

Stepping up the fight against money laundering in Jamaica

SUMMARY OF THE ACCA CONFERENCE HELD IN KINGSTON, JAMAICA, FEBRUARY 2013

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Founded in 1904, ACCA has consistently held unique core values: opportunity, diversity, innovation, integrity and accountability. We believe that accountants bring value to economies in all stages of development. We aim to develop capacity in the profession and encourage the adoption of consistent global standards. Our values are aligned to the needs of employers in all sectors and we ensure that, through our qualifications, we prepare accountants for business. We work to open up the profession to people of all backgrounds and remove artificial barriers to entry, ensuring that our qualifications and their delivery meet the diverse needs of trainee professionals and their employers.

We support our 154,000 members and 432,000 students in 170 countries, helping them to develop successful careers in accounting and business, with the skills needed by employers. We work through a network of over 80 offices and centres and more than 8,400 Approved Employers worldwide, who provide high standards of employee learning and development.

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Like that of other Caribbean nations, Jamaica's geography makes it especially vulnerable not only to the international trade in illegal drugs but also to the laundering of the substantial profits that are associated with that trade. Such a situation poses great risks to any country's economic and social order.

Following encouragement by the international authorities, Jamaica is now increasing its controls to combat money laundering and is boosting its domestic law enforcement and recovery procedures.

This report summarises a day-long conference held in Kingston in February 2013 to review where Jamaica currently stands on these issues and to test its state of readiness to go further.

Introduction

Jamaica faces a significant challenge to bring its framework of anti money laundering controls into line with international standards and up to a level where crime is seen not to pay.

While progress has been made in adopting controls to address anti money laundering (AML) and countering terrorist financing (CTF) requirements, these need to be applied more efficiently and there needs to be a more concerted societal effort to enhance the level of vigilance against the perpetrators of financial crime. Requirements for monitoring money laundering activities need to be extended to encompass a wider range of businesses and institutions than those already covered, in line with the expectations of the international standards issued by the Financial Action Task Force (FATF). Further progress in this area is, however, vital if the country is to enhance its prospects of securing inward investment, reduce its cost of capital and build a political and economic environment that is founded on trust, transparency and fair rewards for all its citizens.

These were the conclusions of a high-level conference held in Kingston, Jamaica on 14 February, organised by the Association of Chartered Certified Accountants (ACCA) in conjunction with Jamaica's Financial Services Commission (FSC). Detailed presentations were made to about 150 delegates, explaining why money laundering is a threat to society and the economy, outlining the methods that criminals use to launder the proceeds of their crimes, describing why accountants and other groups are being brought within the regulatory framework, and specifying what the international authorities now expect national governments to do to tighten

the net on those who use the financial system to strip assets of their association with criminal activities.

The conference was introduced by Leon Anderson FCCA and chaired by Lorice Edwards-Brown, respectively interim chief executive and director of investigation and enforcement at the FSC. The conference spelled out the following key points.

- Money laundering is essentially about making crime pay, and the easier it becomes to achieve that goal in any jurisdiction, the greater the encouragement it is likely to give to the commission of crime and the generalised undermining of law and order. Accordingly, the aim of any system of financial regulation must be to take the profit out of crime by ensuring that the process of converting 'dirty' money into 'clean' money is obstructed by the forces of justice and that, via effective and committed law enforcement action, the assets obtained by criminals are recovered and the criminals themselves prosecuted and convicted. All sections of law-abiding society stand to benefit from such enforcement.
- A joined-up approach, whereby government and its agencies are given material help by trusted intermediaries within the financial system, is now considered to be essential if the activities of criminals and money launderers are to be thwarted. Common cause must be made between regulators and regulated persons to ensure that the interests of the wider economy, as well as society itself, are properly defended. Great care needs to be taken, however, to ensure that confidence in the system is not

undermined by failure to protect the security of the information supplied to the regulators: in particular, the identity of the reporters must not be divulged.

- The relevant authorities in Jamaica have already demonstrated significant progress in bringing prosecution and recovery actions under the existing legislation. That progress suggests that their prospects of making further inroads into serious criminal activity would be enhanced if more resources were extended to them, especially given the new sources of potentially useful information that will be made available to them in the near future.

THE SPEAKERS

The conference heard contributions from the following speakers.

- John Davies is head of the Technical Department at ACCA.
- Alan Wood is a Queen's Counsel and head of the Proceeds of Crime Act committee at the General Legal Council.
- Michelle Walker is head of the Legal Unit of the Jamaican Ministry of Foreign Affairs and Foreign Trade.
- Maldria Jones-Williams is deputy superintendent of police, JCF Fraud Squad.
- Everton Ferguson FCA, FCCA is senior manager with Ernst & Young and spoke to the conference on behalf of the Institute of Chartered Accountants of Jamaica.
- Justin Felice is chief technical director at Jamaica's Financial Intelligence Division (FID).

