



Financial Action Task Force

Groupe d'action financière

**THIRD MUTUAL EVALUATION REPORT
ANTI-MONEY LAUNDERING AND
COMBATING THE FINANCING OF TERRORISM**

JAPAN

17 OCTOBER 2008

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PREFACE

INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF JAPAN

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Japan¹ was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004². The evaluation was based on the laws, regulations and other materials supplied by Japan, and information obtained by the evaluation team during its on-site visit to Japan from 6 to 21 March 2008, and subsequently. During the on-site the evaluation team met with officials and representatives of all relevant Japanese government agencies and the private sector. A list of the bodies met is set out in Annex 2 to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of members of the FATF Secretariat and FATF experts in criminal law, law enforcement and regulatory issues. The team was led by Mr. Rick McDonell, Executive Secretary of the FATF, and included Mrs. Alexandra Eckert, Administrator of the FATF Secretariat; Mr. David Shannon, Principal Executive Officer of the APG Secretariat; Mr. André Corterier, Referent, Federal Finance Supervisory Authority (Germany), who participated as a legal expert; Mr. Brian Grant, Director of Global affairs, US Department of Treasury (United-States), who participated as a financial expert; Mr. Dan Murphy, Senior Counsel, Department of Justice (Canada), who participated as a legal expert; Mrs. Chuin Hwei Ng, Deputy Director, Monetary Authority of Singapore, who participated as a financial expert; Mr. Bill Peoples, New Zealand Police, who participated as a law enforcement expert and Mr. Bazarragchaa Tumurbat, Head of the FIU of Mongolia, who participated as a law enforcement expert. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in Japan as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Japan's levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2).

¹ All references to country apply equally to territories or jurisdictions.

² As updated in February 2008.

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 seizure 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 IX³, 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.

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

³ 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.

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.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1 *General information on Japan*

45. Japan is an island chain located in Eastern Asia, between the North Pacific Ocean and the Sea of Japan, at the east of the Korean Peninsula. It is constituted of four main islands Hokkaido, Honshu, Shikoku, Kyushu and the archipelago of Ryu-Kyu covering an area of more than 377 000 square kilometres, divided in 47 prefectures. Tokyo is the capital city and the political, economic and administrative centre. As of the end of July 2007 the population of Japan is estimated at about 127 million, the average life expectancy is 82 and the median age is 43.5. The population growth rate is negative and there is no immigration, Japanese represent 98.5% of the population.

Economy

46. Japan is an industrialized country. After three decades of important growth, the Japanese economy saw a major slowdown starting in the 1990s. Japan remains a major economic power and is the world's second most powerful economy with current-price GDP valued in 2006 at USD 4 364 trillion, and the third-largest after the United States and China measured on purchasing power parity (PPP) basis. The average per capita GDP was USD 32 074 and the real GDP growth rate in 2006 was 2.4%. The Japanese economy is dominated by services (73.1%) and industry (25.3%); agriculture represents 1.6%.

47. In 2006, Japan posted USD 615.1 billion in exports and USD 533.5 billion in imports. The main trading partners are China and the United States. Japan's main export goods are passenger cars, electronic equipment and machinery mostly to Chinese Taipei, Hong Kong, the Republic of Korea, Singapore, China and the U.S. The most important imported goods are raw materials, such as oil and wood. Oil is supplied from the Middle East, especially Saudi Arabia and the United Arab Emirates. The main importers of these products are the U.S., China, Indonesia, the Republic of Korea, Germany and Australia.

System of government

48. Japan is a constitutional monarchy with a parliamentary government: the chief of state is the Emperor AKIHITO and the head of the government is the Prime minister, elected by the Diet. This representative democracy is made up of executive, legislative and judicial branches. The executive branch is the Cabinet (Naikaku) which is comprised of the Prime minister and 14 departmental ministers, the Cabinet is appointed by the Prime Minister. The legislative branch, the Diet (Kokkai), consists of the House of Representatives (Lower House, 480 seats) and the House of Councillors (Upper House, 242 seats). There is universal adult suffrage from 20 years of age. At the time of the on-site visit, the ruling party was a coalition of the Liberal Democratic Party (LDP) and the new Komeito. Four other major political parties are the Democratic Party of Japan, Japan Communist Party, Komeito and Social Democratic Party. The judicial branch is made up of 438 summary courts, one district court and family court in each prefecture, 8 high courts and the Supreme Court.

Legal system and hierarchy of laws

49. The constitution of Japan dated on 3 May 1947 states a principle of separation of powers: power of legislation, administration and judiciary respectively exercised by the Diet, the Cabinet and the Supreme Court (Articles 41, 65, 76). The legal system is based on the civil law system and was modelled after the German civil law system. However, after World War II, the United-States have heavily influenced the Japanese system in introducing for example of the principle of judicial review. In addition, the influence of Japan's traditional values remains important.

50. The National Diet is the sole law-making body in Japan. However, draft bills come from government agencies and are submitted to the Diet through the Cabinet for discussion and vote. The hierarchy of law is the following:

- Constitution
- Treaties and international Agreements
- Codes and Laws
- Cabinet orders
- Ministry Ordinances
- Ministry Notification.

51. Judgements of the Supreme Court are considered as legally binding on the lower courts.

Transparency, good governance, ethics and measures against corruption

52. Under the provisions of the Act on Protection of Personal Information held by Administrative Organs anyone has the right to request disclosure of official information. Through more active disclosure, Japan aims for a fair and democratic administration to be promoted under appropriate understandings and criticism by the nation, and for complete accountability of governmental activities.

53. Japan signed the United Nations Convention against Corruption in December 2003. It was approved by the Diet in June 2006, but necessary enabling laws or internal measures have not been enacted as at the date of the writing of this report. Japan concluded the OECD Convention on Combating Bribery of Foreign Public Officers in international Business Transactions in October 1998. Japan has also endorsed the ADB-OECD anti-corruption initiative.

54. Various acts and measures dealing with ethics have been adopted and are applicable to the public services, the police and legal professions including prosecutors and judges.

1.2 General Situation of Money Laundering and Financing of Terrorism

Money laundering

55. Based on the cases cleared by the Police in 2006 and the trends observed during the last three years, the Japan authorities indicate that the major sources of criminal proceeds are drug offences, fraud and "loan-sharking" (*i.e.* illegal money lending).

56. The National Police Agency reported for 2006 that most of the drugs abused within Japan are smuggled in from overseas. The process of distribution often involves criminal organisations such as the Boryokudan (Japan's organized crime groups, see below). The most widely used illegal drugs in Japan is methamphetamine. Although the number of people arrested for methamphetamine offences had fallen to approximately 15 000 by 1994, in 1995, the figures began to rise again. Methamphetamine abuse has been expanding. For example, its abuse by juveniles such as junior high school and high school students has increased, and methamphetamine has become easier to obtain through illegal sales, which are now carried out in urban areas by Iranian drug trafficking organisations in addition to the Boryokudan. Japan is promoting comprehensive countermeasures: the Government's Headquarters for the Promotion of Measures to Prevent Drug Abuse has established "the New Five-Year Drug Abuse Prevention Strategy" in July 2003, including the promotion of crackdowns on end abusers, and the development of public information and educational activities to prevent drug abuse.

57. More recently, remittance frauds (Furikome frauds) have been discovered. Some of them involve Boryokudan. The four major types of frauds are: *i*) the "Ore-ore" fraud is a method of fraud in which phone calls are made to victims where swindlers pretend 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 out of court settlement, and convince victims to transfer the money to a certain savings account; *ii*) the fictitious billing fraud uses postal services or the Internet sending documents or e-mails demanding money and valuables based on the fictitious bills, by which the general public is persuaded to transfer money to designated accounts; *iii*) loan-guarantee fraud is a method of fraud where, in spite of not having the intention of making a loan, 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 is a method of fraud where swindlers pretend to be tax officers instructing procedure for tax refund and have victims use ATM to transfer money to designated accounts.

58. Another significant trend of money laundering consists of breaches of the Investment Act. The scheme consists of repeated loans of small amounts, around JPY 50 000 (USD 417) at a higher interest rate than the legal interest rate. Since 2003, the total amount of this kind of loans represent between JPY 20 and 35 billion (USD 166 and 290 millions).

59. "Boryokudan" literally means "violence group": this is the term used by the Japanese police to describe the organized crime groups commonly known in the English-speaking world as "yakuza". According to the statistics provided by the Japanese Police relating to the number of ML cases cleared, in 2006 Boryokudan were involved in around 40% of the cases, the origin of funds is prostitution, gambling and "loan-sharking". Japan set up various measures to combat the Boryokudan. Nevertheless, as of now the number of Boryokudan involved in AML cases is rising, as well as the number of cases.

Terrorist financing

60. 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, organisations which committed terrorist attacks are based in and have been active in Japan.

61. 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, such as attacks on police stations and bank robbery. The JRA has been responsible for major terrorist incidents in the 1970's such as the attacks at Tel Aviv's Lod Airport, the French Embassy in The Hague, and the U.S. and Swedish Embassies in Kuala Lumpur. It also hijacked a JAL flight in 1977 and forced it to land in Dhaka, Bangladesh.

62. Aum Shinrikyo, the cult organisation that had committed multiple felonious acts of terrorism such as the Tokyo subway sarin gas attack (20 March 1995), has been responsible between 2003 and 2006, of various crimes involving drug selling and fraud for the purpose of fund-raising. There are also cases of violent rightist groups carrying out crimes of intimidation with the aim of obtaining funds.

1.3 Overview of the Financial Sector and DNFBP

Financial institutions

63. Japan is a major financial centre in Asia and in the world. At the time of the on-site visit, the figures in the table below were provided by the Japanese authorities.

Type of institution	Number of financial institutions as of March 2008	Total assets as of March 2008 (in trillion Yen)
Banks (total)	1 802	1 452
Commercial banks	213	1 046
Shinkin banks	287	147
Labour banks	14	20
Credit cooperatives	169	21
Agricultural cooperatives	903	136
Fishery cooperatives	214	3
Norinchukin bank	1	68
Shokochukin bank	1	11
Insurance companies	87	370
Securities companies	641	142
Futures commission merchants	70	18 billion Yen
Trust companies	12	11 billion Yen
Money lenders	11 832	NA

64. Japan has a total of 213 commercial banks, including 67 foreign banks, with assets of JPY 1 046 trillion. There are also 287 Shinkin banks, 14 Labour banks, the Norinchukin bank and the Shokochukin bank. In addition, Credit cooperatives, Fishery and Agricultural cooperatives operate in Japan and focus on business sector oriented banking. The Management Organisation for Postal Savings and Postal Life Insurance management since the privatization of the Japan Post on 1 October 2007.

65. The insurance sector is composed by 38 life insurance companies (34 Japanese companies and 4 foreign companies) and 48 non-life insurance companies (26 Japanese companies and 22 foreign companies). The Management Organisation for Postal Savings and Postal Life Insurance manages the postal life insurance services previously handled the Japan Post.

66. There are 319 securities companies, 123 investment trust management companies, 196 financial futures business operators in Japan and 3 securities finance companies with total assets of JPY 142 billion. Besides these companies, there are 4 158 “specially permitted business notifying persons”, the total asset is not available. The number of registered business operators should steadily

increased due to the expansion of the scope of the regulated businesses under the Foreign Instruments and Exchange Act.

67. The table below indicates what type of financial institutions in Japan conduct the financial activities specified in the Glossary of the Methodology and to which the FATF 40 Recommendations apply.

Types of financial activities to which the FATF 40 Recommendations apply	Types of financial institutions in Japan that conduct these specified activities
Acceptance of deposits and other repayable funds from the public	Banks, long-term credit banks, trust banks, cooperative financial institutions
Lending	Banks, long-term credit banks, trust banks, cooperative financial institutions, moneylenders, financial instruments business operators, insurance
Financial leasing	Financial leasing companies (Articles 2.2.(34) of Act on the Prevention of Transfer of Criminal Proceeds).
The transfer of money or value	Banks, long-term credit banks, trust banks, cooperative financial institutions,
Issuing and managing means of payment (e.g. credit cards and debit cards, cheques, traveller's cheques, money orders and banker's draft, electronic money)	Banks, long-term credit banks, trust banks, cooperative financial institutions credit card companies (Articles 2.2(35) of Act on the Prevention of Transfer of Criminal Proceeds)
Financial guarantees and commitments	Banks, long-term credit banks, trust banks, cooperative financial institutions, credit guarantee corporations
Trading in money market instruments (cheques, bills, CDs, derivatives etc.)	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in foreign exchange	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in exchange, interest rate and index instruments	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in transferable securities	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in commodity futures trading	Futures commission merchants
Participation in securities issues and the provision of financial services related to such issues	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators
Individual and collective portfolio management	Trust banks, financial instruments business operators, trust companies
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, trust companies
Otherwise investing, administering or managing funds or money on behalf of other persons	Financial instruments business operators, trust companies
Underwriting and placement of life insurance and other investment related insurance	Insurance companies
Money and currency changing	Banks, long-term credit banks, trust banks, cooperative financial institutions, money exchangers

DNFBPs

Real estate agents

68. In Japan, any person who intends to operate a real estate transaction business must obtain a license from Minister of Land, Infrastructure, Transport and Tourism (MLIT) when the person establishes the offices in two or more prefectures or from the prefectural governor having jurisdiction over the area where the office(s) is/are located when the person establishes the office(s) in one prefecture only. The number of licensed real estate agents is approximately 130 000 as of the end of March 2006.

Dealers in precious metal and dealers in precious stones

69. Based on a 2002 survey by METI, in Japan, there are 33 257 dealers in precious metal and precious stones. METI (Manufacturing Industries Bureau and Agency for Natural Resources and Energy) is the competent administrative agency for these dealers. There is currently no industry act that governs dealers in precious metal and precious stones, and they are also not required to be registered or licensed by METI. They are subject to the AML/CFT regime since 1 March 2008, but are not currently subject to AML/CFT supervision. METI has general power under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and apply sanctions.

70. Besides, “antiques” can also deal with precious metals and precious stones. In 2006, Japan had 641 252 licensed “antique” businesses authorised to sell and buy among other things precious metals and precious stones. Persons and businesses of this nature have to be licensed by the Prefectural Public Safety Commission prior to beginning their business. They are subject to the AML/CFT regime since 1 March 2008, but are not currently subject to AML/CFT supervision. The various Prefectural Public Safety Commissions have general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and apply sanctions.

Legal professionals

- *Certified administrative procedures specialists (CAPS)*

71. Certified administrative procedures specialists prepare documents on behalf of clients for filing with government and public offices. As of October 2006, there were 39 112 certified administrative procedures specialists and 101 certified administrative procedures specialist corporations.

- *Practicing attorneys*

72. Practicing attorneys must be registered with the Japan Federation of Bar Associations through the local bar association of which they are a member. As of 31st of March 2007 there were 23 119 members of bar associations in Japan and, as of 1st of April 2007 there were 252 foreign lawyers.

- *Judicial scriveners*

73. Judicial scriveners provide various services, including representation in procedures related to registration or deposit administration; preparation of document or electromagnetic records to be submitted to a court, public prosecutor or Legal Affairs Bureau and performing services relating to minor court lawsuit representation. In addition, they can be a trustee, administrator or manage the property of another person, guardian or curator. As of 31 December 2006, there were 18 521 judicial scriveners and 195 judicial scrivener corporations located in Japan.

Accountants

- *Certified public accountants (CPA)*

74. The mission of CPA is to ensure the fair business activities of companies and the protection of investors and creditors by securing the credibility of financial statements and other related financial information from their independent standpoint as auditing and accounting professionals. As of the end of March 2007, 170 auditing firms and 17 264 persons were registered at the Japanese Institute of CPAs. Supervision of this profession is the responsibility of the FSA, which can also impose sanctions.

- *Certified public tax accountants (CPTA)*

75. The mission of CPTAs is to fulfil taxpayer expectations as independent and impartial tax experts in keeping with the spirit of the self-assessment system, and to promote the proper fulfilment of tax obligations as outlined in acts and regulations concerning tax. The CPTAs system has been established with the aim of contributing to the smooth and proper operation of the self-assessment system through the taxpayers' fulfilment of their own tax obligations with assistance from the CPTAs, and utilizing the capacity and insight of the CPTAs as tax experts.

