



Financial Action Task Force
Groupe d'action financière

MUTUAL EVALUATION OF JAPAN
Executive Summary

17 OCTOBER 2008

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EXECUTIVE SUMMARY

Background Information

1. This report summarises the anti-money laundering (AML)/combating the financing of terrorism (CFT) measures in place in Japan as of the time of the on-site visit from 5 to 21 March 2008 and shortly thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened. It also sets out the levels of compliance of Japan with the Financial Action Task Force (FATF) 40+9 Recommendations (see the attached table on the Ratings of Compliance with the FATF Recommendations).

2. In general, the domestic crime rate is very low in Japan and the Police are well aware of the money laundering (ML) schemes used in Japan. The statistics held by the Japanese authorities reveal that for the last three years there were three major sources of criminal proceeds: drug offences, fraud and “loan-sharking” (*i.e.* illegal money lending). According to the National Police Agency (NPA), most of the drugs abused are smuggled in from overseas and then often distributed by criminal organizations, organized crime groups according to the Japanese designation, or Boryokudan, commonly known in the English-speaking world as “yakuza”. In 2006, organized crime groups were involved in around 40% of the money laundering cases. The origin of the laundered funds is prostitution, illicit gambling and “loan-sharking”. Recently, remittance frauds have been discovered, some of them also involve organized crime groups.

3. Four major types of frauds are used: *i)* “Ore-ore fraud” where phone calls are made to victims by swindlers pretending to be a relative, police officer, or practicing attorney under the pretext that they immediately need money to pay for something such as an automobile accident, and convince victims to transfer the money to a certain savings account; *ii)* fictitious billing fraud uses postal services or the Internet to send documents or e-mails demanding money and valuables based on fictitious bills, by which the general public is sometimes persuaded to transfer money to designated accounts; *iii)* loan-guarantee fraud is a method of fraud where a letter supposedly meant as a proposal is sent to the victim, persuading the victim to transfer money to designated accounts under the pretext of a guarantee deposit for loans and *iv)* refund fraud where swindlers pretending to be tax officers instruct people on the procedure for tax refunds and have victims use ATMs to transfer money to designated accounts. Another significant trend consists of the repeated loans of small amounts, around JPY 50 000 (EUR 300 / USD 475) at a higher interest rate than is legally permitted. Since 2003, the total amount of this kind of loan ranges between JPY 20 and 35 billion.

4. At the date of this report, Japan has not been the victim of terrorist actions committed in the country by individual terrorists or terrorist organisations listed by the United Nations. However, some groups, which committed terrorist acts are based in and have been active in Japan. The Japanese Communist League’s Red Army Faction, from which the Japanese Red Army (JRA), a Marxist-Leninist revolutionary organisation, later broke away, committed felonious crimes in Japan and the JRA has been responsible for major terrorist attacks in the 1970’s. Aum Shinrikyo, the cult organisation that was responsible for the Tokyo subway gas attack in 1995, is still active and recently committed crimes related to drug selling and fraud such as fund-raising activities.

Legal System and Related Institutional Measures

5. Japan has criminalised the concealment of drug crime proceeds through article 6 of the Anti-Drug Special Provisions Law of 1992. In 2000, the definition of “crime proceeds” was enlarged to the commission and the concealment of the proceeds of offences other than drug-related offences and includes offences contained in a list annexed to the Act on the Punishment of Organized Crime, which covers each of the designated categories of offences. The Japanese criminal law does not require a previous conviction for one of the predicate offences which generated the proceeds of crime. Attempt and self-laundering are punishable under both laws. Aiding, facilitating and counselling are criminalised in Article 62 of the Penal Code and abetting the commission of criminal acts is criminalised in Article 61 of the same code. The money laundering offence extends to any type of property by reference to the expression “proceeds of crime” with the exception of the Act on the Punishment of Financing of Offences of Public Intimidation which uses the term “funds”, the meaning of which does not meet the requirements of the Special Recommendation II.

6. Article 38 of the Penal Code provides for the punishment of offenders who wilfully and intentionally commit offences. This general rule therefore also applies to the money laundering offence. Under the Japanese legal system, criminal procedures are separate from civil and administrative procedures, so pursuit of criminal liability does not prevent civil or administrative procedures from being carried out as well. Japanese law does not impede civil or administrative sanctions when the factual situation is already the basis of criminal sanctions. Article 17 of the Act on the Punishment of Organized Crime and Article 15 of the Anti-Drug Special Provisions Law provide for punishment of the representative of a legal entity or any agent, employee or person engaged in the business of the legal entity who performs an act of money laundering in connection with the business of the legal entity. The offender shall be punished and a fine shall also be imposed upon the legal entity. Depending on the law, the amount of the fine varies between JPY 1 million and JPY 3 million (approximately EUR 6 000 / USD 9 450 and EUR 18 000 / USD 28 300), thus sanctions against legal persons cannot be regarded as dissuasive. From 2003 to 2007, only five legal persons have been convicted of money laundering and the amount of fines applied varied between JPY 1 million and 2.5 million.

7. The number of prosecutions regarding money laundering cases is steeply increasing (105 in 2003, 111 in 2004, 164 in 2005, and 225 in 2006) but remains low, especially in light of the problems related to drug consumption and organised crime organisations located in Japan. These figures can partially be understood by the decision to prosecute; public prosecutors only prosecute when they are almost certain of the conviction. The low number of conviction in money laundering cases, including prosecutions of legal persons, has a negative effect on the overall effectiveness of the criminalisation of money laundering.