Presentation 1

John Davies is head of the Technical Department at ACCA.

John updated delegates on international developments in combating money laundering and on the recent revision of the international standards on this matter.

He began by charting the process whereby action by the international community had become necessary, and which led to the creation of the FATF in 1989. FATF had since become the global authority on AML matters and issues high-level recommendations (now referred to as 'standards') to all national governments on the measures that should be incorporated into national legal systems to deter and prosecute financial crime. He went on to summarise recent enforcement action taken by regulators in the US (against banks) and the UK (against professional advisers) which demonstrated the seriousness with which money laundering and terrorist financing activity were increasingly being treated.

John then gave an account of the changes that had been agreed recently to the standards issued by the FATF. These changes will have implications for all countries, including Jamaica. Chief among these recent changes are the following.

MONEY LAUNDERING OFFENCES

The range of designated criminal offences that should give rise to the crime of money laundering in each country has been expanded to cover taxation offences. The change will give rise to a duty to report to the authorities where the regulated person (ie the party on whom AML responsibilities are imposed) acquires knowledge or suspicion that such an

offence has been committed. This is likely to have a material impact on the work of accountants in public practice since most are likely to provide tax advisory services to their clients and are therefore likely to become aware of cases where a client has committed a tax-related offence.

RISK ASSESSMENTS

Both national governments and individual firms will be required to carry out focused risk assessments to identify, understand and assess the level of risk of money laundering and terrorist financing to which they are exposed in their respective circumstances. This is intended to ensure that all concerned proactively consider the risks they face, bearing in mind the nature of their activities, their client base and external threats, and take mitigating action that is commensurate with their level of exposure. The dimension of risk should also influence directly the extent of the client due diligence (CDD) checks that firms should be obliged to carry out on clients.

POLITICALLY EXPOSED PERSONS (PEPS)

PEPs should continue to be treated with special vigilance because of the particular powers or privileges they may have to divert public funds. In addition, the revised standards call for regulated persons to carry out enhanced checks on the beneficial owners of legal entities (eg the ultimate controlling shareholders in limited companies) and for the identification of 'domestic' as well as foreign PEPs.

INTERNAL CONTROLS

Regulated persons will in future be expected to carry out an independent audit of the effectiveness of their in-house programmes of policies and controls. They will also be obliged to appoint a single individual to act as their compliance officer, and to ensure that the firm complies with its various AML responsibilities.

John stressed that the continuing requirements, under the standards, for regulated persons to file suspicious transaction reports (STRs) with the authorities posed a special problem for professional advisers owing to their obligation of client confidentiality. Reporting the misdeeds of clients would not come easily to professional accountants and lawyers because of their training, which emphasises the importance of trust and confidentiality between adviser and client. Nevertheless, he pointed out that the ethical rules to which all professional accountants are subject require client-related information to be reported to public authorities where there is a legal responsibility to do so and that such obligations, where they exist, override the duty of confidentiality that otherwise applies to them. He also argued that the extension of AML responsibilities to accountants should be seen as recognition of the significant contribution that the accountancy profession can make to serving the public good, and that the adoption by accountants of compulsory client identification checks and other AML responsibilities might actively help accountants in a practical way by deterring criminals from enlisting their professional help.

Presentation 2

Alan Wood is a Queen's Counsel and head of the Proceeds of Crime Act committee at the General Legal Council.

Alan updated delegates on the work being undertaken to expand the scope of AML regulation under the Proceeds of Crime Act from the current collection of 'financial institutions' to cover practising accountants, attorneys at law and others.

This work has been spearheaded by a special committee set up by the General Legal Council in November 2010. The recommendations made by this committee were presented to the Jamaican Government and accepted in May 2012. Since then the Council has been holding consultative meetings with bodies such as the Caribbean Financial Action Task Force (CFATF) and those representing the persons who will be affected by the extension of the AML regime. The extension of the regime is currently due to come into effect in the summer of 2013 by regulations made under section 94 of the Proceeds of Crime Act.

The action now agreed to was prompted originally by the acceptance by the Government that the AML regime in the Proceeds of Crime Act did not go as far as was required by the FATF standards, being currently restricted to 'financial institutions'.

