC AML Guidance Notes were published in the Jamaica Gazette and circulated to the industry in May 2017.
- On October 13, 2017, the Terrorism Prevention (Designated Reporting Entity) (Gaming Machine Operators) Order, 2017 was affirmed in the Senate and is applicable to any person who operates 20 or more gaming machines (gaming lounge) pursuant to a licence under the Betting, Gaming & Lotteries Act. Effective May 2018, the BGLC was also designated the competent authority under the Terrorism Prevention Act by order affirmed in the House of Representatives on November 29, 2017 by the Minister of Finance and the Public Service.
- On September 25, 2020, the BGLC AML Gazetted Guidance Notes were updated to incorporate amendments made to the AML/CFT/CPF legislation, the passage of the United Nations Security Council Resolutions Implementation Act, and the revised FATF Forty Recommendations and Guidance.
- A supervisory examination manual was drafted by the BGLC and is expected to be completed by June 2021.

TYOLOGIES IN THE GAMING SECTOR

The following are potential avenues for money laundering in the gaming sector:

1. The cash purchase of gaming chips valued at the “below radar” amount (below the de-minimis amount of US\$3,000) which can then be laundered through the deposit/encashment of a cheque received from the gaming institution for purported “winnings”.
2. Cash bets at several gaming lounges (structuring) and collecting cheques for chips cashed in which can be encashed or deposited.
3. The use of pay-out cheques to launder money through the combination of gaming proceeds and cash on hand to be converted into one cheque made out by the gaming institution.

7.4.9 A NOTE ON CASINO GAMING

The casino gaming sector is governed by the Casino Gaming Act, 2010 and the Casino Gaming (Prescribed Games) Regulations, 2012, which currently serve as a guide for casino operators regarding their compliance requirements, including AML/CFT. There are, however, currently no registered casinos in Jamaica. While there are no licensees, the sector’s level of preparedness in terms of its regulatory, supervisory and licensing frameworks should be highlighted and seen twofold: (1) as a proactive approach to the regulations of the sector (2) as an invitation to prospective operators.

The Casino Gaming Commission (CGC) was established by the Casino Gaming Act 2010, as a body corporate empowered to grant casino licences, subject to fit and proper and other stated requirements, as well as to regulate casino gaming in Jamaica.⁹⁴ The CGC, in its role as a competent authority, is also responsible for the maintenance of compliance with the Casino Gaming Act and the provision of guidance notes to the sector.⁹⁵ In the event that a casino operator fails to comply with the stipulated guidelines, the CGC is empowered to take disciplinary actions such as the issuance of letters of warnings and directives, revocation or suspension of a licence pursuant to the sector’s legal provisions.

Jamaica has established betting, gaming, lottery, racetrack and casino sectors, which are governed by the Betting, Gaming and Lotteries Act, Jamaica Racing Commission Act and the Casino Gaming Act respectively. Given the complementary nature of responsibilities undertaken by the Betting, Gaming and Lotteries Commission, Jamaica Racing Commission and the Casino Gaming Commission, a decision was made to consolidate supervisory activities in an effort to bolster AML/CFT compliance within the industry. Notably, the BGLC is currently redrafting its Act as required for the merger of the Commissions.

Given the absence of casino operators in Jamaica, the casino gaming sector is considered to be low risk with minimal threats/vulnerabilities surrounding ML/TF activities, but this assessment may change with the expected establishment of casinos within the next few years.

⁹⁴ *The Casino Gaming Act 2010 s.2.5 (Ja).*

⁹⁵ *The Betting Gaming and Lotteries Guidelines on the Prevention of Money Laundering and Countering the Financing of Terrorism and Proliferation (Jamaica Gazette Extraordinary, Vol. CXLIII September 25, 2020) (Ja)*

A NOTE ON HORSE RACING

Horse racing betting activities are cash-intensive. Complex transactions can camouflage the illegal sources of the cash through layering, and the speed at which transactions occur allows the proceeds of illicit funds to be laundered easily. The ability to receive cash and pool funds together from multiple sources are practices that expose the sector to risks of money laundering. For these reasons, horse racing betting raises concerns globally.

The betting sector in Jamaica consists of bookmakers and promoters.⁹⁶ Bookmaking on horse racing was legalized in 1965 under the Betting, Gaming and Lotteries Act (BGLA). As at 2020, there were six bookmakers with an aggregate of 146 betting shops and sports betting sales outlets as well as one racing promoter with 121 off-track betting parlors. For the period 2019 to 2020, the sector generated sales revenue totaling approximately J\$12.6 billion, which represents less than one per cent of Jamaica's gross domestic product. Notably, roughly two per cent (or J\$291.4 million) of sales revenue was collected in taxes, geared towards the maintenance of the horse racing industry for the corresponding period.⁹⁷

The sector does not have an established AML/CFT framework, however, the BGLC conducts fit and proper assessments of principal directors of race promoters and bookmakers before granting a license to operate. This process is repeated every five years and with the appointment of a new director. While mitigative measures are noted in betting activities on part of the BGLC, the following contributing factors should be considered:

1. Customer Onboarding

Bookmakers and racing promoters employ a player account wagering system in their operations. This system accepts bets using a virtual wager account through electronic devices such as mobiles and computers for live sporting events, virtual and pre-recorded sports as well as online games. Registration for player wager accounts are initiated online and completed with a mandatory face-to-face interaction for the initial deposit into the wager account. This face-to-face aspect is geared at validating key customer information, as per the BGLC's KYC framework. However, the effectiveness in combatting ML is hinged on the ability of terminal operators to identify suspicious activity. This level of AML/CFT knowledge is unknown. Of note, one bookmaker integrated a digital verification system, Jumio, to validate customer identifications.

2. Client Profile

Concerns were raised by the BGLC surrounding the level of anonymity for clients of traditional bookmakers offering bets on local and simulcast horse racing. The level of anonymity was linked to limited KYC and due diligence measures undertaken by some bookmakers in initial customer engagements. This uncertainty may create an avenue for suspicious parties to launder money with a relatively greater chance of not being detected.

3. Perceived High Use of Cash

While the actual proportion of cash use is unknown, the use of cash was noted in direct bet offer payments, deposits to player wager accounts and as a form of payout by the BGLC. The BGLC views the horse racing sector as cash-intensive. This increases the vulnerability of the sector to money laundering activities given the inability to adequately trace the source of funds within the system. Notably, ML exposures are somewhat tempered by the cash transaction limit of one million Jamaican dollars, as per POCA, imposed on bookmakers and race promoters by the BGLC.

4. Online Gaming

As at 2020, there were two bookmakers (approximately 33 per cent of bookmakers) offering the online gaming option in the betting sector. While this product is only offered by bookmakers, operators are, to some extent, restricted by adherence to games only within Jamaica. There is no legislation in place surrounding interactive gaming. This deficiency, however, is expected to be addressed in the short to medium term as the BGLC undertakes its draft legislations.

While there are notable unknowns surrounding the internal controls of the horse racing sector, given the relatively small nature of the industry, representing approximately 0.6 per cent of Jamaica's gross domestic

product, coupled with the AML/CFT targeted efforts employed by the BGLC, the horse racing sector's vulnerability is considered to be medium risk in the context of money laundering.

⁹⁶ Bookmakers offer local horseracing, simulcast horseracing, sports betting and online gaming products while promoters offer local horseracing and simulcast horse racing from host tracks in the UK and USA.

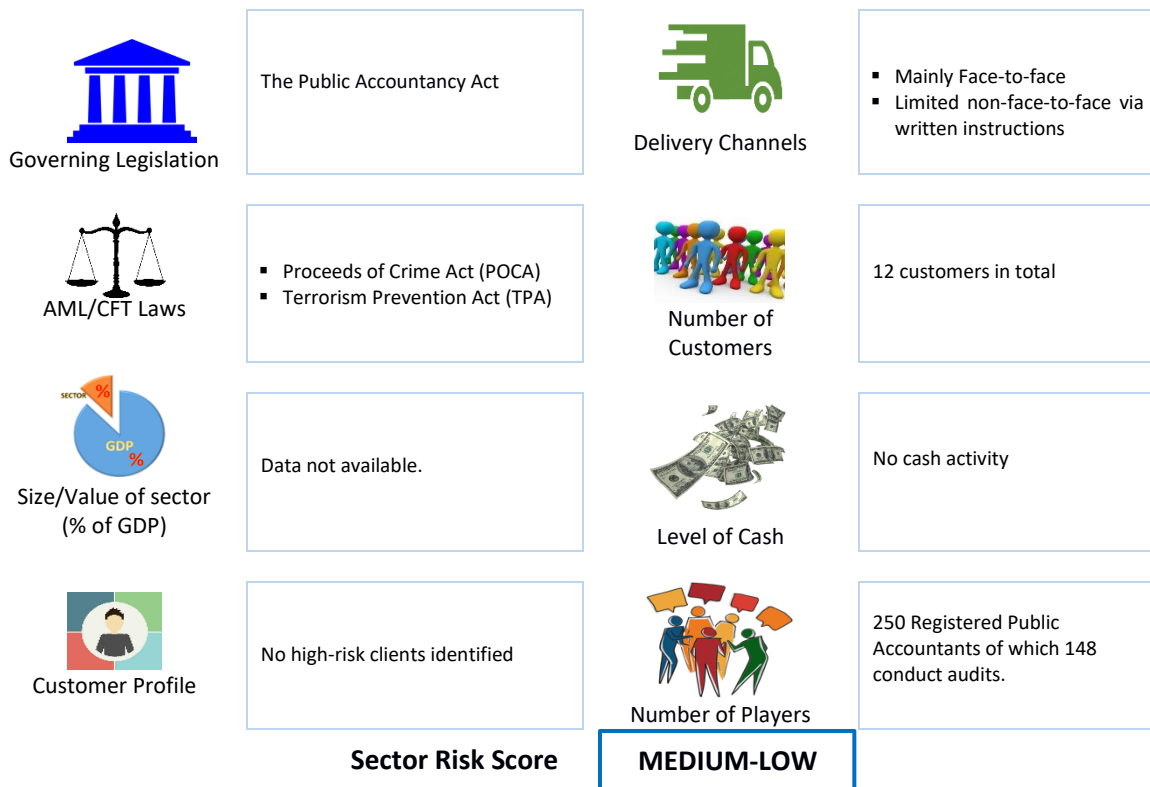
⁹⁷ The Jamaica Racing Commission Act 1972 s.1.4 (Ja.).

7.5 PUBLIC ACCOUNTANTS

The Public Accountancy Board (PAB) registers persons who apply and are qualified to engage in the practice of accountancy in Jamaica. A person practices as a public accountant if the person holds themselves out expressly or by implication as being a professionally qualified accountant or an expert in accounting or auditing matters. Services provided by public accountants may be attractive to criminals because they can be used to help their funds gain apparent legitimacy and respectability.

This section will look at the profession of public accountants in Jamaica, examining its vulnerability to ML/TF risk.

7.5.1 SECTOR AT A GLANCE



7.5.2 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 MER noted the following in relation to accountants:

- The number of accountants qualifying to be supervised for AML/CFT purposes was minimal, as is their client base, and the general method used for assessing clients' risk is determining whether a client is a PEP or not.
- Public accountants are aware of their obligations to file STRs, and designated officers responsible for receiving, reviewing and filing STRs were in place. It was also noted that no STRs were filed by the profession.
- Supervisory frameworks are still being developed by DNFI/DNFBP supervisors to carry out proper AML regulation on the relevant sub-sectors. It was noted that the PAB guidelines were not approved, therefore examiners do not have authority to carry out inspections. On-site AML inspections have not been conducted, which would allow the supervisor to identify activities being

carried out that may result in the imposition of sanctions. In practice, should a registrant be found to not comply with AML/CFT requirements or requirements under the Public Accountants Act, the Practice Monitoring Committee invites the registrant to come in and explain the reason for non-compliance. The registrant would then be required to submit a report including an action plan to address how they would remediate deficiencies.

7.5.3 INHERENT VULNERABILITIES

Within the profession, there are only three firms that carry out one of the activities outlined in the Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, 2013. These firms manage client money, which is defined as preparing accounts and payrolls for clients. As part of that arrangement, they file monthly returns to the Tax Administration Jamaica (TAJ) and pay taxes from funds remitted to them. Accountants do not use cash when conducting business on behalf of their clients.

All initial dealings with accountants are undertaken through face-to-face engagement, and once a relationship is established, non-face-to-face instructions may be received through writing, though this activity is limited given the nature of the services offered.

Registrants retain client identification records for at least seven years after the end of the client relationship. Records of all transactions and other work carried out, in a full audit trail form are retained for at least seven years after the conclusion of the transaction. Based on a review of the PAB audits, no firm was cited for not retaining records as required.

7.5.4 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

Provisions for AML supervision are codified in the Proceeds of Crime Act and the Proceeds of Crime (Money Laundering Prevention) Regulations, however, no guidance notes have been published by the competent authority to govern accountants. Given the number of firms in the industry and the limited services provided, the lack of guidance notes was not viewed as a high priority by the PAB. Overall, the framework in place was deemed effective as it clearly outlined the profession as a designated financial institution and provided the competent authority with the required powers to conduct supervision.

7.5.5 EFFECTIVENESS OF SUPERVISION

The PAB was designated as the competent authority by the Minister of National Security in November 2013, and authorised by the Minister to:

- Monitor compliance of public accountants with the requirements under POCA and its regulations.
- Issue guidelines regarding effective measures to prevent money laundering.

Under POCA section 91A (2) (a), the PAB is required to establish measures it thinks fit, to conduct or to direct a third party to carry out inspections. The PAB relies on a self-declaration by registrants. On an annual basis, all registrants are required to complete and submit a declaration indicating whether or not they have engaged in any of the activities on behalf of a client as outlined under the Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, 2013.

The PAB issued AML Guidance for the accountancy profession in November 2014 and this is now in the process of being updated to provide for the amendments made to the POCA legislation in 2016 and 2019.

In 2016, there were three registrants whose annual declarations indicated that they were carrying out one of the activities falling within the Order, namely managing client money. In 2019, one of these firms

gave up the requisite client and no longer fell under the Order. The other two firms have indicated that they prepare accounts and payrolls for clients, and as a part of the arrangement they submit monthly returns to the TAJ and use the funds remitted to them to pay the relevant taxes although in 2020, one of these firms stopped carrying out this activity. One of these firms also pays rent for their client. In 2019, another registrant declared that their firm was conducting activity under the Order.

The PAB subcontracted the Association of Chartered Certified Accountants (ACCA) to conduct audit monitoring on its behalf. Of the over 250 registered public accountants, 148 conduct audits and are subject to audit monitoring. In late 2020, three inspectors were engaged and Independent Reasonable Assurance Reporting on AML compliance has commenced.

During the period under review, there was only one Senior Practice Reviewer (SPR) engaged by ACCA, and assigned to conduct the monitoring visits of the 148 registered public accountants in Jamaica who conduct audits. As documented in the Practice Monitoring in Jamaica document, the SPR visits for sole practitioners take a day, including the briefing at the start (one to two hours) and the closing session (one hour), while visits to larger firms may exceed one day. In late 2020, the PAB engaged three inspectors to aid with this process.

Table 53 shows the cycle period for each registrant based on the outcome of the previous examination. The table also shows that the majority of registrants (101) received satisfactory examination results:

Table 53: Cycle period for registrants, based on the outcome of the previous examination:

PAB Registrants categorized in time periods for Reviews by SPR	No. of Audits
Satisfactory six years	36
Satisfactory three years	65
Unsatisfactory four years	25
Unsatisfactory two years	22
TOTAL	148

Practice Monitoring examinations focus on the conduct of audits in accordance with International Standards on Auditing (ISAs). The Senior Practice Reviewer (SPR) examines compliance with the IESBA Code of Ethics for Professional Accountants 2016 Edition (2016 Code of Ethics) and the PAB’s Rules of Professional Conduct, which are directly relevant to the audit of annual financial statements. Though not included in the Practice Monitoring in Jamaica document, which outlines the monitoring visits process and action plan templates, the SPR also checks the firm’s awareness of the AML/CFT requirements as outlined in section 21 of the PAB Rules and Recommendations (2010). However, some of the reports do not explicitly state whether the registrants have documented AML policies and procedures that were reviewed by the SPR. Table 54 below shows the number of audits planned and executed over the review period and the reason for non-compliance. The table shows that the number of audits executed was consistently below the numbers planned.

Table 54: ACCA Reports for period 2016 to 2019 re difference between visits planned and achieved:

ACCA Reports	2016	2017	2018	2019
AUDITS SCHEDULED	45	50	41	35
AUDITS COMPLETED	36	36	30	24
Reasons for non-completion				
No audits done / Firm ceased auditing	2	5	2	3
Firm contacted but not able to accommodate the SPR	2	5	2	3
Sole practitioner had a serious illness	2	2	1	2
Sole practitioner joined another firm	1		1	1
Sole practitioner migrated to Canada	1			
Death of Sole practitioner	1	1		
Only Audit not completed		1	1	1
Sole practitioner not contactable				1
Sole practitioner's licence revoked			1	
Sole practitioner attending disciplinary hearing			1	
Visit started in December and not yet completed			2	
TOTAL	9	14	11	11

Through examinations conducted during the period under review, the lack of awareness of AML/CFT requirements was identified for two accounting firms, both of which have since been removed from the Register of Public Accountants, but for reasons other than AML/CFT breaches.

The PAB AML guidance includes a provision for conducting random inspections, and the PAB is using this provision to widen its inspection activity to determine if registrants' declarations on whether or not they are conducting activities under the Order are indeed correct. Three inspections of registrants who do not fall under the Order were completed from which the inspectors determined that the three registrants have not been carrying out any of the six activities. Consequently, the low number of registrants and type of activity conducted by these registrants falling under the Order are considered low risk.

Registrants take the reports issued by the Senior Practice Reviewer very seriously, as failure to achieve three successful reviews is likely to lead to their being struck off the register.

7.5.6 COMPLIANCE FRAMEWORK

Nominated officers have been appointed in the firms that fall under the POCA. The lack of awareness of AML/CFT requirements and failure to train employees in the recognition and reporting of suspicious activity were noted in practice monitoring reports for two accounting firms, both of which have since been removed from the Register of Public Accountants, but for reasons other than AML/CFT breaches.

The Practice Monitoring reports show that the majority of registrants are compliant. The PAB is also not aware of any breaches of the compliance procedures other than those contained in the report.

7.5.7 EFFECTIVENESS OF SUSPICIOUS TRANSACTION REPORTING

Due to the nature of the activities undertaken by registrants who fall within the scope of AML/CFT regulation, viz. paying over to the TAJ taxes on behalf of their clients, STRs were not filed with the designated authority.

7.5.8 ACCOUNTANTS: SECTOR RISKS

The overall risk score for public accountants was **MEDIUM LOW**. As noted in the assessment only three public accountants fall under the Order and the activities conducted are negligible and low risk. The PAB is effective in its disciplinary actions and removal of registrants from the register.

DEVELOPMENTS SINCE JAMAICA'S 2017 MER



- Virtual training sessions were held in January 2020 and March 2021 to aid the supervisory authorities in undertaking risk-based supervision for the DNFI/DNFBP sectors.
- The PAB's AML Guidance for Accountants was approved by the Minister in 2016 and is in effect. The Guidance covers, inter alia, POCA, TPA and UNSCRIA, KYC policies and procedures, risk-based approach, risk assessment and enhanced due diligence. The guidance also deals with settlement, trusts and other legal arrangements.

7.6 ATTORNEYS-AT-LAW

Attorneys-at-law are considered gatekeepers as they are able to provide access to the financial system, thereby allowing illicit funds into the financial system, wittingly or unwittingly. For this reason it is necessary to regulate their activities for AML/CFT/CPF purposes.

The profession of attorneys-at-law in Jamaica has legally challenged its designation under POCA, and the government has been granted provisional leave to apply to the Privy Council. Nevertheless, this section will look at the profession in Jamaica, examining its vulnerability to ML/TF risk.

7.6.1 SECTOR AT A GLANCE

 Governing Legislation	The Legal Profession Act	 Delivery Channels	Data not available
 AML/CFT Laws	Proceeds of Crime Act (POCA) POCA (Money Laundering Prevention) Regulations	 Number of Customers	Data not available
 Size/Value of sector (% of GDP)	Data not available.	 Level of Cash	Data not available
 Customer Profile	Data not available	 Number of Players	As at 2019, there were 2,269 practicing attorneys
Sector Risk Score		MEDIUM	

7.6.2 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

In relation to attorneys, Jamaica's 2017 MER highlighted the following:

- Attorneys were identified as facilitators of ML and were considered as being at high risk for ML/TF.
- The report acknowledged the injunction filed by the Jamaica Bar Association (JBA) which stopped legal professionals from having to adhere to the POCA requirements. The MER identified the lack of reporting by attorneys as a significant weakness in the DNFI/DNFBP regime, particularly since Jamaica's National Security Policy identified attorneys as facilitators for ML in addition to their ability to carry out the services of trust and company service providers (TCSPs). The developments regarding the current court matter are outlined below.