8. Japan criminalises the activities enumerated in the Terrorist Financing Convention through the Act on the Punishment of Financing of Offences of Public Intimidation of 2002. The Act punishes any person who knowingly provides or collects funds for the purpose of facilitating the commission of an offence of public intimidation. However, the Japanese law only criminalises funds collection by terrorists and it is unclear in the law that indirect funds provision and collection are covered and that funds provision and collection for terrorist organisations and individual terrorists for any other purpose than committing a terrorist act is covered. The word “funds” is not defined in this law, but on the basis of its use in other laws, the Japanese term “shikin” signifies “funds, capital” and relates to cash and things easily convertible into cash. Therefore the word “funds” in the Act on the Punishment of Financing of Offences of Public Intimidation inadequately covers all aspects of SR. II which involves “assets of every kind” not only consisting of or easily convertible into cash.

9. Attempts are punishable and terrorist financing is a predicate offence for money laundering, with the exception of the attempt of terrorist financing offence (*i.e.* provision and collection of funds) and where

funds provided or collected are legitimate. The common rules of the Penal Code are applicable to the intention, the criminal, civil and administrative sanctions, and the liability of legal persons. The offences of provision and collection of funds as well as the attempt to commit these offences are sanctioned with 10 years of imprisonment or a fine of not more than JPY 10 million (approximately EUR 60 000 / USD 94 500). This fine, when applied to legal persons, is not proportionate to the threat and too low to be considered as dissuasive. In addition, the number of investigations is very low, but the compliance and adherence to the law reality in Japan does not make the fact of no indictment itself a negative finding.

10. Japan has established a comprehensive and effective mechanism to confiscate, freeze and seize the proceeds of crime. It has also set up a collection procedure. This mechanism allows the collection of the equivalent amount of the property that is not confiscated. A significant disparity appears between the number of confiscation and collection procedures revealing that courts prefer the latter. The small number of confiscation orders as compared to collection orders indicates that the regime is not fully and effectively implemented.

11. As to the freezing of terrorist assets, Japan has established a mechanism based on a licensing system prior to carrying out certain transactions. This process does not cover (i) the potential for domestic funds being available, unless attempted transactions in foreign currency, with a non-resident in Japan, or overseas transactions are undertaken or (ii) other support by residents for listed terrorist entities and individuals; and does not allow Japan to freeze terrorist funds without delay. In addition, there is no express obligation for financial institutions to screen their customers' databases, permitting the verification of the nature of assets already located in Japan at the time of designation of new terrorists, whether they will be individual or legal persons. Japanese officials however told the team, which is not satisfied with this explanation, that financial institutions have to screen their customers' databases to properly implement the licensing obligation. The duration of securance orders issued to freeze terrorist assets and the obligation to undertake prosecution within 30 days does not allow Japan to freeze terrorist assets without delay. Finally, the absence of a broad definition of the word "funds" limits the assets that can be frozen by the Japanese authorities.

12. In April 2007, according to the provisions of the Act on the Prevention of Transfer of Criminal Proceeds, the Japanese FIU, then called JAFIO (Japan Financial Intelligence Office), was transferred from the Financial Services Agency to the NPA and became the Japan Financial Intelligence Centre (JAFIC) and its staff were increased. JAFIC receives a constantly increasing number of STRs (around 99 000 in 2005, 114 000 in 2006 and more than 158 000 in 2007). It undertakes a primary analysis, that involves automatic cross-matching between the STR data and holdings of its databases, and then passes around 60% of the STRs received to law enforcement agencies, including the Police, public prosecutors, customs, coast guards and the SESC (Securities and Exchange Surveillance Commission), within the FSA. An in-depth analysis involving the development of a comprehensive intelligence file derived from STR and including cross-matching police, administrative and open source databases, is undertaken on an increasing number of STRs. JAFIC has good access to law enforcement and other information to undertake STRs analysis. It has a sound information technology for matching information across Police databases. However more analysis should be made with regard to the typologies of money laundering and terrorist financing. STRs are sent by financial institutions to the supervisory agencies, which forward them to the FIU. Since 1 March 2008, a new electronic reporting system has been implemented. This system permits financial institutions and DNFBPs subject to the declaration of suspicious transactions obligation to submit STRs directly to the FIU. At the time of the onsite visit, both systems were available; 25% of the STRs were submitted electronically, 75% were submitted on paper and floppy disk.

13. JAFIC had at the time of the on-site visit a very small number of analysts. Considering the large and increasing number of STRs received and to be received in the coming years due to the subjection of

some categories of DNFBPs to the declaration of suspicious transactions obligation under the new AML law, there are some concerns about the extent and the quality of the analyses undertaken.

14. In less than 12 months since its establishment, JAFIC has become a member of the Egmont group and has established an information exchange network with the FIUs of 12 foreign countries.

15. The main law enforcement bodies involved in the fight against money laundering and terrorist financing are the Prefectural Police and the Public Prosecutor's Office. Both are responsible for AML/CFT investigations and have adequate powers to do so. However, more training and investigatory resources are needed for AML/CFT law enforcement authorities.

16. Regarding Special Recommendation IX¹, Japanese Customs is responsible for AML/CFT enforcement. But it appeared during the on-site visit that Customs only focuses on smuggling and trafficking control and does not have AML/CFT enforcement capabilities. As a consequence, no report on cross-border currencies movements has been made to JAFIC.