Alan proceeded to specify the responsibilities that will be extended to accountants and others. He spoke in detail about the concerns held by professional advisers in other countries about the impact of the reporting duty on their professional duty of confidence, citing court decisions in Europe and the UK. In respect of the duty to report suspicious transactions, he confirmed that the obligation would incorporate a defence of legal

professional privilege. However, he pointed out that unless the proposed legislation extended the scope of the defence, legal advice privilege would not be available when accountants acted as independent professional advisers.

Alan also stressed that in his opinion it will be necessary for the bodies that represent the new classes of registered person to issue guidance to their members to ensure they are aware of exactly what is expected of them under the new regime.

Given the need for the new classes of regulated person to be supervised for their compliance with their new responsibilities, it is likely that the General Legal Council will perform this function in respect of attorneys and that the Public Accountants Board will do likewise for accountants.

He concluded by saying that the final form of the new legislative measures was not yet finalised and that there was still time for interested parties to make representations to the Government.

Presentation 3

Michelle Walker is head of the Legal Unit of the Jamaican Ministry of Foreign Affairs and Foreign Trade.

Michelle spoke to delegates about the tools that are available to the Government of Jamaica to comply with and enforce its international obligations, including those mandated by the United Nations (UN), with specific reference to measures associated with the combating of money laundering and terrorist financing.

She identified section 25 of the UN Charter as obliging all member states to implement resolutions passed under Chapter VII of the Charter (which relates to actions decided upon by the Security Council with the aim of maintaining or securing international peace and security).

Complying with such measures has proved to be problematical for Jamaica in the past, since there has been no facilitating legislation in place to enable the authorities to execute one of the key component elements of Security Council resolutions, namely asset freezing. The absence of facilitating legislation has assumed a special significance because of recent changes to the recommendations issued both by FATF and CFATF, especially those relating to action to be taken to impede the proliferation of weapons of mass destruction.

The situation has prompted the Government to act. It is now in the process of introducing to Parliament a United Nations Act, the terms of which are based on comparable legislation already in force in Australia. This new legislation, which is scheduled to be enacted during the 2013/14 Parliamentary session, will implement new UN resolutions by means of regulations made under it – separate regulations will be issued in respect of each relevant Security Council resolution. Its effect will be to require those entities listed under the Terrorism Prevention Act 2005 (TPA) to report on whether they are in possession of assets owned by entities listed in the regulations (which may conceivably be actual terrorist organisations or other types of entity, including nation states). Accordingly, those entities that are currently affected by the TPA, and those that may become so affected by future expansion of the scope of AML/CTF regulation, will be required to become part of the framework of compliance with UN sanctions.

Presentation 4

Maldria Jones-Williams is deputy superintendent of police, JCF Fraud Squad.

Maldria spoke to delegates about how the work of her agency contributes to the fight against money laundering in Jamaica.

She began by reminding delegates of the scope of the Proceeds of Crime Act and of the current responsibilities of designated financial institutions to report information relating to suspicious transactions to the Financial Intelligence Division (FID). These reporting responsibilities are seen as providing potentially useful information on the basis of which prosecution and recovery action can be taken. She quoted statistics to show that over 700m Jamaican dollars (JMD) had been recovered by the authorities in 2011.

Maldria gave the conference a number of examples of methods known to be used by criminals to launder money in Jamaica. These included the following.

SMURFING

This is a common technique designed to avoid detection when placing substantial funds into the financial system. The practice involves breaking up large amounts of money into smaller batches and placing each of those batches into the system individually via different banks. The aim of this process is to avoid the 'red flag' controls that financial institutions are obliged to operate when receiving deposits that exceed minimum value thresholds.

LOTTERY FRAUD

Lotteries that pay out large cash prizes represent an attractive, albeit expensive, option for laundering large sums of liquid funds. While the chances of winning major prizes may be small for

ordinary gamblers, if enough cash is invested in buying tickets the odds against winning can be reduced significantly, and winning a jackpot will result in a windfall of 'clean' money.

FALSE/GHOST ACCOUNTS

As the first step to accessing the legitimate financial system is usually to open an account with a reputable financial institution, criminals will seek to identify opportunities to gain such access in ways that enable them to maintain their anonymity. They attempt to do this by exploiting complacency, or complicity, on the part of individual institutions that permit them to open accounts under false names. Such practices underline the importance of institutions conducting rigorous client identification checks.

Integral to the approach of money launderers was, she said, a willingness to invest substantial amounts of effort and money to place funds into the financial system and subsequently to complete the process of 'cleansing' those funds of their association with criminal acts. These efforts can take the form of financial inducements to bank officials, police officers, customs officials and politicians. They can also take the form of actual or threatened violence against officials or anyone else who is seen to be a threat to the perpetrators' aims. In this way, the process of money laundering was an active contributor to violent crime and, in particular, contributed to the trade in arms and ammunition.