7.6.3 BACKGROUND – LEGAL CHALLENGE

In 2013, attorneys were designated as DNFBPs through amendments to the POCA. As a result of the amendment to the POCA, the Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order, 2013 was issued.⁹⁸ The order designated attorneys-at-law who engaged in certain business activities as Designated Non-Financial Institutions (DNFIs) and part of the regulated sector.⁹⁹ The activities outlined in the order are listed below:

- Engage in the selling and purchasing of real estate;
- Manage clients' money, securities, or other assets;
- Manage bank, savings, or securities accounts;
- Organize contributions for the creation, operation, or management of companies;
- Create, operate or manage a legal person or legal arrangement (such as a trust or settlement); and
- Purchase or sale of a business entity

The Jamaica Bar Association (JBA) challenged the Government of Jamaica, being represented by the Attorney General and General Legal Council (GLC), in relation to the designation of attorneys as DNFBPs. The JBA¹⁰⁰ argued that the designation of attorneys as financial intermediaries is unconstitutional; and information required under the amendments breached confidentiality, attorney-client privilege, and legal professional privilege. The JBA contends that the regime contravenes sections 13(3)(a), 13(3)(c), 13(3)(j)(i), (ii), and (iii) of the Charter of Fundamental Rights and Freedom ("charter")¹⁰¹ as well as section 16 of the Constitution.¹⁰²

On 10 July 2020, the Court of Appeal ruled that the amended POCA, 2013 is likely to contravene the rights guaranteed to attorneys by the Charter of Fundamental Rights and Freedoms (Amendment) Act, 2011. The court also ruled that the following instruments, in so far as they apply to attorneys-at-law, are unconstitutional, null and void, and of no legal effect for being inconsistent with sections 13(3)(j) and 13(3)(a) of the Charter.¹⁰³

- The Proceeds of Crime Act (POCA), 2007 (as amended by the Proceeds of Crime (Amendment) Acts, 2013 and 2019), section 91A(2) (save and except 91A(2)(b)¹⁰⁴); 91A(5); 94(2) and 95, in so far as it requires attorneys-at-law to report suspicious transactions directly to the designated authority;

⁹⁸ The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order, 2013 (Ja)

https://www.fid.gov.jm/www/wp-content/uploads/2017/09/412_The-Proceeds-of-Crime-Designated-Non-Financial-Institution-Attorneys-at-law-Order-2013.pdf

⁹⁹ *The General Legal Council of Jamaica Anti-Money Laundering Guidance for the Legal Profession* (Jamaica Gazette Extraordinary, Vol. CXXXVII May 22, 2014) (Ja)

¹⁰⁰ A limited liability company and a membership organisation, comprising attorneys-at-law on the roll of attorneys-at-law in Jamaica. The JBA's principal function includes providing advocacy for attorneys-at-law in Jamaica; considering all questions affecting the interests of the legal profession; promoting, assisting and ensuring the proper administration of justice; and "to unceasingly watch over and protect the civil liberties of the people".

¹⁰¹ The Charter of Fundamental Rights and Freedoms (Constitutional Amendment) Act, 2011 (Ja)

[https://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20\(Constitutional%20Amendment\)%20Act,%202011.pdf](https://www.japarliament.gov.jm/attachments/341_The%20Charter%20of%20Fundamental%20Rights%20and%20Freedoms%20(Constitutional%20Amendment)%20Act,%202011.pdf)

¹⁰² Jamaica (Constitution) Order in Council, 1962 (Ja)

[https://moj.gov.jm/sites/default/files/laws/Ja%20\(Constitution\)%20Order%20in%20Council%201962.pdf](https://moj.gov.jm/sites/default/files/laws/Ja%20(Constitution)%20Order%20in%20Council%201962.pdf)

¹⁰³ Supreme Court Civil Appeal No. 35/2017 (Ja)

<https://courtofappeal.gov.jm/sites/default/files/judgments/Jamaican%20Bar%20Association%20%28The%29%20v%20Attorney%20General%20%28The%29%20and%20General%20Legal%20Council%20%28The%29.pdf>

¹⁰⁴ "May issue directions to any of the business concerned; and the directions may require the business to take measures for the prevention or detection of, or reducing the risk of, money laundering or terrorist financing."

- The provisions of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 and the amendments to it that touch and concern the enforcement of the POCA;
- The Legal Profession (Canons of Professional Ethics)(Amendment) Rules, 2014 that permit attorneys-at-law to reveal client confidences or secrets in compliance with the POCA and the attendant regulations;
- The provisions of the General Legal Council of Jamaica: Anti-Money Laundering Guidance for the Legal Profession, published in the Jamaica Gazette Extraordinary of Thursday, 22 May 2014, No. 223A that are designed to enforce the provisions of the POCA.

However, the Court of Appeal ruled that the Proceeds of Crime (Designated Non-Financial Institution) (Attorney-at-Law) Order, 2013 designating attorneys-at-law as non-financial institutions (DNFIs) was not unconstitutional and is, therefore, valid and lawful. Additionally, the ruling regarding the amendment to the Legal Profession Act, which requires attorneys to make annual declarations of their activities to the competent authority, was not unconstitutional and is, therefore, valid and lawful.

The GLC and the Attorney General have been granted provisional leave to apply to the Privy Council to appeal the ruling of the Court of Appeal. At the time of writing the NRA, the government has yet to apply to the Privy Council.

7.6.4 INHERENT VULNERABILITIES

Over the review period, the number of practising attorneys-at-law increased on average by 4 per cent, moving from 2,035 in 2016 to 2,269 in 2019. For the 2016 – 2019 period, 17 attorneys were disbarred; one in 2016, six in 2017, five in 2018, and five in 2019.¹⁰⁵ Notably, these attorneys were not disbarred due to AML related matters.

A review of the practice areas of ten law firms in Jamaica revealed that the majority of these firms operated as General Practice firms. Nine of the ten firms selected, practised in four of the areas outlined in the Order. The exercise also revealed that most attorneys practised in multiple areas; therefore, the current Order would be applicable.

Notably, 32 attorneys also act as real estate agents (28 salespersons and four dealers), and by so doing, are covered under AML/CFT regulations for that sector. A review of ML cases pursued by the FID indicated that real estate related transactions featured heavily, but the filing of STRs by real estate dealers has been low as only four reports were submitted to the FID over the review period.

As discussed in chapter 8, under the Trust and Corporate Service Act, attorneys-at-law providing trust and company services, will have to be licenced under the Act to do so. The risk within this sector is not yet known, as supervision of the sector has not commenced.

7.6.5 THE COMPREHENSIVENESS OF THE AML FRAMEWORK

The legal framework for the reporting of suspicious money laundering and terrorism financing activities by attorneys was gazetted by the Jamaican Parliament in 2013 through an amendment to POCA in 2013. To operationalize the legislation, the Proceeds of Crime (Designated Non - Financial Institution) (Attorneys-at-law) Order, 2013 and the Terrorism Prevention (Designated Reporting Entity) (Attorney-At-Law) Order, 2019 were issued. These Orders apply to any person whose name was entered on the roll

¹⁰⁵ General Legal Council Disbarred Attorneys

<https://www.generallegalcouncil.org/attorneys/disbarred-attorneys/>

of attorneys-at-law according to section 4 of the Legal Profession Act. Additionally, in 2014 the GLC issued its anti-money laundering guidance notes in aid of fulfilling their reporting obligations. However, in 2020, the Constitutional Court ruled the guidance as unconstitutional, null, and void, and therefore having no legal effect.

7.6.6 EFFECTIVENESS OF SUPERVISION

Under the POCA, the GLC was designated the competent authority for attorneys. As the competent authority, the GLC was tasked with ensuring that attorneys operated in compliance with POCA and its regulations. In its role as competent authority, the GLC was empowered to examine and take copies of documents and information in the possession or control of any attorney. However, this power does not extend to information or advice that is subject to legal professional privilege (LPP) that was preserved under the POCA. However, arising out of the 2014 challenge by the JBA, the Court of Appeal ruled in 2020 that this power was unconstitutional, and consequently, no examinations have been conducted by the GLC.

Currently, attorneys are required to file, in respect of each calendar year, a declaration indicating whether or not they have engaged in any of the activities of section 5 (3c) of the Legal Profession Act. However, the GLC are unable to make any disclosure of any information contained therein or take any action under section 91A(2) of the Proceeds of Crime Act given the ongoing court matter.

Based on the information contained in the guidance notes, the GLC intended to outsource its examination responsibility to certified accountants. Currently, the GLC does not have a supervisory programme in place due to the ongoing court challenge.

7.6.7 COMPLIANCE FRAMEWORK

Given the judgment of the Constitutional Court, the GLC has not commenced any supervisory activity.

7.6.8 SUSPICIOUS TRANSACTION REPORTING

Given the current legal challenge from the JBA, attorneys are not mandated to file suspicious transaction reports. This was evident, as over the period under review only one STR was filed by the profession and that was in 2016. This signals a deficiency in the current AML/CFT reporting programme, which was also highlighted in Jamaica's 2017 MER.

All major investigations conducted by the relevant investigative authority over the review period involved real estate transactions, which required the service of an attorney. The reason for their involvement is because attorneys provide legal advice to both buyers and sellers, as well as holding funds received in trust.

7.6.9 ATTORNEYS: SECTOR RISKS

The overall risk score for was determined to be **MEDIUM**. As noted in the assessment, this profession has challenged its designation under POCA and the government has been given provisional leave to apply to the Privy Council, but has yet to do so. The assessment was therefore affected by the lack of available data and the non-existence of an AML/CFT supervisory framework for the profession. It is an area that must be monitored as attorneys are key gatekeepers, and the lack of reporting on their part represents a deficiency in the country's AML framework.

DEVELOPMENT SINCE JAMAICA'S 2017 MER

Since the 2017 MER, the AML/CFT reporting framework has remained unchanged due to the ongoing court challenge. The lack of reporting by attorneys under the POCA is deemed a weakness in Jamaica's AML/CFT framework since attorneys-at-law, in their role as gatekeepers, are in a position to either wittingly or unwittingly facilitate ML.

TYPOLOGIES AMONG ATTORNEYS-AT-LAW

It should be noted that the obligation to file an STR is not limited to reasonable suspicion aroused by a client, but also where suspicion relates to any other party, irrespective of whether the attorney acts for that party. The following are potential avenues for money laundering amongst attorneys:

1. A developer seeking the service of an attorney to execute legal paperwork for the development of a residential lot that is being self-financed with cash, without substantive proof of the source of funds.
2. A customer deciding not to go through with real estate transaction when queries relating to the source of funds are made by attorney.
3. A developer who was convicted of an acquisitive crime requesting legal services for the development of residential dwellings.
4. The service of an attorney is sought to purchase real estate. However, the asset is purchased in the name of a relative without good reason.
5. Transfer of assets from one party to another in an unusually short time period.
6. The requested service was refused by another attorney-at-law.
7. The attorney receives a sum of money from a third party to hold the funds in trust, and is then instructed to deduct their fees and pass the remaining funds on to the client without providing any actual legal service.

7.7 EMERGING AREAS OF RISK

The areas identified in this section do not fall under Jamaica’s current AML/CFT framework. Given the number of investigations involving these sectors, they are areas of concern and the risk must be managed to reduce Jamaica’s ML/TF risk and vulnerability.

7.7.1 REAL ESTATE DEVELOPERS

Real estate developers do not currently fall under the POCA, as the Proceeds of Crime (Designated Non-Financial Institution) (Real Estate Dealers) Order, 2013 does not cover this group. There is therefore no legal framework requiring this group to conduct CDD and file STRs, although they are allowed to carry out the function of a real estate dealer. This constitutes a gap in the country’s AML framework, as developers are not being held to a similar standard as dealers.

7.7.1.1 SECTOR AT A GLANCE

 Governing Legislation	The Real Estate (Dealers & Developers) Act	 Delivery Channels	Face-to-face
 AML/CFT Laws	Real Estate Developers do not fall under the ambit of the POCA.	 Number of Customers	Data not available.
 Size/Value of sector (% of GDP)	<ul style="list-style-type: none"> In 2019 the value of development starts was J\$47,756 million (2018: J\$35,815 billion) % of GDP: 3% 	 Level of Cash	High - Developers handle cash and are not regulated businesses under the POCA
 Customer Profile	<ul style="list-style-type: none"> Professionals and other salaried individuals Overseas residents 	 Number of Players	As at end 2019: 286

The Real Estate (Dealers and Developers) Act defines a developer as a person who carries on, whether in whole or in part, the business of development of land. Development means the carrying out of building, engineering or, other operations in, on, over or under any land, or the making of any material changes in its use or in the use of any buildings or other land for the purpose of disposal of such land or any part thereof in a development scheme.

As seen in table 55 below, over the review period, a total of 296 schemes were approved and developed by real estate developers. It is to be noted that a developer may be approved to register more than one development scheme, hence there is a greater number of development schemes than developers.

Table 55: Real Estate Developers Approved Schemes

Year	Total No. of Schemes Approved	Total No. of Developers Approved
2016	60	59
2017	57	52
2018	78	76
2019	101	99

Although all development schemes must be registered by the REB prior to advertising and contracting, developers are not regulated under the POCA, hence they have no legal obligation to apply AML/CFT due diligence when dealing with their clients. Even though the REB does not have any legal authority to request source of funding from developers, this is done in practice before approving new developments. Concerns were raised regarding the proof of financing provided by a small percentage of developers.

From a review of STR data and criminal investigations that have been conducted, developers feature in a number of the investigations concerning money laundering. The primary concern is that real estate developers may use their operations to legitimize ill-gotten gains, given the lack of supervision. Taking all this into consideration, the ML/TF threats and vulnerability posed by developers have been assessed as **HIGH**.

The Planning Institute of Jamaica (PIOJ) reported that growth in the construction sector was being driven by housing starts, aided by higher disbursement of mortgages, and while the economy contracted by 5.7 per cent for the January to March 2021 quarter, the industry grew by 12.6 per cent.¹⁰⁶ Data from the PIOJ show a 32.8 per cent increase in sales for construction inputs, while sales of wholesale construction materials, hardware and plumbing input went up 65.2 per cent, and retail sales of paint and glass saw a 7.4 per cent increase.

For the corresponding period in 2019, the PIOJ reported that the real value added for the construction industry grew by an estimated 3.5 per cent, reflecting increased activity in both the building construction and other construction components, with growth in the building construction component due to an increase in residential and non-residential construction.¹⁰⁷

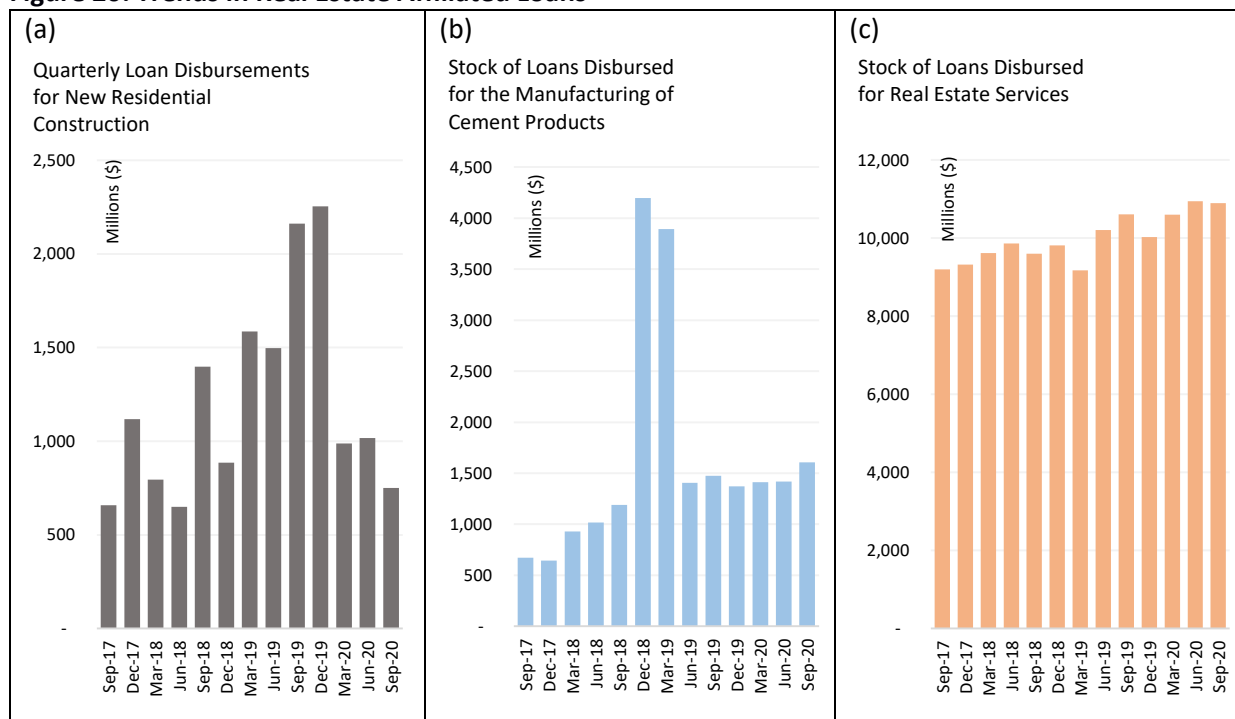
This supports the BOJ's thematic paper in relation to housing which identified moderate growth in disbursements for new residential construction between 2017 and 2019. It was also noted that during the period 2017 to 2019, the growth in loans to other sectors related to real estate was consistent with the demand for residential construction and purchases in the Corporate Area (Greater Kingston).

Figure 20 below shows that loan disbursements for new residential construction reached a high of J\$2.254 billion in December 2019, supported by the loans disbursed for the manufacturing of cement products, which peaked a year earlier at J\$4.196 billion in December 2018.

¹⁰⁶ Garfield L. Angus, "Construction Boom a Signal of Economic Recovery – PM", *Jamaica Information Service*, July 26, 2021 <https://jis.gov.jm/construction-boom-a-signal-of-economic-recovery-pm/>

¹⁰⁷ The Planning Institute of Jamaica's Review of Economic Performance, January–March 2019 Media Brief https://www.pioj.gov.jm/wp-content/uploads/2019/09/Media-Brief_QPB_Jan-to-Mar-2019_23.4.pdf

Figure 20: Trends in Real Estate Affiliated Loans



Though real estate developers featured in a number of investigations, it should be noted the majority of the sector is legitimate, with funding provided by financial institutions. Developments may also be financed through bonds raised through the private capital market. Deposit taking institutions are regulated by the BOJ and before bonds are issued, they must be approved by the Financial Services Commission.

CASE EXAMPLES

The Case of a Drug Trafficker:

A drug trafficker (Mr. XX) and his wife operated a drug-trafficking ring that transported large quantities of marijuana between the states of Arizona and Ohio. The two were arrested in the state of Ohio in February 2019 in a law enforcement operation that netted 3,600 pounds of marijuana, US\$1.3 million in cash, three firearms, and five motor vehicles. In November of 2016, Mr. XX was convicted of conspiracy to possess with intent to distribute 1,000 kilograms or more of marijuana, while his wife was convicted of conspiracy to commit money laundering

Subsequently, a joint effort between US Marshall Service and the Financial Investigation Division (FID) discovered that the couple had used the illicit funds they had acquired to purchase and construct over J\$400 million in property. These properties included:

- a 16-unit apartment complex, valued at J\$180 million
- a 10-unit apartment complex, valued at US\$800,000, or approximately J\$103 million
- another apartment complex, valued at US\$500,000, or approximately J\$65 million,
- a parcel of land being developed of unspecified value

The officers investigating the case stated that the construction and purchases of these properties were financed directly with USD cash.

The properties were disposed of in accordance to a signed MOU between Jamaica and the United States.

The Case of a Former Government Official:

Mr. Z is a former municipal government official. He was found guilty of defrauding a parish municipality of over J\$400 million in 2020.

In court evidenced was provided that showed that Mr. Z used the illicit funds to acquire several high-value properties, all of which were done through cash transactions, including the purchase of materials and the payment of labour. The evidenced also showed that there were no loans associated with the purchases of any of the properties and that the purchases were not supported by Mr. Z's salary or any other source of identifiable income and these signs were indicative of money laundering. The properties in question included:

- An 11-unit apartment complex
- A four-storey family house
- Four residential lots

For his crimes, Mr. Z received a five year prison sentence. Additionally, the government has successfully taken possession of properties and other assets valued at more than J\$220 million under the forfeiture clause found in the Proceeds of Crime Act.

The cases highlight the heightened risk of real estate being used a vehicle to circumvent AML/CFT efforts. In both cases, cash was used to finance either purchases or construction of the properties in question. This allowed the criminals to skip the placement and layering stages of money laundering. Income from the sale or the rental of the property is integrated into the financial system, as it would appear to be coming from a legitimate source.

TYOLOGIES AMONG REAL ESTATE DEVELOPERS

It has been observed that the proceeds of crime have been used by criminals to finance real estate development projects as a means of laundering money in Jamaica. The following are potential avenues for money laundering among real estate developers:

1. The development is 100 per cent self-financed and payments for labour and construction materials are made using mainly cash.
2. The developer does not have a legitimate source of funds for the portion of the project that is self-financed.
3. The expected cost of the completed is project is significantly greater than the document cost. For example, a developer states that total expenditure for a construction project was J\$100 million, however, based on the market, the cost of construction for a similar project is J\$300 million. Additionally, the source of funds provided was for a fraction of the true cost.
4. The developer sells units in the development for cash to individuals without concern for their source of funds, and rinses those funds through construction costs.

7.7.2 USED CAR DEALERS

The used car dealers sector is not regulated for AML/CFT purposes in Jamaica. From a review of investigations conducted, the seizure of motor vehicles feature in a number of the investigations concerning money laundering. The concern is that individuals, wishing to convert their illicit funds, may use the car dealerships to acquire vehicles as assets, given the lack of supervision. In light of the available evidence the ML/TF threats and vulnerability posed by used car dealers have been assessed as **HIGH**.

7.7.2.1 SECTOR AT A GLANCE



No governing legislation in place.



Delivery Channels

Face to face



Not governed under the POCA



Number of Customers

Data not available



Data not available.



Level of Cash

High cash activity – Some dealers accept cash above the cash transaction threshold.



Data not available



Number of Players

482 used car dealers

Before operating a used car dealership, dealers should be certified by the Trade Board Limited. As at October 2020, there were 482 used car dealerships in Jamaica, of which 251 (52 per cent) were in operation for less than 3 years. To import vehicles, the Trade Board¹⁰⁸ requires the following:

- Business registered with the Companies Office of Jamaica
- Taxpayer Registration Number (TRN) for the company, bearing company's seal and manager/director signature, (a valid Driver's License issued by TAJ is also accepted).
- TRN for each director and manager in the company, bearing company's seal and manager/director signature (a valid Driver's License issued by TAJ is also accepted).
- Employment letter/contract and certificate of one trained mechanic/technician
- A copy of title, if property is owned, or rental/lease agreement, if the operational location is rented or leased
- Most current property tax receipt if operational location(s) is/are owned by director(s)
- A signed contractual agreement between dealer and entity providing service facilities and/or spare parts, where applicable (i.e. if service facilities and, or provision of parts is outsourced. A copy of the contracted entity's company registration document and valid Tax Compliance

¹⁰⁸ The Trade Board is the regulatory agency of government under the auspices of the Ministry of Industry, Commerce, Agriculture and Fisheries (MICAF) headed by the Trade Administrator who operates under the legal authority of the Trade Act. The Trade Board is Jamaica's certifying authority for goods exported under the various trade agreements, and has responsibility for:

- WTO Agreement on Import Licensing.
- Issuing import and export licences for specific items that may have a negative impact on the environmental, social or economic conditions of the country;
- Issuing certificates of origin for Jamaican exports under various Preferential Trade Agreements;
- Ensuring that Jamaica meets its international obligations under the following: WTO Agreement on Rules of Origin

Certificate (TCC) must be submitted and must be signed by the manager/director and the company's seal affixed).