Preventive measures - Financial Institutions (FIs)

17. The legal framework for customer due diligence is set out in the Act on the Prevention of Transfer of Criminal Proceeds, implemented by a Cabinet Order and an Ordinance. The Act came into force on 1 April 2007, and on 1 March 2008 for the provisions regarding DNFBPs. The Act covers the full range of financial institutions. A document entitled "Comprehensive Supervisory Guidelines" for the various categories of financial institutions have been issued by the FSA. Among other things, it deals with AML/CFT. Although, these guidelines cannot be considered as other enforceable means according to the FATF's definition, the financial institutions interviewed by the assessment team told the team that in practice they comply with this non-binding guidance. All financial institutions listed by the FATF Recommendations are covered by the Japanese AML/CFT system.

18. Financial institutions are not explicitly prohibited from opening anonymous accounts. However, the Act on the Prevention of the Transfer of Criminal Proceeds requires financial institutions to identify and verify the customer's identification data. Japan relies on an *a contrario* reading of this obligation and on the prohibition on customers providing false identification information. These requirements in effect prohibit the opening of anonymous accounts.

19. The Act on the Prevention of Transfer of Criminal Proceeds requires financial institutions to identify their customers and verify the customers' identification data (*i.e.* name, date of birth and address or head office for legal persons). These obligations apply when establishing a business relationships; carrying out occasional transactions over JPY 2 million or wire transfers over 100 000 JPY and when the financial institution has doubt about the veracity or adequacy of previously obtained identification data. Thus, CDD is limited to the identification of the customer and the verification of the identification data, and not all acceptable identification documents have a photograph or unique identification number. The CDD obligation does not cover cases where several transactions below the threshold appear to be linked or where there is a suspicion of money laundering or terrorist financing. In addition, there are exemptions to the identification obligation on the grounds that the customer or transaction poses no or little risk of being used as a tool for ML or TF. These exemptions, which are not acceptable under the FATF Methodology, include, for instance, certain securities transactions and transactions with state or public entities.

¹ Japan has implemented a new declaration system on 1 June 2008. It is not described in the report as the team was not provided with any written document presenting the future system at the time of the on-site visit and thus was not placed in a position to discuss it with the relevant Japanese authorities.

20. The CDD framework does not fully address the issue of authorised persons, representatives and beneficiaries or of beneficial ownership. There is no requirement for financial institutions to gather information on the purpose and intended nature of the business relationship or to conduct ongoing due diligence on these relationships.

21. Japan is not implementing an AML/CFT risk-based approach, thus there is no provision mandating enhanced due diligence for higher risk customers, business relationships and transactions nor authorized simplified due diligence.

22. Japan has not yet implemented Recommendations 6 and 7 on politically exposed persons and cross-border correspondent banking and the measures in relation to Recommendation 8 dealing with technological developments are not sufficient to be satisfactory, especially on the identification and verification of the identity in cases of non-face-to-face transactions.

23. Japan does not allow financial institutions to rely on a third party to perform CDD.

24. There are several gaps in the record keeping requirements: small transactions are exempted and financial institutions are not required to keep records on the beneficiary of a transaction nor of business correspondence files and account files. No legal or regulatory provision requires financial institutions to make recorded information available to the competent authorities on a timely basis. With regard to domestic wire transfers, financial institutions of the payer are not required to maintain or transmit originator account number or unique reference number. Beneficiary institutions are not obliged to verify that incoming wire transfers contain complete originator information nor are they required to consider filing STRs or terminating the business relationship in case of repeated failure of a financial institution.

25. The mechanism of monitoring of unusual transactions relies entirely on the STR system. There is no requirement to pay special attention to the transactions covered by Recommendation 11 or to examine such transactions, but the “Reference cases of suspicious transactions”, issued as a list of examples, provide a number of red flag scenarios related to complex transactions. Similar findings are also applicable to Recommendation 21. In addition, financial institutions are not required to implement counter-measures to mitigate risks associated with jurisdictions that do not or insufficiently apply the FATF Recommendations and Japan has no mechanism to decide and apply countermeasures against these countries.

26. The Japanese AML/CFT law requires the reporting of suspicious transactions in ML and TF cases, except for credit guarantee corporations. Competent authorities have taken some actions to promote the filing of STRs by financial institutions. The banking sector increasingly files most STRs, other sectors, including insurance and securities, have submitted over the past years an extremely limited number of STRs. Therefore, in relation to the insurance and securities sectors, more guidance and outreach needs to be undertaken. Protection from civil and criminal liability for disclosure of financial information is provided by means of provisions of the Act on the Protection of Personal Information, the Penal Code and the Civil Code to financial institutions, their directors, officers and employees when they submit, in good faith, STRs to the FIU. There are two sets of provisions relating to tipping off. The first set deals with tipping off customers and relevant parties. Directors, officers and employees of financial institutions are not sanctioned in law for commission of a tipping off offence. They are only sanctioned after violation of the administrative order applied to the financial institution for this offence. The second set deals with all third persons but does not sanction the disclosure of information by natural persons, whether directors, officers or employees of financial institutions. The sanctions applicable to financial institutions for tipping off third parties are not dissuasive.

27. Under the Japanese law, there is no requirement for financial institutions to establish and maintain procedures, policies, and internal controls to prevent ML and FT; to designate an AML/CFT compliance officer; to maintain an independent audit function or to adopt screening procedures to ensure high standards when hiring employees. Only the Comprehensive Supervisory Guidelines, which are not enforceable, deal with these requirements. As to branches and subsidiaries located abroad, the situation is quite similar: absence of legal or regulatory requirements. The guidelines only demand supervisors assess the internal controls that banks develop to manage and supervise their foreign branches and whether banks have persons with adequate knowledge and experience of the business situation in foreign branches and the local legal system. However the guidelines do not specifically deal with implementation of AML/CFT measures by foreign branches and subsidiaries.