76. The number of registered CPTAs is 70,768. The number of notified CPTA corporations is 1,443 at the end of September 2007.

Trust and Company Service Providers

- *Trust companies*

77. Trust business in Japan is defined as “the business of accepting trusts” (Article 2 of the Trust Business Act) and includes provision of services to form or create a trust, acting as a trustee or arranging for any person to act as trustee, and provision of trust administration services. A license is required to conduct a trust business (Article 3), except for a “management-type” trust business defined as one in which the discretion of the trustee is restricted. Trust companies can either be banks or other financial institutions or non-financial institutions or general incorporated companies.

78. As of end-March 2007, there are 58 banks operating as trust companies with JPY 739 trillion in trust assets and 12 non-financial trust companies with trust assets of JPY 11.3 billion.

79. “Self-trusts” are allowed under the Trust Business Act. However there are currently no such trusts in Japan as the pertaining provisions are not yet into force.

- *Postal Service Business*

80. Postal service business operators provide customers with the service of using the address of their domicile or office as the customer's own for purposes of receiving postal mail. METI (Commerce and Information Policy Bureau) is the competent administrative agency for these operators. There is currently no industry act that governs these operators, and these operators are also not required to be registered with or licensed by METI. Based on a 2007 survey by METI, there are 1200 such operators in Japan.

Specific characteristics of certain professions in Japan

Telephone receiving services providers

81. Telephone receiving service operators provide customers with answering, messaging and call forwarding services. MIAC (Telecommunications Consumer Policy Division) is the competent administrative agency for these providers. There is currently no industry act that governs these operators, and these operators are also not required to be registered with or licensed by MIAC. Based on a 2007 survey by MIAC, there are 300 such operators in Japan. This profession is subject to the AML/CFT system, however it does not fit with the characteristics of the professions and businesses described in the Methodology. Therefore, this business is not considered as DNFBP in this report.

Notaries

82. In Japan, notaries must prepare documents or electromagnetic records notarising a legal act or relationships under civil law. They are appointed by the Minister of Justice. Japanese notaries do not handle their clients' money nor participate or manage legal entities or any other activity set out under Recommendation 12.1 d) of the Methodology. As a consequence, they don't fall under the definition of DNFBPs.

Casinos

83. Articles 185 and 186 of the Japanese Penal Code sanction gambling and habitual gambling. Thus casinos and internet casinos are prohibited in Japan. However, the Prefectural Public Safety Commission does license "business parlors" and casino bars (card games, roulettes, pachinko, arcade games...) in accordance with Article 3 of the Act on the Control and Improvement of Entertainment and Amusement Business.). However, exchanging chips, pachinko balls... acquired from the entertainment for money or prizes is prohibited by the law.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

84. Under the Japanese Companies Act, there are four types of companies *i)* stock company; *ii)* general partnership company; *iii)* limited partnership company and *iv)* limited liability company. Every company is a juridical person and its domicile is to be the location of its head office.

Joint-Stock Company

85. The shareholders of a joint-stock company own it (*i.e.* the shares in the joint-stock company). A legal person as well as a natural person may be a shareholder. The joint-stock companies are conducted in the following manner depending on the joint-stock company's governance structures:

- a) If the joint-stock company is a company with a board of directors (but without committees): Each of the representative directors and other designated directors may conduct corporate affairs in accordance with the board's decisions (Act§362.2(1), §363).
- b) If the joint-stock company is a company without a board of directors each director may conduct corporate affairs in accordance with decisions made by a majority of the directors (Act§348.1 and 2).
- c) If the joint-stock company is a company with committees, each of the representative officers and other officers may conduct corporate affairs in accordance with the board's

decisions. However, the officers may make the decisions (other than some exceptional matters) if the board delegated such decisions to the officers (Act§416.1 and 4 and 418).

Partnership Company

86. A general partnership company, a limited partnership company and a limited liability company (collectively referred to as “membership companies”) are legal persons. Membership of a general partnership company comprises one or more unlimited liability members. Membership of a limited partnership company comprises one or more limited liability members as well as one or more unlimited liability members. Membership of a limited liability company comprises one or more limited liability members.

87. The members of a partnership company own the company (*i.e.* the equities in the company). A legal person as well as a natural person may be a member. In general, each member may conduct corporate affairs in accordance with decisions made by a majority of the members (Act§590.1 and 2).

General Incorporated Associations

88. A general incorporated association does not distribute dividends. It is a legal person. The members of a general incorporated association own the general incorporated association. A legal person as well as a natural person may be a member of the general incorporated association. However, as opposed to companies, technically no contribution is required from the members of the incorporation. No member may be granted rights to receive any dividends or liquidation dividends (Act§11.2).

- a) If the general incorporated association has a board of directors, each of the representative directors and other designated directors may conduct corporate affairs in accordance with the board’s decisions (Act§90.2 and 91.1).
- b) If the general incorporated association has no board of directors, each director may conduct corporate affairs in accordance with decisions made by a majority of the directors (Act§76.1 and 2).

General Incorporated Foundations (GIF)

89. A general incorporated foundation is a foundation with legal personality. It has no members. No founder may be granted rights to receive any dividends or liquidation dividends (Act§153.3). Each of the representative directors and other designated directors (Act§197, 90.2 and 91.1) may conduct corporate affairs in accordance with the decisions of the board of directors although certain material matters of the general incorporated foundation must be decided by the board of councillors (Act§178.2).

90. Directors of a general incorporated foundation are elected at the board of councillors’ meeting (Act§177 and §63.1), and representative directors are elected at the board of directors’ meeting (Act§197 and 90.2(3)). The general incorporated foundation must prepare minutes of the board of councillors’ meetings and the board of directors’ meetings, and keep them at its principal office (Act§193.1 and 2, 197 and 97.1). Those minutes must be disclosed to councillors and creditors of the GIF at their request (although the disclosure is subject to court permission with respect to minutes of the board of directors’ meetings when requested by a creditor) (Act§193.4, 197, 97.2 and 3).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

91. The “Ministerial Meeting Concerning Measures Against Crime” was established in September 2003, with membership of the entire Cabinet, aiming to re-establish Japan as “the safest country in the world”, in response to the worsening level of security in recent years (increase in the number of reported crimes and decrease in the crime clearance rate) as well as to growing concern for crimes as shown in various opinion polls. In December 2003, meeting participants drafted the “Action Plan for the Realization of a Society Resistant to Crime”. This action plan included as an item within “protection of the economy and society from criminal organisations” the “Promoti[on of] money laundering countermeasures: Prevent the criminal proceeds to be used to sustain or enlarge a criminal organisation or to be reinvested in future criminal activities, or its negative impact on legitimate economy when these criminal proceeds are invested in business activities, by making thorough efforts to investigate and prosecute money laundering offences or predicate offences. For this purpose, suspicious transaction reports from financial institutions etc. should be properly collected, arranged, and analyzed, and effectively utilized by investigative authorities”. Regular follow-ups are conducted on how the countermeasures are implemented.

92. In July 2001, the “Headquarters for Promotion of Measures Against Transnational Organized Crime” (Director: Chief Cabinet Secretary) was established within the Cabinet for the purpose of comprehensively and proactively promoting effective and appropriate measures against international organized crimes through a close cooperation among relevant governmental agencies. In August 2004, the said Headquarters was reorganized as the “Headquarters for Promotion of Measures Against Transnational Organized Crime and International Terrorism” with the objective of preventing terrorism and ensuring public security in consideration of the growing threat of international terrorism.

93. In December 2004, the Headquarters established the “Action Plan for Prevention of Terrorism” because of concern that terrorist acts might directly target Japan, as multiple terrorist acts were occurring throughout the world – including the simultaneous multiple terror attacks of September 11, 2001 in the United States – and Japan was designated as a target by international terrorists. Among the 16 “urgently needed terrorism prevention measures ” in this Action Plan, “measures to fully implement FATF Recommendations” was listed, besides preventing terrorists from entering Japan; strengthening control of materials that could be potentially used for terrorist attacks; and so forth. Thus nine relevant Ministries and Agencies (NPA, MOJ, FSA, METI, MLIT, MOF, MHLW, MAFF, MIAC) were mandated to prepare a bill aimed at fully implementing the FATF Recommendations.

b. The institutional framework for combating money laundering and terrorist financing

(i) Ministries

94. The **Ministry of Justice** (MOJ) is responsible for: *i*) the planning of and proposals for criminal legislation; *ii*) the extradition of offenders, mutual legal assistance in criminal investigations, and other mutual legal assistance; as well as *iii*) matters related to public prosecution.

95. At the Criminal Affairs Bureau, the International Affairs Division is responsible for international cooperation in the area of criminal justice, participating in talks to conclude bilateral treaties on mutual legal assistance in criminal matters and extradition, as well as participating in negotiations on multilateral treaties that address international crimes. The Division also proactively participates in international and regional efforts and activities to cope with international crimes, and deals with mutual legal assistance and extradition in real cases as well as the application and management of concluded international treaties.

96. In performing its extradition role, the Division examines each extradition request received, determines whether or not extradition is appropriate, assists Tokyo High Public Prosecutors' Office to apply to Tokyo High Court for a case review, and arrange a handover of a fugitive to the foreign country making such an extradition request.

97. The **Ministry of Foreign Affairs** (MOFA) is basically responsible for the conclusion of relevant conventions for the purpose of AML/CFT. Besides, it is in charge of making public notification of those individuals and entities whose assets are to be frozen, serves as a focal point for the exchange of information on the sanctioned persons and entities with the United Nations and foreign countries, and coordinates with countries concerned in making up such lists.

98. Within the MOFA the International Organized Crime Division and International Counter-Terrorism Cooperation Division in the Foreign Policy Bureau work on fighting against money laundering and the prevention of terrorist financing in their respective capacities. MOFA also takes a role in the process of provision of evidence to a foreign authority under the Law for International Assistance in Investigation and Other Related Matters (LIAI).

99. As the national agency with the role to aim at ensuring public safety of Japan, the Public Security Intelligence Agency conducts wide-ranging intelligence activities and investigation into activities of terrorist organisations, based on the Subversive Activities Prevention Act and the Act Regarding the Control of Organisations Which Committed Indiscriminate Mass Murder. Clearing up how the money of those organisations moves is one of the important tasks.

100. Since the privatization of the Japan Post in October 2007, the **Ministry of Internal Affairs and Communications** (MIAC) has jurisdiction over the remaining affairs of the Japan Post transferred to the Management Organisation for Postal Savings and Postal Life Insurance.

101. Besides reports and on-site inspections under Act on the Prevention of Transfer of Criminal Proceeds, the MIAC may require the Management Organisation for Postal Savings and Postal Life Insurance to report on the status of its services. The minister may also require that MIAC officials are given access to the offices of the organisation for the purpose of inspecting the status of services pursuant to Article 64, paragraph 1, of Act on General Rules for Incorporated Administrative Agency when he deems it necessary to do so pursuant to enforcing Act on General Rules for Incorporated Administrative Agency.

102. The **Ministry of Health, Labour and Welfare** (MHLW) is jointly with the Prime Minister in charge of licensing and revision of articles of incorporation, supervision and inspection of Labour Bank and The Rokinren Bank.

103. At the **Ministry of Economy, Trade and Industry** (METI), the *Commerce and Information Policy Bureau* is in charge of futures commission merchants, the credit card, and finance lease sectors, and the Small and Medium Enterprise Agency oversees in charge of the Shoko Chukin Bank. Futures commission merchants are jointly supervised by METI and MAFF.

104. The *Commodity Derivatives Division* supervises transactions on commodity markets and futures commission merchants, based on a system of supervision and inspections "the Supervision Office and the Inspection Office" established within the Commodity Derivatives Division in 2005.

105. The *Commercial and Consumer Credit Division* is in charge of instalment sales, specific prepaid transactions and instalment credit, affairs concerning leasing and other transactions in general of goods and services conducted through granting credit. Based on this, the Division oversees credit card transactions and lease transactions and carried out on-site inspections of credit card issuers.

106. The *Small and Medium Enterprise Agency* is responsible for the smooth supply of funds for small and medium enterprises are included in affairs under its jurisdiction.

107. The METI jointly with the MOF are the competent ministries for the Shoko Chukin Bank. Nevertheless, this bank can be subject to inspections by the Board of Audit of Japan.

108. Within **Ministry of Land, Infrastructure, Transport and Tourism**, the *Real Estate Industry Division* has jurisdiction over Real Estate Specified Joint Business, listed as “specified business operator” in the Act on the Prevention of Transfer of Criminal Proceeds.

109. Whereas the prefectural governors are in charge of licensing, approval, supervision and inspection for the credit business of Agricultural and Fishery cooperatives, the **Ministry of Agriculture, Forestry and Fisheries** (MAFF), jointly with the Prime Minister are responsible for Prefectural Credit Federations of Agricultural Cooperative, Prefectural Credit Federations of Fishery Cooperative and the Norinchukin. MAFF supervises jointly with METI futures commission merchants.

110. The prefectural governors are in charge of licensing, approval, supervision and inspection for the mutual insurance business of Agricultural cooperatives and the Minister of MAFF is responsible for federations of agricultural cooperatives that are engaged in mutual insurance business.

111. Agricultural cooperatives and mutual insurance federations of agricultural cooperatives are supervised and inspected with the viewpoint similar to other financial institutions. These institutions may be required to submit operation improvement plans, thereby encouraging their compliance for the Act on the Prevention of Transfer of Criminal Procedures.

(ii) Criminal justice and operational agencies

Financial intelligence unit

112. The Act on the Prevention of Transfer of Criminal Proceeds of 1 April 2007 transferred the functions of Japan’s FIU from the FSA (JAFIO) to the Japan Financial Intelligence Centre (JAFIC) within the National Police Agency. JAFIC is established within the Organized Crime Control Department, Criminal Investigation Bureau, National Police Agency under the management of the National Public Safety Commission.

113. Suspicious transactions reports submitted by specified business operators (financial institutions and DNFBP) are filed with the National Public Safety Commission (JAFIC) through competent administrative agencies. They are analyzed and disseminated to the Public Prosecutors and law enforcement authorities when deemed to be relevant to their criminal investigations or to foreign FIUs when deemed to be relevant to carrying out their duties.

Law enforcement authorities

National Police Agency

114. The National Police Agency (NPA) is the main law enforcement body in Japan. It is responsible for the administration, planning of policies, public safety, operations concerning knowledge and skill, communication and forensics which serve as the basis of police activities, and coordination related to police administration

115. National and Prefectural Public Safety Commissions are council organisations, consisting of representatives of the people, established in order to supervise the police. The Commissioner General of the NPA, under the supervision of the National Public Safety Commission, directs and supervises the prefectural police for issues concerning the police administration, planning of policies, public safety, operations concerning knowledge and skill, communication and forensics which serve as the base of police activities, and coordination related to police administration.

116. NPA Strategy-Planning and Analysis Division of the Organized Crime Department provides the necessary guidance to the prefectural police regarding money laundering offences under the Act on the Punishment of Organized Crime, and deprivation of criminal proceeds, in accordance with system of the seurance order for confiscation before the institution of prosecution provided by the Act. In addition, based on the results of the analysis of suspicious transaction reports provided by JAFIC, it conducts further analysis from the viewpoint of investigation.

117. The Public Safety Division provides instruction and coordination for prefectural police investigations into terrorist and guerrilla-type incidents committed by violent extreme-leftist and rightist groups. (Article 37 of NPA Organisational Ordinances)

118. The Foreign Affairs Division provides necessary instruction and coordination related to investigations into so-called underground financiers carried out by the foreign affairs departments of the prefectural police. (Article 39 of NPA Organisational Ordinances)

119. In order to combat the growing threat of international terrorism, the Counter International Terrorism Office became the Counter International Terrorism Division in April 2004. This division provides instruction and coordination for prefectural police investigations of terrorist financing based on information on suspicious transactions and other related sources. (Article 40 of NPA Organisational Ordinances)

Prefectural Police

120. The prefectural police conduct enforcement duties such as criminal investigation and traffic regulation. In order to put into practice effective and uniform organized crime and money laundering countermeasures for police nationwide, by release of the "Organized Crime Control Guidelines" in October 2004, prefectural police has organized framework such as Organized Crime Control Division dealing with affairs related to organized crime control systematically, and therefore prefectural police has made rapid progress in countermeasures against organized crime and money laundering.