- Annual Certification fee

Although all dealers should be certified, one government minister has noted that some dealers are operating without a license.¹⁰⁹ In addition, there were increased numbers of used car dealers operating in rural parishes where there is no commensurate increase in economic activity to support the increase. This is one reason for the identification of this sector as a concern. A check of the Certified MV Dealers' List available on the Trade Board's website showed multiple dealers with the same listed address, but different phone numbers. This suggests that insufficient due diligence is conducted by the Trade Board in both the approval and issuance of certification to operate, as well as visits to locations to check for authorised certificates.

The Jamaica Used Car Dealers Association (JUCDA) was established in 1995 with the main objective of presenting a united voice when lobbying the government for policy change. To be eligible for membership, dealers must comply with the importation policy outlined by the government. The Membership of the association totals 195, with most of its members based in Kingston, where 42 per cent of dealerships are located.

Table 56 below shows information from the Economic and Social Survey Jamaica (ESSJ) on vehicles imported into Jamaica over the period under review. The total number of vehicles imported has increased from 40,043 in 2016 to 58,639 in 2019, with used car imports jumping from an average of 27 per cent of total imports to 76 per cent in 2019.

Table 56: Vehicle Imports to Jamaica 2016-2019

Year	Total No. Imported	CIF Value	No. of Used Vehicles	Used Vehicles as % of Total
2016	40,043	US\$622.0M	(not reported)	-
2017	56,134	US\$521.2M	14,932	26.6%
2018	52,357	US\$615.8M	14,846	28.3%
2019	58,639	(not reported)	44,551	76%

A check of the Certified Motor Vehicle Dealers' List available on the Trade Board's website showed multiple dealers with the same listed address, but different phone numbers. This suggests that insufficient due diligence is conducted by the Trade Board in both the approval and issuance of certification to operate, as well as visits to locations to check for authorised certificates.

Under the Proceeds of Crime Act, section 101A places a limit on cash transactions whereby a person shall not pay or receive cash in excess of J\$1.0 million for the purchase of any good or service. While the dealers are knowledgeable about the cash restriction by law, the comment was made that the limit affects business, and dealers have on occasion accepted cash in excess of the threshold.¹¹⁰

¹⁰⁹ Tanesha Mundle, "Industry State Minister Says Used Car Dealers Must be Certified", *Jamaica Information Service*, March 2, 2020

<https://jis.gov.jm/industry-state-minister-says-used-car-dealers-must-be-certified/>

¹¹⁰ "St. Ann Car Dealer Pleads Guilty to Breaching Proceeds of Crime Act", *Radio Jamaica News*, May 18, 2016

<http://radiojamaicanewsonline.com/local/st-ann-car-dealer-pleads-guilty-to-breaching-proceeds-of-crime-act>

Investigations have shown that proceeds of crime are laundered through the used car dealer sector. As seen in the case example below, investigations have also revealed a penchant for high-end vehicles.

CASE EXAMPLE

Thirty persons were arrested and 12 motor vehicles, as well as cash and household items, seized during police operations in Montego Bay.¹¹¹ Police said the 30 individuals were taken into custody in connection with lottery scamming activities, bribery and money laundering.

Among the motor vehicles seized were:

One BMW X6;
One Audi Q7;
Two Lexus SUVs; and
Two Skyline motor cars

The police noted that the value of the 12 motor vehicles seized was estimated at just over \$50 million, the cash seized amounted to approximately \$1 million and a number of household items were seized, including several flat screen televisions.

TYOLOGIES AMONG USED CAR DEALERS

The typologies below demonstrate how the industry can be used to launder funds. This is compounded by the fact that the sector engages heavily in cash activities and some used car dealers are operating without being licensed. Through interviews with four dealers, the following scenarios were highlighted as possible methods used to launder money:

1. A deposit just under the J\$1 million threshold is made to the dealer, the car is not collected and after a month, a request for a refund is made. The refund is then paid via cheque as dealers do not provide cash refunds. Sometimes deposits are made on multiple vehicles.
2. With enhanced scrutiny of remittance companies and the restrictions/limitations imposed, criminals have been looking for alternative avenues. Persons call to enquire whether funds can be wired to the dealership's account and the dealership then wire any excess funds back to them, or they wire the funds and then ask the dealership for a refund.
3. Some used car dealers own taxis and buses. Tainted funds from the dealership are then commingled with the funds earned from operating the taxis.
4. Multiple payments are made in cash over a short period of time for vehicles.
5. Dealerships established for the sole purpose of laundering funds – only 2 or 3 vehicles are parked at a location, but millions of dollars in purported sales, not commensurate with the low number of vehicles on the lot.
6. Shell operations – multiple dealers sharing an operating address for the purpose of inspection by the Trade Board and granting of a licence to operate. It should be noted that once approved, no other inspection or verification is conducted by the Trade Board. No real business is conducted by most of these registered dealers, but are instead used as a front to launder funds from other illicit activity.

¹¹¹ "30 arrested, 12 vehicles seized as cops hit lotto scam", *Jamaica Observer*, February 21, 2012
https://www.jamaicaobserver.com/news/30-arrested--12-vehicles-seized-as-cops-hit-lotto-scam_10846248&template=MobileArticle

7. Unregistered Dealers can also operate with the assistance of a facilitator who obtains the certificate to operate and charges for the use of that certificate. The facilitator's records only reflect the cost of the vehicles sold, but not the income indicating possible tax evasion.
8. Lottery scammers' counterparts in the United States are sending the money directly to Japan to purchase motor vehicles that are then delivered to Jamaica. These vehicles are sold to customers who often secure financing from a financial institution, from which payment is then made directly to the account of the dealer.

CHAPTER 8: TRUST & COMPANY SERVICE PROVIDER

8.1 CHAPTER OVERVIEW

This chapter focuses on entities and professions that provide trust and company services (TCS). In Jamaica, these services are provided by financial institutions, accountants, attorneys-at-law, and an industry umbrella organization that consists of a combination of attorneys and accountants. These services are usually offered alongside other products and services and therefore act as complementary offerings.

Currently, trust and company service providers (TCSPs) are not subject to separate supervision although the framework to regulate TCSPs is currently in an advanced stage of development and should be in operation by the latter part of 2021. Once this is completed, TCSPs will be designated as non-financial institutions under the Proceeds of Crime Act (POCA), Terrorism Prevention Act (TPA), and the United Nations Security Council Resolutions Implementation Act (UNSCRIA). The supervisory authority for the sector will then be the Financial Services Commission (FSC). Financial institutions that offer TCS are currently subject to Jamaica's anti-money laundering (AML), countering the financing of terrorism (CFT) and countering proliferation financing (CPF) framework as they are regulated by either the Bank of Jamaica (BOJ) or the FSC. These financial institutions also typically operate within a structure that includes a group compliance function.

Public accountants are subject to reporting obligations by virtue of their being a designated non-financial business or profession (DNFBP) by the Proceeds of Crime (Designated Non-Financial Institution) Order, 2013. The Public Accountancy Board (PAB) is the competent authority for those who are qualified to engage in the practice of accountancy in Jamaica and this authority ensures the profession complies with its obligations under the above order.

The position in relation to attorneys in Jamaica is more complex because, although they were designated as a DNFBP by the above order, the Jamaican Bar Association (JBA) has appealed this requirement on behalf of their members (see Chapter 7 for more details). The matter is due to be heard by the United Kingdom Privy Council which is the highest tier of Jamaica's court system. The effect of this is that although the General Legal Council (GLC) is the competent authority for the legal profession, it cannot undertake supervisory activity in respect of this regime and, at present, attorneys are not required to file suspicious transaction reports (STRs). The negative impact that this has on Jamaica's AML/CTF/CPF regime is dealt with in detail in chapter 7.

An important element of the proposed supervisory regime will be the requirement for all entities providing TCS to be subject to supervisory and regulatory regimes through, for example, POCA, the Terrorism Prevention Act (TPA) and will be required to be licensed separately as a TCSP.

Through the assessment conducted, it was established that TCSPs did not feature in any money laundering (ML) or terrorist financing (TF) investigations. Although there is non-sector specific supervision combined with an absence of evidence that TCSPs are being used by criminals in Jamaica, the vulnerability has still been assessed as **MEDIUM**. This reflects the fact that there is no sector-specific supervision which meant that it was not possible to properly assess the level of risk. Also, there was limited response to the questionnaires that were circulated with only 50 per cent responding to the request for information and none of the attorneys doing so.









8.2 FATF GUIDELINES

Under the FATF definition,¹¹² Trust and Company Service Providers (TCSPs) refer to all persons, both legal and natural, or businesses that are not covered elsewhere under the FATF’s 40 Recommendations, and which as a business, provide any of the following services to third parties:

- Acting as a formation agent of legal persons;
- Acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- Providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership, or any other legal person or arrangement;
- Acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- Acting as (or arranging for another person to act as) a nominee shareholder for another person.

FATF recommends a risk-based supervisory approach for the supervision of the TCSPs sector and recommends that licensees should also adopt a risk-based ML/TF compliance programme. Countries should also conduct assessments to identify the ML/TF risk within the sector and could also consider exempting certain institutions, sectors, or activities from some AML/CFT obligations where specified conditions are met, such as a proven low risk of ML/TF.

8.3 SECTOR AT A GLANCE

 Governing Legislation	International Corporate and Trust Providers Act [ICTPA } (<i>ACT is not yet in effect nor operationalized</i>)	 Delivery Channels	Face-to-face and online
 AML/CFT Laws	Once the ICTPA is passed, the sector will be brought under the POCA and the TPA.	 Number of Customers	Data not available.
 Size/Value of sector (% of GDP)	<ul style="list-style-type: none"> ▪ Private Pension: As at Sept 2020: J\$639.30 billion ▪ The size and value of majority of TCSPs are currently not known as the sector does not currently fall under the AML/CFT regime. 	 Level of Cash	Data is not available, however, the use of cash by TCSP is believed to be low.
 Customer Profile	<ul style="list-style-type: none"> ▪ International Corporations ▪ Domestic Corporations ▪ High net worth individuals 	 Number of Players	Financial Sector: <ul style="list-style-type: none"> ▪ Corporate Services: Approx. 20 ▪ Pension Trust: 25 Non-Financial: <ul style="list-style-type: none"> ▪ Accountants: 2

¹¹² FATF (2019), Guidance for a Risk-Based Approach for Trust & Company Service Providers (TSCPs), FATF, Paris, www.fatf-gafi.org/publications/documents/rba-trust-company-service-providers.html

8.4 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

- The 2017 mutual evaluation report (MER) noted that TCS can be provided by accountants and attorneys who are covered under the AML/CFT framework; although as was highlighted before, attorneys are currently not being supervised due to an injunction in place as part of an ongoing court case.
- The report highlighted that Jamaica did not have an independent TCSP sector and there was no independent TCSP regime. It was, however, acknowledged that legislation had been drafted to specifically regulate persons who provide international corporate and trust services. The MER further highlighted that attorneys-at-law were identified as a Tier 1 threat in Jamaica's NSP and, given the large size of the legal profession, this sector was considered to be sufficiently important in determining the effectiveness of Jamaica's AML/CFT structures. This assessment was based in particular on the ability of attorneys to act as TCSP, as well as the current injunction against the enforcement of the AML/CFT regime.
- The MER also indicated that at the time of the review, no accountants provided trust or company services. The report further noted that persons can register entities directly with the Registrar of Companies, which currently allows for the registration of both local companies and foreign companies doing business within Jamaica. It also noted that there was no requirement for persons wishing to register a company to do so through a TCSP, attorneys-at-law or accountant. It was noted that this lack of regulation presents a gap in Jamaica's AML/CFT regime, as there is limited oversight, particularly concerning the collection of beneficial ownership information, on which the current Companies Act was silent. It should be recognised that the Companies Act is currently being amended to include guidance on beneficial ownership.

8.5 OVERVIEW OF JAMAICA'S TCSP SECTOR

Jamaica is not an international financial centre (IFC), however, the Government of Jamaica (GOJ) is modernizing its suite of company formation types, to attract both local and international businesses. Notably, there will be no differential tax treatment of these companies, and as such, there is no tax advantage to be obtained.

In 2017, the International Corporate and Trust Providers Act (ICTPA) was passed by the Jamaican Parliament. The ICTPA established a regulatory regime for the licensing of international corporate and trust services providers who will perform duties on behalf of international entities and trusts set up in Jamaica. This Act was, however, not brought into force as it is currently being amended to include domestic TCSPs. Consequently, individuals and entities offering trust or corporate services have not yet come under a supervisory regime as the ICTPA is not yet in effect.

The amendment will also make provisions for the expansion of the licensing regime to all providers of TCS including individuals. The amendment to the Act is expected to be completed by the end of 2021. The Act and its proposed amendments were initiated prior to the completion of a risk assessment on the sector. However, the Act has provisions for enhanced due diligence to be applied to TCSPs based on their risk profile, and this also considers the jurisdiction of the licensee. Once the legislation has been passed, steps will be taken to have all TCSPs designated as non-financial institutions under POCA, TPA and UNSCRIA.

The designated competent authority for TCSPs will be the Financial Services Commission (FSC) which already has significant experience with implementing risk-based AML/CFT supervision. Under the ICTPA, all TCSPs must be licensed. The 2017 MER indicated that no accountants provided TCS at the time of the MER. However, over the 2016 -2019 review period, it was determined that two accounting firms provided TCSs through their paying over of taxes to Jamaica’s tax authority.

TCS can also be provided by attorneys-at-law; the extent of their involvement is not known as this profession did not respond to surveys administered and they do not currently report under the POCA due to the previously discussed ongoing legal challenge. It must be noted that TCS are usually offered as an ancillary service that complements the main offerings of a profession or an entity. The amended legislation will cover all persons currently providing TCS, irrespective of whether they are otherwise regulated. Therefore, any accountancy or legal firm that is operating as a TCSP will have to be licensed separately as a service provider by the FSC.

As a result of the sector not being regulated, there were significant data constraints that impacted the assessment of the sector. To overcome the data constraints, questionnaires were administered to several entities within the sector and the feedback was assessed and incorporated into the evaluation of this area.

The assessment revealed that trust services provided by financial institutions were mainly in relation to the administration of private pension trusts. Other relevant services provided by financial institutions included corporate services where these entities act as (or arrange for another person to act as) a director or secretary of a company, an alternate director, or a partner of a firm.

In relation to accountants, only two establishments offered services that could allow them to be classified as TCSPs, however, as was noted earlier this was limited to the paying over of taxes to the tax authority. As the attorneys did not respond to the questionnaires the extent to which this profession provides trust and corporate services could not be determined. The assessment also found that one umbrella organization, which is comprised principally of attorneys and accountants, which also provided trust and corporate services.

8.5.1 SUPERVISION

In preparation for the supervision of the TCSPs providers, the FSC has expanded the mandate of its Registration Department to include the supervision of TCSPs. As a result, the department was renamed the Registration, Corporate & Trust Services Division (RCTSD). New posts were created and include a director and a manager and the department will be responsible for implementing the operational framework for prudential and AML/CFT oversight of the TCSPs sector. The FSC’s AML Department will oversee the AML supervisory activities of TCSPs. The Department will coordinate with the RCTSD to ensure that the risk within the sector is fully understood and that there is an integrated approach to the consolidation of supervisory resources.

8.5.2 DATA COLLECTION

Given that TCSPs in Jamaica are not currently regulated, there is limited information available about this sector in terms of its size and structure, the number of service providers, the extent of services being provided, and risk profiles of customers. In order to collect data, a survey was administered to 13 entities. The selection of the entities was informed by what was already known in terms of the category of professionals such as attorneys-at-law and accountants who carried out the services. Open-source data was also used in identifying, for example, the accounting firms and other entities that are providing the

identified services. Relevant authorities, such as the Financial Investigations Division (FID) and Jamaica International Financial Services Authority (JIFSA) were also consulted. In addition, internal data held by the FSC was utilized in the assessment. The survey had a response rate of approximately 54 per cent.

Despite the information gaps, the available data indicates that the TCSPs client base is primarily domestic customers. Also, it does not appear that there is a large number of entities that exist purely to provide TCS. The industry norm in Jamaica appears to be that TCS are usually used to complement existing services that are being offered by individuals or entities operating in the insurance, securities, pensions, legal services, or accountancy sector or profession.

TCSPs' principal vulnerability is considered to stem from the entities or professional's involvement in the formation, management and administration of both domestic and foreign legal persons and legal arrangements. This is based on the fact that legal persons and legal arrangements may be used to conceal the identity of beneficial owners and the source of assets, as well as the use of intermediaries as professional advisors. However, as detailed in Chapter 10 complex legal structures are infrequently used by criminals in Jamaica to launder proceeds from crime with the proceeds being laundered through relatively unsophisticated means. This contention is supported by the fact that a review of STR data shows that there were no STRs submitted on any known TCSP; neither has there been any ML investigation with respect to any person offering these services.

8.6 TRUST AND CORPORATE SERVICE PROVIDERS IN JAMAICA

As indicated earlier, TCS are provided by financial institutions, attorneys-at-law, accountants and an umbrella association. Details on the sector are provided below:

8.6.1 FINANCIAL SECTOR

Trust and corporate services provided by financial institutions are usually carried out in addition to other activities that already fall under the country's AML/CFT supervisory regime. The services provided by the financial sector are outlined below:

8.6.1.1 CORPORATE SERVICES

There are at least 20 TCSPs that are regulated by the FSC and which are subject to prudential and AML/CFT supervision and some of these entities also fall under the supervisory purview of the BOJ as members of a financial group. They include insurance companies, securities dealers, and investment managers of private pension trusts.

Services provided include acting as (or arranging for another person to act as) a director or secretary of a company, an alternate director, or a partner of a firm. They also undertake administrative tasks, usually performed by the company secretary, such as circulating notices of annual general meetings of clients, the maintenance of the register of shareholders for these clients and arranging the payment of dividends or other special payments

Based on the results of the survey, some entities are providing company services to international clients. However, the extent to which this facility is being offered is not fully available due to the limitation in accessing data given that TCSPs are not regulated. Only one of the three financial institutions that

participated in the survey provides corporate services, but it does not offer this service to international clients; although it should be noted that its portfolio does include high-net-worth clients.¹¹³

8.6.1.2 TRUST SERVICES

8.6.1.2.1 PRIVATE PENSION TRUSTS

Private pension trusts provide pension benefits and related services to corporate and individual clients. The private pensions sector is a key driver of capital flows in Jamaica and is considered significant in terms of the size and range of the assets under management. As at September 30, 2020, total assets stood at J\$639.3 billion with Pooled Investment Arrangements accounting for 37 per cent of total assets or J\$239.7 billion and covering 378 active plans.

The number of providers of pension administration and investment management services has remained relatively stable over the last ten years and involves three insurance companies, 15 securities dealers, one credit union, one bank, and five other types of entities. The client base consists predominantly of domestic customers; and benefits are paid upon specific events, such as the termination, retirement or death of a participant. Private pension arrangements are usually established as irrevocable trusts, the majority of which are employer-based superannuation funds. Services being provided in relation to the administration and investment management of trusts related to occupational pensions will be exempted from the provisions of the ICTPA.

8.6.1.2.2 OTHER TRUSTS

All three financial institutions that responded to the survey offer trust services by acting as trustee or executor of a trust or providing administration services (for securities under management and bond trustee). One institution is regulated by the BOJ, while the others are supervised by the FSC. Based on the response from the survey, there are different types of trusts that have been established for legitimate purposes, which include irrevocable trusts, special needs, bondholders and testamentary trusts. Trusts administered by financial institutions include those established by parents for the benefit of their children.

8.6.2 DESIGNATED NON-FINANCIAL INSTITUTIONS & PROFESSIONALS AND UMBRELLA ASSOCIATION

Currently, accountants, attorneys and an umbrella association provide TCSs. Details on these professions and the umbrella association are outlined below:

8.6.2.1 ACCOUNTANTS

Under the Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, 2013 only three firms carry out one of the activities outlined in the order. These firms manage client money, which is defined as preparing accounts and payrolls for clients. As part of that arrangement, they file monthly returns to the Tax Administration Jamaica (TAJ) and pay taxes from funds remitted to them.

The Proceeds of Crime (Designated Non-Financial Institution) (Public Accountants) Order, also covers accountants involved in creating, operating or managing a legal person or legal arrangement (such as a

¹¹³ High net worth clients are identified as: (i) individuals whose net worth exceeds J\$50M (US\$345,000) or who earn gross income of more than J\$10M (US\$69,000) per annum; (ii) in the case of an entity, one with net assets valued over J\$250M (US\$1.7M) as reflected in its audited financial statements for its most recently completed financial year; (iii) a corporation with over 90 per cent of the voting shares owned by a 'high net worth' individual; and (iv) a trust wherein a 'high net worth' individual is the sole primary beneficiary.

trust or settlement) which falls under the purview of the ICTPA. Although accountants may offer other TCSs, including the creation, operation and management of a legal person or legal arrangement there is no evidence that these services are currently being offered.

8.6.2.2 ATTORNEYS-AT-LAW

Attorneys were included in the TCSPs survey pool, however, no response was received from this profession and it is not clear what percentage of TCSPs are legal professionals. Additionally, attorneys can offer multiple TCS including formation and administration of trusts, company formation, nominee directorship, and registered office.

8.6.2.3 OTHER ENTITY (UMBRELLA ASSOCIATION)

The assessment found that an umbrella association consisting of several independent practitioners, some of whom are accountants and attorneys provides TCSs. Further details of the membership composition were not available. Services that are being provided by these corporate service providers relate to the formation of legal entities, directorship and secretarial services and domiciliation. The assessment also found that the umbrella association conducts business with international customers and with clients they never meet and new clients were gained mainly through referrals.

8.7 PROPOSED SUPERVISORY FRAMEWORK

As mentioned earlier, the FSC is the proposed competent authority for TCSPs and will commence supervision after the amendments are made to the ICTPA and it comes into effect. It is anticipated that the regulatory and operational framework, including the AML/CFT requirements for the supervision of all TCSPs, which will incorporate beneficial owners will take effect by December 2021.