28. There is no explicit prohibition on financial institutions from entering into or continuing correspondent banking relationships with shell banks and financial institutions are not required to satisfy themselves that correspondent banks do not permit their accounts to be used by shell banks.

29. The supervisory authorities are, in general, properly resourced, staffed and trained in relation to AML/CFT. They have adequate powers to monitor and ensure compliance by financial institutions with laws and regulations, including conducting inspections and obtaining access to all information, documents and records. There are, however, concerns with regard to the low number of inspections carried out in financial institutions, other than in the core sectors of banking, securities and insurance, and cooperative sector, and the limited number and type of sanctions applied. Moreover, the dissuasive nature of the criminal monetary penalties for ML/TF is doubtful.

30. Financial institutions in Japan are adequately regulated and supervised. However, fit and proper tests should be extended to all senior management staff, and for securities and insurance sectors, should include requirements in relation to professional expertise, in order to prevent criminals and their associates from holding or controlling financial institutions. In addition, money exchangers and leasing companies are not required to be licensed or registered.

31. In Japan, money or value transfer services (MVT) are required to get a banking license, hence the concerns in the report regarding effective implementation of applicable FATF 40+9 Recommendations to banks also apply to MVT services. The monetary penalties for underground banking seem too low in comparison with the potential criminal proceeds involved in this illegal activity.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBPs)

32. The Act on the Prevention of Transfer of Criminal Proceeds is applicable to various categories of designated non-financial businesses and professions (DNFBPs): real estate agents, precious metals and stones dealers, postal service providers, legal professionals such as attorneys, judicial scriveners and certified administrative procedures specialists, and accountants, including certified public accountants and certified public tax accountants. However the relevant provisions entered into force on 1 March 2008, a week before the on-site visit started. As a consequence, the evaluation team was not in a position to properly assess the effectiveness of the newly implemented system. The AML/CFT requirements as applicable to financial institutions also apply to DNFBPs with some exceptions, especially for legal professionals and accountants. These professions are not subject to the STR obligation. Moreover, there are CDD exemptions in the JFBA Regulation on CDD for attorneys that are not provided for in the FATF Recommendations; they are unclear and could be interpreted as exempting a large number of situations. Besides these specific comments, what has been noted for financial institutions is also valid for DNFBPs.

Legal Persons and Arrangements & Non-Profit Organisations

33. There are four types of companies authorised under the Japanese Companies Act. All have to be registered to be legally formed. Registration requires various documents, including the articles of incorporation, along with the names and addresses of the incorporators or partners. Changes in the registered matters have also to be notified and registered. However there is no obligation to gather information on the beneficial ownership and control of the legal person. Any person can obtain the extract of the registered matters, but there is no specific provision granting access by the competent authorities to the shareholders' registers, which have to rely on the Code of Criminal Procedure in order to do so.

34. Despite the prohibition of anonymous bearer shares issuance since the amendment of the Commercial Code in 1990, there may still be such shares in circulation. The Japanese authorities estimate that they are very limited, but do not have any statistics. Besides anonymous bearer shares, bearer shares holders are not identified or their identity verified.

35. In Japan, trusts companies are regulated by the FSA and are subject to AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds. The serious deficiencies in the CDD obligations also imply serious difficulties in transparency concerning beneficial ownership and control of trusts.

36. Terrorist financing risks in the Non-Profit Organisations sector are relatively low in Japan. NPOs are subject to a high degree of transparency and public accountability for their operations and there is a generally comprehensive regime of licensing, registration or oversight. While there is a wide range of national, regional and activity-specific regulators for NPOs, coordination between regulators and investigation agencies is overall effective. However, Japan has not yet conducted any specific outreach to the NPO sector to raise awareness about risks of abuse for terrorist financing and relevant AML/CFT preventive measures.

National and International Co-Operation

37. Japan utilizes a multi-agency AML/CFT strategy involving the FIU, law enforcement agencies, policy makers and supervisors. ML and TF are included in broader programmes against transnational organised crimes and international terrorism. This is led at a ministerial level by the "Ministerial Meeting Concerning Measures Against Crime" established in September 2003 and the "Headquarters for Promotion of Measures Against Transnational Organised Crime" created in July 2001, which was reorganized as the "Headquarters for Promotion of Measures Against Transnational Organized Crime and International Terrorism" in August 2004. Both initiatives comprise all the relevant agencies and ministries and have adopted Action Plans to combat ML/FT.

38. Japan has ratified the Vienna and the Terrorist Financing Conventions. The Palermo Convention has been signed and its ratification is in process. There are gaps in the implementation of the UNSCRs 1267, 1373 and successor resolutions.

39. Regarding mutual legal assistance (MLA), Japan has signed only two MLA treaties (with Korea and the United States), so the most utilised means for MLA is the Law for International Assistance in Investigation. In the absence of treaties, the law requires requesting assistance through diplomatic channels, which are potentially slow as the Ministry of Foreign Affairs, the central authority in the MLA process, is required to consider the request, develop an opinion and to forward both to the Ministry of Justice. In addition, the requesting state has to demonstrate that the evidence requested from Japan is indispensable before Japan can take any coercive measures and dual criminality is an inflexible condition in requests concerning conspiracy and prosecution of legal persons. As a party to various conventions,

Japan has also multilateral obligations. However, as the Palermo Convention is not ratified yet, MLA related to the serious crimes considered under the Convention has to be treated under the general law.