121. In consideration of the importance of organized crime and money laundering countermeasures, Organized Crime Control Departments independent of the Criminal Investigation Department have been established in the Metropolitan Police Departments with jurisdiction over Tokyo. Furthermore, task forces specializing in investigation of money laundering, utilizing results of analysis of STRs provided by the NPA, have been established in these Organized Crime Control Divisions and Departments.

122. The security/public safety departments of the prefectural police are carrying out the collection of information and crackdowns with the aim of preventing terrorist and guerrilla-type incidents committed by violent extreme-leftist groups and rightists. With developing frameworks for counter terrorism, terrorist financing investigations are being carried out based on information on suspicious transactions and other related sources provided by the NPA.

(iii) Financial sector bodies – Government

123. The **Ministry of Finance's** (MOF) responsibilities include proper and fair taxation, proper management of customs business, and maintenance of foreign exchange. The function of ensuring the stability of foreign exchange is performed by the International Bureau.

124. The Legal Office of the Research Division of the International Bureau is responsible for the planning and management of the Foreign Exchange Act, which is a general law administering cross-border transaction. The Legal Office is comprised of eight officials. Asset-freezing measures against the Taliban, Al-Qaeda, and terrorists, etc. are conducted under the Foreign Exchange Act. The Legal

Office also administers the Foreign Exchange Act in close coordination and communication with relevant ministries/agencies and financial institutions.

125. The Office of Foreign Exchange Examiners of the International Bureau conducts on-site inspections to monitor the observance of the Foreign Exchange Laws by money exchangers. Foreign exchange inspections are implemented in accordance with the “Foreign Exchange Inspection Manual,” which inquires whether financial institutions follow the regulations of transactions against the Taliban, terrorists, and other designated persons, and whether their internal management system for legal compliance is duly established.

126. The **Financial Services Agency** (FSA) is in charge of ensuring the stability of the national financial system and protecting depositors, insurance policyholders, securities investors and any other equivalent to these persons. Its main responsibilities are: *i*) designing and planning the financial system; *ii*) inspecting and supervising private financial institutions such as banks, securities companies and insurance companies as well as market-related entities such as securities exchanges, and certified public accountants, auditing firms; *iii*) establishing transaction rules in the securities markets; *iv*) setting corporate accounting standards and other matters concerning corporate finance; *v*) participating in the work of international organisations aimed at ensuring internationally-harmonized financial regulations and bilateral or multilateral financial related consultations; *vi*) monitoring the compliance with securities market rules.

127. The FSA conduct joint supervision with **MHLW** for labour banks; with **MAFF** for agricultural cooperatives, fishery cooperatives and Norinchukin Bank and with **METI** for Shokochukin Bank.

128. METI also supervises credit card companies and financial leasing companies. Futures commission merchants are jointly supervised by METI and MAFF.

129. The Ministry of Internal Affairs and Communication (**MIAC**) supervises the remaining activities of the Management Organisation for Postal Savings and Postal Life Insurance, which receives the existing banking accounts and insurance contracts after the privatisation of the Japan Post in October 2007. The two new entities, Japan Post Bank and Japan Post Insurance, are placed under the supervision of the FSA.

130. **Japan’s Securities Exchanges.** In Japan, there are six securities exchanges--the Tokyo Stock Exchange (TSE), the Osaka Securities Exchange (OSE), the Nagoya Stock Exchange (NSE), the Fukuoka Stock Exchange, the Sapporo Securities Exchange and the JASDAQ Securities Exchange (The TSE, the OSE, the NSE and JASDAQ are organized as joint stock companies, and the Fukuoka and Sapporo exchanges are membership organisations.)

131. “Self-regulatory business” conducted by the financial instruments exchanges is defined as including pre-listing examination/post-listing watch, onsite inspection toward members of the exchanges, and examination of purchases and sales to detect unfair transactions.

(iv) Financial sector bodies – Association

Japanese Bankers’ Association

132. The JBA was established in 1945 and formed by the regional bankers’ associations. Since its reorganisation in 1999, it also comprises individual institutions. As of October 2007, 128 banks, three bank holding companies and 61 bankers’ associations were members of JBA. JBA represents and furthers the interest of its members, issues policy recommendations, conducts economic and financial studies.

133. Besides the JBA, there exist several other banking associations: the Regional Banks Association of Japan, the Second Association of Regional Banks and the Trust Companies Association of Japan.

Japan Security Dealers Association

134. The Japan Security Dealers Association (JSDA) was established in 1973 based on former Securities and Exchange Act (corresponding to Article 67 of the Financial Instruments and Exchange Act). As of May 2008, JSDA has 315 regular members (Type 1 Financial Instruments Business Operators) and 220 special members (Registered Financial Institutions). JSDA has established and enforced self-regulatory rules, managed securities sales agents system and conducted research, in order to ensure fairness of securities transactions and to promote sound development of securities business and investor protection.

Life Insurance Association of Japan

135. The Life Insurance Association of Japan (LIAJ) was established as an incorporated association in 1908. As of end of March 2008, LIAJ has 41 members: 37 members are Life Insurance Companies; four members are Foreign Insurance Companies which have branch(s) in Japan.

Trust Companies Association of Japan

136. The Trust Companies Association of Japan (TCAJ) was established in 1919, and was approved as incorporated association by Ministry of Finance in 1926. As of April 2008, it has six member companies and 49 associate member companies. TCAJ ensures the promotion of trusts and has conducted various studies on trust in order to improve them.

(v) Supervisory/regulatory authorities in the DNFBP sector

Dealers in precious metal and dealers in precious stones

137. Dealers in precious metals or stones (antiques) are licensed and supervised by the Prefectural Public Safety commission.

138. At the Ministry of Economy, Trade and Industry, the Manufacturing Industries Bureau is in charge of jewel dealers, the Commerce and Information Policy Bureau is in charge of postal service businesses, and the Agency for Natural Resources and Energy is in charge of precious metal dealers.

Real estate agents

139. The real estate industry division of Ministry of Land, Infrastructure, Transport and Tourism has jurisdiction over affairs of real estate industry, *i.e.* development, improvement and coordination of real estate industry and smooth and fair transaction of real estate. MLIT and prefectural governors would supervise and inspect real estate agents.

Practicing Attorneys

140. Bar associations are established in each district of the jurisdiction of each district court throughout Japan, in view of the mission and the duties of practicing attorney and legal profession corporations, for the purpose of providing guidance, liaison, and supervision to member practicing attorney and legal profession corporations. A bar association shall be a juridical person. Practicing attorneys and foreign lawyers shall be members of the bar associations.

141. District bar associations throughout Japan have collectively established the Japan Federation of Bar Associations. The Japan Federation of Bar Associations has the purpose of managing affairs

related to guidance, liaison, and supervision of practicing attorney and legal profession corporations, in view of consideration the mission and the duties of practicing attorney and legal profession corporations, in order to maintain their dignity and improve and advance the business of practicing attorney and legal profession corporations. The Japan Federation of Bar Associations is a juridical person.

Judicial scriveners

142. Judicial scriveners must set up a Judicial Scrivener Association, by formulating rules thereof, for each district of the Legal Affairs Bureau or District Legal Affairs Bureau that exercises control over the location of the office of the judicial scrivener with a view to performing clerical work related to guidance and communication with association members. The Director of the Legal Affairs Bureau or District Legal Affairs Bureau has the right to give disciplinary punishment to judicial scriveners

143. Judicial Scrivener Associations throughout the county must set up Japan Federation of Judicial Scrivener Associations that is aimed at performing clerical work related to the guidance to and communication with Judicial Scrivener Associations and association members thereof and clerical work related to the registration of judicial scriveners

144. Directors of Legal Affairs Bureau and District Legal Affairs Bureau are permitted to supervise judicial scriveners within the limit of exercise of the right to give disciplinary punishment (Articles 47 to 51 of the Law). **Minister of Justice** is competent to oversee the system, has an array of authority and through the exercise of this authority, ensures directly or indirectly the maintenance of the dignity of the judicial scrivener and improvement of services of the judicial scrivener.

Certified Administrative Procedures Specialists (CAPS)

145. A Certified Administrative Procedures Specialist Association aims to retain the dignity of its members and facilitate the improvement and progress of the profession by carrying out the business concerning guidance of and communications with its members. It shall be a juridical person. Once a year, it reports to the prefectural governor matters related to members which are prescribed by the Ministerial Ordinance of Internal Affairs and Communications and where a CAPS conducts or acts in violation of this law, orders and rules issued under this law, or disciplinary actions taken by the prefectural governor, it shall report details thereof to the prefectural governor.

146. The Japan Federation of Certified Administrative Procedures Specialist Associations covers all CAPS Associations. The Minister of Internal Affairs and Communications may, if deemed necessary, require the Japan Federation of Certified Administrative Procedures Specialist Associations to submit reports or make recommendations on its profession.

Certified Tax Accountants

147. Tax accountant associations shall be corporations made up of CPTAs and the CPTA corporations as members, and the Japan Federation of CPTAs' Associations shall be a corporation made up of tax accountant associations across the country as members. A tax accountant association shall endeavour to conduct business affairs relating to the guidance, communications, and supervision of the branches and members with which it is affiliated, in light of its role as a self-regulatory organisation of CPTAs and the CPTA corporations, to ensure that CPTAs and the CPTA corporations may fulfil their missions and perform their obligations, and that the CPTA's service progresses or is improved.

148. Tax accountant associations operates under the supervision of the Finance Minister, it shall report the resolutions at its general meeting and the postings and resignations of its officers to the

Finance Minister through the Regional Commissioner with jurisdiction over the location of its principal office.

149. The Japan Federation of CPTAs' Associations intends to conduct business affairs relating to the instruction of, communications to, and supervision of tax accountant associations and their members, as well as affairs relating to the registration of CPTAs. This is in order to contribute to full compliance with obligations by CPTAs and the CPTA corporations and the improvement and development of the CPTA's service, in light of the mission and duties of CPTAs and the CPTA corporations.

Trust and Company Service Providers

150. Trust companies are licensed and supervised by Financial Services Agency (FSA)/Local Financial Bureau (LFB).

151. Postal services providers are supervised by METI, however they are not required to be licensed or registered. There were 1 200 such operators in Japan in 2007.

c. Approach concerning risk

152. The Japanese AML/CFT regime is not based on a risk based approach as advised in the *40+9 Recommendations*. However, some steps have been taken recently to provide advice to the industry, especially the banking sector, on the risk-based approach.

153. The FSA issued from 2004 a series of "Comprehensive Supervisory Guidelines" for the banking, securities and insurance sectors, which are regularly revised and include some aspects of an AML/CFT risk-based approach. For example, the "Comprehensive Supervisory Guidelines for Major Banks" mentions that banks are intended to "establish and maintain an internal control environment, including the decision-making process at the senior management level, to ensure appropriate response and management of customers and transactions identified as problematic in light of the customer attributes (including his/her public status) through procedures for customer identification or customer due diligence" and "to consider various factors concerned, such as the customer attributes including the customer's nationality (*e.g.* Non-Cooperatives Countries and Territories listed publicly by the FATF), public status and business profile..."

154. The NPA issued a "List of Reference Cases of Suspicious Transactions" which lists examples of transactions with sectoral breakdowns. One of the cases given as an example concerns "transactions conducted by a customer with a person based in a country or a territory not cooperative with anti-money laundering measures or with a person based in a country or a territory producing and exporting illegal drugs".

155. The Japanese Bankers' Association issued in November 2007 "Guidance Note on the Risk-based approach" for combating money laundering and terrorist financing. They provide to the Association members advice on the implementation of an AML/CFT risk based approach in:

- The internal control and organisation.
- The identification and assessment of risk.
- The application of the risk-based approach in customer due diligence, customers and transactions monitoring, training.

d. *Progress since the last mutual evaluation*

156. The second evaluation of the compliance of the Japanese AML/CFT regime to the *FATF 40 Recommendations* took place in 1997-98. The main findings followed by progress made since that time were the following:

- (a) **The low number of money laundering investigations and prosecutions** due to the fact that the only predicate offence was drug related: Japan expanded the scope of money laundering predicate offences by the enactment of the Act on the Punishment of Organized Crime in February 2000. The number of prosecution steadily increased from three to 160 cases between 2000 and 2007.
- (b) **The few number of confiscation cases:** Japan resorted more often to the confiscation system under the Anti-Drug Special Provisions Law and the number of confiscation as compared with collection order cases increased but this may not mean that the amount of money realized through confiscation and collection increased.
- (c) **International cooperation:** the absence of central authority to handle mutual assistance requests; the absence of mechanism permitting to share confiscated property the other countries; and the absence of mutual legal assistance treaties. Japan has since signed two mutual legal assistance treaties, with the United-States and South Korea.
- (d) **Law enforcement:** the lack of an overall national AML plan or strategy; the absence of systematic cooperation between law enforcement authorities on one hand and investigative authorities and financial institutions on the other hand; and the limited role of the Customs. Since the evaluation Japan has adopted AML/CFT plans and improved cooperation at the national level. Notwithstanding the involvement of the Customs within the AML/CFT system remains confined and cross border reporting is still not shared with the FIU.
- (e) **The low level of suspicious transaction reporting, the inadequacy of guidelines and the absence of an FIU:** since the last mutual evaluation, the number of transactions reported as suspicious to the FIU steadily increased and actions promoting suspicious transactions reporting, including various sets of guidelines, were undertaken. However, this is largely due to the banks, the securities and insurance sectors report only a very limited number of suspicious transactions. The Act on the Punishment of Organized Crime established the Financial Supervisory Agency as the Japanese FIU. In 2007, the FIU functions moved to JAFIC within the National Police Authority.
- (f) **Customer identification:** the second mutual evaluation noticed: the wide range of documents, including non photographic documents and documents issued by non-governmental authorities were allowed; the absence of obligation to identify a beneficial owner; the inappropriate threshold of identification of occasional customers and the lack of criminal sanctions where financial institutions breach the customer identification requirement. Since the last evaluation, Japan has reduced the threshold above which occasional customers have to be identified and introduced indirect criminal sanctions against financial institutions applicable in case of violation of an administrative sanction.
- (g) **Supervision:** the last mutual evaluation report pointed out the future deregulation of money exchange through the amendment of the Foreign Exchange and Foreign Trade Control Law and therefore the possible difficulty to conduct compliance inspection. Japanese authorities now point out that, while money exchangers are not licensed or registered, they are subject to a transaction reporting system when they conduct business of more than JPY one million per month. Failure to report or submission of a false report is subject to criminal penalties of imprisonment with work for not more than six months or a fine of not more than JPY 200 000.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 *Criminalisation of Money Laundering (R.1 & 2)*

2.1.1 *Description and Analysis*⁴

Recommendation 1

157. In 1992, under the “Law concerning Special Provisions for the Narcotics and Psychotropic Control Law, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation” (compilation of various existing and drug related laws, hereinafter the Anti-Drug Special Provisions Law), Japan criminalized the concealment of drug crime proceeds. Article 6 stipulates that any person who disguises facts concerning the acquisition or disposition of drug offence proceeds or conceals drug offence proceeds shall be imprisoned with hard labour not exceeding five years or fined not more than JPY three million (approximately EUR 18 400/USD 28 600), or both. The same shall apply to any person who disguises facts concerning the source of drug offence proceeds. Attempts are punishable by the same sanctions and preparation to commit one of the above mentioned offence is punishable by imprisonment with hard labour not exceeding two years or fines of not more than JPY 500 000 (approximately EUR 3 000/USD 4 700).

158. Under the Act on the Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters (hereinafter the Act on the Punishment of Organized Crime) of 2000 Japan expanded the definition of “crime proceeds” to include the commission of other offences than drug related offences and the concealment of the proceeds of offences other than drug offences, including offences contained in a list annexed to the law and in various laws, such as the Anti-prostitution Law, the Law controlling possession, etc. of firearms and swords. Despite its title, this law applies to the offences listed in the annex whether or not they arise in relation to organized crime.

Consistency with the Vienna and Palermo Conventions

Transferring or concealing the benefits of drug trafficking and crime proceeds

159. Article 6 of the Anti-Drug Special Provisions Law punishes any person who conceals facts concerning the acquisition or disposition of drug offences proceeds, the drug offence proceeds themselves and facts concerning the source of drug offence proceeds by imprisonment with hard labour for not more than five years or a fine not exceeding JPY 3 000 000 (approximately EUR 18 400/USD 28 600) or both. Attempts are punishable by the same sanctions and any person who intentionally prepares to commit one of the offences listed in the Article 6 is punishable by imprisonment with hard labour not exceeding two years or a fine not exceeding JPY 500 000 (approximately EUR 3 000/USD 4 700).