Since 2018, the FSC has instituted a risk-based approach in its AML/CFT supervisory activities and has indicated that this will be the means by which it will supervise this sector. Each licensed TCSP will be required to complete an AML/CFT/CPF questionnaire to allow an assessment to be made of the entity’s level of compliance. The information will then be supplemented by findings from onsite examinations, thematic studies, and information received from external sources such as the media, law enforcement agencies, or other regulatory bodies. The questionnaire will also collect financial data and information relating to the ownership, beneficial ownership, directors, and management structure of the entity and provides the basis for an impact analysis.

The information gathered will be used to rank licensees using a four-point scoring system, as outlined in table 57 below to ascertain the AML/CFT risk levels and the impact of the entity in comparison to the industry.

Table 57: FSC Risk Point Scoring System

Risk Profile	Rating
Low	1
Moderate	2
Above Average	3
High	4

Using the information obtained during the risk assessment the FSC will then propose an onsite supervision cycle based on the risk profile, and table 58 below indicates how often onsite visits will be conducted based on this identified level of risk.

Table 58: FSC Onsite Visit Cycle

Risk Profile	Onsite Audit Cycle	Responsible Division
Low	5 - 7 years	The Registration, Corporate and Trust Services Division
Moderate	4 – 6 years	The Registration, Corporate and Trust Services Division
Above Average	3 - 5 years	AML Unit
High	1 - 3 years	AML Unit

Each licensee’s risk profile will be updated annually, or following a significant/trigger event, or on the completion of an onsite audit examination. The FSC’s experience in supervising the insurance and securities sectors will enable it to transfer this supervisory knowledge and experience to the proposed supervisory framework for the TCSPs sector. However, additional staff will be required to fill the posts created to allow the FSC to conduct supervision of this sector as it is currently under-staffed.

8.8 ASSESSMENT OF THE RISK IN TRUST AND CORPORATE SERVICE PROVIDERS IN JAMAICA

Table 59 below shows that, as noted before, trust and corporate services in Jamaica are provided by financial institutions (insurance companies, banks, among other entities), accountants, attorneys and an umbrella organization. The assessment of risk within the TCSPs sector is also summarized in the table.

Table 59: Risk Assessment of TCSPs

Type of TCSPs	Risk Assessment:
Financial Sector	
1. Corporate Services	<ul style="list-style-type: none"> ▪ The provision of corporate services by financial institutions is usually carried out in addition to other regulated activities that are supervised by either the BOJ or the FSC. These entities usually operate within a group structure that incorporates a group-wide AML/CFT compliance function. ▪ Services provided include acting as (or arranging for another person to act as) a director or secretary of a company, an alternate director or a partner of a firm. These services can be used as a front by criminals to disguise decision-makers within a company. ▪ Based on the responses provided to the survey administered, there is some evidence that not all financial institutions obtain and maintain beneficial ownership information. The extent of this issue should be verified when supervision of the sector commences. ▪ With the proposed amendments to the ICTPA, corporate services providers in Jamaica will be able to offer services directly to overseas individuals and entities, or through intermediaries. This will increase the vulnerability of domestic corporate services providers. Therefore adequate verification mechanisms should be implemented by these entities to effectively execute customer due diligence (CDD). ▪ The number of financial institutions offering TCSs appears to be low (approximately 20) and there is no evidence of corporate service providers being investigated or prosecuted for ML or TF offences. Also, the NRA found that self-laundering was the main vehicle through which proceeds from crime were laundered. ▪ Based on the above, the risk of corporate service providers over the review period was assessed as low.
2. Trust Services (Private Pension Trusts and Other Trusts)	<ul style="list-style-type: none"> ▪ Financial institutions that offer trust services are mainly private pension trusts (that are established as irrevocable trusts) and are regulated by the FSC and must also be registered with the Registrar General Department (RGD). Other trust providers, other than pension companies, must also register with the RGD and include foundations.

Type of TCSPs	Risk Assessment:
Financial Sector	
	<ul style="list-style-type: none"> ▪ The inherent vulnerability of the private pensions trust providers was deemed low given the long-term nature of retirement benefits schemes. Additionally, pension payments are usually undertaken via salary deductions or wire transfers and benefits are paid upon specific events, such as the termination, retirement or death of a participant. This makes occupational pension products unattractive to money launderers and terrorism financiers ▪ Other than acting as a trustee for pension arrangements, financial institutions also act as trustees or executors for securities under management and bond trustee. ▪ It is important to note that assessment of STR data revealed that no STRs have been submitted on any known trust service provider; neither has there been any ML investigation relating to any person offering these services. ▪ Based on the above, the risk of private pension trust being misused for ML/TF purposes was assessed as low.
Designated Non-Financial Institutions & Professions/ Umbrella Association :	
3. Accountants	<ul style="list-style-type: none"> ▪ The assessment of the profession found that only three firms offer TCSs. These services are limited to paying over of taxes to the tax authority. Given the number of entities that fall under the provisions of the Act, the vulnerability to ML and TF was considered low.
4. Attorneys-at-laws	<ul style="list-style-type: none"> ▪ Attorneys are designated as non-financial institutions under Jamaica’s AML/CFT regime. However, they are not reporting under the framework due to an ongoing legal challenge brought by the Jamaica Bar Association. ▪ Attorneys in their professional capacity can create complex structures intended to conceal beneficial ownership which can be used to launder funds. Although there is a strict entry requirement to the legal profession, it is perceived that some legal professionals could become complicit and willingly facilitate ML as a TCSP. Under the TCSPs legislative framework, attorneys who provide TCSs will have to be licensed by the FSC. ▪ Although there is little evidence that TCSs are being misused within Jamaica for ML or TF purposes the ability, as outlined in the NSP, for attorneys to act as facilitators for such activity means that the risk is assessed as medium until such time as a proper assessment can be undertaken.
5. Other Entity (Umbrella Association)	<ul style="list-style-type: none"> ▪ The risk assessment of TCSPs indicates that an umbrella association consisting of several independent practitioners, some of whom are accountants or attorneys currently provide TCSs. Services offered by this group included the formation of legal entities, directorship and secretarial services, and domiciliation. ▪ The assessment also revealed that new clients were gained mainly through referrals. The use of referrals to attract new clients could increase the vulnerability within this group as relaxed CDD measures may be applied to these customers. ▪ The assessment also found that the umbrella association conducts business with international customers and clients they never meet. This vulnerability could be exploited if inadequate customer due diligence or enhanced due diligence measures are applied when dealing with these customers. ▪ Given that the sector is not regulated, this group of service providers could be targeted by criminals to create complex corporate vehicles for the obfuscation of beneficial ownership information and to provide domiciliation facilities. ▪ The risk is assessed as medium for this group for the identical reasons given for attorneys above. Until such time as a proper assessment of the sector can be undertaken and the role of attorneys fully evaluated there is a heightened level of risk within it.

8.9 CONCLUSION

The assessment of the TCSP sector found that a small number of financial institutions, attorneys and an umbrella organization currently provide trust and corporate services in Jamaica. Some of these players currently fall under the AML/CFT regime of the country. Additionally, Jamaica is not an international financial centre and there is no evidence of the widespread use of complex legal structures by criminals to launder proceeds from crime. The sector remains in a nascent state, but as Jamaica seeks to modernize its suite of company formation types it may become more attractive to foreign participants which will invariably increase its vulnerability quotient.

Given that the sector is currently unregulated it was difficult to garner details of the operations of some categories of TCSPs. The regime to bring TCSPs under Jamaica's AML/CFT framework is quite advanced and is consistent with the global standard of risk-based supervision. This new framework will also be agnostic of the profession or entity and as such will bring all providers of the services into this regime.

Based on the assessment of the sector the level of vulnerability was assessed as **MEDIUM**.

CHAPTER 9: NON-PROFIT ORGANISATIONS

9.1 CHAPTER OVERVIEW

This chapter provides an assessment of the terrorism financing (TF) risks in the Non-Profit Organisations (NPO) sector in Jamaica. In the Jamaican context, there are six categories of NPOs; registered charities, benevolent societies, trusts and foundations, companies limited by guarantee, friendly societies and specially authorised societies.

The assessment of the NPO sector was conducted using aspects of the NPO module of the World Bank's NRA Tool. There were data constraints that precluded the NRA team from fully utilizing all segments of the module, which provides a framework for the analysis of the potential abuse of NPOs for terrorist financing. The NRA tool helps to identify NPOs that meet the FATF definition, assess the evidence of NPO abuse for terrorist financing, as well as the inherent TF threat risk and the quality of any existing mitigating measures. This analysis of the sector also leverages the money laundering (ML) and TF vulnerability assessment covered in chapters 3, 4 and 5 of the NRA.

In conducting the assessment, both qualitative and quantitative data was requested from the competent authorities as well as the Financial Investigations Division (FID). Whilst the limited amount of data that was available, together with its lack of comprehensiveness affected the depth of the NPO sectoral assessment, the information obtained was supplemented with open source research to assist in categorizing some NPOs. To further aid the analysis, best estimates based on projections using the existing data were also employed.

The assessment showed that whilst the country is at low risk for the threat of terrorism, the competent authority for the NPO sector, the Department of Cooperatives and Friendly Societies (DCFS), is in a nascent stage of implementing risk-based supervision (RBS) and there were significant gaps in data collection and recording seen during the assessment of the sector. There are also concerns regarding the staff complement, and the limited technological capacity available to it that would allow it to effectively track and monitor this sector.

Additionally, the assessment of the sector, which also considered the extent of ML threats and vulnerabilities, identified the need to make amendments to the charities framework to bring those NPOs at risk for TF as well as ML under the regime. Charities and foundations registered with the Companies Office of Jamaica (COJ) only come under the anti-money laundering (AML) and countering the financing of terrorism (CFT) framework if registered under the Charities Act.

9.2 FATF GUIDELINES FOR NPOs

The FATF defines an NPO as a "legal person or arrangement", or an organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal, or for the carrying out of other types of "good works."

FATF's Recommendation 8 was intended solely for those NPOs that are susceptible to terrorist financing abuse, given that not all NPOs are inherently high risk. It requires countries to review both the adequacy and the efficacy of their legislative frameworks that relate to non-profit organisations and would allow these organizations to be subject to abuse or misuse by terrorist organisations:

- a. posing as legitimate entities;

- b. seeking to exploit legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and
- c. concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations.

Countries are required to adopt and implement measures to protect the sector against abuse and exploitation, as well as identify and take effective, proportionate and dissuasive actions against those NPOs that through, either negligence or wilful blindness, enable organizations to be used as conduits for terrorist financing. These measures adopted by countries should not disrupt or discourage legitimate charitable activities, but rather promote transparency and engender greater confidence in the sector across the donor community and general public.

9.3 BACKGROUND: JAMAICA’S 2017 MUTUAL EVALUATION REPORT

Jamaica’s mutual evaluation report (MER) acknowledged the passage of the Charities Act in November 2013, which sets the framework for the registration and monitoring of incorporated or unincorporated NPOs; inclusive of charitable trusts or any other institutions formed for a charitable purpose. A number of deficiencies in the Charities Act, 2013 were highlighted within the MER, particularly relating to the regulatory and supervisory framework of certain NPOs as well as the fact that the Act was predicated upon voluntary registration, which was also identified as a weakness.

The MER noted that the framework only contemplates supervisory oversight of those charities seeking tax relief as opposed to NPOs susceptible to terrorist financing misuse and abuse. NPOs deemed most at risk of TF misuse and abuse include, but are not limited to, the following:

- organisations with international connections;
- are engaged in international activities; and
- organisations whose source of financial resources include donations obtained from overseas donors.

The report also highlighted inadequacies in the approach to supervisory oversight. These inadequacies were due to the lack of risk-based supervision which would have the effect of informing the most appropriate corrective actions to be taken when failings were identified. , This was compounded by the Charities Authority’s inability to effectively exercise its supervisory powers in enforcing compliance in the sector due to various deficiencies including gaps in mandatory data collection and retention as well as the unavailability of financial sanctions.

In this regard, the report noted that whilst the DCFS conducted 30 inspections of entities in order to assess their compliance with the Charities Act, the introduction of requirements for AML/CFT filing by registered charities remained unaddressed by the DCFS. Consequently, a suite of recommended actions was put forward, including, inter alia, that Jamaica:

- identify and assess its ML/TF risks associated with the sector and put measures in place to mitigate these risks;
- identify the characteristics and features of NPOs that are vulnerable to TF abuse and implement appropriate countermeasures;
- take appropriate and proportionate actions, including measures that prevent the raising and transferring of funds through NPOs by those engaged in TF, given their high risk of being misused by terrorists;

- The Charities Authority should conduct fitness and propriety tests on all directors and officers of all registered charities, and adopt a risk-based approach (materiality and risk) for the conduct of AML/CFT onsite examinations.

Subsequent to Jamaica’s 2017 MER, a number of actions were taken to address some of the highlighted deficiencies in relation to the regulation and supervision of NPOs. These actions included:

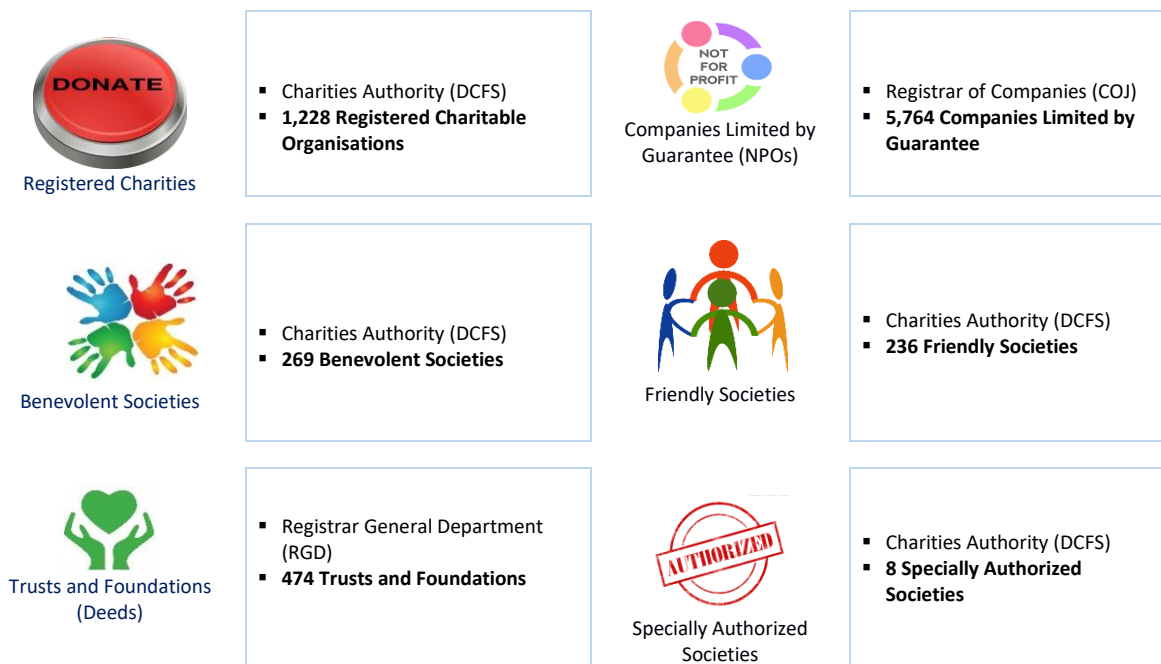
- The application of basic risk profiling of registered charities; and
- Adopting commensurate examination measures in respect of those Charitable Organisations.

Jamaica has taken a number of steps to address these shortcomings, something that is reflected in the fact that the country was re-rated from being Non-Compliant with Recommendation 8 to Partially Compliant in its 3rd Enhanced Follow-up Report and Technical Compliance Re-rating in December 2020.

9.4 OVERVIEW OF JAMAICA’S NPO SECTOR

Non-Profit Organisations are organizations that operate for benevolent purposes, for the explicit benefit of specified groups, rather than to generate profits, and as such generally enjoy tax-exempt status. In the Jamaican context, there are six categories of NPOs as outlined in the diagram below.

Sector at a glance:



9.4.1 PRIVATE COMPANIES LIMITED BY GUARANTEE (NPO)

Most frequently the establishment of a charity begins with its incorporation under the Companies Act, where the usual business vehicle to establish a charity is its incorporation as a company limited by guarantee without a share capital. Companies registered with the COJ as legal persons in the form of Companies Limited by Guarantee (without share capital), have no shares but are owned by guarantors who agree to pay set amounts of money towards company debts, and restrict their undertaking to promoting commerce, art, science, religion, charity or any other useful object. Companies’ rights to transfer shares are also restricted, the number of members is limited to 20, which does not include

employees or former employees and they are prohibited from making any invitation to the public for the subscription of their shares or debentures.

As shown in table 60 below, as at March 2020, there were 5,764 companies that are NPO's and are registered with the COJ as Private Companies Limited by Guarantee.

Table 60: Key Categories of Companies Limited by Guarantee (NPOs)

TYPE	ACTIVE as at March 2020
Charities	1,840
Foundations	1,036
Commerce, Membership Associations/bodies, Homeowner Associations, Childcare Facilities/Nursing Homes	2,888
TOTAL	5,764

9.4.2 CHARITIES

On January 1, 2014, the DCFS was designated the Charities Authority with the responsibility for registering and regulating charities within Jamaica. Charities are unincorporated or incorporated companies (registered legal persons) approved under the Charities Act for the purposes of carrying out specified activities and to whom a taxation benefit will be accorded. The Jamaica Charities Act, 2013 defines a charitable organization as:

- A charitable trust; or
- Any institution, whether incorporated or not, which
 - i. Is established for a charitable purpose exclusively;
 - ii. Is intended to and does operate for the public benefit; and
 - iii. Has no part of its income or assets inuring to the personal benefit of any governing board member or settlor of the organization, or of any other private individual, but shall not include an excluded body.

The Act further defines an excluded body as:

- A political party or a body that promotes a political party or a candidate of a political party;
- A trade union;
- A representative of a body of employers;
- A chamber of commerce or other body that promotes the interest of commercial entities; or
- A body that promotes purposes that are:
 - I. Unlawful;
 - II. Prejudicial to public order or public safety;
 - III. In support of terrorism or terrorist activities, whether those activities occur in Jamaica or outside of Jamaica; or
 - IV. For the benefit of an organization, being a member, of which is unlawful.

Additionally, in keeping with the First Schedule of the Charities Act, charitable purposes include:

- The prevention or relief of poverty;
- The advancement of education;
- The advancement of religion;
- The advancement of health or the saving of lives;
- The advancement of good citizenship or community development;
- The advancement of the arts, culture, heritage or science;

- The advancement of amateur sport;
- The advancement of human rights, conflict resolution or reconciliation;
- The promotion of religious or racial harmony or equality and diversity;
- The advancement of environmental protection or improvement;
- The relief of those in need because of youth, advanced age, ill health, disability, financial hardship or other disadvantage (including temporary disadvantages such as the effects of a public disaster or public emergency).;
- The promotion of the efficiency of the armed forces or the efficiency of the police forces;
- The advancement of animal welfare;
- A purpose specified by the Minister, by order, subject to negative resolution of the House of Representatives, as being analogous to a purpose mentioned in paragraphs 1 to 13(of the Charity Act.

The registration process for charitable organizations under the Charities Act, includes an application being made to the Tax Administration Jamaica (TAJ), whose role is to determine which entities are entitled to be subject to statutory exemptions for tax purposes. When an application is received by the DCFS, a copy is sent via email to the TAJ for review, to ensure that the objects and powers, as outlined below, are in keeping with the Charities Act:

- The charitable purpose(s) with which the organization wants to be involved and what outcome the charity is set up to achieve;
- The beneficiaries of the charity - the target group(s) e.g. women, children, animals, people in need;
- The target area for the charity - e.g., a particular parish or town, community or the entire island of Jamaica.

If no impediments are identified, the TAJ issues a No Objection Letter to the DCFS attesting to its satisfaction with the application. On receipt of this letter the DCFS will register the charity and as part of the process will generate a certificate to this effect. Conversely, where the TAJ identifies problems with the application, the DCFS is advised of the issues identified.

Once registered, the charities certificate is emailed to the Companies Office Jamaica (COJ), which maintains a list of registered charitable organizations. For charities approved for tax relief under the Customs Act, the certificate is also uploaded to the Automated System for Customs Data (ASYCUDA) in use by the Jamaica Customs Agency to facilitate the clearance of goods.

As at March 2020, there were 1,228 charities registered with the DCFS, some of which are closely associated with well-established overseas partner organizations such as the Red Cross and United Nations. The majority of the registered charities are foundations and churches, representing 38.6 per cent and 35 per cent of charities respectively. Table 61 below outlines the key areas of focus for these NPOs.

Table 61: Key areas of focus for NPOs:

TYPE	ACTIVE as at March 2020	TYPE	ACTIVE as at March 2020
Animal Welfare	1	Foundation/Trust	474
Children Home	4	Home	4
Church/Ministry	431	Hospital/Infirmary /Health Care	47
Civic Group	22	Performing Art	7
Community Development/Outreach	24	Poverty Relief	28
Corporate	11	Senior Citizens	2
Development Fund	1	Service Clubs	7
Education	82	Sports	28
Endowment Fund	1	Youth	28
Environment	3	Others	23
TOTAL		1,228	

9.4.3 DEEDS OF CHARITABLE TRUSTS AND FOUNDATIONS

Charitable trusts and charitable foundations *may* be registered as legal persons with the COJ and/or approved as a charitable organisation under the Charities Act, whilst the deeds of Trusts and Foundations must be registered with the Registrar General’s Department (RGD).

The Charities Act, 2013 defines a charitable trust as one that:

- Is established exclusively for a charitable purpose; (as listed in the First Schedule to the Act)
- Is established under a deed of trust that requires the trustees of the trust to apply all of the property (both real and personal) of the trust in furtherance of that purpose except for moneys expended in the management of the trust; and
- Has no part of its net income or assets inuring to the personal benefit of any governing board member or settlor of the organization, or of any private individual.

While trust deeds for registered charitable trusts must be registered with the RGD, the supervisory authority with oversight responsibility for such registered charitable trusts rests with the DCFS.