40. Extradition is governed by the Law of Extradition which allows extradition where the conduct for which extradition is requested is punishable by a custodial sentence of three years or more in both Japan and the requesting state. It prohibits the extradition of Japanese nationals, but this can be and has been specifically included in Japan's two extradition treaties. Japan has only signed two such treaties, with Korea and the United States. The minimum sentence precondition to an extradition request appears to be too high and Japan does not effectively prosecute its nationals in lieu of extradition.

41. As dual criminality is required to provide MLA or grant extradition, the limitation in the ML and TF offences reduces the extent and effectiveness of the MLA provided by Japan and Japan's ability to grant extradition requests.

42. Japan has implemented some measures to facilitate and improve administrative cooperation between domestic authorities and foreign counterparts. However, the number of information exchanges by the FIU is very low.

Resources and Statistics

43. Overall Japan has dedicated appropriate financial, human and technical resources to the various areas of its AML/CFT regime. All competent authorities are required to maintain high professional standards. However, the FIU should increase its human resources involved in STRs analysis, particularly in relation to the recent entry into force of the STR obligation for certain categories of DNFPBs. More training and investigatory resources should be allocated to the AML/CFT law enforcement agencies.

44. The assessment team was unable to determine whether the statistics maintained by various agencies in Japan are comprehensive or systematically accumulated, because not all agencies appear to do so.

Table: Ratings of Compliance with the FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA).

Table 1. Forty Recommendations	Table 2. Rating	Table 3. Summary of factors underlying rating ²
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> Conspiracy to launder money is not covered. Payment of legitimate debts with illicit funds is not covered. The approach to indictments creates a weakness regarding organized crime in the money laundering area.
2. ML offence – mental element and corporate liability	LC	<ul style="list-style-type: none"> Regarding proportionality, sanctions lack a middle ground; criminal sanctions against legal persons that are not financial institutions are not dissuasive. The effectiveness of prosecution is questionable due to the low number of cases prosecuted.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> The collection alternative should be subject to mandatory execution obligations and limited authority to revoke the order. Based on the small number of confiscation and collection orders obtained in Japan, it does not seem that the confiscation and seizure regime is fully effective.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	C	<ul style="list-style-type: none"> The Recommendation is fully observed.
5. Customer due diligence	NC	<p><i>When CDD is required:</i></p> <ul style="list-style-type: none"> The CDD obligation does not include multiple below-threshold transactions that appear to be linked. CDD is not required when there is a suspicion of money laundering or terrorism finance. <p><i>Required CDD measures:</i></p> <ul style="list-style-type: none"> The quality of the customer identification documents upon which financial institutions are permitted to rely is unclear and, in the case of natural persons, does not include photographic identification (or, in situations when photographic identification is not practicable, additional secondary measures to mitigate the increased risk accompanying such situations). Financial institutions are not required to verify whether the natural person acting for a legal person is authorized to do so. Financial institutions are not required to obtain information on the customer's legal status, director(s) and provisions regulating the power to bind the legal person or arrangement, when the customer is a legal person or arrangement. There is no general requirement for financial institutions to identify and verify the identity of the beneficial owner. Financial institutions are not required to determine whether the customer is acting on behalf of another person, or to take reasonable measures to verify the identity of that other person.

² These factors are only required to be set out when the rating is less than Compliant.

Table 1. Forty Recommendations	Table 2. Rating	Table 3. Summary of factors underlying rating ²
		<ul style="list-style-type: none"> • In case of legal persons or arrangements, there is no obligation for the financial institutions to understand the ownership and control structure of the customer or to determine who are the natural persons who ultimately own or control the customer. • Financial institutions are not explicitly required to obtain information on the purpose and intended nature of the business relationship. • There is no obligation in law or regulation for financial institutions to conduct ongoing due diligence on the business relationship. <p><i>Risk:</i></p> <ul style="list-style-type: none"> • Higher risk categories of customers, business relationships and transactions are not subject to enhanced due diligence. • Low risk categories of customers are exempted entirely from CDD requirements. • There is no requirement to undertake any CDD measures when there is a suspicion of ML or TF. <p><i>Timing of verification:</i></p> <ul style="list-style-type: none"> • There is no requirement for financial institutions to develop internal controls to mitigate the increased risk posed by transactions undertaken before the completion of the CDD process, including by limiting the number, types, and amount of transactions or by enhanced monitoring. <p><i>Failure to complete CDD:</i></p> <ul style="list-style-type: none"> • Financial institutions are not required to consider filing an STR when CDD cannot be completed. <p><i>Existing customers:</i></p> <ul style="list-style-type: none"> • There is no requirement in law, regulation or other enforceable means requiring CDD on previously existing customers on the basis of materiality and risk.
6. Politically exposed persons	NC	<ul style="list-style-type: none"> • There is no requirement in law, regulation, or other enforceable means obligating financial institutions to identify whether a customer is a politically exposed person. • Financial institutions are not required to take specific steps to mitigate the increased risk accompanying dealings with PEPs by seeking senior management approval, establishing source of wealth, and conducting enhanced ongoing monitoring of the relationship.
7. Correspondent banking	NC	<ul style="list-style-type: none"> • There is no obligation for financial institutions to: a) determine whether a respondent institution has been subject to money laundering or terrorist financing enforcement action; b) assess the adequacy of the AML/CFT respondent's controls; c) require senior management approval before establishing the relationship; and d) document the respective AML/CFT responsibilities of each institution.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> • There is no explicit requirement for financial institutions to develop policies and procedures to mitigate the use of technological developments for the purposes of money laundering and terrorism finance. • The identification and verification requirements for non face-to-face customers are insufficient.
9. Third parties and introducers	NA	
10. Record keeping	LC	<ul style="list-style-type: none"> • Small transactions are exempted from the record-keeping requirements. • Financial institutions are not obligated to keep business