A major dimension of money laundering in the Caribbean is the international trade in illegal drugs. This trade, although criminal and socially

destructive, offers the prospect of huge profits for those involved in managing and operating the process. Since money laundering provides the channel for those profits to be retained and used, both for private consumption and investment in further criminal activity, it is vital, she said, for war to be waged by society not only on the drugs trade itself but on the 'business of drugs'. In other words, it is necessary to challenge the various means whereby the trade is financed and the profits from it retained.

As a former teacher, she concluded her talk by urging delegates to remember their 'A B Cs'. In this case, ABC stood for:

- Assume nothing
- Believe nothing
- Check everything.

This amounted to a plea to accountants and others involved in AML/CTF issues to retain a sense of scepticism when dealing with client transactions and to be prepared to look into the background of any such transactions, wherever appropriate, in order to establish whether they are or are not bona fide.

Presentation 5

Everton Ferguson FCA, FCCA is senior manager with Ernst & Young and spoke to the conference on behalf of the Institute of Chartered Accountants of Jamaica.

Everton discussed the detail of the reporting requirements in the Proceeds of Crime Act, which are to be extended to professional accountants and other classes of person in the near future.

Section 94 of the Act identifies the range of persons who are to be covered by AML responsibilities regarding compliance and reporting. It does so by cross-referring to the Fourth Schedule of the Act: this, at present, defines a regulated person only as a 'financial institution' (as further defined). Nonetheless, the Schedule makes clear that the list of regulated persons may be added to by the identification of specified 'non-financial institutions' (this will be the legal basis for the extension of the scope of the framework of regulation later in 2013).

Section 94 says also that a regulated person commits an offence if he/she does not make a report to the authorities in the situation where he/she knows or believes, or has reasonable grounds for knowing or believing – in all cases where the information concerned is discovered in the course of business – that another person has engaged in an act of money laundering.

Section 94 also calls on regulated

persons to pay special attention to all complex, unusual and large transactions, and any unusual patterns of transaction that appear to them to be inconsistent with the normal range of transactions carried out by the client concerned. The Act also makes clear that the requirement to report does not apply in two specific situations, viz.

- If the regulated person has a 'reasonable excuse' for not reporting (whether or not an excuse is 'reasonable' will ultimately be for the courts to decide but it may take into account circumstances of intimidation and duress).
- If the regulated person is an attorney at law and the information on which the knowledge or belief is based came to him/her in circumstances where legal professional privilege applies – by virtue of this provision, attorneys at law, who are due to be added shortly to the list of regulated persons – already enjoy an exemption from the requirement to report.

Presentation 6

Justin Felice is chief technical director at Jamaica's Financial Intelligence Division (FID).

Justin reported to the conference that Jamaica faces real threats from both money laundering and terrorist financing and is not immune from international developments on both issues. To illustrate this he relayed to delegates the recent case of a Pakistani man who, following a circuitous journey, was arrested at Kingston airport, and cited evidence of an increase in the amount of cocaine that was being transported to the US via Jamaica.

He stressed that the common currency of criminal activity tends to be cash, since settling bills in cash leaves no audit trail. Because of this, regulated persons must be constantly alert to instances where significant amounts of cash are used in the course of business.

Justin welcomed the current plans to extend the scope of the Proceeds of Crime Act to cover groups such as accountants and attorneys at law but suggested that more still needs to be done to increase the Act's scope. He suggested that significant amounts of 'dirty' money are spent on luxury items such as property (one residence restrained by the authorities had a value of US\$1.6 million) and cars: in view of this, property agents and car dealerships should be covered by responsibilities to report information on suspicious transactions.

Justin highlighted the role played in money laundering by lottery 'scams', especially those based in the US. These fraudulent schemes operated by raising large sums of money with no intention of paying out the advertised prizes. He estimated that around JMD1 billion was

transmitted back to Jamaica every year from these schemes. Not only did this amount to a significant criminal activity in itself, but the huge profits being made from the scams had been linked by the police to a series of murders in Jamaica.

He set out a 'new paradigm' for taking forward the fight against money laundering and terrorist financing in Jamaica. This would need to involve the following elements:

- enhanced financial support from central government to help law enforcement agencies in their efforts to 'take the profit out of crime' and to strip criminals of their assets
- new, focused strategies to tackle tax crime and to achieve more effective screening at customs points
- a multi-agency approach to achieving efficiencies in the dissemination and processing of information relevant to the prosecution of serious crime
- enhanced cooperation with international partners in the US, UK, EU and elsewhere
- membership on the part of Jamaica, of the Egmont Group, the international network of government-level financial intelligence units: joining was seen as a key step for enhancing the credibility of Jamaica's AML/CTF regime and tapping into intelligence and best practice that could assist the authorities here in their continuing efforts.