As at March 2020, there were 474 foundations/charitable trusts registered with the DCFS, a subset of all approved charitable organisations. The majority of the foundations/charitable trusts are registered for the purpose of relief of those in need, and education. Table 62 below outlines the purposes for which they were established:

Table 62: Purpose for which foundations/charitable trusts were established

PURPOSE	ACTIVE As at March 2020	PURPOSE	ACTIVE As at March 2020
Animal Welfare	4	Human Rights	1
Arts/Culture/Heritage/Science	18	Relief of poverty	30
Community Development	34	Relief of those in need	145
Education	115	Religion	16
Environment	11	Saving lives	2
Good citizenship	17	Sport	8
Health	66	Not Known	7
TOTAL		474	

9.4.4 FRIENDLY SOCIETIES

Friendly societies are established to facilitate assistance to its members, their relatives and dependents in at least one of the following ways:

- the relief or maintenance of members, their families and relatives during sickness, old age or on becoming a widow or orphan;
- ensuring money to be paid on instances including, birth, death, funeral expenses, relief during unemployment, against fire for household furniture.

Friendly societies are funded primarily by the members who may own shares, or through the payment of dues and examples of these types of societies include burial schemes and lodges. Burial schemes are established to provide aid to poorer citizens of Jamaica, through co-operative and fund-raising efforts, to allow them to bury an individual, provide aid during periods of hospitalization due to illness as well as any other urgent matters where financial relief is needed. Lodges are freemasonry societies where members engage in fundraising efforts on behalf of the community. *As at March 2020, there were 236 friendly societies registered with the DCFS and a breakdown of the membership of these societies is provided in table 63 below.*

Table 63: Breakdown of Friendly Societies Registered in Jamaica

PURPOSE	ACTIVE as at March 2020
Association	4
Burial Scheme	20
Transport (Taxi Association)	4
Lodges	187
Farming	1
Financial	1
Community Development	4
Fisher folk	3
Others	12
TOTAL	236

9.4.5 BENEVOLENT SOCIETIES

Benevolent societies are largely community-based organizations established for benevolent or charitable purposes such as:

- The creation of community development activities;
- To facilitate representations and recommendations to the relevant authorities for the improvement of the community infrastructure;
- To promote, assist and support the creation of healthy life styles and a high standard of family life; and
- To foster the creation of job opportunities via skills training.

These societies exist mainly in the form of Community Development Action Committees (CODACS). For example, associations fostered by the Drug Abuse Secretariat to assist in the fight to reduce substance abuse, the Citizens’ Associations and charitable organizations aimed at community development, and entities such as Clarendon Association of Street People (CLASP) which provides care for the mentally ill in Clarendon and the Water Users Societies aimed at bringing domestic water to their communities.

As at March 2020, there were 269 benevolent societies and table 64 below provides a breakdown of these classifications:

Table 64: Classification of Registered Benevolent Societies

CLASSIFICATION	ACTIVE as at March 2020	CLASSIFICATION	ACTIVE as at March 2020
Association	3	Foundation	1
Club	5	Hospital	1
Community Development	200	Housing	1
Crafts	1	Neighborhood Watch	2
Diaspora	2	Sports (Club)	1
Education	1	Tours	1
Environment	3	Welfare	1
Farming	27	Youth	3
Fisher folk	6	Others	10
TOTAL		269	

9.4.6 SPECIALLY AUTHORIZED SOCIETIES

For purposes other than banking, Specially Authorized Societies (SAS) are established with the authority of the Minister of Industry Investment and Commerce (MIIC), under whose portfolio the DCFS falls.

The SAS, whose purpose includes irrigation projects as well as those related to craft and farming, are a composite of friendly and benevolent societies, funded primarily through their members. These societies may also benefit from funding grants through the local government or multilateral agencies. One example of a SAS is the Yallahs Irrigation Specially Authorized Society, which operates the Yallahs Agro Park; producing crops including mangoes, ackee and bananas. All the farmers are equipped with metered irrigation water from the Yallahs Irrigation Scheme. Another example is the Network of Women for Food Security Specially Authorized Society, which was established as a community of like-minded women, committed to improving the lives of rural women and their families in Jamaica through agriculture, in particular through the establishment of a local mushroom industry. Table 65 below provides a breakdown of the eight SAS registered with the DCFS as of March 2020.

Table 65: Specially Authorized Societies registered with the DCFS

PURPOSE	ACTIVE as at March 2020
Irrigation	6
Craft and Farming	1
Farming	1
TOTAL	8

9.4.7 FATF DEFINED NPOS

Table 66 represents the subset of NPOs in Jamaica that meet the FATF definition. The charitable purposes for which most charities were established were, religious purposes (345), followed by 270 for the relief of those in need and 243 for education.

Table 66: NPOS Meeting FATF Definition

CHARITABLE PURPOSE	BENEVOLENT SOCIETY	CHARITY
Animal Welfare		4
Arts/Culture/Heritage/Science	1	30
Community Development	208	61
Education	2	243
Education		4
Environment	36	18
Good citizenship		29
Health		113
Human Rights	1	1
Relief for those in need		1
Relief of poverty	1	45
Relief of those in need	3	270
Religion	1	345
Religious harmony		6
Saving lives		2
Sport	1	36
(Unknown)	15	20
TOTAL	269	1,228

The ability to determine the true number of FATF defined NPOs registered with the COJ as companies limited by guarantee, as a subset of the 1,840 charities and 1,036 foundations contained in table 62 was impaired by the unavailability of data. Although data maintained by the COJ for these charitable organizations is limited, it was determined through comparison of the data provided by both the COJ and the DCFS that 128 of the 1,840 charities registered with the COJ as companies limited by guarantee, are also registered with the DCFS, and meet the FATF definition.

Further research identified that 182 of the 1,036 foundations registered with the COJ are also registered with the DCFS and meet the FATF definition. It was also determined that the lack of available data is due to the combination of inadequate measures in place to obtain and record requisite information on these incorporated entities as well as the absence of adequate provisions requiring the retention of pertinent data.

Additionally, information on the charitable purposes of all registered charitable organisations (RCOs) was not readily available from the DCFS with details available for only approximately 75 per cent of the RCOs.

The data was however, supplemented by open source research to allow the categorization of some of the RCOs. Failure to record all the relevant details of the RCOs registered is assessed as a gap that could negatively affect the DCFs' ability to understand the sector and to apply a risk-based approach to supervision if the purposes for which the entities were established is not known.

9.5 INHERENT VULNERABILITIES

The NPOs that meet the FATF definition are primarily engaged in service activities such as community development (social services, housing), religious purposes, relief of the poor (social services, housing), education and health care.

Though limited data is available on donations for all 1,228 registered charities, the total donations for approximately one third of the entities represented less than one per cent of GDP (0.69 per cent or J\$14 billion) in 2019, while estimated sector totals were projected at about two per cent (or J\$44 billion) of GDP for the corresponding period. Furthermore, the predominant suite of activities undertaken by the larger RCOs are for religious purposes, relief of the poor and for educational purposes. These larger NPOs are representative of established foundations, trusts, missionary groups and to a lesser extent, churches who receive donation funding locally and from overseas.

Data regarding overseas funding received by registered charities in Jamaica is not currently collected. However, since the preferred method of funds transfer to registered charities in Jamaica is through the formal banking system, the NRA team was able to utilise data from deposit taking institutions on originating countries for international transfers as a proxy measure for the level of ML/TF exposure. This information was obtained from the Bank of Jamaica's thematic study on international transfers, which concluded that international wire inflows were predominantly from diaspora areas in the United States (US), United Kingdom (UK) and Canada for the FY2018/19. Notably, while there were also minimal inflows emanating from high-risk jurisdictions (see table 67 below), these funds were channelled through the US and/or UK, tempering the level of perceived risk exposure, with no indication of adverse connections to the NPO sector.

Table 67: Incoming Wire Transfers from High-Risk Jurisdictions

Incoming Wires from High-Risk Jurisdictions FY2018/19		
Country	Value of Transactions (USD)	No. of Transactions
India	2,696,973	252
Nigeria	179,932	72
Philippines	121,895	14
Pakistan	25,346	10
Total	3,024,146	348

Using elements of the World Bank Tool, NPOs meeting the FATF definition were assessed under two categories (RCOs and Benevolent Societies), rather than each of the different categories, given that most fall within the charities and benevolent Societies framework, and where they do not, such as companies limited by guarantee, very limited data was available.

Again, due to the limited data available, it could not be determined whether NPOs conduct due diligence on their donors (significant or otherwise). NPOs provide service activities that are prone to diversion, misappropriation and abuse, which raises their inherent vulnerability. However, there are no such known

cases in Jamaica. Additionally, the structures of these NPOs are not complex, and are predominantly established locally.

The preferred method of funds transfer for FATF NPOs in Jamaica is through the formal banking system and, to a lesser extent, in cash and in-kind goods. This tempers the level of ML/TF risk exposure to the sector owing to the relatively robust screening systems employed by banks.

9.6 LEGAL FRAMEWORK

The Jamaican NPO sector is governed by the following suite of legislation:

- The Charities Act, 2013
- The Friendly Societies Act, 1968
- The Trusts Act, 2019
- The Income Tax Act, 1955
- The Companies Act, 2004

Supervisory oversight of the NPO sector is provided by the DCFS, within the purview of the Charities Act, 2013. This Act was established with the objective of standardizing the treatment of charitable organizations within the context of their respective tax obligations. The Charities Act, along with the passage of the Charities Regulations which is expected to take place by the end 2021, serve as supervisory tools for the DCFS and an obligatory medium through which sector data can be exchanged with investigative authorities although it is worth reiterating that registration under the Act is voluntary. The passage of the Act also earmarks the initial stage of the process to integrate organizations at risk of terrorist financing under the framework, and by extension, the application of a risk-based approach.

The Charities Act, 2013 sought to address the treatment of charitable organizations for the purpose of taxation, by removing the powers of granting tax waivers from the Minister and instead conferring the power to the appropriate authorities (Tax Commissioner and Jamaica Customs Agency). Consequently, registration under the Charities Act is voluntary and only needs be pursued by persons who require exemption from the tax obligations under the Income Tax Act.

The Charities Act, 2013 allows the DCFS few penal options, such as the refusal, suspension or revocation of registration and, where applicable, by way of court order, remedial actions in relations to administrative matters.

Section 40 of the Charities Act, 2013 requires that reviews be undertaken by a committee of both Houses of Parliament appointed for the purpose, no later than three years after the commencement date. It is to the detriment to the utility of the Act that no such reviews have been conducted to determine whether its provisions are adequate to prevent charities from being abused for the financing of terrorism.

9.7 SUPERVISORY FRAMEWORK

Subsequent to the 2017 MER, a number of actions were taken to address some of the deficiencies relative to the regulation and supervision of NPOs. These actions included the application of basic risk profiling of registered charities and adopting examination measures in respect of those organizations. These risk factors assessed by the DCFS, during the application/renewal of licences process, include the following:

- Inconsistencies in application information;
- Nationality of directors;
- Association with high-risk countries;

- Source of funds;
- Expenditure patterns.

Additionally, amendments were made to the charity application form to include a request for detailed donor and source of funds data, as well as the establishment of a records database at the DCFS.

Notwithstanding the actions taken, work has continued in assessing the NPO sector, particularly for the purposes of identifying the characteristics and features of RCOs that are vulnerable to TF abuse as well as the implementation of appropriate countermeasures. This process of identifying the risks in the NPO sector is intended to promote effective risk-based supervision and, if necessary, inform legislative amendments.

The DCFS derives its power from the Charities Act, 2013, which sets out the functions of the key authorities with responsibilities under the Act. The functions, are outlined in Section 7, and include, *inter alia*, the role of the DCFS to:

- receive, process and determine applications for registration under the Act;
- monitor charitable organizations and associated activities to ensure continued qualification for registration;
- monitor and promote compliance with the Act; and
- take the necessary steps to ensure that registered charitable organizations are not misused for criminal purposes or controlled by persons engaged in criminal activities.

Section 24 of the Act also sets out the registration obligations of the Registrar of Companies which is to maintain an up-to-date register of RCOs with specified minimum information including the registered name of the RCO, the date of registration, registered address, summary of objects and purpose, names of governing board members and dates of appointment, and other particulars as deemed necessary by the Registrar.

Further, section 16 outlines the requirement for the TAJ's no-objection to the registration of a charitable organization, a requirement central to the Act with the objective of obtaining tax relief.

Following the passage of the Act in November 2013, the registration process included the completion of fit and proper assessment of all applicants for charitable status as well as fitness and propriety tests for directors and officers of NPOs upon renewal of registration. Whilst these assessments are conducted as part of the application process, the DCFS currently has no available tools to verify the involvement of Specially Designated Nationals (SDNs), a US Government sanctions/embargo measure targeting US-designated terrorists, officials and beneficiaries of certain regimes and international criminals.

This lack of screening tools to identify SDNs or PEPs impairs the registration process, which entails the completion of a fit and proper assessment of all applicants, in addition to fitness and propriety tests for directors and officers of NPOs upon renewal of registration.

Under the Act, charitable organizations are required to submit annual returns that include information on the total of contributions and donations they have received, total contributions/donations disbursed and a list of the major donors. The manual processing and retention of this information negatively impacts record-keeping and the ability to effectively retrieve and analyse data received from charitable organizations. Further, the manual processing affects the DCFS' ability to effectively track the receipt of

annual returns, which may result in the non-filing by charitable organisations going undetected for extended periods and not be subject to review/scrutiny.

Table 68 shows the number of annual returns submitted for the period 2017 -2019, and demonstrates the low level of compliance, less than 35 per cent of all registered NPOs, with this requirement.

Table 68: NPO Annual Returns Submitted 2017-2019

Year	Number of Annual Returns Received	% of Total Registered NPOs
2017	295	24%
2018	393	32%
2019	352	29%

Further, although it is a requirement for charitable organisations to attach a list of their major donors and the value of contributions and donations received from each to their annual return form, the DCFS' Guidance Notes do not provide specific direction on what is considered a threshold for major donors. This information is not reviewed as part of the examination process and there are also no specific controls to ensure funds are spent in a manner consistent with a charity's purpose and objective.

The DCFS also requires independent audits to be conducted either by the Charities Authority or registered accountants in order to allow them to meet the basic auditing standards. On an annual basis, all registered charitable organizations are required to submit, along with their annual return form, audited financial statements/returns meeting any of the following standards:

- IFRS compliant and signed off by an independent registered accountant or auditor
- Not IFRS compliant and signed off by an independent registered accountant or auditor
- Certified balance sheet together with a receipt and payment account along with the relevant notes from any registered public auditor/accountant
- An independent practitioner's report prepared in accordance with International Standard on Review Engagements (ISRE) 2400 (Revised), by either a registered chartered accountant/auditor.

Given the gaps in data collection and recording, it was not possible to determine the level of compliance with this requirement.

These control deficiencies negatively impact the DCFS' ability, as required under the Act, to effectively monitor charitable organizations and their activities to ensure continued qualification for registration and to ensure the charitable organizations are not misused for criminal purposes or controlled by persons engaged in criminal activities.

Consideration should be given to enhancing the penalties applicable to NPOs under the framework to make them effective, dissuasive and proportionate whilst recognizing that in a voluntary registration framework, the benefits to registration should outweigh non-registration. Whilst the current powers include the ability to apply sanctions ranging from suspension to revocation of the registration as an NPO, these powers are deemed ineffective given that the Act is also predicated on voluntary registration only for those charities seeking tax relief. The refusal to grant a license or the revocation of a license may be of little significance to an NPO as they may opt to operate outside of the regulatory framework. The Act also, to its detriment, does not provide for financial sanctions applicable to targeted NPOs in breach of the filing requirements.

9.8 TERRORISM FINANCING AND MONEY LAUNDERING THREATS IN THE NPO SECTOR

The extent to which Jamaica is vulnerable to terrorism financing and money laundering was assessed as a part of the NRA. The assessment reflected a **low** vulnerability to terrorist attacks and a **medium-high** ML vulnerability. The nature of charities and their reliance on volunteerism places them in a vulnerable position for misuse. This vulnerability is predicated on the fact that crimes such as terrorism financing and money laundering, can result in financial losses with a ripple effect of reputational damage and public mistrust. In this section, brief discussions will be presented surrounding the level of terrorism financing and money laundering threats experienced by the NPO sector for the 2016 to 2019 review period. Because of the dearth of data, not all elements of the World Bank Tool were utilised, but the assessment also took into consideration, general sector findings, inclusive of law enforcement, coupled with case examples of instances of threat to the sector. Overall, threat level for the sector was concluded as **low**.

9.8.1 TERRORISM FINANCING/TERRORISM

The World Bank Tool was used to examine the level of exposure to TF Abuse of the NPO sector in Jamaica. Based on key input variables, as seen in table 69 below, there was no evidence of TF abuse throughout the period of review.

Table 69: Breakdown of TF Law Enforcement Activity within Jamaica

Evidence of TF Abuse of NPO [2017 -2019]		
Number of TF/terrorism Convictions	Does not exist	0.0
Number of TF/terrorism Prosecutions	Does not exist	0.0
Number of TF/terrorism Investigations	Does not exist	0.0
Number of TF/terrorism Intelligence	Does not exist	0.0
Number of TF/terrorism STRs	Does not exist	0.0
Number of TF/terrorism Allegations in credible open sources	Does not exist	0.0

Although the present terrorism threat level has been assessed as low, there was one incident involving TF which is outlined in the case below.

CASE EXAMPLE

On 17th October 2019 an IT engineer living in Singapore, was jailed for two-and-a-half years by a court in Singapore for financing terrorism. He was convicted of sending Sg\$1,146 (US\$840) through Western Union to an Islamist preacher living in Jamaica. In July 2016, the Singaporean national donated to the preacher's programme through a middleman who was fundraising for the preacher.

The preacher was jailed for seven years in Britain in 2003 after calling for the murders of non-Muslims and was deported to his native Jamaica after serving four years of his sentence. In August 2017, the preacher was arrested on an extradition warrant from the United States in relation to charges of conspiracy as a crime of terrorism, two counts of soliciting or providing support for an act of terrorism, and two counts of attempted soliciting or providing support for an act of terrorism. He has since been extradited to the United States in connection with this matter.

While Jamaica has not yet implemented a risk-based approach to the supervision of the NPO sector nor has it conducted a vulnerabilities assessment to identify which NPOs are at risk for TF abuse, Jamaica did not experience any terrorist attacks during the period January 1, 2016 to December 31, 2019. Jamaica does not appear to have suffered any terrorist attacks in its recent history, nor does it appear to have any domestic terrorism issues or incidents of terrorist financing that have been identified.

9.8.2 MONEY LAUNDERING

While the risk of TF is considered low, ML is more of a concern in the NPO sector. Donations received from illegal sources may be channelled through the sector for money laundering purposes. The DCFS indicated that they will not register a charity operated by a PEP, however, this may be circumvented by family members or close associates who are allowed to establish these entities. Evidence to support this assertion is provided by examining the case of a charity that was established in 2017 by the wife of a Member of Parliament, who together with her husband, their daughter and two other co-accused are currently before the courts charged with a number of offences. A brief overview of this matter is provided in the case example below.

CASE EXAMPLE

In October 2019, as a result of a joint operation involving the Financial Investigations Division (FID), the Major Organised Crime and Anti-Corruption Agency (MOCA), and the Constabulary Financial Unit (CFU), part of the Jamaica Constabulary Force (JCF) Counter-Terrorism and Organised Crime Division (CTOC), a PEP, spouse, daughter, and two associates were arrested and charged with breaches of the Corruption Prevention Act, conspiracy to defraud, misconduct in a public office and the Proceeds of Crime Act.

Investigators have alleged that over J\$50 million of public funds were diverted to the personal use of the PEP and associates through a number of schemes, including a Non-Profit Organisation, to provide opportunities for training and skills for the job market.

The investigation and ongoing prosecution of this case, highlights the requirement for effective due diligence, tracking, recording and analysis of annual filings with the Supervisory Authority, and risk-based supervisory reviews.

9.9 CONCLUSION

Overall, the assessment of the NPO sector in Jamaica reflects a **LOW** risk of abuse for terrorist and terrorism financing through NPOs. There is no evidence to indicate systemic TF risk within the NPO sector, that NPOs divert funding to known terrorist cells, or that their operations are affiliated with terrorist organisations, support terrorism, or carry out activities in support of terrorism.

Though terrorism threat levels have been assessed as low, there is a high level of awareness amongst key law enforcement stakeholders of the need to address inherent vulnerabilities, and they have already adopted several initiatives intended to mitigate against the threat posed by possible terrorist attacks.

It is however recognized that the sector is inherently vulnerable for TF and ML given the profile of the NPOs. This is particularly so in relation to foreign funding sources and the nature of services provided (housing, social services, education and health care), where these services are generally more prone to diversion, misappropriation and abuse. However, there have been no reported cases in Jamaica in this regard.

Additionally, the quality of supervisory oversight of the sector and quality of governance/management by the NPOs were identified as key areas requiring attention given that there is currently no AML framework in place for the NPO sector. It is apparent as the result of this assessment that appropriate regulatory/supervisory programs should be implemented.

In the course of the TF assessment, the extent of ML threats and vulnerabilities to the NPO sector was also considered. The assessment of a medium-high vulnerability to money laundering in the NRA highlighted some key areas of susceptibility including, inter alia, corruption and bribery, fraud, engaging in illegal narcotics, guns and ammunition activities, and trafficking humans, as well as other predicate offenses. These areas of ML vulnerability also impact on the susceptibility of the NPO sector as donations received from illegal sources may be channeled through the sector for money laundering purposes.

CHAPTER 10: LEGAL PERSONS AND ARRANGEMENTS

10.1 CHAPTER OVERVIEW

This chapter outlines the different types of legal persons and arrangements (LPAs) that exist in Jamaica, the current state of those LPAs, and details on the findings from the risk assessment conducted, as well as compliance with FATF guidance on transparency and beneficial ownership.

To understand the risk posed by legal structures in Jamaica, an assessment was undertaken, led by the Companies Office of Jamaica (COJ), with the assistance of the Inter-American Development Bank (IDB), who provided support in the form of an experienced consultant to complete the assessment. The assessment found that LPAs did not feature heavily in investigations and prosecutions of money laundering and terrorism financing.

The National Risk Assessment (NRA) was completed using elements of the World Bank Group's NRA Tool. We were not able to use all areas of the tool due to data gaps.

10.2 BACKGROUND: JAMAICA'S 2017 MUTUAL EVALUATION REPORT

Jamaica's 2017 mutual evaluation report (MER) concluded that while the country has been able to ensure that basic information on the types and forms of legal persons can be publicly accessed, it has not conducted a comprehensive money laundering (ML), terrorism financing (TF) and proliferation financing (PF) risk assessment of legal persons and arrangements.