Table 1. Forty Recommendations	Table 2. Rating	Table 3. Summary of factors underlying rating ²
		<p>correspondence and account files.</p> <ul style="list-style-type: none"> Financial institutions are not required to ensure that recorded information is made available to the competent authorities on a timely basis.
11. Unusual transactions	PC	<ul style="list-style-type: none"> There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to all complex, unusual large or patterns of transactions, that have no apparent or visible economic or lawful purpose. Financial institutions are not required to examine such transactions, set forth findings in writing and maintain appropriate records.
12. DNFBP – R.5, 6, 8-11	NC	<ul style="list-style-type: none"> The deficiencies in CDD obligations as applied to financial institutions (Recommendation 5) also apply to DNFBPs. Obligations in Recommendations 6, 8 and 11 are not applied to DNFBPs (Recommendation 9 is not applicable). The JFBA regulations provide inadequate guidance on non face-to-face transactions and allow attorneys to rely upon a broader universe of acceptable documentation including those produced by unspecified “reliable private bodies”. The scope of the CDD exemptions in Article 2 of the JFBA Regulations is unclear and could be interpreted as exempting a large number of transactions. There are de minimis exemptions from CDD for customers of attorneys, judicial scriveners, CAPS, CPAs, and CPTAs that are not provided for in FATF standards. The indirect obligation to monitor unusual or large transactions as part of an STR filing regime does not apply to attorneys, judicial scriveners, CAPS, CPAs, and CPTAs as these professions are exempt from the filing requirement. The regulatory regime for non-compliance with CDD obligations is as yet untested.
13. Suspicious transaction reporting	LC	<ul style="list-style-type: none"> Credit guarantee corporations are not subject to a direct, mandatory STR reporting obligation. Low number of STRs submitted by certain categories of financial institutions, including insurance and securities sectors.
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> Directors, officers and employees of business operators are not prohibited and sanctioned in law from tipping off third parties. Directors, officers and employees of business operators are not sanctioned in law upon commission of a tipping off offence to the customer and relevant parties, but only after violation of the administrative order applied to the business operator. The sanctions that are available for tipping off third parties are too low to be dissuasive.
15. Internal controls, compliance & audit	NC	<ul style="list-style-type: none"> Financial institutions are not explicitly required to adopt and maintain an AML/CFT internal control system. There is no legal or regulatory requirement to designate an AML/CFT compliance officer at the management level, and no guidance on this officer’s roles and responsibilities, including on timely access to customer identification and other CDD information and transactions records. Financial institutions are not explicitly required to maintain an independent audit function to test compliance with the procedures, policies and controls. Procedures and policies are not required to be updated, and communicated to the employees, who should be trained on their use.

Table 1. Forty Recommendations	Table 2. Rating	Table 3. Summary of factors underlying rating ²
		<ul style="list-style-type: none"> There is no requirement to adopt screening procedures to ensure high standards when hiring employees.
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> The legal professions and accountants are not subject to an STR reporting obligation. The effectiveness of the STR reporting regime is as yet untested. The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBPs. Recommendations 15 and 21 are not applied to DNFBPs. None of the competent administrative agencies responsible for the supervision of DNFBPs has issued supervisory guidance concerning the developing of appropriate internal AML/CFT controls nor have any of these agencies developed programs for off-site and on-site AML/CFT supervision.
17. Sanctions	LC	<ul style="list-style-type: none"> The concerns in Recommendation 2 on the dissuasive power of criminal monetary penalty for money laundering also apply here. Low number of sanctions applied to financial institutions (banks, financial instruments business operators and futures commission merchants) and absence of sanctions in the other financial institutions.
18. Shell banks	PC	<ul style="list-style-type: none"> There is no explicit prohibition on financial institutions from entering into or continuing correspondent banking relationships with shell banks. There is no explicit obligation to require financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> The Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> This Recommendation is fully complied with.
21. Special attention for higher risk countries	NC	<ul style="list-style-type: none"> There is no requirement in law, regulation or other enforceable means for financial institutions to pay special attention to business relationship and transactions with jurisdictions which either do not or insufficiently apply the FATF Recommendations. In cases where transactions with such jurisdictions have no apparent or visible lawful purpose, financial institutions are not required to examine them and set forth their findings in writing. Financial institutions are not required to implement any specific counter-measures to mitigate the increased risk of transactions with such jurisdictions. Japan has no mechanism to implement countermeasures against countries that do not or insufficiently apply the FATF Recommendations.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> There is no explicit obligation on financial institutions to ensure that their foreign subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations. Financial institutions are not required to pay particular attention that the above principle is observed in their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations. There is no explicit obligation on either branches or subsidiaries to apply the higher standard where home and host countries' AML/CFT requirements differ. There is no explicit obligation for financial institutions to inform their home country supervisor when their foreign branches or subsidiaries are unable to observe appropriate AML/CFT measures because of prohibition by local laws or regulations.