160. The Act on the Punishment of Organized Crime is the second law containing provisions criminalising money laundering. Its Article 10 criminalises the concealment of facts with respect to acquisition or disposition of crime proceeds and the concealment of crime proceeds. The sanction shall be imprisonment with labour for not more than five years or a fine not exceeding JPY 3 000 000 (approximately EUR 18 400/USD 28 600), or both. The same sanctions shall apply to any person who disguises facts with respect to the source of crime proceeds. Attempts are punishable by the same sanctions and the person intentionally prepares to commit the offences describes above shall be

⁴ Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness, and should contain any relevant statistical data.

imprisoned with labour for not more than two years or fined not more than JPY 500 000 (approximately EUR 3 000/USD 4 700).

Acquisition, possession and use

161. Article 7 of the Anti-Drug Special Provisions Law punishes any person who knowingly receives drug offence proceeds by imprisonment with hard labour for not more than three years or a fine not exceeding JPY 1 000 000 (approximately EUR 6 100/USD 9 500) or both.

162. Article 11 of the Act on the Punishment of Organized Crime provides for imprisonment with labour for not more than three years or a fine not exceeding JPY 1 000 000 (approximately EUR 6 100/USD 9 500) or both, any person who knowingly receives crime proceeds.

163. The criminalization of the money laundering offence in both Article 10 of the Act on the Punishment of Organized Crime and Article 6 of the Anti-Drug Special Provisions Law focuses solely on the receipt of proceeds of crime and does not use the terms “acquisition”, “possession” and “use” of such crime proceeds.

164. This apparent conflict with the requirements of Article 3 (1) c) of the Vienna Convention and Article 6 (1) b) of the Palermo Convention has its origin in the history of the Vienna Convention itself. Indeed, the Japanese laws regarding money laundering are formulated on the basis of the understanding by the Japanese delegation during the discussion of the Vienna Convention that criminalization of the receipt of proceeds, phrased so that acquisition, possession and use of crime proceeds necessarily requires first the receipt of such proceeds, would satisfy the requirements set in Article 3 (1) c) of the Vienna Convention. The same understanding applies to the analogous provision of the Palermo Convention.

165. Based on this understanding, the Japanese authorities interpret the term “receipt” broadly and consider it to generally cover instances of “acquisition”, “possession” and “use” of proceeds of crime, as it is considered impossible to possess or use proceeds without first having received them. In the assessment team’s view, it is clear from the wording of Article 3 of the UN Convention that “possession” and “use” do not require prior “acquisition”. It would not have been necessary to mention “possession” nor “use” if they were covered by the notion of “acquisition”. However, on 25 September 1998, a judgment by the Osaka High court interpreted broadly the term “acquisition”. An accused junior member of a criminal organization transported money between two other members of the organization. While this transportation might have been considered “possession” without “acquisition”, the court held that the accused had received the money himself, upholding the broad reading of the term “acquisition”.

166. However, receipt and acquisition of proceeds of crime without knowledge of its origin, as well as possession or use of such property fall outside the scope of the criminal offence, even if the recipient subsequently learns of the origins of the proceeds of crime. This narrowly tracks the requirements in the Conventions, as they explicitly require the criminalization of the “acquisition, possession or use of property”, knowing, at the time of receipt, that such property is the result of crime⁵.

167. Both laws, the Anti-Drug Special Provisions Law and the Act on the Punishment of Organized Crime appear to be interpreted broadly. There were no reports of instances in which convictions failed based on a narrow reading of this language. The low number of prosecutions seems to be due to a perceived requirement by the public prosecutors of a very high certainty of conviction before instigating court proceedings.

⁵ Cf. UN (1998) *UN Commentary of the 1988 United Nations Convention against Illicit Traffic in Narcotic drugs and Psychotropic Substances (Vienna Convention)*, UN Publication Sales No. E.98.XI.5 (see section 3.69).

Cases/people to which the Anti-Drug Special Provisions Law was applied (number of cases in which application was requested)

Articles applied	2000	2001	2002	2003	2004	2005	2006	2007
Article 6 (Concealment of drug crime proceeds)	2	3	0	8	6	3	7	5
Article 7 (Receipt of drug crime proceeds)	0	0	0	2	0	2	5	3

Number of money laundering cases cleared under the Act on the Punishment of Organized Crime

	2000	2001	2002	2003	2004	2005	2006	2007	Total
Concealment of criminal proceeds (Art.10)	3	10	19	45	50	65	91	137	420
	(1)	(5)	(9)	(25)	(29)	(21)	(18)	(35)	(143)
Receipt of criminal proceeds (Art.11)		2	9	11	15	42	42	40	161
		(2)	(7)	(10)	(11)	(27)	(35)	(25)	(117)
Total	3	12	28	56	65	107	133	177	581
	(1)	(7)	(16)	(35)	(40)	(48)	(53)	(60)	(260)

Note: Figures in parentheses indicate the subset of cases in which *Boryokudan* members were involved.

168. Besides the criminalization of the receipt of crime proceeds, Article 7 of the Anti-Drug Special Provisions Law and Article 11 of the Act on the Punishment of Organized Crime exempt from liability the recipients of crime proceeds offered for the performance of an obligation under a law or regulation or a contractual obligation, when the recipient did not know at the time of the conclusion of the contract that it would be performed with crime proceeds.

Definition of property

169. According to the provisions of Article 2, paragraphs 3 to 5 of the Anti-Drug Special Provisions Law, the “drug offence proceeds” consist of any property obtained through the action of a drug offence or obtained in reward for such criminal conducts, or any money involved in an offence related to specific provisions of the Narcotics and Psychotropics Control law, the cannabis control law, the opium law and the stimulants control law. The “property derived from drug offence proceeds” means (Article 2, paragraph 4) any property obtained as the fruit of or in exchange for drug offence proceeds or any property obtained in exchange for such property so obtained, or any other property obtained through the possession or disposition of drug offence proceeds. The “drug offence proceeds or the like” means drug offence proceeds, property derived from drug offence proceeds or any other property in which any drug offence proceeds or property derived from drug offence proceeds is mingled with other property.

170. Under the provisions of the Act on the Punishment of Organized Crime, “crime proceeds” are defined as any property produced by, obtained through or obtained in reward for a criminal act constituting an offence listed in the law and committed for the purpose of obtaining illegal economic advantages, any money provided by one of the criminal acts listed in the act or any funds related to an offence provided for in Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation (Act No. 67 of 2002) (hereinafter referred as the Terrorist Financing Act).

171. Property derived from crime proceeds covers any property obtained as the fruit of or in exchange for crime proceeds or any property obtained in exchange for such property so obtained or any property obtained through the possession or disposition of crime proceeds.

172. Article 13 of the Act relating to the confiscation of crime proceeds specifies that property may be confiscated when it is movable or immovable or consists of money.

173. The definition of “property” used by the Japanese authorities in the context of AML does not have a narrow legal definition. Rather, the respective laws speak of the “proceeds of crime” which are understood to be any asset of economic value. The Japanese authorities confirmed that voting rights in shareholder companies, intellectual rights, movable and immovable tangible assets, the use of another’s tangible assets, etc are included. The single exception is the selective use of the word “funds” relative to the Terrorist Financing Act, which will be discussed in Special Recommendations II, III and V in this report.

Predicate offences

174. In order to allow an indictment or conviction for money laundering, Japanese criminal law does not require a previous conviction for one of the predicate offences which generated the proceeds of crime to be laundered. There is a requirement to prove the predicate offence, but this can be done in the ambit of the money laundering proceedings.

175. Japanese courts have both indicted and convicted suspects for money laundering offences without a conviction of any person for the respective predicate offence. In an 18 January 2007 judgment given by the Nagano District Court, a perpetrator of fraud was convicted for three instances of fraud and 127 instances of money laundering. While the perpetrator was not convicted for the predicate offences for the remaining 124 instances, it was proven to the satisfaction of the court that the money involved did stem from a predicate offence. In a 14 February 2008 judgment given by the Saitama District court, a money launderer not identical with the perpetrator of the predicate offence was convicted for money laundering absent a conviction -of anyone- for a predicate offence.

176. Japan enumerates the offences which are predicate offences for money laundering purposes and covers all the designated categories of offences as provided below:

Designated categories of offences	Citations of the relevant Japanese text
<ul style="list-style-type: none"> • Participation in an organized criminal group and racketeering 	<ul style="list-style-type: none"> • Article 3 of the APOC. • Schedule, No. 1
<ul style="list-style-type: none"> • Terrorism, including terrorist financing 	<ul style="list-style-type: none"> • Articles 2 (terrorist financing) and 3 (collection of terrorist funds) of the Act on the Punishment of Financing of Offences of Public Intimidation. • Schedule, No. 64 and 41, 43, 44 and others that list various crimes which describe terrorist acts.
<ul style="list-style-type: none"> • Trafficking in human beings and migrant smuggling 	<ul style="list-style-type: none"> • Act on the Punishment of Organized Crime Schedule, No.2 (XIII). • Schedule, No.26.
<ul style="list-style-type: none"> • Sexual exploitation, including sexual exploitation of children 	<ul style="list-style-type: none"> • Various provisions of the Prostitution Prevention Law (No. 118 of 1956). • Schedule, No. 34. • Various provisions of the Act on the Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children (Act No.52 of May 26, 1999). • Schedule, No. 59.

Designated categories of offences	Citations of the relevant Japanese text
<ul style="list-style-type: none"> • Illicit trafficking in narcotic drugs and psychotropic substances 	<ul style="list-style-type: none"> • Article 2, paragraph 2 of the Anti-Drug Special Provisions Law, which refers to provisions of other laws.
<ul style="list-style-type: none"> • Illicit arm trafficking 	<ul style="list-style-type: none"> • Various provisions of the Law controlling possession, etc of Fire-arms and swords of 1958. • Schedule, No. 35.
<ul style="list-style-type: none"> • Illicit trafficking in stolen and other goods 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. Q • Article 256, paragraph of the Penal Code relating to the acceptance of stolen property.
<ul style="list-style-type: none"> • Corruption and bribery 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. I • Articles 197 to 197-4 of the Penal Code.
<ul style="list-style-type: none"> • Fraud 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. O • Articles 246 to 250 of the Penal Code.
<ul style="list-style-type: none"> • Counterfeiting currency 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. C • Article 148, 149 and 153 of the Penal Code.
<ul style="list-style-type: none"> • Counterfeiting and piracy of products 	<ul style="list-style-type: none"> • Schedule, No. 36, 37 and 40 referring to the Patent Law, the Trade mark Law and the Copyright Law.
<ul style="list-style-type: none"> • Environmental crime 	<ul style="list-style-type: none"> • Schedule, No 42 • Various provisions of the Wastes Disposal and Public Cleaning Law.
<ul style="list-style-type: none"> • Murder, grievous bodily injury 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. J and K • Articles 199 and 204 and 205 of the Penal Code.
<ul style="list-style-type: none"> • Kidnapping, illegal restraint and hostage-taking 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. M • Articles 224 to 228 of the Penal Code.
<ul style="list-style-type: none"> • Robbery or theft 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. N • Articles 235 and 236 of the Penal Code.
<ul style="list-style-type: none"> • Smuggling 	<ul style="list-style-type: none"> • Schedule, No. 30 • Article 109 of the Customs law.
<ul style="list-style-type: none"> • Extortion 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. O • Article 249 of the Penal Code.
<ul style="list-style-type: none"> • Forgery 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. D • Articles 155 et seq. of the Penal Code.
<ul style="list-style-type: none"> • Piracy 	<ul style="list-style-type: none"> • Schedule, No. 2 lit. N • Article 236 of the Penal Code.
<ul style="list-style-type: none"> • Insider trading and market manipulation 	<ul style="list-style-type: none"> • Schedule, No. 14 • Article 198 of the Securities and Exchange Law.

177. Under the Anti-Drug Special Provisions Law (Article 10), predicate offences are criminalized irrespective of where they are committed and irrespective of whether they are considered as criminal offences at the location in which they are committed, with the exception of the importation of goods as controlled substances (Article 8 of the Anti-Drug Special Provisions law).

178. Under the Act on the Punishment of Organized Crime all other predicate offences are considered crimes in Japan even if they occurred outside of Japan as long as they are considered as criminal actions where they occurred (Article 12).

Self-laundering

179. The crime of money laundering, whether based on the Anti-Drug Special Provisions Law or the Act on the Punishment of Organized Crime, is defined without regard to who perpetrated the predicate offence. Perpetrators of predicate offences are punishable for self-laundering under Japanese criminal law with the exception of the initial acquisition of the crime proceeds – the initial acquisition of the crime proceeds which is the result of the predicate offence is not considered self-laundering.

180. This is because the crime of “receiving” crime proceeds (whether proceeding from drug crimes or organized crimes) does not provide for punishment of the perpetrator of the predicate crime as the “first recipient” of the proceeds of crime. This is based on the understanding that the perpetrator of an economically motivated crime does not commit an additional, distinguishable crime by taking control of the economic benefit which is the object of the crime. If the proceeds of crime are then passed on to another person, that recipient becomes criminally liable as a money launderer for receiving crime proceeds, while the perpetrator of the original crime becomes additionally criminally liable for self-laundering under the aspect of “concealing” crime proceeds, because passing the funds on is understood to be an act of concealment, as it makes them more difficult to trace.

181. The perpetrator of the predicate offence is not punishable under Japanese law for the initial acquisition, and subsequent possession and use of the proceeds of a predicate offence. This is in line with the relevant provisions of the Vienna and Palermo Conventions, which require criminalising the “acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence...” For the initial perpetrator of a predicate offence, the property in question is not (yet) derived from a predicate offence, but is the object of the predicate offence. Acquisition, use and possession of the object of the predicate offence, by its perpetrator, are therefore part and parcel of committing the predicate offence.

182. It is only persons who subsequently derive possession of the property from the initial perpetrator who thereby acquire property “derived from an offence”. The mere possession of the gains of the predicate offence by the perpetrator therefore does not constitute self-laundering, nor does its use. The initial perpetrator only commits a money laundering offence by attempting to hide the criminal origin of the proceeds, which is adequately covered by the Japanese Law.

183. For example, the 18 January 2007 judgment given by the Nagano District Court specifically punished the perpetrator of a predicate offence (fraud) for self-laundering the fraud proceeds and other predicate offences.

Ancillary offences

184. The Japanese law establishes a number of ancillary offences to money laundering, particularly regarding attempt, aiding and abetting, facilitating and counselling:

- Attempts of an intentional offence are not generally punishable as a matter of criminal law, but only where the offence in question so provides (Article 44 of the Japanese Penal Code). The offences in question do provide for such punishment: Article 10, paragraph 2 of the Act on the Punishment of Organized Crime and Article 6, paragraph 2 of the Anti-Drug Special Provisions Law.
- Aiding, as well as Facilitating and Counselling, of criminal actions are criminalised in Article 62 of the Japanese Penal Code (“Accessoryship”). This broad category of offences captures all actions intended to aid another criminal.
- Abetting of criminal actions is criminalised in Article 61 of the Japanese Penal Code (Inducement).

185. The above statutes broadly establish ancillary offences to all intentional crimes. According to the ancillary offences provisions, certain types of crimes are not punishable. They are ancillary offences to crimes which, according to Article 64 of the Japanese Penal Code are subject only to misdemeanour imprisonment without work or a petty fine. This does not affect money laundering, which is punishable by imprisonment with labour for not more than five years or a fine of not more than JPY 3 000 000 (approximately EUR 18 400/USD 28 600), or both (according to both Article 10 of the Act on the Punishment of Organized Crime and Article 6 of the Anti-Drug Special Provisions Law).

186. Japanese law does not, however, include criminal provisions regarding a conspiracy to commit any crime. Article 60 of the Japanese Penal Code (Punishment of Co-Principals) is seen by Japan to cover that type of criminal agreement. As a result it does not cover instances of conspiracy. While large groups of people may become criminally liable due to a common intent to commit a crime, it requires actions of at least one member of the group to rise the group to the level of an attempt to commit the agreed upon crime in order to incur criminal sanctions under Article 60 of the Penal Code. Absent an action which can be punished as an attempt by at least one member of the group, common planning and preparations to commit a crime are not punishable.