The MER also noted that competent authorities are able to obtain information on directors and shareholders of companies that are kept on the public register maintained by the COJ. However, the register 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 trusts 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.

The report notes that tax and law enforcement agencies are able to obtain information from the COJ in a timely manner. However, the COJ does not verify data submitted by companies.

The MER concluded that while there is general awareness amongst the key anti-money laundering (AML), countering the financing of terrorism (CFT) and countering proliferation financing (CPF) authorities in Jamaica of the potential use of corporate structures and trusts to facilitate money laundering and terrorist financing, there is insufficient data to make a determination as to whether there are any legal persons and arrangements in Jamaica that have been created for the purposes of facilitating money laundering, terrorist financing or proliferation financing. It should also be noted that Jamaica is not an international financial centre and a framework to regulate trust and company services providers is currently being developed. This will result in these providers being designated as non-financial institutions under the POCA, TPA and UNSCRIA and being supervised by the Financial Services Commission (FSC). Regulation of company formation agents and trust companies can help mitigate against some of the potential abuse of LPAs.

10.3 FATF GUIDANCE

Recommendation 24 specifically requires countries to assess the ML/TF/PF risks associated with all types of legal persons created in the country. The FATF methodology, as part of the assessment of immediate outcome 5, outlines that the competent authorities identify, assess and understand the vulnerabilities, and the extent to which legal persons can be, or are being, misused for ML/TF/PF.

A summary of Jamaica’s performance against the FATF guidance is detailed in table 70 below:

Table 70: Review of Jamaica’s LPAs Framework against FATF’s Requirement

FATF Guidelines	Jamaica’s Current Framework
<ul style="list-style-type: none"> ▪ Countries should take measures to prevent the misuse of legal persons for money laundering or terrorist financing. 	<p>To identify and understand the risk in LPAs, a risk assessment was conducted in 2021. This assessment was spearheaded by the COJ in partnership with the IDB, who contracted a consultant to execute the risk assessment. The findings from the assessment revealed that the risk of ML / TF/PF in LPAs was low. The assessment also included preventive and detective recommendations for policymakers to consider.</p> <p><u>Access to Beneficial Ownership (BO) by competent authorities:</u></p> <p>In 2017, the Companies Act was amended to require:</p> <ul style="list-style-type: none"> ▪ The disclosure of beneficial ownership information; ▪ The maintenance of a BO register; and ▪ The disclosure of any changes to the BO information to the Registrar. ▪ New and increased penalties for failure to keep records (ownership and accounting). <p>Additionally, in 2017, the Companies Act was amended; companies are :</p> <ul style="list-style-type: none"> ▪ Required to keep BO information and to report the BOs to the COJ annually. ▪ Required to identify the individual on whose behalf shares are held ▪ Prohibited to issue share warrants to bearer shares in the case of public companies
<ul style="list-style-type: none"> ▪ Countries should ensure that there is adequate, accurate and timely information on the beneficial ownership and control of legal persons that can be obtained or accessed in a timely fashion by competent authorities. <ul style="list-style-type: none"> ▪ <i>In particular, countries that have legal persons that are able to issue bearer shares or bearer share warrants, or which allow nominee shareholders or nominee directors, should take effective measures to ensure that they are not misused for money laundering or terrorist financing.</i> 	<p>Competent authorities can obtain information on directors and shareholders of companies that is kept on the public register maintained by the COJ.</p> <ul style="list-style-type: none"> ▪ <i>However, the database does not include up-to-date and accurate information on BO 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.</i> <p><u>Bearer Shares or Bearer Share Warrants</u></p> <p>Public companies are prohibited from issuing share warrants to bearer shares.</p>

FATF Guidelines	Jamaica's Current Framework
<p>Immediate outcome 5, the core issue 5.2: Competent authorities should identify, assess and understand the vulnerabilities, and the extent to which legal persons created in the country can be, or are being misused for ML/TF/PF.</p>	<p>Jamaica has taken steps to understand the risk within LPAs, through an initial risk assessment. The findings from the assessment found that the risk of ML/ TF/PF in LPAs was low. The findings from the assessment also recommended several preventative and detective recommendations for policymakers to consider.</p>
<p>Conclusion: Based on the current framework, Jamaica still has significant work to do in order to meet the FATF's requirements. To bring the country into compliance, the Companies Act is being amended, and the proposed amendments include:</p> <ul style="list-style-type: none"> ▪ Reducing the shareholding amount that triggers the disclosure of BO information, from 50 per cent; ▪ Removing the provision which allows for nominee directors; ▪ Making consequential amendments to related legislation to ensure uniformity of definitions of terms; ▪ Increasing the power of the Registrar to conduct inspection, request documents and impose administrative penalties; ▪ Ensuring sanctions are effective, proportionate and dissuasive. 	

10.4 TYPES OF LEGAL PERSONS AND ARRANGEMENTS OPERATING IN JAMAICA

Jamaica is in the process of modernizing its suite of company formation types to attract both local and international entities wanting to do business in Jamaica. It should be noted that Jamaica is not an international financial centre (IFC). This reduces the country's vulnerability to ML TF/PF as LPAs are more attractive to launders in countries that are designated as IFC. It is expected that once these company formation types are modernized and operationalized, the country's vulnerability will increase. To manage this exposure, Jamaica is advanced in the development of a framework for the inclusion of Trust and Company Service Providers (TCSP) under its AML/CFT/CPF regime and the FSC, as the designated competent authority, will supervise these vehicles. Also, LPAs will be designated as non-financial institutions under Jamaica's AML/CFT/CPF regime.

The types of LPAs that can be established in Jamaica are outlined in table 71 below:

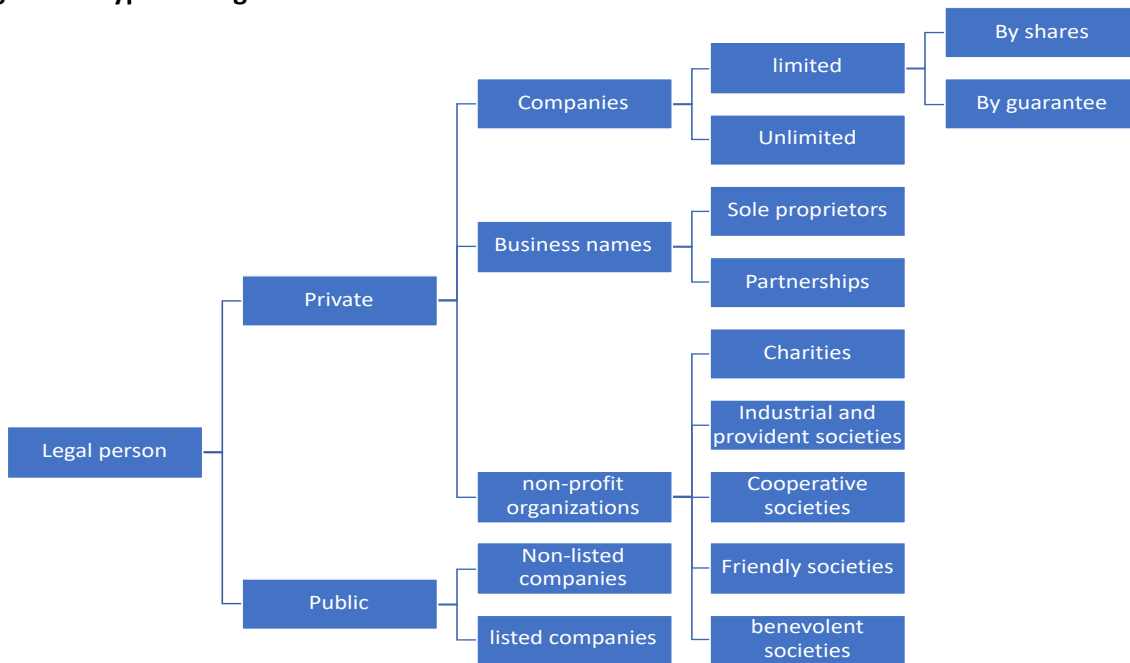
Table 71: The scope of legal persons and legal arrangements in Jamaica

LEGAL PERSONS	LEGAL ARRANGEMENTS
Companies (Private and Public)	Trusts
Business Names (Sole Proprietors)	Powers of Attorney
Partnerships	Partnerships
Non-Profit Organizations	Escrow Arrangements
Bodies Corporate	Associations

10.5 LEGAL PERSONS

Legal persons are defined by the FATF as any entity other than natural persons that can establish a permanent customer relationship with a Financial Institution or otherwise own property. As depicted in figure 21 below, several types of legal persons can be created in Jamaica, broadly as private companies or public companies.

Figure 21: Types of Legal Persons that can be created in Jamaica:



10.6 ASSESSMENT OF THE RISK IN THE VARIOUS TYPES OF LEGAL PERSONS THAT CAN BE CREATED IN JAMAICA

Table 72 below summarizes the risks identified within the various types of legal persons in Jamaica. The assessment shows that the risk within the sector is low and that legal persons did not feature in many ML/TF/PF investigations and prosecutions. The details in relation to the features of each type of legal person are provided later in this chapter.

Table 72: Risk Assessment on the Types of Legal Persons

Legal Persons		
Type of Legal Persons		Risk Assessment:
Private Companies:		
Company Limited by Shares		<ul style="list-style-type: none"> ▪ Companies limited by share can be easily set up, which makes them attractive to criminals and increases their level of risk. Consequently, the vulnerability within these company types was deemed high. ▪ Assessment of ML investigations revealed that legal persons did not feature heavily in these investigations. Of the 294 ML investigations over the review period, 15 or 5 per cent involved companies limited by shares. ▪ The ML offences investigated did not involve complex company structures with chains of ownership (including trusts across multiple countries); did not use formal (contractual) or informal nominee shareholders or directors; did not use intermediaries in company formation; and did not use shelf (dormant), shell (no activity) or front companies (often in the customer service sector). This indicates that the techniques being used by launderers are not sophisticated and can be easily traced. <p>➤ <i>Based on the details provided above, the risk within these company types was assessed as medium-low.</i></p>
Company Limited by Guarantee		<ul style="list-style-type: none"> ▪ Based on the nature of companies limited by guarantee, their organizational structure is usually simple (refer to the write-up on this company type below).

Legal Persons	
Type of Legal Persons	Risk Assessment:
	<ul style="list-style-type: none"> ▪ The vulnerability in these companies can, however, increase when they feature nominee shareholders or directors where nominator identity is undisclosed. ▪ This company type did not feature in ML/TF/PF investigations and prosecution. ➤ <i>Based on the details provided above, the risk within these company types was assessed as low.</i>
Private Unlimited Company	<ul style="list-style-type: none"> ▪ Unlike public limited companies, private limited companies are not subjected to public disclosure, which increases their vulnerability to ML/TF/PF. ▪ This business type is, however, not attractive to investors as the owners of the business have unlimited liability. As result, there was no private unlimited company registered with the COJ. ➤ <i>Based on the details provided above, the risk within these company types was assessed as low.</i>
Business Names:	
Sole Proprietors	<ul style="list-style-type: none"> ▪ The lack of separation between the owner and the business entity presents some level of vulnerability as sole proprietors could disguise proceeds from crime with the business entity, especially in the case of cash-intensive businesses. ▪ The ease at which these companies can be formed also presents some level of ML vulnerability. ▪ Over the review period, sole proprietors featured in 17 ML investigations, which represents 5.7 per cent of the total ML investigations (294) conducted over the review period by law enforcement agents. ▪ It is important to note that ML investigations, which involved sole proprietorship did not feature complex structures and therefore did not involve nominee shareholders or directors, use of intermediaries and dormant companies. ▪ Additionally, beneficial ownership information on this business type is usually readily available as the owner is a natural person. ➤ <i>Given the foregoing, risk within this business type was assessed medium.</i>
Partnerships	<ul style="list-style-type: none"> ▪ Partnerships can operate as separate legal entity from their owners, this feature increases their vulnerability to ML as they can be used as front companies to disguise the BO. This is especially in the case of partners who are not involved in the day to day operation of the company. These partners may stay behind the scene while being able to instruct other partners. ➤ <i>Despite the vulnerability of these company types to ML, they did not feature in any ML/TF/PF investigations/cases over the review period. As a result of this, the risk within this company type was deemed low.</i>
Non Profit Organizations	<ul style="list-style-type: none"> ▪ There are no requirements for this business type to register and they are not required to provide proof that they are operating in line with their company objective. Therefore, criminals may exploit this vulnerability and use this vehicle to launder proceeds from crime. ▪ The risk assessment conducted on non-profit organisations (NPOs) is detailed in Chapter 9 and indicated that the sector has a medium-high vulnerability to money laundering. This was based on the profiles of the NPO operating in Jamaica and the poor supervisory oversight that is currently in place (Please refer to Chapter 9 for the details of the risk assessment).
Public Legal Persons	
6. Public Legal Persons	<ul style="list-style-type: none"> ▪ The ML vulnerability within a publicly listed company is low as these companies are required to make timely public disclosures on their operations (including audited reports and connected party transactions).

Legal Persons	
Type of Legal Persons	Risk Assessment:
	<ul style="list-style-type: none"> ▪ These companies also have a strong relationship with banks (as they are usually partially funded by bank debt), which conduct ongoing risk assessments on these companies as part of their risk profiling. ▪ These companies are also subjected to scrutiny from securities dealers who conduct ongoing assessments on listed company performance. These assessments are usually made available to customers to aid in their investment decision. ▪ These company types did not feature in any ML/TF/PF investigations/cases over the review period.

10.7 DETAILS ON LEGAL PERSONS OPERATING IN JAMAICA

10.7.1 PRIVATE COMPANIES

Several types of private companies can operate in Jamaica. These include unlimited companies, companies limited by shares and companies limited by guarantee.

10.7.1.1 COMPANY LIMITED BY SHARES

Companies limited by shares are companies in which the liability of its members is limited to the amount (if any) unpaid on the shares held by them and typically operate in all areas of industry and commerce. There are 2,754 active companies limited by shares registered with the COJ.

Companies limited by shares are more susceptible to ML activity as they are easy to set up. Over the period under review, 15 ML and predicate offence investigations involved companies limited by shares, which represents 5 per cent of all ML investigations (294) conducted over the review period.

CASE EXAMPLE

Individual X is a convicted drug trafficker having pleaded guilty in 2014 to offences of drug trafficking and money laundering in the United States of America. Prior to being convicted, money laundering and civil recovery investigations were undertaken in Jamaica on individual X's finances concerning assets owned by them and their associates. This investigation revealed that during the years 2002-2009, individual X and their relatives purchased properties in excess of J\$400M. These properties are believed to have been purchased with the proceeds from criminal conduct.

During the course of the investigation, it was established that individual X was the principal director of a construction company and a restaurant, which were incorporated in 2003 and 2008, respectively. These companies filed either nil/minimal or no income tax returns respectively during the years following their incorporation.

Despite reporting only nil or minimal income for tax purposes, the construction company imported heavy-duty tractors, motor vehicles and parts in excess of J\$60 million over three years. The company also acquired several real estate properties in excess of US\$2,000,000 over a six-year period. Additionally, the restaurant, since its incorporation in 2008, never engaged in any kind of business. Despite this, it imported two fishing vessels which totalled more than J\$26 million in 2009 and 2011.

From the investigations, it appears that the companies were used as conduits to facilitate the laundering of the owner's proceeds from drug trafficking.

In December 2013, a Jamaican attorney, together with a number of others were charged with money laundering. Subsequently, in 2016, the construction company, individual X and the other directors were charged jointly for its acquisition of two of the properties, valued in excess of US\$1,500,000.00.

All those charged are currently awaiting trial whilst a parallel civil recovery proceeding is also in court against a number of assets purchased by the companies and their directors.

This case highlights the potential use of legal persons and/or arrangements to launder funds and also how long it can sometimes take to get a prosecution.

10.7.1.2 COMPANY LIMITED BY GUARANTEE

Companies limited by guarantee are companies that have no shares or shareholders but are owned by guarantors who agree to pay set amounts of money towards company debts. In addition, companies limited by guarantee without share capital, restrict their undertaking to promoting commerce, art, science, religion, charity or any other useful object. There are 390 active companies limited by guarantee registered with at the COJ.

Companies limited by guarantee with share capital are limited by both shares and guarantee and has two classes of members- shareholders and guarantee members. Typically shares are issued on terms that carry voting privileges but no rights to dividends or to participate in the income/capital of the company in any other way. Guarantee membership carries no voting rights but carries all the rights to participate in the income/capital of the company. These types of companies are rare and historical.

10.7.1.3 PRIVATE UNLIMITED COMPANY

A private unlimited company is a firm held under private ownership and there are no limits on the liability of its members. Each member/shareholder is jointly and severally liable for the debts of the company in the event of winding up and may be registered with or without share capital. There were no private unlimited companies in the records of the COJ's registry.

10.7.2 BUSINESS NAMES

A business name is the name under which a person or entity conducts business and is any name other than that of the business owner under which he conducts business. This could be in the form of a partnership, or as sole proprietorship and are usually used in the areas of consultancy, service stations and partnerships and excludes businesses being operated for charitable purposes.

10.7.2.1 SOLE PROPRIETORS

A sole proprietorship is the simplest business form under which one can operate a business and is defined as a single owner of a business name. There is no distinction between the owner and the business entity. The usual types of sole proprietorships are self-employed business owners, independent contractors, and franchises.

10.7.2.2 PARTNERSHIPS

A partnership is a form of business operation (or arrangements) between two or more individuals who agree to share the assets, profits, financial and legal liabilities of a jointly owned business. Partnerships are typically professional groups, real estate firms and asset protection firms. There are two main types of partnerships, general partnerships and limited partnerships.

GENERAL PARTNERSHIPS

General Partnerships must include at least two people who agree to work together for profit. The assets of the partnership are owned by the partners, and each partner is personally liable for business debts, taxes and tortious liability. Further, each partner is the agent of the partnership. Partnership Agreements should be in writing and registered with the Registrar General's Department (RGD). General Partnerships typically include legal firms, accounting firms, real estate firms.

LIMITED PARTNERSHIPS

Limited Partnerships include one or more general partners and one or more limited partners. The limited partner is not personally liable for the debts of the partnership and can only lose the amount paid as capital contribution or received from the partnership. Further, a limited partner cannot participate in the management of the business. Partnership Agreements should be in writing and registered with the RGD. Partnership Deeds of Limited Partnerships are currently registered with the RGD, Limited Partnerships are currently not incorporated with the COJ.

It is important to highlight that Jamaica is modernizing its legislative framework to guide the establishment and supervision of limited liability partnerships (LLP) and limited liability limited partnership (LLLLP).

10.7.3 NON PROFIT ORGANIZATIONS (NPO)

The FATF defines a NPO as a "legal person or arrangement", or an organization that primarily engages in raising or disbursing funds for purposes such as charity, religion, cultural, educational, social or fraternal, or for the carrying out of other types of "good works."

As discussed in Chapter 9, NPOs can be established as charities; industrial and provident societies; cooperative societies; friendly societies and benevolent societies. The registration of NPOs in Jamaica is voluntary and is usually undertaken for tax benefits. As a result, the number of NPOs operating in Jamaica is not known; however, 2,221 registered NPOs are operating in the country. Also, there are no established mechanisms to ensure NPOs use funds in line with the purpose and objectives of the company. The details of the risk assessment conducted on NPOs is outlined in Chapter 9.

10.7.4 PUBLIC LEGAL PERSONS¹¹⁴

Public legal persons include:

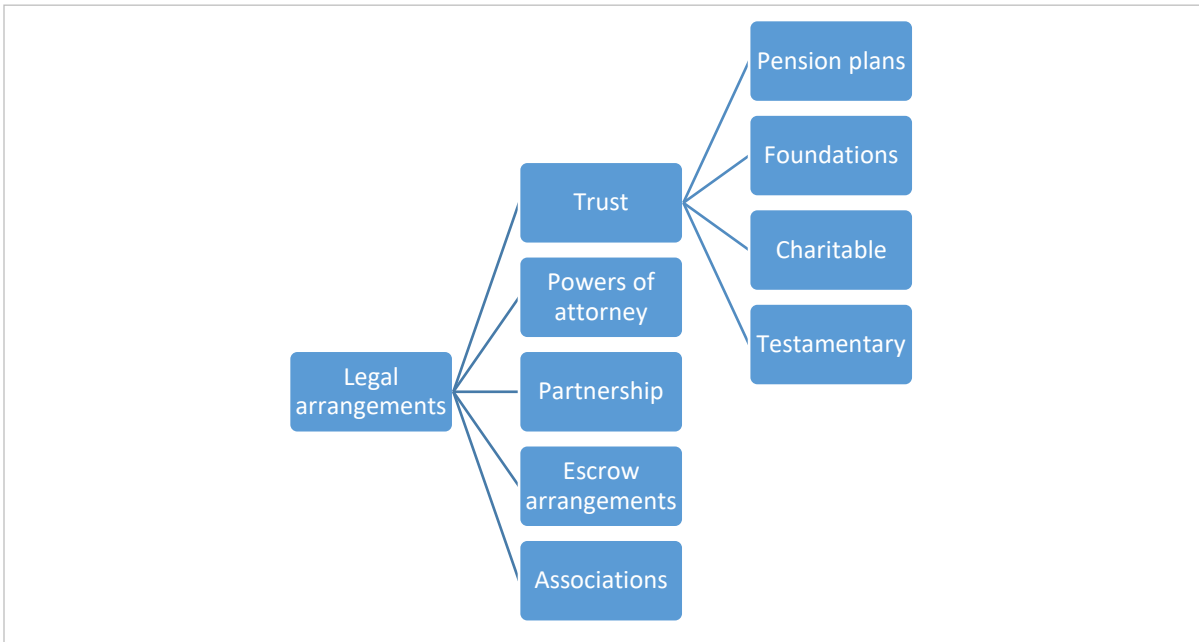
- i) Companies that are not listed on a stock exchange (the Jamaica Stock Exchange) and their members' liabilities are limited by shares or guarantees. The articles of incorporation for these companies state that they are public.
- ii) Listed companies that are registered on the Jamaica Stock Exchange, for which their members' liabilities are limited by shares or guarantee. The articles of incorporation state that they are public and their ownership is organized through shares that are freely traded on a stock exchange. As at July 2021, 91 such companies were listed on the Jamaica Stock Exchange.