Table 1. Forty Recommendations	Table 2. Rating	Table 3. Summary of factors underlying rating ²
23. Regulation, supervision and monitoring	LC	<ul style="list-style-type: none"> ● Money exchangers and financial leasing companies are not required to be licensed or registered. ● Although money exchangers are subject to reporting requirements when their business volumes exceed a certain threshold, the risk that money exchangers do not report when they should, especially for individuals money exchangers, is not fully addressed. ● Fit and proper requirements should explicitly apply to all, and not only some, of senior management for financial institutions subject to the Basel Core Principles. ● For banks, senior management in addition to directors should be explicitly subject to a fit and proper test. ● For securities and insurance, the fit and proper tests should include requirements on expertise.
24. DNFBP - regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> ● The effectiveness of the AML/CFT regulatory and monitoring regime by the various competent administrative agencies is untested. ● DNFBPs are not subject to formal AML/CFT supervision (i.e. offsite monitoring and regular onsite inspection) although competent administrative agencies are appropriately empowered.
25. Guidelines & Feedback	LC	<p><i>Financial institutions (guidance on STR):</i></p> <ul style="list-style-type: none"> ● Absence of specific or case-by-case feedback to reporting institutions. ● Absence of actions taken to promote STR filing by insurance and securities sectors. <p><i>Financial institutions (guidance other than on STRs):</i></p> <ul style="list-style-type: none"> ● For financial institutions the Recommendation is fully met. <p><i>DNFBPs:</i></p> <ul style="list-style-type: none"> ● No supervisory guidelines concerning AML/CFT obligations for DNFBPs have been issued.
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> ● JAFIC lacks adequate human resources involved in STR analysis. ● JAFIC STR analysis does not include access to cross border currency reports. ● JAFIC should develop its strategic analysis capability regarding typologies and methodologies, for dissemination to law enforcement authorities and for feedback to financial institutions and DNFBPs.
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> ● More training and investigatory resources are needed for AML/CFT law enforcement authorities.
28. Powers of competent authorities	C	<ul style="list-style-type: none"> ● The Recommendation is fully met.
29. Supervisors	LC	<ul style="list-style-type: none"> ● There are effectiveness issues: <ul style="list-style-type: none"> - other than in the core sector of banking, securities and insurance, and cooperative sector, limited number of inspections carried out in some categories of financial institutions over the past five years. - although the supervisory bodies have sanction powers and a large range of sanctions available for failure to comply with the AML/CFT requirements, the number and type of sanctions imposed so far have been limited.
30. Resources, integrity and training	LC	<ul style="list-style-type: none"> ● JAFIC needs to increase its human resources involved in STRs analysis.
31. National co-operation	LC	<ul style="list-style-type: none"> ● Cross-border agencies are not sufficiently involved in the AML/CFT system and their reports on cross-border movements should be made available to the FIU.

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		<ul style="list-style-type: none"> • Except for the dissemination of STRs, it is too early to assess the quality of the works and efforts made by JAFIC in its central role in the national co-operation and coordination.
32. Statistics	LC	<ul style="list-style-type: none"> • No statistics are available on the sanctions applied to legal persons convicted for money laundering; on the number of persons convicted for the predicate offences and money laundering; on dual prosecution of drug offences and concealment of the proceeds of crime; on the number of appeal in case of confiscation, collection or preservation. • Effectiveness: Japanese authorities appear able to provide statistics on request, but it is uncertain that they are systematically maintained.
33. Legal persons – beneficial owners	NC	<ul style="list-style-type: none"> • There is no obligation to gather information on the beneficial ownership and control of companies. • Access to the shareholders registry relies on general police powers. • Bearer shares are not identified nor their identity verified and there may still exist totally anonymous bearer shares.
34. Legal arrangements – beneficial owners	NC	<ul style="list-style-type: none"> • Serious deficiencies in CDD obligations to identify beneficial ownership (Recommendation 5) imply serious difficulties in transparency concerning beneficial ownership and control of trusts. Japan has not implemented mechanisms or measures to ensure transparency concerning beneficial ownership and structure of control of trusts and other legal arrangements. • Although law enforcement agencies have powers to obtain information on trusts, given the deficiencies in CDD obligations, it is unclear whether the information that could be accessed actually reflects the true beneficial ownership and control of trusts.
International Co-operation		
35. Conventions	PC	<ul style="list-style-type: none"> • Japan has not ratified the Palermo Convention. • Japan has not fully implemented the freezing obligation relative to terrorist funds, including other property, according to the TF Convention.
36. Mutual legal assistance (MLA)	PC	<ul style="list-style-type: none"> • Requirement to request LIAI assistance through diplomatic channels is cumbersome. The entire process upon acceptance is burdened with requirements to provide opinions to either provide assistance or opinions relative to the transmission of the evidence obtained. • The absence of mutual legal assistance under the multilateral provision of the Palermo Convention compels case specific requests in most serious crimes. • The low number of bilateral mutual legal assistance treaties increases the need for case specific requests under the LIAI process which may delay requests. • Japan has a large number of protected categories of persons that can frustrate mutual legal assistance without any clear means to address valid professional secrecy concerns. • The requirement for the requesting state to demonstrate that the evidence is indispensable before coercive measures are granted is a significant barrier to effective mutual legal assistance. • As dual criminality is required for providing MLA, the limitation in the ML and TF offences reduces the extent and effectiveness of the MLA provided by Japan.
37. Dual criminality	PC	<p><i>Mutual legal assistance:</i></p> <ul style="list-style-type: none"> • Japan's dual criminality condition in LIAI is a barrier to assistance in specific cases, such as conspiracy charges or prosecution of legal

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		<p>persons.</p> <p><i>Extradition:</i></p> <ul style="list-style-type: none"> • Japan does not have a conspiracy offence or any authority to domestically prosecute nationals for such an offence. • Japan's dual criminality and sentence requirement does not include the possibility of extradition of organized crime figures for fraud or extortion.
38. MLA on confiscation and freezing	LC	<ul style="list-style-type: none"> • Japan should consider the post-confiscation use of its confiscated property or collection orders. • As dual criminality is required, the limitation in the ML and TF offences limits the extent and effectiveness of Japan's capacity to confiscate, seize and freeze in the context of mutual legal assistance.
39. Extradition	PC	<ul style="list-style-type: none"> • Japan's minimum sentence for extradition is too high. • Japan does not effectively prosecute nationals in lieu of extradition. • As dual criminality is required, the limitation in the ML offences limits the extent and effectiveness of Japan's ability to grant extradition requests.
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> • Very small number of STRs exchanged with foreign counterparts. • Except for the FIU, no statistics are available to prove effectiveness of international cooperation between Japanese competent authorities and their foreign counterparts.