187. While the common intent and preparation for a crime can extend one member's punishment for committing a crime or an attempt thereof to other members of the group, the common intent and preparation to launder money by a group cannot be punished absent an actual attempt to launder money. Thus, the Japanese law does not provide for punishment of conspiracy to launder money. No constitutional constraints have been cited to explain the deficiency.

188. Japan has advised the assessment team that a bill has been prepared and sent to the Diet which shall criminalize conspiracy in regard to money laundering. Whether this bill will pass into law, and whether it will establish a broad ancillary offence of "conspiracy" in line with the other ancillary offences in Article 61 and 62 of the Japanese Criminal Code remains unknown at this time.

189. The Japanese law treats a number of offences as criminal actions irrespective of whether they are treated as a crime in the location where they occurred; with the exception of drug crimes however, these are not predicate offences for money laundering.

190. The actual number of prosecutions, as compared to cases cleared by the police was considered. The team received a pamphlet from Japan's Supreme Prosecutors Office. That pamphlet revealed that, for 2007, there was a 0.07% acquittal or dismissal rate for prosecutions that were undertaken in Japan. That is a noteworthy achievement by prosecutors. However examining the statistics from the perspective of the initialisation of a prosecution, rather than from results of a prosecution, in 49.6 % of all cases considered for prosecution no prosecution was instituted by Japanese prosecutors. There would obviously be a wide variety of reasons for a decision not to prosecute but the statistical number of non prosecutions in Japan is very high. In fact prosecutors advised that they would not prosecute a person in possession of their own proceeds of crime, acquired from foreign drug offences outside of Japan, since those proceeds were not received as required by the relevant offence in the Penal Code or the Act on the Punishment of Organized Crime or the Anti-Drug Special Provisions Law. In addition the prosecutors further advised that a foreign case built upon circumstantial evidence would generally not be prosecuted in Japan as a domestic case.

191. The conviction rate of 99.93 % of all indictments indicates that the prosecutors' perception of the likelihood of a conviction is paramount in a decision to institute a prosecution. However, such cases rely, in roughly 80 % of the indicted instances, on a confession of the criminal involved. The law enforcement officials met by the evaluators admitted that such confessions are rarely available from suspects related to organized crime groups. As organized crime is a very large concern regarding money laundering, it appears as though this reliance on confessions creates a weakness in the prosecutorial determination of Japanese authorities.

Recommendation 2

Mental element

192. As a general rule Japan punishes a willful and intentional offender, and therefore, the offence of money laundering is applied to natural persons who shall have knowingly engaged in such an offence. Article 38 of the Penal Code (Intent) stipulates that:

- (1) An act performed without the intent to commit a crime is not punishable; provided, however, that the same shall not apply in cases where otherwise specially provided for by law.
- (2) When a person who commits a crime is not, at the time of its commission, aware of the facts constituting a greater crime, the person shall not be punished for the greater crime.
- (3) Lacking knowledge of law shall not be deemed lacking the intention to commit a crime; provided, however, that punishment may be reduced in light of the circumstances.

193. There is no provision in the Japanese Penal Code or Code of Criminal Procedure which requires a confession or in other ways limits a prosecutor's or judge's ability to infer intent to act from objective factual circumstances.

194. The public prosecutors in Japan nevertheless strongly rely on confessions by the accused. Prosecutors will push for an indictment only if they are overwhelmingly convinced that a conviction will be achieved. Such certainty is usually based on a confession. However, it is possible to convict for money laundering absent a confession. The assessment team was told that this has happened in a number of cases, but no statistics have been provided or concrete examples. The problem remains, described in Recommendation 1, that the legal ability to punish a crime is useful only to the degree to which prosecutors bring charges against perpetrators identified by the police.

Criminal liability of legal persons

195. Legal persons are held criminally liable in conjunction with the natural persons who performed the actions in question. 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 person 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 such corporation or person. In such an instance, when the natural person is fined, the same fine is also imposed upon the corporation or person represented.

196. Under the Japanese legal system, criminal procedures are separate from civil and administrative procedures and, therefore, pursuit of criminal liability does not prevent civil or administrative procedures from being carried out as well. There are no provisions in the Japanese law which would rule out basing administrative or other sanctions on a factual situation which was previously the basis for criminal sanctions. It is understood by both the authorities and the private sector representatives that these are separate things and that one does not preclude the other.

197. Civil court procedures are designed to decide upon and, where necessary, execute the legal obligations between the parties to a dispute. While confiscation of property may ensue in order to ensure performance of a debt, the design intent behind such confiscation is not to punish the person whose property is confiscated, but only to give effect to a legal obligation. Administrative sanctions are designed to ensure the cooperation of the legal entity to which they are addressed. While the net effect of a fine due to an administrative sanction may be the same as that of a fine which is the result of a criminal sanction, the latter is designed to punish (past) behavior. That the same factual circumstances may have given rise to an administrative action is of no consequence regarding a

possible criminal sanction. In fact, while criminal sanctions imposed by other nations on a criminal will be considered to the degree that punishment has already been served (Article 5 of the Japanese Penal Code), no similar provision exists which would take account of (national or international) administrative sanctions. However, Japan was unable to provide concrete cases in which both administrative and criminal sanctions were based on the same facts due to a lack of statistics.

Effective, proportionate and dissuasive sanctions

198. Regarding natural persons, Article 10 of the Act on the Punishment of Organized Crime and Article 6 of the Anti-Drug Special Provisions Law provide for the punishment of concealment of crime proceeds or drug crime proceeds by imprisonment with labour of up to five years and/or a fine of up to JPY 3 million (approximately EUR 18 400 – USD 28 600). Article 11 of the Act on the Punishment of Organized Crime and Article 7 of the Anti-Drug Special Provisions Law provide for the punishment of receipt of crime proceeds or drug crime proceeds by imprisonment with labour of up to three years and/or a fine of up to JPY 1 million (approximately EUR 6 100 – USD 9 500).

199. Japanese authorities, when basing criminal sanctions on these provisions, lack a sufficiently adjustable means of sanctioning. While both comparatively light punishments and harsh punishments (imprisonment with labour) seem to be provided, there does not appear to be an adequate middle ground. While these two types of punishments can be sentenced separately or together, there does not appear to be a punishment available which a rich individual would find dissuasive below the threshold of imprisonment with labour. In particular, the system of confiscation and collection of equivalent value with unlimited amount (up to the amount of criminal proceeds concerned) based on the Act on the Punishment of Organized Crime, Articles 13 and 16, the Anti-Drug Special Provisions Act, Articles 11 and 13 and Penal Code, Article 19 serves only to withdraw the benefit of the crime and has no punitive effect as such.

200. Under Articles 17 of the Act on the Punishment of Organized Crime and 15 of the Anti-Drug Special Provisions Law, legal persons can be made subject to the same fines as natural persons (fine of up to JPY 3 million (EUR 18 400 – USD 28 600) and fine of up to JPY 1 million (EUR 6 100 – USD 9 500). A variety of other sanctioning measures exist for financial institutions (see also Recommendation 17). There also exists the possibility to confiscate crime proceeds and collect equivalent value when it is proven that they have been illegally gained by the legal person. This serves to deprive the legal entity of the illegal gains. However, as far as dissuasive punishment for corporations which do not fall under the sanctioning regime of financial institutions is concerned, fines up to JPY 3 000 000 do not appear to be dissuasive at all.

Statistics (Recommendation 32)

201. The number of convictions regarding money laundering cases seems low compared to the size of the Japanese economy, an acknowledged problem with the consumption of certain drugs and a well-known organized crime problem.

202. In 2006, a total of 225 people were indicted for money laundering. While this continues the upward trend from 164 in 2005, 111 in 2004 and 105 in 2003 the numbers are low.

203. For example, in 2006 there were 6,043 members of organized crime groups (Boryokudan) arrested for violation of Stimulants Control Act, 3 139 for larceny, 2 523 for extortion, and 1 785 for fraud⁶. As all of these are predicate offences and organized crime groups have a known propensity to launder the proceeds of crime they generate, there is a severe disproportionality between the number of arrests of organized crime group members for predicate offences and indictments for money laundering.

⁶ Report on “Situation of Organized Crime” provided by Japan to OECD website, p. 4.

204. Japanese prosecutors advised the assessment team that in the past, cases cleared by the police as money laundering investigations and handed over to the prosecution authorities would often end up as indictments for predicate offences rather than money laundering, because proving the predicate offence to the satisfaction of a criminal court is often easier than proving the subsequent movement of the proceeds. While the self-laundering of such perpetrators would be considered in sentencing such offenders, these convictions would not show up in the statistics as a conviction for money laundering. The team was advised that the prosecution authorities have changed track on this issue to more explicitly prosecute money laundering in order to more aggressively send the message that money laundering is prosecuted. The Japanese delegation stated that partially as a consequence of this decision, 239 people were indicted for money laundering offences in 2007, representing over 80 % of the 286 potential money laundering cases forwarded to prosecution authorities by the police.

Number of prosecutions of and prosecution rate for money laundering offences under the Act on the Punishment of Organized Crime

Prosecution Concerning Money Laundering

(Applied Article 9 to 11 of Act on the Punishment of Organized Crime)
(Number of Cases)

Year	Prosecution (Amendment of a Court)	Prosecution	Suspension of Prosecution	Non-prosecution	(Investigating)	Total	Prosecution Rate
2000		3				3	100.0%
2001		12				12	100.0%
2002		26	1	1		28	92.9%
2003		53	1	2		56	94.6%
2004	6	52	6	1		65	89.2%
2005	8	80	8	11		107	82.2%
2006	4	110	6	14		134	85.1%
2007	1	160	2	13	1	177	90.8%
Total	19	496	24	42	1	582	%

*Cases in which multiple suspects were involved but only some were prosecuted are reported as "prosecutions."

Number of people convicted of money laundering offences (in first instance)

Law and Articles applied		2001	2002	2003	2004	2005	2006	2007
Act on the Punishment of Organized Crime	Art.10 (concealment)	4	27	52	99	130	175	241
	Art.11 (receipt)	2	4	15	13	44	48	33
Anti-Drug Special Provisions Law	Art.6 (concealment)		2	4	7	4	8	1
	Art.7 (receipt)			11	1			4

Prosecutions by Predicate Offences

Predicate Offences (Type)	Art.10 (Concealment)					Art.11 (Receipt)					Total	
	04	05	05*	06	06*	04	05	05*	06	06*		*
Fraud	13	23	6	25	1		6	2	9	5	76	14
Investment Act	22	17	3	30	7	5	3	2			77	12
Act on Controls, etc on Money Lending	17	18	3	24	7	1	2	2	1		63	12
Prostitution Prevention Law		2	1	1	1	2	11	11	16	11	32	24
Larceny	3	5	2	8		1	3	1			20	3
Extortion	2	2		6	1	1	3	1	2	2	16	4
Opening Gambling Place for Profit		1	1	1		1	5	4	6	6	14	11
Copyright Law	2	2		4	1		1				9	1
Habitual Gambling						1	4	3	1	1	6	4
Trademark Act		1	1	1		1	2		1	1	6	2
Forgery of Official Document with Seal		2	1								2	1
Illegal Production and Provision of Private Electro-Magnetic Record				1							1	
Distribution of Obscene Object	4	3	1	6	2		1	1	4	4	18	8
Acceptance of Bribe				1							1	
Kidnapping for Ransom		1	1								1	1
Robbery				1	1	1	1		1	1	4	2
Computer Fraud				1							1	
Embezzlement in the Conduct of Business		1	1								1	1
Stolen Property, etc.				1	1						1	1
Organized Extortion									1	1	1	1
Organized Fraud		2	2	3	1						5	3
Organized Opening Gambling Place for Profit				1	1						1	1
Practicing Attorney Act	1	1					1				3	
Immigration Control and Refugee Recognition Act				2	1		1	1	1	1	4	3
Act on the Punishment of Activities Relating to Child Prostitution and Child Pornography and the Protection of Children	1	1	1	3			1	1			6	2
Child Welfare Act									1		1	
Unauthorized Computer Access				1							1	
The Pharmaceutical Affairs Law	3	1		1	1						5	1
Industrial Waste Disposal Act		1	1								1	1
Horse Racing Law				1	1		1	1	1	1	3	3
Motorboat Racing Law						1	1	1			2	1

Predicate Offences (Type)	Art.10 (Concealment)					Art.11 (Receipt)					Total	
Bicycle Racing Act							1	1			1	1
Employment Security Law						1			1	1	2	1
Total	68	84	25	123	27	16	48	32	46	35	385	119

* Cases involving Boryukudan.

Number of legal persons convicted of money laundering offence (in first instance)						
Name of offence and punitive article applied		2003	2004	2005	2006	2007
Violation of the Act on the Punishment of Organized Crime, Control of Crime Proceeds and Other Matters	Art 10 (Concealment)	0	0	0	3 persons on \2 500 000	1 person on \2 000 000
	Art 11 (Receipt)	0	0	0	1 person on \1 000 000	0
Violation of the Anti-Drug Special Provisions Act	Art 6 (Concealment)	0	0	0	0	0
	Art 7 (Receipt)	0	0	0	0	0

Number of legal persons convicted of terrorist financing offence (in first instance)					
Name of offence	2003	2004	2005	2006	2007
Violation of Act on the Punishment of Financing of Offences of Public Intimidation	0	0	0	0	0

Types of penalties applied to natural persons for money laundering offence (in first instance)											
Name of offence and punitive article applied		2003		2004		2005		2006		2007	
		P	F	P	F	P	F	P	F	P	F
Act on the Punishment of Organized Crime	Article 10 Concealment	46	6	98	1	119	11	171	1	238	2
	Article 11 Receipt	15	0	10	3	40	4	41	6	25	8
Anti-Drug Special Provisions Act	Article 6 Concealment	4	0	7	0	4	0	7	1	1	0
	Article 7 Receipt	11	0	1	0	0	0	0	0	4	0

P= imprisonment – F= fine.

Types of penalties applied to natural persons for terrorist financing offence										
Name of offence and punitive article applied	2003		2004		2005		2006		2007	
	P	F	P	F	P	F	P	F	P	F
Act on the Punishment of Financing of Offences of Public Intimidation	0	0	0	0	0	0	0	0	0	0

P= imprisonment – F= fine.

2.1.2 Recommendations and Comments

205. It is recommended that Japan take measures to strengthen the ability of its prosecutors and police units to uncover and prosecute money laundering offences and to confiscate the funds involved.

206. It is recommended that Japan extend the criminalisation of the receipt of crime proceeds to parties who do so under a contract, or on the basis of law or regulation, concluded without knowledge that the contractual obligation would be performed with illicit funds

207. It is recommended that Japan review and raise the level of the sanctions applicable to legal entities that are not financial institutions.

208. It is recommended that Japan establish the offence of conspiracy to commit money laundering.

209. Public Prosecutors will prosecute an offence only if they are overwhelmingly confident of a conviction. Organized crime is a very large concern regarding money laundering. It appears as though a reliance on confessions creates a weakness in the prosecutorial determination of Japanese authorities. It is recommended that the Japanese authorities take a more robust approach to prosecuting such crimes.

210. It is recommended that the maximum amounts of fines available for individuals and, in particular, legal persons, be significantly increased.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating ⁷
R.1	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.
R.2	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.

⁷ These factors are only required to be set out when the rating is less than Compliant.

2.2 *Criminalisation of Terrorist Financing (SR.II)*

2.2.1 *Description and Analysis*

211. The Act on the Punishment of Financing of Offences of Public Intimidation (Act No. 67 of 2002) (Terrorist Financing Act) entered into effect in 2002. Its Article 1 lists and defines terrorist acts as follows: “act carried out with the aim to intimidate the public, national or local governments, or foreign governments and other entities including foreign national or local governments, international organisations established pursuant to treaties or other international agreements”. The listed offences are: “murder, bodily injury by using an offensive weapon or any other means which is likely to harm body seriously, abduction or taking hostages; or involves criminal acts against aircraft, shipping, transportation, including trains and transportation infrastructures or public or private utility facilities operating for the benefit of the public, when such actions are carried out for purposes of public intimidation”. The definition includes offences from the Japanese Penal Code which reflect all of the offences listed in the Annex to the Terrorist Financing Convention pursuant to Article 2, paragraph 1a. However, it restricts the application of this law to instances in which such acts are carried out for purposes of public intimidation. Provisions relating to providing funds or attempting to provide funds for the purpose of the commission of the defined terrorist acts are in Article 2 and provisions relating to fund collection acts performed by individuals who plan or attempt to carry out criminal acts intended to intimidate the public, by soliciting, requesting, or other means for the commission of such criminal acts are in Article 3.