10.8 LEGAL ARRANGEMENTS:

As noted earlier in this chapter, legal arrangements are express trusts or other similar legal arrangements, such as trusts, trust agency and escrow arrangements. As depicted in figure 22, several types of legal arrangements can be established in Jamaica.

¹¹⁴ Legal persons and legal arrangements Reference Guide, prime contact secretariat, August 2020.

Figure 22: Types of Legal Arrangements that can be created in Jamaica:



10.9 ASSESSMENT OF THE RISK INHERENT IN THE VARIOUS TYPES OF LEGAL ARRANGEMENTS

Table 73 below summarizes the risk within legal arrangements in Jamaica. The assessment showed a low level of vulnerability and threat within legal arrangements as they did not feature in ML/TF investigations and prosecution. The details in relation to the feature of each type of legal arrangement are provided later in this chapter.

Table 73: Risk Assessment on the Types of Legal Arrangements

Legal Arrangements	
Type of Legal Arrangements	Risk Assessment:
Private Companies:	
1. Trust	<ul style="list-style-type: none"> Some trust services are provided by financial institutions and must be registered with the RGD. These are mainly private pension trusts that are regulated by the FSC. Other trust providers, other than pension companies, must also register with the RGD. Assessment of suspicious transaction report (STR) data revealed that no STRs have been submitted on any known trust service provider; neither has there been any ML investigation relating to any person offering these services. The findings for the risk assessment on trusts was discussed in chapter 8 of this report.
2. Power of Attorney	<ul style="list-style-type: none"> A power of attorneys can be used to disguise the BO of an asset or transaction. The BO can use a power of attorney as a front to launder proceeds from crime. In this case, the BO will instruct the third party to execute transactions on his behalf. Despite this vulnerability, there is no evidence of the involvement of this legal arrangement in ML/TF/PF investigations and prosecutions.
3. Escrow Arrangements	<ul style="list-style-type: none"> Criminals may contract a third party to hold assets on their behalf and hold these assets in escrow. Escrows are often managed by professionals such as attorneys and accountants. The management of these assets by the third party could enable criminals to legitimize ill-

Legal Arrangements	
Type of Legal Arrangements	Risk Assessment:
Private Companies:	
	<p>gotten gains, as professional intermediaries know how to structure transactions for them to appear legitimate. The use of a third party also seeks to disguise the beneficial owner of the asset.</p> <p>➤ <i>Despite these vulnerabilities, there is no evidence of the involvement of this legal arrangement in ML/TF/PF investigations and prosecutions.</i></p>
4. Associations	<ul style="list-style-type: none"> ▪ Associations are often established as not for profit entities and can be exploited by launders and terrorism financiers. ▪ Launders may use these vehicles as a front company and use them to make contributions to what appears to be legitimate charitable work. ▪ Additionally, terrorist financiers may use these vehicles to disguise funds being remitted to other jurisdictions as charitable donations. <p>➤ <i>Despite these vulnerabilities, there is no evidence of the involvement of this legal arrangement in ML/TF/PF investigations and prosecutions.</i></p>

10.10 LEGAL ARRANGEMENTS IN JAMAICA

10.10.1 TRUSTS

A trust is a legal relationship in which the legal title to property is entrusted to a person or legal entity (trustee) with a fiduciary duty to hold and use it for another's benefit (beneficiary). The trusts that can be formed in Jamaica are:

- i) Private occupational pension plans;
- ii) Foundations;
- iii) Charitable; and
- iv) Testamentary.

Trusts are established through trust deeds that must be registered with the RGD before they can be considered valid and in effect.

Private pension arrangements are established as irrevocable trusts, the majority of which are employer-based superannuation funds. Less than five per cent of private pension plans falling within the ambit of the FSC's supervision are established as retirement schemes. The client base therefore consists predominantly of domestic customers with some high-net-worth individuals and benefits are paid upon specific events, such as the termination, retirement, or death of a participant. As noted in Chapter 8, trusts in Jamaica are operated by financial institutions (insurance companies, securities companies among other financial institutions) or non-financial institutions (attorneys and accountants) and the framework to supervise these businesses is advanced.

There is no evidence of trusts being investigated or prosecuted for ML/TF/PF over the review period. The findings for the risk assessment on trusts are discussed in chapter 8.

10.10.2 POWER OF ATTORNEY

A power of attorney is the legal authorisation of a person (appointee) to act on the behalf of another (donor) in business, judicial or personal affairs. A power of attorney must be registered with the RGD to be considered valid. The donor is at liberty to revoke/discontinue the power of attorney at any time, and

may also appoint a new agent to act on their behalf. On the death of the donor, the power of attorney ceases to be valid.

10.10.3 PARTNERSHIP

As noted earlier in this chapter, partnerships are legally defined as business arrangements (or legal persons) by which two or more individuals agree to share in all assets, profits and financial and legal liabilities of jointly owned businesses. The partnership deed specifies how profits or losses are shared, how to resolve conflicts and conditions for dissolution of the partnership. Partnership deeds are duly registered with the RGD and include the original deed along with the original Certificate of Formation of Partnership.

10.10.4 ESCROW ARRANGEMENTS

An escrow arrangement is a legal arrangement constituting a system of document transfer in which a deed, bond or funds is delivered to a third person to hold until all conditions in a contract are fulfilled.

10.10.5 ASSOCIATIONS

Associations are defined as a group of persons organized for a joint purpose and having a formal structure. These structures may be established for profit or not for profit purposes.

10.11 SUPERVISORY FRAMEWORK

All businesses operating in Jamaica must be registered with the COJ, except for persons who buy and sell livestock; persons occupying public market stalls and paying market fees; and firms established for social or welfare purposes, public service, religion, charity, education, art, science etc., whose income and profits are used solely for that purpose. Other than those excepted businesses operating without registering at the COJ are operating illegally. Once registered, a business’s information is uploaded to the COJ’s website and can be accessed by the general public.

Other than the registration with either the COJ (legal persons) or the RGD (legal arrangements), some LPAs must also register with other government agencies based on their purpose. Details on the responsible governing agencies for LPAs are detailed in table 74 below:

Table 74 :Responsible entity for the various types of Legal Persons and Arrangements

Legal Persons	
Type of Legal Persons	Responsible entity:
1. Private Companies	Registered or incorporated under the Companies Act. These business types must be registered with the COJ. Private companies include: <ol style="list-style-type: none"> a. Company Limited by Shares b. Company Limited by Guarantee c. Unlimited Company
2. Sole proprietor	Registered under the Registration of Business Names Act. This business type must be registered with the COJ.
3. Partnerships	Registered under the Registration of Business Names Act and must be registered with the COJ. Partnerships covered under this framework include: <ol style="list-style-type: none"> a. Incorporated Partnerships

Legal Persons	
Type of Legal Persons	Responsible entity:
	<ul style="list-style-type: none"> b. Limited Partnerships as it relates to registering the business name (e.g. Investment business, asset protection, real estate) c. General Partnerships (e.g. Legal firms, accounting firms, real estate firms)
4. Publicly listed or Non-listed companies (Bodies Corporate)	Established by statute and take the form of an individual that can sue or be sued. These companies must be registered by the COJ.
5. Non-Profit Organisation	Non-Profit Organisations are registered voluntarily with the Companies Office of Jamaica and are also registered with the Department of Co-operatives and Friendly Societies (DCFS).
Legal Arrangements	
Type of Legal Arrangements	Responsible entity:
1. Trusts and Deeds of Trusts	Registered with the RGD. <ul style="list-style-type: none"> a. Pension Plans are deemed to be trust arrangements and are also registered with the Financial Services Commission. b. Charitable Trust is duly registered with the DCFS, upon approval as a charitable entity.
2. Powers of Attorney	Registered with the RGD, however, must be stamped by the Tax Audit and Assessment Department (TAAD) before it is presented to the RGD for registration. There are three types of Powers of Attorney: <ul style="list-style-type: none"> a. Limited b. General Powers c. Durable
3. Partnerships	Original deed along with the original Certificate of Formation of Partnerships is filed and kept with the RGD. Two types of partnership deeds are registered with RGD: <ul style="list-style-type: none"> a. General Partnerships b. Limited Partnerships
4. Escrow Arrangements	Registered with the RGD
5. Associations	

As depicted in table 77 above, several agencies are involved in the registration of legal persons. However, there are no formal or informal arrangements in place in relation to cooperation and information sharing. To ensure that the risk within the sector is properly understood, the responsible agencies must work together and develop a formal framework for cooperation and information sharing. This could be established through a memorandum of understanding, which details the role of each agency, the type of information to be shared and the frequency at which data is shared. Agencies should also collaborate with the Financial Investigations Division (FID) to develop typologies and identify trends in relation to the misuse of legal persons and arrangements.

10.12 AMENDMENTS TO THE COMPANIES ACT

In 2017, the Companies Act, 2004 was amended to require, the disclosure of beneficial ownership information, the maintenance of a beneficial ownership register, and the disclosure of any changes to the beneficial ownership information to the Registrar.

Additional amendments introduced included:

- requirement for all domestic companies and foreign companies carrying out business in Jamaica to keep beneficial ownership information and to report the beneficial owner(s) to the COJ annually
- requirement to identify the individuals on whose behalf shares are held
- prohibition for public companies to issue share warrants to bearer
- new and increased penalties for failure to keep records (ownership and accounting).

The amendments introduced by Jamaica regarding the availability of beneficial ownership of companies allows that information to be available, to some extent, to those companies that do not engage in business with an AML/CFT reporting entity. The 2017 amendments also provided enhanced access by law enforcement to the financial institutions and designated non-financial institutions information on companies and beneficial ownership.

The amended Companies Act establishes in Art. 3 (amending Art. 2 of the Companies Act) that the beneficial ownership is defined as:

“an individual in whose name the shares are held or in whose name share transactions are made. The term also includes any individual who exercises ultimate ownership or effective control over company policy or decision making or who controls more than 51 per cent of voting rights or holds more than 51 per cent of the shares issued by the company”.

This definition is not in line with the FATF standard and accordingly, it does not allow the beneficial ownership information to be kept in line with the FATF standard contained within Recommendation 24.

The 2017 amendments were therefore not sufficiently adequate to bring Jamaica into compliance with FATF requirements. Further substantive amendments were therefore necessary to the Companies Act, including:

- Amend the definition of beneficial ownership in line with the FATF definition;
- Amend by reducing (currently 50 per cent) the shareholding amount requiring/triggering disclosure of beneficial ownership information;
- Remove the provision which allows for nominee directors;
- Make consequential amendments to related legislation to ensure uniformity of definitions of terms;
- Increase the power of the Registrar to conduct inspection, requests documents and impose administrative penalties;
- To make sanctions effective, proportionate and dissuasive.

These necessary additional amendments are now the subject of a bill that is currently being drafted to further amend the Companies Act.

The COJ noted that it possessed limited staff to adequately undertake the required beneficial ownership procedures, management and retention of data and the provision of information in furtherance of requests for beneficial ownership data, whether by court order or otherwise. This deficiency was not addressed during the period under review, but the COJ has indicated that it is working to address the resource gaps.

Similarly, it is known that trust and company service providers (TCSPs), as discussed in Chapter 8, is a professional grouping that is vulnerable to exploitation. It is attractive to criminals seeking to launder money, who may intentionally use the services of these professionals, who may be complicit to create structures, which enable anonymity of the beneficial owner(s). It is important to note that over the review period, there was no evidence of TCSPs creating structures and providing services to enable criminals to either launder the proceeds of crime or finance terrorism.

Amendments currently being undertaken to the International Trusts and Corporate Services Act seek to bring the supervision of TCSPs under the ambit of the FSC and widen the proposed supervisory framework to include domestic TCSPs. This forms part of a wider initiative to better regulate key sectors that may be susceptible to misuse by money launderers and terrorist financiers.

10.13 BENEFICIAL OWNERSHIP

The FATF standards define a beneficial owner as the “natural person(s) who ultimately own(s) or control(s) a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement”.

FATF also notes that the concept of ultimate control or benefit refers to the natural person who ultimately controls or benefits from an asset or transaction through direct or indirect means. Importantly, a beneficial owner must always be a natural person, as a legal person cannot exert ultimate control over an asset.¹¹⁵ This is due to the fact that legal persons are always controlled, directly or indirectly, by natural persons. Therefore, while a legal person or arrangement can be the beneficiary of an asset or transaction, determining the beneficial owner requires the discovery of the natural person(s) who ultimately control or benefit from the legal person or arrangement

In determining beneficial ownership, the concept of ultimate benefit and control is also central to distinguishing beneficial” ownership from legal ownership.¹¹⁶ The legal owner of an asset is the natural or legal person or arrangement that holds the legal title of that asset; however, legal ownership is not always essential in order to exert control over, or benefit from, an asset, particularly when the asset is held in trust or owned by a legal person. It is therefore essential to determine the natural person who controls an asset, rather than the legal owner of that asset. Determining ultimate control can be problematic and is often the principal challenge of establishing beneficial ownership. In the context of a company, control can be exerted by shareholders, directors, and senior management. In relation to trusts or private foundations, whose control structure is more sophisticated than that of a company (which only has shareholders), it can become even more difficult to determine who really has effective control. In this regard, it is necessary for the regulator to understand the risk in the sector and implement proportionate measures.

¹¹⁵ FATF – Egmont Group (2018), Concealment of Beneficial Ownership , FATF, Paris, France, 18
www.fatf-gafi.org/publications/methodandtrends/documents/concealment-beneficial-ownership.html

¹¹⁶ FATF – Egmont Group (2018), Concealment of Beneficial Ownership , FATF, Paris, France, 77
www.fatf-gafi.org/publications/methodandtrends/documents/concealment-beneficial-ownership.htm

The Companies Act defines beneficial ownership as “an individual in whose name the shares are held or in whose name share transactions are made. The term also includes any individual who exercises ultimate ownership or effective control over company policy or decision making or who controls more than 51 per cent of voting rights or holds more than 51 per cent of the shares issued by the company”. This definition is not in line with the FATF standard and accordingly, it does not allow for the beneficial ownership information to be kept in line with the FATF standard contained within Recommendation 24. Given the deficiencies, the COJ has been leading the process to introduce amendments to the Companies Act.¹¹⁷

The current draft legislation includes the following changes to the concept of beneficial owner:

1. Beneficial owner - is the natural person who exercises or may exercise ultimate ownership or ultimate effective control over a corporate or legal entity, including but not limited to:
 - (a) In relation to a company,
 - i. the natural person who ultimately owns or controls, whether directly or indirectly, through companies or other mechanisms, 25 per cent of the shares or voting rights in the legal person;
 - ii. the natural person who is in a position to determine, directly or indirectly, the policy of the company, make the final determination as to the decisions to be made by the company, or has the right to appoint or remove the majority of directors of the company;
 - iii. Where it is not possible to identify the person referred to in (i) or (ii), the Chairman or the highest authority of the company, or whoever acts as the natural person who otherwise exercises effective control over the management of the company.
 - (b) In relation to shares, the natural person on whose behalf the shares are held or on whose behalf a share transaction is conducted;
2. Ultimate effective control – means the control exercised by an individual who: - (a) is in a position to determine the policy of the company or to make the final determination as to the decisions to be made by the company, or (b) by himself or together with a connected person is in a position to control more than 50 per cent of the voting power of the company or would hold interest in more than 50 per cent of the issued shares of the company;
3. Ultimate ownership – means any situation in which ownership of a company is exercised by means of control other than direct control, and includes any arrangement utilizing one or more persons through which beneficial ownership of a company is established.

In addition, other measures such as record keeping, update of the information if there is any change on the registry, and sanctions for non-compliance have also been included.

¹¹⁷ At the time of the finalization of this report, the COJ was engaged in discussions relating to the Cabinet Submission of the amendments to the Companies Act.

10.14 RISKS

Based on the vulnerability assessment on the types of LPAs, the overall risk within the sector was assessed as **LOW**. This overall risk was also tempered by the fact that LPAs did not feature heavily in ML investigations. As depicted in table 75 below, over the review period law enforcement agents conducted 294 ML investigations, 32 (or 10.8 per cent) of which involved LPAs; and featured companies limited by shares and sole proprietorships. Based on the LPAs cases analyzed, it was found that the methods used by legal persons to launder proceeds from crime were not sophisticated as they did not use complex methods for layering or structuring the ownership. In relation to sole proprietorships, it is the owner of the business that is believed to have committed the offences investigated. The use of both company types by criminals could be attributable to the ease at which these business types can be created. And in the case of sole proprietorship, the fact that the funds generated outside of the business can be comingled with funds from the business also makes this vehicle attractive to launderers.

Table 75: ML investigations (2016 – 2019)

Type of legal person	No. of investigations	Type of business /activity
Company limited by shares	15	Cash intensive businesses
Sole proprietorship	17	Cash intensive business
Total ML Investigation (both legal & natural persons)	294	

In relation to TF, no LPA was prosecuted for TF. However, there have been 2 investigations of possible involvement of legal persons (companies limited by shares) in possible TF offences. These investigations are still ongoing.

The NRA also found that complex legal structures (including beneficial ownership) were not heavily used by money launderers. Instead, self-laundering was the preferred vehicle.

The risk assessment conducted on LPAs by the COJ in partnership with the IDB is an important first step in understanding the risk within the sector. There is a need for more ongoing risk assessments to ensure the competent authorities identify and understand the risks as they evolve in the various company types.

As detailed in this assessment, the LPA sector is not high risk and did not feature heavily in ML/TF investigations. However, as the country modernizes its suite of company formation types to attract both local and international entities, the vulnerability within the sector will increase. In this regard, collaboration will be required among the various agencies charged with monitoring LPAs (the competent authority for TCSPs, National Anti-Money Laundering Committee and the FID), to identify trends and typologies within LPAs as they evolve.

CHAPTER 11: THE WAY AHEAD

11.1 POLICY IMPLICATIONS OF THE NRA

As seen in the NRA, Jamaica's overall risk for money laundering was **MEDIUM-HIGH**. This reflects a country threat score of Medium-High and a national vulnerability score of Medium-High. The assessment also concluded that the risk of terrorism financing was **LOW**. The results of the NRA conducted do point to a number of important policy implications. This section seeks to highlight some of the key ones.

11.1.1 CODIFY NAMLC AND INCREASED COORDINATION AND COOPERATION

As presented earlier in this NRA, the national anti-money laundering committee (NAMLC) is the central body responsible for AML/CFT coordination and cooperation at the national level. However, the role and responsibilities of NAMLC are not codified in legislation. It is therefore recommended that the POCA be amended to give NAMLC statutory recognition. This will provide the committee with the authority required to drive policy changes and to ensure continuity of the work of the committee.

The NRA process demonstrated that there was some collaboration between entities, but enhancements in this regard are necessary. The NAMLC, which has a wide membership, is specially placed to support increased coordination and cooperation among competent authorities, designated authority, and ministries involved in the AML/CFT efforts. In this regard, the NAMLC should be appropriately resourced to execute its role as the main body tasked with the execution of Jamaica's AML/CFT agenda.

11.1.2 THEMATIC PAPERS AND TYPOLOGIES

The NRA revealed significant data gaps in several critical areas assessed. One suggested way to remedy this data gap is through the development of periodic thematic studies in areas of greatest concern. Each competent authority should therefore update their supervision manual to mandate periodic thematic reviews.

The analysis of data available also showed trends of abuse unique to each sector. The data held by the FID affords them an advantageous position in the identification and dissemination of key trends and typologies. The FID should therefore, as per its obligations under POCA and FIDA, include the creation and dissemination of ML/TF typologies for each sector within the AML/CFT framework as an operational objective.

11.1.3 MORE ROBUST DATA COLLECTION AND ANALYSIS

Significant data gaps were identified across most sectors during the NRA process. Some data was either not being collected or was not stored in a central database to facilitate easy retrieval. In order to address the data gaps, the NRA team used surveys, interviews, working group meetings and open-source data published by reputable agencies. To address the existing data gaps, competent authorities must ensure that they identify and collect relevant data from their licensees to facilitate ongoing risk assessments.

11.1.4 REMOVAL OF DE-MINIMIS AMOUNT

The POCA was amended to include requirements for the use of a risk-based approach to due diligence. The legislative provision for the application of a risk-based approach to CDD is outlined in section 7a(1) of the Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019 and section 6A(1) of the Terrorism Prevention (Reporting Entities) Regulations 6A(1). These Acts require entities in the regulated sector to undertake simplified CDD in circumstances where a proper evaluation of the business or one-off transaction is found to be low risk.

However, Regulation 8 of the Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019 also made provision for competent authorities to impose limits on their licensees (including the application of CDDs limit). There is therefore a disconnect between a de minimis threshold and the requirement to implement risk-based processes.

11.1.5 DEVELOP A SINGLE PEP DATABASE

The risk assessment highlighted that across the relevant sectors, systems for the identification and monitoring of PEPs were not adequate as institutions generally relied on the honest disclosure of clients to determine whether or not the client is a PEP.

There is therefore need for a single database that identifies all relevant PEPs in the country. It is recommended that the Integrity Commission, or a similar body, should be responsible for creating and managing a national PEP database. Public bodies and statutory agencies would then be required to submit the names of senior officials to this single authority and this should be enshrined in law. The development and implementation of a single PEP database would greatly assist in reducing the need for licensees having to rely on the ‘honest’ disclosure of clients that are PEPs.

11.2 CONTINUING THE WORK TO ACHIEVE AN EFFECTIVE AML/CFT/CPF FRAMEWORK IN JAMAICA

As noted in Chapter 1, Jamaica’s objectives in undertaking the NRA were to:

- help the country identify and understand its ML and TF risks;
- facilitate the targeting of resources to address the areas of greatest risk and vulnerability, and
- maintain a sustainable/ongoing national programme designed to strengthen Jamaica’s AML/CFT/CPF framework.

The NRA, which included extensive data collection and consultation, has to a large extent achieved the goals articulated at the start of the process. The action plan provided earlier will also provide a framework within which to improve Jamaica’s AML/CFT/CPF framework.

The NRA cannot be a “one-off” exercise; it must be done on a periodic basis and each NRA should build on the previous one. A mechanism must be implemented for the ongoing collection of the requisite data to conduct the NRA and the NAMLC should be sufficiently resourced to carry out monitoring of the action plan and the conducting of future NRAs. The database created for the NRA can be used for ongoing risk management and information exchange.