Table 4. Nine Special Recommendations	Table 5. Rating	Table 6. Summary of factors underlying rating
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> • The term "funds" is not sufficient to cover "funds and any other property". • UNSCR 1267 is only partially implemented, as it is based on foreign exchange controls and limited to funds. • UNSCR 1373 is only partially implemented, as it is based on foreign exchange controls and limited to funds.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> • Limited definition of "funds". • Failure to criminalize funds collection for terrorists by non-terrorists. • It is unclear in the law that indirect funds provision/collection is covered. • It is not explicitly clear in the law that funds collection or provision to terrorist organizations and individual terrorists for any other purposes than committing a terrorist act is criminalized.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> • The licensing process in the Foreign Exchange Act does not cover (i) the potential for domestic funds being available, unless attempted transactions in foreign currency, with a non-resident in Japan or overseas transactions are undertaken or (ii) other support by residents for listed terrorist entities and individuals, and does not allow Japan to freeze terrorist funds without delay. • The limited duration of the securance orders, together with the obligation to institute a prosecution within 30 days or undertake extension applications does not allow Japan to freeze terrorist assets on a "without delay" basis. • The lack of a broad definition of "funds" in the Act on the Punishment of Financing of Offences of Public intimidation and the limited scope of the "crime proceeds" definition in the Act on the Punishment of Organized Crime creates an unacceptable risk that

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SR.IV Suspicious transaction reporting	LC	<p>other property that could be used by terrorists cannot be frozen.</p> <ul style="list-style-type: none"> ● Credit guarantee corporations are not subject to a direct, mandatory STR reporting obligation. ● Low number of STRs submitted by certain categories of financial institutions, including insurance and securities sectors.
SR.V International co-operation	PC	<p><i>Mutual legal assistance:</i></p> <ul style="list-style-type: none"> ● Japan does not efficiently freeze all funds and other terrorist property under its Foreign Exchange and Foreign Trade Act licensing regime. ● The authority for Japan to enforce a foreign confiscation order against property, other than “funds” as covered by Japan’s Punishment of Financing of Offences of Public Intimidation, is doubtful. ● In light of the obligation to have a dual criminality precondition for LIAI assistance foreign confiscation orders against property other than funds is unavailable. ● As dual criminality is required for providing MLA, the limitation in the ML and TF offences reduces the extant and effectiveness of the MLA provided by Japan. <p><i>Extradition:</i></p> <ul style="list-style-type: none"> ● The 3 year maximum sentence under the Foreign Exchange Act could be interpreted to mean that these offences are not extraditable offences. ● The failure to define “funds” in the Act on the Punishment of Financing of Offences of Public Intimidation to include “other property or assets” increases the risks of an argument being made that there is no extraditable offence for the provision of other property or assets. ● As dual criminality is required, the limitation in the ML and TF offences limits the extent and effectiveness of Japan’s ability to grant extradition requests. <p><i>Other forms of international cooperation:</i></p> <ul style="list-style-type: none"> ● The factors underlying the rating of Recommendation 40 are also valid to SR. V.
SR.VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> ● The concerns regarding effective implementation of applicable FATF 40+9 Recommendations to banks also apply here in the banks’ function as MVT service operators. ● Monetary penalties for underground banking seem low relative to potential criminal proceeds from underground banking.
SR.VII Wire transfer rules	LC	<ul style="list-style-type: none"> ● There is no provision requiring financial institutions to transmit originator account number or unique transaction reference numbers in domestic wire transfers. ● There is no express requirement for financial institutions to provide originator information to supervisory authorities within three business days nor is there a requirement for financial institutions to immediately provide this information to domestic law enforcement authorities. ● Beneficiary financial institutions are not obligated to verify that incoming wire transfers contain complete originator information nor are they required to consider filing an STR or consider terminating the business relationship if appropriate.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> ● No outreach to the NPO sector on TF risks and preventative measures in the sector. ● There are some impediments to police having timely access to

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		<p>relevant taxation records of NPOs that receive preferential tax treatment.</p> <ul style="list-style-type: none"> • Social welfare juridical persons are not required to update changes in their office holders in a timely fashion.
SR.IX Cross Border Declaration & Disclosure	NC	<ul style="list-style-type: none"> • Japan needs to establish an AML/CFT enforcement capability for cross border movement of currency and bearer negotiable instruments. • Cross border reporting only relates to carriage by an individual and needs to be extended to include all forms of physical cross border movement of currency and bearer negotiable instruments. • Customs require an authority to request and obtain further information from the carrier regarding the origin and the intended use of currency and bearer negotiable instruments. • Japan needs to enact a general provision that enables officials to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found. • Information from reports on cross border movement of currency or bearer negotiable instruments needs to be made available to the FIU on a timely basis. • Sanctions for breach of cross border reporting requirements need to extend to legal persons, and to company directors and senior management. • Japan needs to enact provision for seizure of suspected proceeds and instrumentalities of ML and TF. • Japan needs to establish an ability to co-operate with a foreign jurisdiction with a view toward establishing the source, destination, and purpose of the movement of currency and bearer negotiable instruments.