212. The Act on the Punishment of Financing of Offences of Public Intimidation has not been applied yet. Its scope is therefore judged on its wording, the context of the words in analogous laws and the Diet debate of the Act.

213. The offences listed in the Annex to the Terrorist Financing Convention pursuant to its Article 2, paragraph 1 a) will be considered “terrorist acts” under the Japanese law only if carried out for purposes of public intimidation, requiring a proof of such intent.

214. Article 2 of the Act provides punishment for offenders who “knowingly” provide “funds for the purpose of facilitating the commission” of a terrorist act. This wording differs from the requirements of Special Recommendation II, which indicates that terrorist financing offences should extend to any person who “wilfully” provides “or collects” funds “with the unlawful intention that they should be used or in the knowledge that they are to be used” by terrorists or terrorist organizations or to commit a terrorist act. The first deviation from the recommended scope of the offence is found in the term “knowingly” used in the Japanese Act, as opposed to the term “wilfully” which is used in the Convention. The second is with the Convention’s definition of “funds” to mean assets of every kind⁸.

215. The term knowingly appears more restrictive, as it requires actual knowledge of the use to which the funds are to be put, whereas “wilfully” would appear to be satisfied even if the perpetrator only had good reason to suspect such use. However, the Convention adds a second requirement in that the “wilful” provision of funds must be with the “intention that they should” or “knowledge that they are to” be used in such a fashion. The Convention therefore requires a degree of wilfulness with regard to the provision of funds, as well as either intent or knowledge regarding the terrorist use.

216. The Japanese Act punishes the knowing provision and collection of funds “for the purpose” of facilitating a terrorist act. However Special Recommendation II also requires that providing funds or, more specifically, assets of every kind for terrorist organizations and individual terrorist should be

⁸ Article 1 – For the purpose of this Convention: 1. “Funds” means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers cheques, bank cheque, money orders, shares, securities, bonds, drafts, letters of credit.

criminalised. In addition, the indirect collection or provision of funds is not criminalised under the Japanese law.

217. Special Recommendation II demands criminalisation of the collection of funds for terrorist organisations. The Japanese law, in its Article 3 criminalises the collection of funds for terrorist purposes only if undertaken by the terrorists themselves, leaving fund collectors for terrorism who are not terrorists themselves outside of the scope of the criminal offence (unless and until they actually provide the funds to the terrorists in question, at which point they are punishable under Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation).

218. The scope of the Act on the Punishment of Financing of Offences of Public Intimidation Terrorist Financing Act is therefore more restrictive than the Special Recommendation II requires.

Definition of funds

219. Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation, entitled “Provision of funds”, deals with the provision of “funds for the purpose of facilitating the commission of an offence of public intimidation” (Article 3 of the Act punishes the “collection” of funds). The word “funds” used is the translation of the Japanese term “shikin”. There is no legal or regulatory definition or exhaustive list of the scope of the word “shikin”. The literal translation of “shikin” is “funds, capital”. In other Japanese legal texts the word “shikin” is used and generally understood as meaning cash and monetary instruments easily convertible into cash, in particular the Foreign Exchange Act. By utilizing a term known in other laws and interpreted in a more narrow fashion than is required by SR. II, the scope of the provision misses aspects of terrorism support which involves assets other than funds.

220. Japanese officials advised the assessment team that they approached the obligation to freeze property that may be used for terrorist activities, as an integral part of the concept of “funds” in articles 2 and 3. Those articles criminalize the provision of “funds” (undefined-see Article 2) and the collection of “funds” (undefined-see Article 3). Japanese officials advised the assessment team they intended the concept of “funds” to include non-financial assets but the intended expansive definition is more theoretical than actual. The team was advised that the scope of the word “funds”, both conceptually and in the opinion of the Minister of Justice as evidenced in a response to a question in the Diet debate on the law, is sufficient to include other assets or property.

221. The application of terms used in Japanese laws is up to the ministry under whose jurisdiction a law was created. In the case of the Act on the Punishment of Financing of Offences of Public Intimidation, this is the Ministry of Justice. In the deliberation of the law in question in the Diet, the Minister of Justice pointed out that “funds” are not limited to cash and other means of payment, but includes “other kinds of assets that are provided or collected with the intention of gaining such cash or other means of payment as a fruit or to be converted into such cash or other means of payment”.

222. This definition seems to exclude assets that are provided regardless of cash or other means of payment or the ability to convert the asset to something akin to cash or other means of payment. Providing the simple use of real estate (without the ability to sublet the real estate in order to convert the use into cash), for example as a safe house or training ground, does not appear to fall under this definition. The definition in Article 1 of the International Convention for the Suppression of the Financing of Terrorism, mirrored by the Interpretative Note to SR II, defines “funds” as “assets of every kind, whether tangible or intangible, movable or immovable, however acquired, ...” without any concern to their convertibility into cash or other means of payment or ability to bear other “fruit” of any kind.

223. As the criminalization of the financing of terrorism does not include assets outside the scope of “funds”, other provisions, in particular those pertaining to seizure, are also impacted in instances where such assets are being provided to terrorist organizations.

224. The Act on the Punishment of Financing of Offences of Public Intimidation criminalises the financial support of terrorist acts without the need to establish a link with a specific terrorist act or the need to prove that the funds were actually used to further a terrorist act. The mere possession of the property by the perpetrator therefore does not constitute self-laundering, nor does its use. The initial perpetrator only commits a money laundering offence by attempting to hide the criminal origin of the proceeds, which is adequately covered by the Japanese Law. Japanese law does not, however, include criminal provisions regarding a conspiracy to commit any crime. Article 60 of the Japanese Penal Code (Punishment of Co-Principals) is seen by Japan to cover that type of criminal agreement. As a result it does not cover instances of conspiracy. While large groups of people may become criminally liable due to a common intent to provide their own property for a terrorist offence, it requires actions of at least one member of the group to raise the group to the level of an attempt to commit the agreed upon crime in order to incur criminal sanctions under Article 60 of the Penal Code or the offence covered by the Terrorist Financing Act. Absent an action which can be punished as an attempt by at least one member of the group, common planning and preparations to commit a crime are not punishable.

225. Attempts to finance terrorism, as criminalised in Article 2, paragraph 1 and Article 3, paragraph 1 of the Act on the Punishment of Financing of Offences of Public Intimidation, are criminalised by paragraph 2 of the respective Articles.

226. To punish the participation in terrorist financing, the Japanese legal system relies on the same provisions of the Japanese Penal Code which it relies on regarding money-laundering (see *supra*), *i.e.* Article 60 *et seq.* of the Penal Code. As Article 2, paragraph 5 of the Convention does not require the criminalisation of a conspiracy to commit a crime, these provisions adequately cover the required forms of participation with the exception of the definition of “funds”.

227. Under the Japanese Law, terrorist financing is a predicate offence for money laundering (see table of predicate offences, Rec. 1, paragraph 132). However, the attempt to finance terrorism (including the concealment of money intended for such use) does not fall under any of the predicate offences under the Japanese Law. This exemption does not apply where the funds which were concealed with the intent to finance terrorism were themselves derived from crime, as such an action would constitute a concealment of crime proceeds and therefore be punishable under Article 10 of the Act on the Punishment of Organized Crime but for the fact that the reference only refers to funds while, within the definition of crime proceeds other property is covered for other crimes.

228. However, where legitimate funds were collected in order to finance terrorism and the terrorist financing act has not progressed beyond the stage of an attempt, this attempt of terrorist financing is not considered a predicate offence for money laundering under Japanese law, as funds from a legitimate source conceptually fall outside of the scope of money laundering laws in Japan.

229. According to Article 5 of the Act on the Punishment of Financing of Offences of Public Intimidation, in connection with Articles 3 and 4.2 of the Japanese Penal Code, Japanese nationals shall be punished for acts of terrorist financing as provided for in the Act on the Punishment of Financing of Offences of Public Intimidation irrespective of the location in which the financing occurred, or where related terrorists were or are located or a related act of terrorism was planned, prepared or executed.

230. As far as proving the intentional element of an FT crime and the parallel application of criminal and administrative sanctions are concerned, the legal regime on terrorist financing relies on the same mechanisms as those employed regarding money laundering (see Rec. 2, elements 2 and 4, *supra*).

231. Regarding the application of criminal sanctions for terrorist financing to legal entities, Article 6 of the Terrorist Financing Act stipulates that “where a representative of a legal entity, or a proxy, an employee or any other servant of a legal entity or of a natural person has committed [an act of terrorist financing] with regard to the business of such legal entity or natural person, the legal entity or natural person shall, in addition to the punishment imposed upon the offender, be punished with the fine described in the relevant article”.

232. The sanctions imposed by Articles 2 and 3 of the Terrorist Financing Act for acts of terrorist financing are punishment with imprisonment for not more than ten years or a fine of not more than JPY 10 million (approximately EUR 61 000/USD 95 000).

Statistics

233. There have been few investigations and no arrests or indictments regarding terrorist financing in Japan and no statistics are available. Nevertheless, Japan has not been a victim of terrorist organisations or individual terrorists listed by the UN Resolutions. In addition, no Japanese citizens nor legal persons are listed on these list. Therefore, the low number of investigations and the absence of convictions cannot be considered as a negative finding. The effectiveness of the system therefore could not be assessed.

2.2.2 Recommendations and Comments

234. It is recommended that Japan expand its definition of “funds” under the Terrorist Financing Act to include movable and immovable assets, tangible or intangible, beyond the more limited, commercial meaning of the term “Shikin”, in line with the definition in Article 1, paragraph 1 of the Terrorist Financing Convention.

235. It is recommended that Japan criminalise the collection of funds (and other assets, see above) by non-terrorists for terrorist organizations or individual terrorists. In particular, this should allow the mechanisms of the money laundering and terrorist financing laws, especially their freezing and confiscation provisions, to apply to funds from legitimate sources collected for terrorist purposes.

236. It is recommended that Japan enact legislation which explicitly criminalise the collection and provision of funds, whether direct or indirect, to terrorist organisations, regardless of the purpose for which they are used.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	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.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

237. Criminal instrumentalities are subject to seizure, inspection, investigative and confiscation provisions in the Penal Code. Proceeds of crime are subject to broad seizure, inspection and investigative authority and, in addition, specialized freezing provisions, known in Japan as *securance*

orders. Confiscation of proceeds of crime is available under two special laws, the first for drugs and the second is a recently amended law for organized crime that includes the drug proceeds concepts and creates a general confiscation authority for all serious crimes.

238. Instrumentalities, which in Japan includes an object that was a component of a criminal act or an object that was *i)* used or intended for use in the commission of a criminal act, *ii)* produced or acquired by means of a criminal act or *iii)* was a reward for a criminal act, pursuant to the provisions of Article 19 of the Penal Code, may be confiscated. This power to confiscate is only available if the object was owned by the criminal or if it was, after the criminal act, knowingly acquired by another person. In addition Article 19-2 of the Penal Code provides for a fine equivalent to the value of the thing that was produced, acquired or received as a reward if that thing cannot be confiscated.

239. Japan covers crime proceeds in two distinct laws. The first is the Anti-Drug Special Provisions Law, enacted on October 5, 1991. The second is the recently revised Act on the Punishment of Organized Crimes, Control of Crime Proceeds and Other Matters Act, hereinafter referred to as the Act on the Punishment of Organized Crime that came fully into force on 1 March 2008.

240. The Anti-Drug Special Provisions Law provides for confiscation procedures against “drug offence proceeds” and “property derived from drug offence proceeds”. Article 2(3) of that law defines “drug proceeds” as “any property obtained through the action of a drug offence or obtained in reward for such criminal conduct, or any money involved in an offence”.⁹ Cross references to specified offences, such as Article 69-4 relative to diacetylmorphine, appears to limit confiscation to funds but, in the context of the articles, clarity and consistency means that land, buildings, conveyances and equipment are additional things available for confiscation. In addition Article 2(4) and (5) of the Anti-Drug Special Provisions Law clarifies any ambiguity by providing that property obtained as the fruit of or in exchange for drug offence proceeds or any property where drug offence proceeds are mingled with other property is included within the scope of the provisions.

241. The Act on the Punishment of Organized Crime is the other general confiscation law. This law is designed to strengthen the provisions of the Anti-Drug Special Provisions Law and expand confiscation, seizure and securance (freezing) provisions in Japan. In Article 2 of that law the definition of “crime proceeds” specifically includes drug offence proceeds covered by the Anti-Drug Special Provisions Law in Article 2, paragraph 5. The Act on the Punishment of Organized Crime, however, significantly expands Japan’s confiscation concept to:

- Any property produced by, obtained through, or obtained in reward for a criminal act included in the schedule to the Act on the Punishment of Organized Crime (which includes a large majority of the designated categories of offence in the 40 Recommendations Glossary).
- Any money provided by a criminal act constituting an offence, including any act committed outside Japan, which would constitute the offences of *i)* the provision of funds or things required for the import and other offences stimulants; *ii)* the provisions of funds or things related to prostitution and *iii)* the provision of funds or things for injury caused by sarin.
- Any property given through a criminal act (including any act committed outside Japan which would constitute the offence of bribery of a foreign public official to obtain business).

⁹ The relevant drug offences are found in specified articles in various drug laws. These are Article 68 (provision of funds and things or transporting diacetylmorphine) or Article 69-4 (provision of funds to commit an offence relative to psychotropic) of the Narcotics and Psychotropic Control Law; Article 24-6 of the Cannabis Control Law (provision of funds and things or transporting cannabis); in Article 54-2 of the Opium Law (provision of funds and things or transporting opium) or in Article 41-9 of the Stimulants Control Law (provision of funds and things or transporting stimulants).

- Any funds related to an offence provided for in Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation.

242. The Anti-Drug Special Provisions Law confiscation provisions are in Article 11 which provides for the confiscation of any drug proceeds; property derived from drug offence proceeds; rewards obtained for the commission of an offence or any property indirectly realized from such property. Article 12 of the Anti-Drug Special Provisions Law provides that the Act on the Punishment of Organized Crime’s confiscation provisions apply for commingled property and foreign confiscation requests. Article 13 provides for a collection order, said to be a forfeiture order, which is the equivalent of a value confiscation or collection authority, where property that would otherwise be subject to an article 11 confiscation order is not confiscated.

243. The Act on the Punishment of Organized Crime’s confiscation provisions are in Article 13 of that law. It is important to note that the Act on the Punishment of Organized Crime creates general confiscation provisions for serious crimes, including drug crimes. In addition to confiscation pursuant to Article 13, the same law contains a confiscation provision in Article 8. This article provides for confiscation when a party commits an offence on behalf of a group in the operation of a gambling place if the property belongs to the group rather than a third party. Article 13 of the Act on the Punishment of Organized Crime provides for the confiscation of any moveable or immoveable property or a money claim, that is:

- Crime proceeds¹⁰.
- Property derived from crime proceeds.
- Shares acquired with crime proceeds.
- Claims acquired by means of crime proceeds.
- Crime proceeds involving an Article 10 (concealing) or Article 11 (receiving) crime proceeds.
- Property derived from or obtained as the fruit of a crime proceed.

244. Article 13 (4) includes authority to confiscate “drug crime proceeds” under the authority of the Act on the Punishment of Organized Crime if that property was involved in a money laundering offence under Article 9 of the law. In addition, Articles 14 and 15 provides for confiscation of commingled and jointly owned property if the third person knowingly acquired the crime proceeds after the commission of the predicate offence. Article 18 provides for the confiscation or property in the hands of third parties.