The NRA—in using the very rigorous World Bank tool—has been able to give an objective picture of the AML/CFT risks in Jamaica. The NRA demonstrated that there has been much improvement in Jamaica’s AML framework, but there remain some significant gaps that need to be addressed. The work already done is important, but Jamaica must address in short order the areas of deficiency identified in the NRA so as to continue the strengthening of Jamaica’s AML/CFT/CPF framework.

APPENDIX 1: LIST OF PARTICIPANTS IN THE NRA:

Name	Organization
Maurene Simms	Prime Contact
Dr Dana Morris Dixon	Advisor to the Prime Contact on the NRA
Natalie Haynes	Bank of Jamaica
Celeste McCalla	Bank of Jamaica
Dr Jide Lewis	Bank of Jamaica
Dr Novelette Panton	Bank of Jamaica
Judith Romeo	Bank of Jamaica
Annette Beaumont	Bank of Jamaica
Larene Samuels	Bank of Jamaica
Graig Stewart	Bank of Jamaica
Millicia Henry	Bank of Jamaica
Anthony McKenzie	Bank of Jamaica
Genel Archer	Bank of Jamaica
Rushane Burger	Bank of Jamaica
Omar Blake	Bank of Jamaica
Christopher Walker	Bank of Jamaica
Gillian Lee	Bank of Jamaica
Shanee McKenzie	Bank of Jamaica
Janice Smith	Bank of Jamaica
Jacqueline Shaw	Bank of Jamaica
Alicia Evans-Morris	Bank of Jamaica
Lisa Thompson	Bank of Jamaica
Colleen Baker	Bank of Jamaica
Paulette Thompson	Bank of Jamaica
Carl Daley	Bank of Jamaica
Marcia Robinson	Betting Gaming & Lotteries Commission
Laurie Wiggan	Betting Gaming & Lotteries Commission
Titania Ward	Counter Terrorism Forum
Tanisha Webster	Counter Terrorism Forum

Name	Organization
Trezawnah Gordon	Counter Terrorism Forum
Tanesha Facey	Department of Cooperative And Friendly Societies
Maxine Jackson	Office of the Director of Public Prosecution
Selvin Hay	Financial Investigation Division
Keith Darien	Financial Investigation Division
Berdie Dixon-Daley	Financial Investigation Division
Courtney Smith	Financial Investigation Division
Brenton Williams	Financial Investigation Division
Claudia Wade-Gordon	Financial Investigation Division
Cheryl-Lee Bolton	Financial Investigation Division
Nicolai Green	Financial Investigation Division
Rae-Ann Robinson	Financial Investigation Division
Karlene Barnaby	Financial Investigation Division
Oneil Salmon	Financial Investigation Division
Stacian Bennett	Financial Services Commission
Shakeira Dunkley	Financial Services Commission
Robin Whyte	Financial Services Commission
Paulette Gilfillian	Financial Services Commission
John Badley	Jamaica Constabulary Force
Morris Martin	Jamaica Constabulary Force
Robin Levy	Jamaica Cooperative Credit Union League
Vera Lindo	Jamaica Cooperative Credit Union League
Cassel Dunkley	Jamaica Customs Agency
Claudine Garcia Rattray	Jamaica Customs Agency
Dr Deloree Staple-Chambers	Jamaica Customs Agency
Lynvalle Hamilton	Jamaica Used Car Dealers Association
Titania Ward	Ministry of National Security
Trezawnah Gordon	Ministry of National Security
Nigel Parke	Major Organized Crime Agency
Hope Wint	Prime Contact Secretariat
Susan Watson Bonner	Prime Contact Secretariat

Name	Organization
Compton Rodney	Public Accountancy Board
Nadine Allen	Public Accountancy Board
Sandra Garrick	Real Estate Board
Cresfroid Brown	Real Estate Board
Karlene Barnaby	Real Estate Board
Akeil Pladley	Real Estate Board
Michelle Roberts	Real Estate Board
Mark Wilson	Serious Organised Crime and Anti-Corruption (Consultant)
Alan Johnstone	Serious Organised Crime and Anti-Corruption (Consultant)
Gary Dickson	Serious Organised Crime and Anti-Corruption (Senior Consultant)
Roy Evans	Tax administration Jamaica

APPENDIX 2: LEGISLATIVE AMENDMENTS:

Proceeds of Crime Act, 2007 and Proceeds of Crime (Money Laundering Prevention) Regulations, 2007 – The Proceeds of Crime (Amendment) Act, 2019 and the Proceeds of Crime (Money Laundering Prevention (Amendment) Act, 2019

Section 91A(2) - amended to include a new provision permitting the competent authorities to apply a risk-based approach to AML/CFT supervisory efforts and also increased the applicable penalties, as specified by FATF Recommendation 1.

Section 94 - amended to include section 94(A) which addresses counter measures for listed territories or high-risk jurisdictions as required pursuant to FATF Recommendation 19. Specifically, section 94A (1) addresses enhanced due diligence measures to be effected by entities in the regulated sector when engaging in business relationships or one-off transaction with customer resident or domiciled in a specified territory.

Section 97 – The tipping off provision expanded to include disclosing information that would form part of a protected disclosure (STR) not yet filed with the designated authority. Prior to the amendment, the tipping off regime was limited to circumstances with information was disclosed which would likely to or prejudice a pending or ongoing investigation.

Section 101A – this provision was amended to bring clarity to the transactions covered by the section but could not rightly be deemed to be either goods or services. Additionally, the amendment also strengthened the process for the granting of exemptions under the section, by enabling the relevant Minister to act, if satisfied, that it is in the public interest to grant exemption(s). The Minister's trigger to consider such action is upon the receipt of written consultation with the designated authority and the competent authority, regarding the risks of money laundering and terrorist financing relating to the person or transaction concerned.

Section 102 – addresses the Minister's power to make regulations governing the regulated sector and was amended to ground the Minister's power to make regulations on the application of enhanced monitoring powers in respect of specified territories, for the purposes of section 94A, as aforementioned.

Section 137 – provides for the protection from civil, criminal proceedings or professional sanction for breach of confidentiality against persons exercising functions under the POCA, arising either from a request by the enforcing authority or made to the pursuant to the requirement of the POCA, once exercised in good faith.

Section 137A – applicable to **Recommendation 33** - the insertion of this new provision in the POCA mandates supervisory authority, competent authority or designated authority to keep statistical records for measuring the overall effectiveness of measures taken under the POCA in respect of preventing money laundering and terrorist financing. This provision addressed the deficiency identified in the MER. In light of this amendment, Jamaica's rating for **Recommendation 33** was upgraded from partially compliant to compliant.

Section 138 – amended to include **section 138(2)** the fixed penalty regime for monetary penalties to be imposed on licensees in the regulated sector by competent authority where the competent authority identifies breaches of money laundering offences pursuant to the Proceeds of Crime (Money Laundering

Prevention) Regulations, 2007, and as amended on diverse dates. The implementation of the administrative fixed penalty is in keeping with the requirement of FATF **Recommendation 35** and additionally, there is significant utility in being able to sanction the regulated sector without seeking a conviction primarily. The fixed penalty is also aimed at being a dissuasive measure to promote compliance without threatening financial sector stability.

Section 139 – a new insertion in the POCA, section 139 sets out factors the court may use in determining the amount of any fine to impose on a body corporate on whom a fixed Penalty was imposed but failed to pay and the matter progresses to court.

The Proceeds of Crime (Money Laundering Prevention) Regulations were also amended. The resulting positive consequences were that several recommendations were upgraded. **Recommendations 10 and 12** were upgraded from Partially Compliant to Largely Compliant consequent upon the following:

- **Regulation 6(a)(i)** – mandates the application of risk management measures are applied to conditions under which the business relationship or one-off transaction is addressed whilst procedures to verify the applicant’s identity are being carried out.
- **Regulation 6(d)** – seeks to prevent tipping off in circumstances where a regulated entity suspects that a business relationship or one-off transaction constitutes or could be related to money laundering and believes that conducting CDD may lead to tipping off of the customer, the regulated entity shall instead of performing CDD, file an STR.
- **Regulation 7 and 4** of the Proceeds of Crime (Money Laundering Prevention) Regulations and the Terrorism Prevention (Reporting Entities) (Amendment) Regulations, 2019, respectively, require the regulated sector to establish risk profiles in respect of all its business relationships and one off transactions to enable the application of risk mitigation measures commensurate with identified risk. In doing so, it must consider all information regarding the customer, inclusive of the nature of the business and its ownership and control structure.

Another critical requirement of para (b), consistent with the identification of beneficial ownership and or control, as such, the regulated entity is also required to verify the identity of individuals who holds more than ten (10%) percent of that person and the individual who exercises ultimate effective control of that person.

Further, as per **Regulation 7A(2) (4) (5) (a) and 6A** of the Proceeds of Crime (Money Laundering Prevention) Regulations and the Terrorism Prevention (Reporting Entities) (Amendment) Regulations, 2019, respectively, Enhanced Due Diligence (EDD) measures are applied to all PEPS, as defined at Regulation

- **Regulation 13 and 13(c)(iii) D(ii) and 7** of the Proceeds of Crime (Money Laundering Prevention) Regulations and the Terrorism Prevention (Reporting Entities) (Amendment) Regulations, 2019, respectively, mandate businesses in the regulated sector to identify and verify the identity of beneficiaries in insurance contracts, including cases of legal arrangements involving insurance contracts.
- **Regulation 14(4)(a)(ii) and 14(4)(b)** of the Proceeds of Crime (Money Laundering Prevention) (Amendment) Act, 2019 serve to rectify the deficiencies identified with **Recommendation 11** by

requiring regulated businesses to keep and retain all correspondence, account files and analysis related to each transaction and business relationship. Further, **Regulation 14(4)(a)** mandates reporting entities to provide to the designated competent with seven days of the requests, the information retained.

- Further, **section 13** of the Terrorism Prevention (Amendment) Act, 2019 mandates that a regulated business should provide the information to the competent authority as is specified in the notice but is silent on the time frame in which the information should be submitted by the regulated business.

Recommendation 2 – addresses cooperation and coordination mechanism and by its own action, Jamaica has implemented a priority action plan based on the recommended actions that were outlined in the MER, to include but not limited to, its intention to develop national strategies following the completion of its NRA.

The creation of the Counter- Terrorism (CT) Forum, resulted in competent authorities committing to taking actions to cooperate, coordinate and exchange intelligence on matters relative to the proliferation financing of weapons of mass destruction. The CT forum comprises of persons from the intelligence community, law enforcement, FID and the Ministry of National Security. Representatives from these agencies are also a part of the National Anti-Money Laundering Committee (NAMLC). Additionally, cooperation and coordination between relevant authorities are compatible with Jamaica’s data protection law. Jamaica’s Data Protection Act makes provision for exemptions for data standard and disclosure of data requirements. Data protection and privacy rules do not apply in cases involving national security, law enforcement, taxation and regulatory activities (Part V- s. 32- 42). **Recommendation 2** was upgraded from partially compliant to largely compliant.

Recommendation 14 – is concerned with the money or value transfer sector and at the time of the mutual evaluation, Jamaica received a partially compliant rating. At the time of the application for re-rating the BOJ’s application for an upgrade was supported in law as Section 22D of the Bank of Jamaica Act makes it a criminal offence for person to engage in MVTs without a license. Additionally, the BOJ provided substantial information on media broadcast and outreach to the public informing them to report illegal MVTs. As such, the rating was upgraded to largely compliant. The BOJ with the assistance of the International Monetary Fund (IMF) are working on developing a risk-based framework for the sector.

Recommendation 17 – companies that are part of financial group are allowed to share information for the purpose of customer identification, transaction verification and risk management as per Regulation 4. under the Banking Services Act, secrecy and confidentiality is not applicable in circumstances where the sharing of information takes place among members of a financial group (s.134 of the Banking Services Act (BSA). The Banking Supervision Act was gazetted on September 30, 2015 through Jamaica Gazette No. 121A and is now law. The law fully implements the requirements for consolidated supervision.

There is no similar provision in the TPA for the detection of TF but based on supporting documentation presented it was ascertained that the authorities are in practice applying the AML/CFT measures to members of a financial group, the deficiency was not considered to be egregious. **Recommendation 17** was upgraded from partially compliant to largely compliant.

Recommendation 18 – Pursuant Regulation 4 of the Proceeds of Crime (Money Laundering Prevention) Amendment Regulation, 2019, regulation 5(2)(e) of the principal regulation was amended so that where the regulated business is a member of a group, the regulated business is mandated to establish and implement such programmes, policies and procedures and controls as to permit the disclosure of information and controls as to permit the disclosure of information between companies within the group, for the purposes of customer identification, transaction verification, and risk management. Arising from this amendment Recommendation 18 was upgraded from partially compliant to largely compliant.

Recommendation 19 – A regulated business is required to apply EDD procedures in respect of its business relationships and transactions with customers domicile, resident or incorporated in specified territories (s.10 of the TPA, 2019). The definition of specified territories in the TPA is sufficiently broad to capture jurisdictions listed by the FATF A regulated business is required to apply enhanced countermeasures in respect of any business relationship and transaction established or conducted with any class and category of persons or applicants for business which are resident or domiciled or in the case of a body corporate, incorporated in a specified territory (Reg 8 of the POC Regulations). Similar provisions exist in Regulation 5 of the TP Regulations. The measures do not require that the application of countermeasures be proportionate with risk. Nevertheless, this was not considered to be a serious deficiency that had a significant impact on the rating assigned. In this vein, Recommendation 19 was upgraded from partially compliant to largely compliant.

Recommendation 21 - measures to prevent tipping off are not intended to inhibit the sharing of information under R.18. Tipping-off provision does not inhibit the sharing of information under R.18 as members of financial group can share information for the purpose of risk management, despite the fact that an STR is treated as a protected disclosure. On this basis, **Recommendation 21** was upgraded from partially compliant to compliant.

The Terrorism Prevention (Amendment) Act, 2019 and The Terrorism Prevention (Reporting Entities) (Amendment) Regulations, 2019

Recommendation 6 was upgraded from non-compliant to compliant

In 2019, Jamaica passed amendments to its Terrorism Prevention Act (TPA), which, *inter alia*, spoke explicitly to asset freezes, identified measures for proposing listings to the UN as well as the procedures for delisting. Guidance documents or protocols that simplified the language used in the legislation were also prepared.

To address one of the main deficiencies - implementing targeted financial sanctions without delay - The Ministry of Foreign Affairs and Foreign Trade (MFAFT) and the Office of the Director of Public Prosecutions (ODPP) jointly drafted Standard Operating Procedures in respect of the procedure adopted regarding applying for Orders under section 14 (1) (a) of the TPA. The SOP and the increased coordination between the MFAFT, the ODPP and the Office of the Chief Justice has resulted in more efficient implementation of targeted financial sanctions. Between 2017 to 2019, Jamaica implemented orders between 24-48 hours. Since 2020, Jamaica has been able to obtain orders within an average time of 15 hours and 38 minutes, and on two occasions was able to obtain orders in less than 4 hours.

Further legislative and administrative changes will be adopted to, *inter alia*, clearly establish procedures for identifying targets for local designation. Further improvements will also be made to procedure for listings as well to ensure that all listings continue to be done within 24 hours. This includes increased use of electronic filing.

The United Nations Security Council Resolutions Implementation Act, 2013 (UNSCRIA)

The two major areas of concern regarding Recommendation 7 involved the provision of adequate guidance to DNFBPs and the implementation of sanctions re Iran and Democratic People’s Republic of Korea (DPRK). Specifically, the government was required to prepare guidance to DNFBPs on procedures for implementing targeted financial sanctions in relation to specified UNSCRs. Also, Jamaica was required to freeze assets without delay in respect of targeted financial sanctions and expand regulatory regime to cover Iran and the Democratic People’s Republic of Korea.

In addition to legislative amendments made in 2019 to the United Nations Security Council Resolution Implementation Act, some of the required guidance notes have been prepared. Currently, the Regulations implementing UN Security Council Resolutions in respect of Iran and DPRK have been drafted and are to be finalized. Additional guidance documents and regulations to address outstanding issues are under consideration.

Legislative Amendments:

Section 8A provides for an asset freeze, which is a prohibition against dealing with the assets owned or controlled by a proscribed entity. In order to ensure implementation of UNSCRs without delay, **section 3A** was introduced in 2019 amendments and read in conjunction with **section 8A**, once a court order is made under section 3A and financial institutions and DNFBPs are notified, the assets of the proscribed persons and entities are frozen.

The combination of section 3A and 8A prevent dealing and all the other elements of freezing in relation to the property, and there are criminal penalties for breaching the section. Section 3A of the UNSCRIA gives the DPP the power to apply to a Judge of the Supreme Court for an order to declare a person or entity a proscribed person or entity. Section 8A of the UNSCRIA establishes a prohibition against persons dealing with property of a proscribed individual or entity.

Section 3(2), 3A and 8A of the UNSCRIA (Amendment) Act, 2019, requires with respect to a proscribed entity, that is, (one designated by regulations under section 3(2) or order under section 3A) a report of any transaction or attempted transaction must be made to the designated authority. This amendment was made to address the deficiency that there was no requirement to freeze assets and neither was any reference made to attempted transactions.

Section 3(2)(fa) – a new inserted provision in the 2019 amendments, provides for the protection of the rights of bona fide third parties who act in good faith when dealing with assets in the manner so provided under section 8A(2):

“A person who acts reasonably in taking or omitting to take, measures to comply with subsection (1) (prohibition against dealing with assets of proscribed person or entity) shall not be liable in any civil action arising from having taken or omitted to take the measures, if the person took all reasonable steps to satisfy himself that the relevant assets were owned or controlled by, or on behalf of, the person or entity proscribed by said regulations.”

The UNSCRIA also provides for the rights of third parties in relation to injunctions- Section 7(3) of the UNSCRIA empowers a judge of the Supreme Court to discharge or vary an injunction under this section.

Further, the Supreme Court of Jamaica is a court of inherent jurisdiction and has the power to vary and or set aside (discharge) orders in cases where a third party makes an application, and is able to satisfy the court. Additionally, third parties may also place reliance on Part 42.12 of the Civil Procedure Rules for variation or discharge of court orders, even if situations where they were not served notice of the claim or the order in a timely manner.

Section 5(2) of United Nations Security Council Resolutions Implementation (Reporting Entities) Regulations, 2019 provides for clear guidance to FI's and DNFIs/DNFBPs in respect of their obligations to determine on a continuing basis whether they are in the possession or control of assets owned or controlled by or on behalf of a person or entity proscribed by Regulations made under s.21.

Section 5 (3A) provides for specific information to be reported by the FIs and DNFBPs to the designated authority and such reports, pursuant to **section 5(3B)**, are to be disclosed to regulators of FIs and DNFBPs. The aforesaid provisions are complimented by the United Nations Security Council Regulations Implementation (Reporting Entities) Regulations, 2019 which provide guidance to FIs and DNFBPs on their reporting obligations under section 5 of the UNSCRIA.

Further, guidance was provided by the Financial Services Commission (FSC) and the Bank of Jamaica (BOJ) to the entities under their supervision.

BOJ's updated gazetted guidance notes provide detailed guidance on the R7 obligations (at paragraph 50) and the UNSCRIA (at paragraphs 51 – 56). These guidance notes provide a very detailed outline of the requirements for persons subject to BOJ's regulatory oversight. These guidance notes provide clear and concise information to entities over which the BOJ exercise supervisory/regulatory authority on how to implement targeted financial sanctions draft guidance notes have been published and are now in effect.

Section 3(5A)- of the United Nations Security Council Resolutions Implementation (Amendment) Act 2019, provides clarity on when a person can apply to for de-listing if they have been proscribed under this Act. Delisting protocols have been drafted and approved. Applications for delisting are made to the United Nations Security Council and the procedures for making said application are established and available publicly.

Section 3 (2A) of the United Nations Security Council Resolutions Implementation (Amendment) Act, 2019 contains provisions to effect the exemptions set out in UNSCRs 1718 and 1737. The section provides that where a UNSCR provides that the assets of a proscribed person or entity shall be subject to certain exemptions, the implementing regulations should specify the exemptions. The exemptions are aimed at allowing the proscribed person or entity access to legal representation, reasonable living expenses until the determination of the court proceedings.

Remaining Deficiencies

The provisions as set out in the UNSCRIA do not clearly establish the giving of effect of freezing without delay.

The outstanding National Risk Assessment.

One technical deficiency, which upon its completion the NRA is expected to cure is related to de minimis threshold of US\$250.00 contained at paragraph 8(1) of the Proceeds of Crime (Money Laundering Prevention) Regulations, which was not established using a risk-based approach. As such, this regulation is inconsistent with the requirements of Recommendation 1, and the rating remains as Partially Compliant.

Despite the fact that the de minimis amount was arrived at without the use of the application of a risk-based approach, we ask that notice be taken of the fact that entities in the regulated sector are required to carry out customer due diligence (CDD) in circumstances where the transaction is suspicious and where guidance issued by their respective supervisory/regulatory or competent authority requires the to do so. For example, guidance notes issued by the Bank of Jamaica requires entities to engage CDD measures in instances where the one-off transaction or business relationship is:

- Suspicious; or
- The transaction is being carried out by a repeat customer

It is clear that measures are in place to mitigate risks associated with money laundering and terrorist financing even in these circumstances

The Terrorism Prevention (Reporting Entities) (Amendment) Regulation, 2019 does not have a similar provision to Regulation 6(d) of the Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019.

The Terrorism Prevention (Reporting Entities) (Amendment) Regulations, 2019 does not have a similar provision to Regulation 4 which amends regulation 5(2)(e) of the Proceeds of Crime (Money Laundering Prevention) (Amendment) Regulations, 2019.

There are no mechanisms in the TPA 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.

All the DNFI/DNFBPs are currently awaiting the conclusion of the NRA to ascertain their individual sectoral risk and on application of said proscribed risk to develop a risk based supervisory approach of their licensees.

APPENDIX 3: MEMBERS OF THE NATIONAL ANTI-MONEY LAUNDERING COMMITTEE (NAMLC):

Bank of Jamaica
Financial Investigations Division
Financial Services Commission
Jamaica Constabulary Force
Jamaica Customs Agency
Ministry of Finance and the Public Service
Ministry of Foreign Affairs and Foreign Trade
Ministry of Justice
Ministry of National Security
Office of the Director of Public Prosecutions
Tax Administration Jamaica
The Attorney General's Chambers
The Betting Gaming and Lotteries Commission
The Casino Gaming Commission
The Department of Friendly and Cooperative Society
The General Legal Council
The Public Accountancy Board
The Real Estate Board