Justin concluded by citing statistics that demonstrated the results that the authorities in Jamaica were achieving. In 2012, the sum of restrained assets was JMD1.6 billion; cash seizures in 2012 amounted to JMD52m (up from 21m in 2011). This, he said, was evidence that cooperation between the FID and the police and law enforcement agencies was having a significant effect on the fight against crime and that investing in these efforts should be seen by the Government and the rest of society as 'good business'.

Question and answers

A number of points were raised and discussed during a panel session that involved presenters and delegates.

JOHN DAVIES

John Davies suggested that, in the interests of promoting and preserving confidence in the system of reporting, the authorities should consider two things.

Firstly, it may be more efficient, from the perspective of both enforcement and the regulated sector, if the authorities were to specify whether they wished to receive information in STRs in a particular format, or for the information to be of a certain length or to contain certain stipulated details.

Secondly, while this was necessarily problematical because of the issue of confidentiality that must attach to the processing of STRs, it would be helpful if the authorities were able to give feedback periodically on how the information contained in STRs had helped to bring prosecutions and convictions.

He also warned that the authorities in Jamaica must learn from the mistakes that had occurred when the AML regime was first extended to professional advisers in the UK in 2004, and ensure that information communicated to the authorities via STRs is managed with the utmost security so as to not to undermine the personal position of reporters.

STEPHEN HOLLAND

Stephen Holland, company secretary of Insurance Company of the West Indies (ICWI), welcomed the extension of AML/CTF compliance responsibilities to accountants and others, but stressed that the authorities in Jamaica must also address the expectation, as laid down in the FATF standards, that those persons are supervised appropriately and to the same level that financial institutions are currently supervised.

JUSTIN FELICE

Justin Felice informed delegates that the FID now receives in excess of 300,000 STRs a year from entities currently regulated under the Proceeds of Crime Act. While this indicated a very high level of engagement on the part of the regulated community, which was welcomed, this level of reporting has proved to be extremely challenging for the FID to manage, given its limited resources. The FID is therefore considering options to make the process more streamlined and efficient.

Specifically, he announced that the FID hopes shortly to introduce a system of online reporting, which he was confident would serve the interests of both sides. This announcement was greeted enthusiastically by delegates.

On the question of 'simplified' due diligence (CDD) checks, which the revised FATF standards say national authorities may allow in 'low-risk' situations, Justin urged caution.

Any attempt to reduce the compliance burden for smaller entities and lower-risk situations must acknowledge the known practice of criminals to target and exploit the most vulnerable points in the AML/CTF system.

Any reduction in the amount of information sought via CDD/'know your client' (KYC) checks must not undermine the basic necessity for regulated persons to identify each client and ascertain his/her motives properly.

Concluding remarks

Given the forthcoming changes to Jamaica's AML/CTF regime, the conference was a very timely opportunity to communicate not only what accountants and others will shortly be expected to do in the name of combating money laundering and the financing of terrorism, but why they are being expected to take on these new responsibilities.

The conference suggested that delegates already had a good level of awareness of the steps that are or will be expected of them, and that financial institutions had a high level of engagement with the current requirements for them to file with the authorities information relating to suspicious transactions. The big challenge now will be for that same level of engagement to be replicated among those parties who are to be added to the compliance regime in the near future, and for the system to be able to put to productive use the anticipated increase in the amount of information supplied to it.

John Davies said: 'The extension of the Proceeds of Crime Act compliance requirements to professional advisers and others opens up a new front in the struggle against financial crime. Accountants understand that they are obliged to comply with all legal requirements that are imposed on them and will therefore be expected to cooperate with the authorities to the extent of providing them with information that the law demands. Key, though, to the maintenance of a constructive level of engagement between regulators and regulated entities will be ensuring the security of information that is supplied by the latter. When they file reports on the affairs of their clients, regulated persons must be confident that the identity of the reporter is not divulged, to the client or to any other person. This is vital if trust in the system is to be achieved and maintained.'

Leon Anderson, in summarising the seminar, said: 'This partnership with the ACCA forms part of the FSC's Public Education Mandate to advance knowledge for its varying stakeholders. Traditionally, the FSC has held annual AML/CFT Seminars for its licensees and we were pleased when approached by the ACCA to partner as we thought that now we could incorporate representatives from the accounting profession. The FSC hopes that the presentations which were generated at the seminar will advance and strengthen the AML/CFT monitoring regime in financial institutions in Jamaica.'

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