245. Article 16 of the Act on the Punishment of Organized Crime, similarly to the forfeiture of equivalent value in Article 13 of the Anti-Drug Special Provisions Law, provides for a value based order in lieu of confiscation, as a “collection order” alternative to confiscation. A collection order is available when confiscation is deemed inappropriate or for other specified reasons. In such a case a collection order can be recovered against any party to the offence

Provisional measures

246. Japan’s Code of Criminal Procedure applies to the application for and service of search and securance orders. Article 54 provides that the civil rules, apart from service by public notification, apply to service. Article 218 of the Code of Criminal Procedure provides for a judicial order of search

¹⁰ Article 2 defines crime proceeds and that definition is summarized at paragraph 83 *et seq.*, above.

of a person or place or examination of a person without notice. In any case where the authorities seek to freeze property for confiscation specialized authority is used in Japan.

247. Article 19 of the Anti-Drug Special Provisions Law provides for an *ex parte* application for a seizure order against drug proceeds. A public prosecutor must request such an order but the court, *ex proprio motu* has authority to also issue such an order. The seizure order is issued by the court if it is satisfied that such an order is necessary. The order may also secure and limit the rights of other persons holding an interest in the property. Article 19, paragraph 4 incorporates the seizure provisions in the Act on the Punishment of Organized Crime, *mutatis mutandis*. Finally, article 20 provides for a similar *ex parte* seizure order against property that may be the object of a forfeiture order (*i.e.* a collection order) to recover a fine in lieu of confiscation under the authority of article 13. Either seizure order may freeze a third party's interest in the property if probable cause exists to believe the third party right may be confiscated. Pursuant to Article 19, paragraph 3 and Article 20, paragraph 2 a seizure order can be obtained before the institution of a prosecution.

248. The Act on the Punishment of Organized Crime provides for broad seizure orders in Japan relative to crime and drug proceeds. The court *ex proprio motu* or upon the application of a public prosecutor or a senior judicial police officer may issue a seizure order, pursuant to Article 22 against crime and drug crime proceeds if the court is satisfied that the property is illicit property that may be the subject of confiscation under the Act on the Punishment of Organized Crime or any other law.

249. The Act on the Punishment of Organized Crime's seizure order may freeze third party interests in the property if probable cause exists to believe the third party right may be confiscated. Pursuant to Article 23 the seizure can be obtained before the institution of a prosecution. However, Article 23 (3) provides that a prosecution must be instituted within 30 days or the seizure order becomes invalid, unless the property could be confiscated under proceedings already instituted against another party. Article 23(4) goes on to provide that a public prosecutor may apply for repeated 30 days extensions on the basis of compelling reasons until a prosecution is instituted. Once such a prosecution commences the prosecutor, pursuant to Article 23(7) must notify affected persons, other than the defendant, either through a public or personal notice.

Power to identify and trace property

250. Japan's Code of Criminal Procedure provides the police with all the required authority to trace property that may be the subject of a confiscation order. In addition the public prosecutor in Japan, under the Code of Criminal Procedure, has similar investigative authority. Any relevant property may have been the object of a suspicious transaction report or it may have come to the attention of authorities under their ordinary criminal investigation obligations.¹¹ In either scenario investigative powers allow the authorities to trace and identify instrumentalities and proceeds of crime.

251. The criminal court has its own authority to seize or order the delivery of material, for example, pursuant to Article 100, material in the course of post or telegram documents. This is important, since there is a close relationship between law enforcement and the public prosecutor. Japan's primary investigative bodies, the police and the public prosecutors, coordinate their respective responsibilities. In addition the relevant law explicitly recognizes that relationship.

¹¹ Article 2, paragraph 1 of the Police Act specifies that, among other responsibilities, the police should protect the lives, persons and property of individuals, as well as to take charge of prevention, suppression and investigation of crime. Equally pursuant to Article 6 of the Public Prosecutors Office Law and the Code of Criminal Procedure the prosecutor participates in proceeds investigations as an investigative equivalent to a police officer in Japan.

252. Chapter 9 of the Code of Criminal Procedure provides for broad and effective search and seizure authority. Ordinarily a police officer, or public prosecutor working with a police officer, would use Articles 106 to 127 to implement a search and seizure authority. In addition, Article 189 of the Code provides for specific authority for a police officer to act as a judicial police officer to investigate offenders and seek evidence of a crime. Concomitantly a public prosecutor, pursuant to Article 193, may give general suggestions to the judicial police officer relative to their investigations. Specific authority to trace is found in Article 198 of the Code of Criminal Procedure since it provides that the prosecutor or judicial police officer may ask a suspect to appear and answer questions. Assuming that the person complies and truthfully answers, the investigation proceeds. On the other hand, assuming a refusal to attend, both the judicial police officer and the prosecutor may use Article 199 of the Code of Criminal Procedure as their arrest authority, while Article 218 of the same code provides authority to apply to the court for authority to search, seize or inspect.

Third Party Protection

253. Article 11(2) of the Anti-Drug Special Provisions Law, for drug proceeds, provides that confiscation of drug offence proceeds may be avoided if innocent third party rights may be impacted. Innocent third parties are further protected by Article 12 of the Anti-Drug Special Provisions Law since it incorporates third party protections in Articles 14 and 15 of the Act on the Punishment of Organized Crime.

254. Article 14 of the Act on the Punishment of Organized Crime responds to cases where the proceeds are commingled with assets that are not criminal proceeds. If that occurs an amount equivalent to the criminal proceeds may be confiscated.

255. Article 15 of the Act on the Punishment of Organized Crime prohibits the confiscation of property from any third party who obtained such property without knowledge of how the property had been acquired by the original owner. Article 15(2) goes on to provide that any surface right or hypothec existing on the property shall continue in a case where the property is acquired by such a secured person prior to the commission of the relevant offence without knowledge of how the property came into possession of the owner.

256. Japan, has a specific third party protection law known as the Emergency Measure Act on the Procedures for Confiscation of Third Party Property in a Criminal Case Law. This law provides that for confiscation of property owned by a third party that such third party's rights must be protected by following specific procedures. In essence, pursuant to Article 2, such third party shall be given an opportunity to be notified, Article 3 provide for a procedure for the third party to intervene and provide an explanation.

Authority to void transfers and prevent dealing with property

257. Preservation for confiscation is achieved by means of the sequestration order available in Article 19 of the Anti-Drug Special Provisions Law. Article 14 of that law includes limited presumption against an offender under the drug law if the offender was professionally engaged in offence covered by Article 5. Article 11 applies to the actual confiscation of property under this law but third party confiscation is subject to the Emergency Measure Act on the Procedures for Confiscation of Third Party Property in a Criminal Case Law in light of Article 16 of the Anti-Drug Special Provisions Law that goes on to provide for the confiscation of third party property. Such a party must be provided with notice and permitted to intervene. If their intervention is unsuccessful the property may be forfeited pursuant to Article 11(1) and (3). Finally combined drug and crime proceeds confiscation and preservation provisions are covered by Article 12 of the Anti-Drug Special Provisions Law by incorporating through reference Articles 14 and 15 of the Act on the Punishment of Organized Crime.

258. Articles 14 and 15 of the Act on the Punishment of Organized Crime deal with commingled proceeds and conditions on confiscation. Article 14 provides for an alternative value confiscation order. Article 15 provides for confiscation of commingled and jointly owned property if the third person knowingly acquired the crime proceeds after the commission of the predicate offence. Article 16 of the Act on the Punishment of Organized Crime is a “catch all” provision designed to cover cases where the property cannot be forfeited. In such a case a collection order equivalent to the value of the property acquired may be issued and executed.

259. The authority to track and trace property, as summarized above seems broad. However, in light of Article 105 of the Code of Criminal Procedure, if the evidence required for the investigation is in the possession of a physician, dentist, midwife, nurse, attorney, including a foreign lawyer registered in Japan, patent attorney, notary public or a person engaged in a religious occupation, or any other person who was formerly engaged in any of these professions, such a person may refuse the seizure. In addition if the evidence is in the possession of a member or ex member of the legislature, or a minister of the state and they object, Article 104 provides that the thing may not be seized without the consent of the legislature, which may not be refused except where the seizure may harm important national interests of Japan. In addition Article 113 provides that if the necessary search is to be undertaken in a public office the office head or their deputy must be notified and attend at the search.

260. The authority to question a person is also limited in some circumstances. Article 147 of the Code of Criminal Procedure, as an example, establishes a bar to questioning of an extended category of relatives.¹² That category of persons can refuse to give testimony at a proceeding in court. Finally Article 149 provides for a similar objection for the occupations covered by Article 105 and Article 145, which covers the class of persons in Article 104. Article 193 of the Code of Criminal Procedure does provide authority for a judicial police officer or public prosecutor to ask a suspect to appear for an interview. An ordinary witness may be required to attend and provide information pursuant to Article 223. They can refuse to answer or assist. On this point the police and prosecutors advised that such witnesses customarily cooperate with the authorities. In addition the claim for privilege by professionals once made results either in the abandonment of the search or, in rare instances, the seizure of the thing. If a seizure is undertaken the professional has the right to challenge the search. If that challenge is successful, as advised by the Japanese Bar Association, the thing may not be produced.

261. If a warrant of seizure, examination of a person or inspection is required under the authority of Article 218 of the Code of Criminal Procedure the court issuing the order must be advised of the reason for the necessity of the examination as well as the person’s sex and physical condition.

Exceptions from confiscation

262. The confiscation provisions in the Anti-Drug Special Provisions Law provides for significant exceptions from confiscation. Article 11(1) excludes attempted (*i.e.* preparatory) drug offences, other than an attempt to conceal drug offence proceeds. In addition, Article 11(2) of the Anti-Drug Special Provisions Law provides that confiscation of drug offence proceeds may be avoided if it is deemed to be inappropriate in light of the nature of the property in question, the conditions of its use or other circumstances.

263. The Act on the Punishment of Organized Crime also provides for exceptions to confiscation. Article 13, paragraph 2 provides that crime victim property may not be confiscated. Article 13,

¹² Spouse, blood relatives within the third degree of kinship or relatives by affinity within the second degree of kinship or a person who formerly had such relative relationships with him/her; his/her guardian, the supervisor of his/her guardian or a curator or a person for whom he/she is a guardian, supervisor of a guardian or a curator. On this point the police and prosecutors advised that such witnesses customarily cooperate with the authorities.

paragraph 3 lessens the impact of this exception when the crime is committed by a group such as an organized crime group; when the criminal is a mere receiver of the proceeds or in a money laundering case. However the assumption is that the crime victim would otherwise have the ability and expertise to use other provisions to recover their lost property. The categories of crime victim property are quite broad. Article 225-2, paragraph 2 of the Penal Code illustrates this fact. That offence covers a kidnapping for ransom where a family pays the ransom demand. In addition high interest rate loans (Schedule, offence 31); hostage taking (Schedule, offence 44); fraudulent reorganization (Schedule, offence 55) and fraudulent bankruptcy (Schedule, offence 68) are also covered. In addition, Article 13(5), provides that confiscation of drug offence proceeds may be avoided if it is deemed to be inappropriate in light of the nature of the property in question, the conditions of its use, and other circumstances.

264. The availability of a collection order alternative to an actual confiscation order appears attractive and a viable alternative to confiscation. However such an order is only effective if steps are consistently undertaken to actually enforce the collection order.

265. Chapter IV, Part 2, Articles 42 to 49 of the Act on the Punishment of Organized Crime applies to question of actual enforcement of collection orders. An order can issue on the application of a public prosecutor, or on the courts own motion (Article 42). The person's property can be frozen until the order is paid (Article 42, paragraph 5). However Article 47 provides that the order may be revoked if the duration of the order is unreasonably prolonged. That provision is similar to the authority to revoke an ordinary securance order against property that may be confiscated (Article 32) However, in a collection order scenario a final adverse finding and order was obtained against the relevant person. As a result a collection order appears to depend upon an expectation that the criminal will actually pay the order. It is difficult to understand why delay in paying the order justifies a decision to revoke the order.

266. Article 20 of the Anti-Drug Special Provisions Law allows a freezing order for all property of a future defendant even before court proceedings have been initiated if such seems necessary for an anticipated order to collect "equivalent value". Article 42 of the Act on the Punishment of the Organized Crime does not have corresponding language. Thus, it appears that a defendant of a non-drug crime predicate offence cannot be adequately prevented from hiding valuable objects paid for with proceeds of crime before a court proceeding has been initiated.

Statistics (Recommendation 32)

267. Japan's Ministry of Justice receives reports from each District Public Prosecutor's Office regarding the number of people who were the subject of court rulings in the confiscation or collection of crime proceeds and the amounts thereof in accordance with the relevant provisions of the Anti-Drug Special Provisions Law and the Act on the Punishment of Organized Crime as well as regarding the number of people that were subjected to such confiscation, collection, or preservation, and the amounts thereof, and compiles the reports into annual statistics.

Number of people subjected to confiscation, collection or preservation under the Anti-Drug Special Provisions Law

Year	Confiscation		Collection		Preservation	
	Persons	Amount	Persons	Amount	Persons	Amount
2001	30	102 226 477	155	3 685 271 147	3	25 168 522
2002	45	176 959 095	307	1 363 995 367	13	167 083 530
2003	47	36 539 127	304	1 541 756 834	10	391 139 249
2004	75	583 372 109	329	3 270 608 245	15	308 655 939
2005	39	64 332 330	316	3 513 785 244	23	668 842 188

Year	Confiscation		Collection		Preservation	
	Persons	Amount	Persons	Amount	Persons	Amount
2006	62	133 441 937	373	2 372 788 711	27	154 972 093
2007	53	207 411 215	285	2 216 634 562	15	96 049 530
Total	351	1 304 282 290	2 069	17 964 840 110	106	17 964 840 606

Number of people subject to confiscation, collection or preservation orders under the Act on the Punishment of Organized Crime

Year	Confiscation		Collection		Preservation	
	Persons	Amount	Persons	Amount	Persons	Amount
2001	4	9 749 473	5	64 820 618	4	10 039 804
2002	7	5 043 917	17	241 408 094	8	68 000 664
2003	8	4 278 363	20	144 397 850	7	122 066 058
2004	15	69 804 002	22	504 806 482	10	285 525 085
2005	18	70 138 192	54	816 175 850	13	225 589 201
2006	27	154 723 282	75	3 408 638 832	15	132 797 711
2007	29	104 088 886	65	782 938 219	18	153 739 514
Total	108	417 826 115	258	5 963 185 945	75	997 758 037

2.3.2 Recommendations and Comments

268. The two tables above demonstrate the results achieved by the two closely connected confiscation laws, over a similar five-year period. The Anti-Drug Special Provisions Law achieved JPY 1 304 322 069 (approximately USD 12 275 000 or EUR 8 620 000) in confiscations, with additional collection orders that totalled JPY 17 964 840 500 (approximately USD 170 000 000 or EUR 118 800 000). The Act on the Punishment of Organized Crime achieved JPY 417 826 135 (approximately USD 3 900 000 or EUR 2 700 000) in confiscations and JPY 5 963 185 941 (approximately USD 56 000 000 or EUR 39 000 000) in collection orders. There were approximately 12 times more collection orders than there were confiscation orders under either law. In addition, for a country of Japan's size and wealth the amount of actual confiscation and collection orders is low.

269. Either law contemplates a collection order in a case where it is deemed to be inappropriate in light of the nature of the property in question, the conditions of its use or other circumstances. In light of the significant disparity between confiscation and collection it seems clear that prosecutors or the courts prefer a collection order rather than a confiscation order. Given the likelihood that the criminal will pay the collection order or elect not to pay hoping that the order will eventually be revoked, the value of such an option is doubtful. Japan should consider the elimination of the open ended option to grant a collection order against the person, rather than a confiscation order on the basis of the nature of the property in question, the conditions of its use or other circumstances. The alternatives of collection orders, which may be left unenforced, and the ability to revoke such orders, in light of the quantum of those orders, raise a concern over the effectiveness of the confiscation regime.

270. The ability to seize and the availability of a professional or a prominent public official to object to a search is a potential impediment. The authorities could be reluctant to execute appropriate search warrants in the face of objections. In addition if they seize the things and use the seized property to advance their investigation they may be faced with trial restrictions. In light of the fact that the things to be seized is, to the satisfaction of an issuing court, relevant to a criminal investigation, Japan might consider establishing a system where the thing seized from a professional

or member of the legislature or executive be sealed and brought before the court, in an expedited hearing designed to determine if it is in fact and law properly subject to professional or national security protection.

271. Article 42 of the Act on the Punishment of Organized Crime should be amended to include similar language to Article 20 of the Anti-Drug Special Provisions Law in order to allow a freezing order for all property of a future defendant even before court proceedings have been initiated if such seems necessary for an anticipated order to collect “equivalent value”.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	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.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

272. In 2002 Japan enacted the Act on the Punishment of Financing of Offences of Public Intimidation (the Terrorist Financing Act). Article 1 of this Act defines “acts of public intimidation” while Articles 2 and 3 criminalize the knowing provision and request for or the collection of “funds” for the purpose of committing any “acts of public intimidation”. In addition an attempt to provide, request or collect such funds is an offence in this law.

273. Under the Japanese system, cross-border transactions (including transactions between residents and non-residents) are administered by Foreign Exchange and Foreign Trade Act, (hereinafter referred to as the Foreign Exchange Act). Japan primarily addresses its obligation to freeze terrorist property under that law. In addition Japan also depends upon the provisions of the Act on the Punishment of Financing of Offences of Public Intimidation and, for property freezing authority (which in Japan is known as a securance order) yet another law must be used. Japan’s securance provision relevant to terrorist property is found in the Act on the Punishment of Organized Crime.

Security Council Resolutions

274. Japan’s preliminary approach to freezing terrorist property was accomplished by means of a domestic designation first issued against the Taliban, under the requirements of the United Nations Security Council Resolution 1267. That designation occurred on September 22, 2001. The designation brought the provision in Articles 16, 21 and 24 of Japan’s Foreign Exchange Act into effect with the result that a licensing system was implemented to preclude the movement between Japanese residents and non-residents or toward a foreign country of the designated funds and economic resources, including those derived or generated from property owned or controlled directly or indirectly from the persons or entities designated, and the payments to the designees. However this does not freeze funds and other financial resources, including funds derived or generated from or property owned or controlled directly or indirectly by the designated entities or persons who are nationals residing in Japan who never intended the funds` to leave Japan. In addition the criminalization of funds, as previously described, ignores other property that may be collected but not yet advanced to a specific terrorist intending to commit an act of public intimidation (*i.e.* a terrorist act). Japan subsequently followed up with listing actions under the United Nations Security Council Resolution 1333 and 1390 as additional names were established by United Nations 1267 Sanctions Committee.

275. In follow up designations under Security Council Resolutions Japan again relied upon its Foreign Exchange Act. Japan's licensing system relies upon Article 16, 21 and 24 of the Foreign Exchange Act. That Act specifies certain categories of activity that require a license. Each category deals with activities primarily but not exclusively involving entry or exit from Japan: Article 16 (1) controls a "payment" out of Japan or a payment from a Japanese resident to a non-resident; Article 21 controls capital transactions in the same way and Article 24 covers goods imported and exported. However the regime does not, without delay, freeze property, such as a bank safety deposit box, owned or controlled directly or indirectly that is in Japan and never intended to leave Japan.

276. The Ministry of Finance (MoF) introduces and enforces a licensing system regarding terrorist designees. Japan's process to designate new entities/individuals starts with the Ministry of Foreign Affairs (MoFA). They disseminate Security Council or information from other countries by Ministerial Notification. In Japan a "Liaison Committee" comprised of relevant ministries and agencies, such as the Ministry of Foreign Affairs (MoFA), the Ministry of Finance (MoF), and the Ministry of Economic Trade and Industry (METI), designates a target individual or entity based on information including other country's responses and information about the target. The Committee's recommended designation is then endorsed by Cabinet to give it official approval.

277. The Minister of Finance or the Minister of Economy, Trade and Industry (METI) may issue a notification, using a Cabinet order process established in Articles 16 and 21 of the Foreign Exchange Act. The effect of that notification is a licensing system for payment and capital transactions. Japan's license system process is undertaken by either Minister under the circumstances set out in Articles 16, 21 and 24 of the Foreign Exchange Act:

- (i) To faithfully perform international agreements such as treaties.
- (ii) To contribute to international efforts for world peace. Or
- (iii) To maintain the peace and safety of Japan.

278. Essentially, relevant orders in Japan¹³ designated the Taliban and related persons as well as payments to terrorists that have been designated by a Foreign Ministry notification. Japan applies its listing process to cover terrorists or terrorist entities and groups in collaboration with the G7 countries (*i.e.* the United States, Canada, the United Kingdom, France, Germany and Italy). In addition the Foreign Ministry has designated a number of entities and persons of other countries (such as designated entities and persons of Iran), which require a license to allow for payments or transactions. As of the date of the onsite visit Japan has listed numerous individuals or entities.

279. The Foreign Exchange Act is utilized since it includes customer identification obligations. However the customer due diligence aspects of the law have largely been replaced by stronger provisions in the recently amended Act on the Punishment of Organized Crime.

280. Article 16 of the Foreign Exchange Act applies to transactions from Japan to a foreign state and to a resident of Japan who intends to make payment or issue account instruction to a non-resident. The license requires the person to first obtain permission for the account instruction or payment. Operationally the license system functions under provisions established in the Foreign Exchange Order (Cabinet Order No. 260). Pursuant to Article 6 of that order a payment to a foreign country and between residents and non-residents are controlled.

281. The asset-freezing measures attempt to control cross-border payments to and capital transactions (*i.e.* deposit contracts, trust contracts, money lending, and guarantees of debt, etc.) with

¹³ Japan designated individual, entities and countries (numbers of designees in brackets) in response to UNSCR 1267, 1333, 1390, 1373 (530); 1483 (295); 1532 (57); 1596 (23); 1572 (3); 1591 (4); 1695 & 1718 (16); 1737 (22) and 1747 (28).

designated persons. Any person who intends to make such payments/contracts needs to apply for a license in advance, and he/she/it must submit the license to the financial institutions carrying out the payment or the transaction.

282. Japan is implementing an original system of freezing terrorists' assets based on the authorisation to carry out certain payments or transactions. In the case of the designation of a Japanese resident, his funds wouldn't be frozen in case of domestic transaction (for instance, cash withdrawal) or transactions with other Japanese residents, except overseas transactions, capital transactions using foreign currency or transactions with a non-resident.

283. Japan's officials ensured the team that as a consequence of this system financial institutions, even if they are not legally required to screen their customers' databases, they do so to properly implement the licensing process. The team is not satisfied by this statement, as Japanese residents do not need any license to carry out domestic transactions in Yen. A license is required for cross-border transaction or with a non-resident. It is obvious that before carrying out a transaction requiring a license, financial institutions check the terrorist lists, but in the absence of any transaction or attempt of transaction, the team has doubts about the reality of any systematic screening process. However, Japan's officials explained, that in practice, every time a new terrorist list is released, the MOF instruct financial institutions to report whether any of their clients are designated by the list, according to the provisions of the Article 55-8 of the Foreign Exchange Act. This report is submitted to the MOF within 7 to 14 days.

284. Financial institutions are obliged to confirm that a customer has obtained a license from the Finance Minister when conducting the payment or activity pursuant to the licensing obligations (Article 17 of the Foreign Exchange Act). Financial institutions that fail to perform such confirmation may be subject to a rectification order, including the suspension of foreign exchange transactions for a certain period (Article 17-2). Non-compliance with a rectification order is available to deal with financial institutions and entities that fail to comply with the license system. In addition the financial institution and the natural persons between whom the transaction is carried out may be the subject of a criminal penalty (Articles 17-2 and 70). The maximum sentence could be three years and a maximum fine of JPY 1 million (approximately EUR 6 100– USD 9 500), plus five times the amount paid unlawfully.

285. Japan's Foreign Exchange Act's obligations apply to all 1 005 financial institutions and securities firms in Japan and all branches of such institutions. In the case of payments subject to that act the provisions apply to all persons when the payment goes outside of Japan or it is to be made to a non-resident in Japan.

286. In making designations under its Foreign Exchange Act, using its Liaison Committee process, described above, the Government of Japan takes into account the asset freezing measures already implemented by foreign countries. In addition, at the request of a foreign country for implementation of that country's asset-freezing measures against particular terrorists and their supporters, Japan determines its measures if it recognizes their involvement in terrorism.

Funds or other assets subject to freezing

287. The Foreign Exchange Act implements asset-freezing measures by imposing the obligation of a Finance Minister's license in conducting payments (movements of financial resources between Japan and foreign countries) and capital transactions (*e.g.* deposit contracts, money lending) between residents and non-residents. The Foreign Exchange Act also restricts the withdrawal of deposits held by the designees, and restricts crediting interest to the account. However the Foreign Exchange Act fails to sufficiently deal with "other assets" that may be held in Japan by the designated entities or other persons (legal or natural).

288. The assumption underpinning Japan's reliance on the Foreign Exchange Act appears to be that the principal terrorist asset would be money on deposit or payments into or out of Japan. That approach could work for such payments but it is less than sufficient for money or other assets, such as a bank safety deposit boxes, a safe house, or a conveyance in Japan, that were never intended to leave Japan.

289. In those types of cases Japan uses its Act on the Punishment of Financing of Offences of Public Intimidation, with the securance provisions incorporated in the new Act on the Punishment of Organized Crime, to freeze property be it money or other assets, that were never intended to leave Japan. The Act on the Punishment of Organized Crime came fully into force on 1 March 2008 and it may be used to freeze such assets. Precursor law attempted to accomplish the same result relative to `funds` covered by the Public Intimidation Act. In addition to the Act on the Punishment of Organized Crime, the Penal Code and the search and seizure provisions in Japan's Code of Criminal Procedure, in particular Article 218 would be available in an appropriate case.

290. The obligation in SRIII is to freeze or seize terrorist assets without delay. The Interpretative Note to this Special Recommendation states that "funds or other assets" mean financial assets and property of every kind. In addition the obligation relating to the freezing requirement includes the words "without delay". This has particular significance, creating an obligation to freeze, ideally within hours. Japan's reliance upon the securance order provisions in its Act on the Punishment of Organized Crime means that there is no freezing without delay.

291. Japan's Act on the Punishment of Organized Crime is the general freezing (securance) and confiscation law in the country. That law significantly expands its securance authority but it seems to have a rather fundamental problem. In its definition section for crime proceeds the law includes "any funds related to an offence provided for in Article 2 of the Act" with a reference to the Act on the Punishment of Financing of Offences of Public Intimidation". That inclusion is integral to the "crime proceeds" definition in the Act on the Punishment of Organized Crime. The impact is that only "funds" covered by the Terrorist Financing Act are covered by securance orders.

292. In addition the reference fails to mention funds collected pursuant to Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation. A securance for confiscation is intended to cover assets that may be the subject of a future confiscation order. A confiscation order for laundering terrorist assets would be covered by Article 10 of the Act on the Punishment of Organized Crime yet that offence specifically excludes some "funds" covered by Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation. That gap is significant since the Act on the Punishment of Financing of Offences of Public Intimidation is Japan's legal foundation for its obligation to criminalize the financing of terrorism. The provisions in the Act on the Punishment of Financing of Offences of Public Intimidation are specifically limited to "funds" for an act of public intimidation. The failure to refer to funds covered by Article 3 in the definition of crime proceeds in cases where the asset is collected but yet to be allocated; the broader failure to define "funds" and the apparent exclusion of funds in Article 10 of the Act on the Punishment of Organized Crime are significant deficiencies.

293. Japanese officials advised the assessment team that they approached the obligation to freeze property has being an integral part of the concept of "funds" in Articles 2 & 3 of the Act on the Punishment of Financing of Offences of Public Intimidation. Those articles criminalize the provision of "funds" (undefined-see Article 2) and the collection of "funds" (undefined-see Article 3). Japan advised the assessment team they intended the concept of "funds" to include non-financial assets but the intended expansive definition is more theoretical than actual. The team was advised that the scope of the word "funds", both conceptually and in the opinion of the Minister of Justice as evidenced in a response to a question in the Diet debate on the law, is sufficient to include other assets or property. The minister advised the Diet as follows:

“Funds’ as used in this law means cash and other means of payment that are provided or collected whose economic value is intended to be used for the benefit of specific people as well as other kinds of assets that are provided or collected with the intention of gaining such cash or other means of payment as a fruit or to be converted into such cash or other means of payment. My understanding is that ‘funds’ as used in the International Convention for the Suppression of the Financing of Terrorism has the same meaning.”

294. The response is clear but it reflects a conscious determination to cover assets provided or collected to be converted into cash or a means a payment. The Act on the Punishment of Financing of Offences of Public Intimidation’s failure to specifically define “funds” in terms of funds and other property arguably means that any type of non financial asset or property would not be covered. That failure reflects a deficiency in fully implementing the Recommendation.

295. The schedule to the Act on the Punishment of Organized Crime does include Articles 2 & 3 of the Act on the Punishment of Financing of Offences of Public Intimidation. However, given the fact that the definition of “crime proceeds” Article 2 of that only refers to “funds” by reference to “any funds related to an offence provided for in Article 2 (Provision of Funds) of Act on the Punishment of Financing of Offences of Public Intimidation, the exclusion of a reference to Article 3 must have a legal effect. In addition the Act on the Punishment of Organized Crime simply adds Article 2 and 3 of the Act on the Punishment of Financing of Offences of Public Intimidation to the schedule of offences under the Act on the Punishment of Organized Crime. The deficiency of the Article 3 offence in the Act on the Punishment of Financing of Offences of Public Intimidation has already been reviewed. The result is that funds or, for that matter other things that may be covered by Article 3, are not proceeds that may be secured (*i.e.* frozen) under the provisions of the Act on the Punishment of Organized Crime. The Penal Code applies to aiding and other ancillary offences. It is essential to understand the scope of Act on the Punishment of Financing of Offences of Public Intimidation’s approach to “funds”.

296. Definitional context may be discovered from the words in a law. In the Act on the Punishment of Organized Crime the definition of “crime proceeds” uses a tiered approach to the things covered by the definition. It starts with “any property produced by a criminal act”. It then includes “any money provided by a criminal act” and subsequently adds “any property given through a criminal act”. The definition ends with the addition of a specific reference to funds related to an offence provided for in Article 2 (Provision of Funds). That tiered approach provides assistance in determining the scope of this additional concept. In the context of the definition and the law the absence of any mention of funds covered by Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation is important.

297. There is a concern that the word “funds” would not include other property irrespective of the ministerial advice to the Diet. The absence of any reference to Article 3 in the Act on the Punishment of Organized Crime reinforces that concern. In light of the concern the simple fact there is an inherent delay in obtaining security orders against terrorist property; together with the possibility that other terrorist property as compared with terrorist funds would not be crime proceeds and the need to institute prosecutions or obtain endless delays as more specifically described in paragraph 261 below, with respect the unfreezing and challenge considerations, shows a deficiency that must be reflected against this Recommendation.

Communication of listing action

298. Japan’s Foreign Exchange Act’s listing regime includes a specific mechanism to notify relevant institutions, through e mail distribution and publication in the government’s official gazette. The MoF, when it distributes a listing notification, requires the institutions to notify it of the existences of a relevant account based on the Foreign Exchange Act, usually within two weeks after the designation. In addition, in accordance with a supplementary decision of the Diet, the MoF releases the reason for the designation on the MoF’s website and reports the listing to the Diet.

Guidance to Financial Institutions

299. The MoF advises financial institutions to report without delay when they find an account whose name is similar to that of the designee, or if any of their customers have a similar name. The MoF advised that it receives such inquiries occasionally. Whenever such inquiries are made, the MoF advises the financial institution to confirm all the information published by the UN Sanction Committee. In some cases, the MoF seeks the advice of the Ministry of Foreign Affairs. The method of collation of the designee is also described in the foreign exchange examiner's manual, and the MoF advises financial institutions to refer to similar names.

Delisting

300. Japan advised that deletion of a designee under the UNSCR1267 is publicized by MoFA's Ministerial Notification. In the case of a designee listed under the UNSCR1373 listing process, the Liaison Committee comprised of relevant ministries/agencies confirms the information gathered, and requests a Cabinet Decision. The individuals or groups deleted from the list are posted in the official gazette, and the MoF informs financial institutions via e-mail.

Unfreezing mechanisms

301. Japan has unfrozen some property that was covered by listed individuals, such as the deposits held by five Afghani organizations including the Afghanistan Central Bank (total: USD 6 000) and the deposits in the name of government organizations of the former Iraqi regime (total: USD 103 million) were transferred to the Iraq Development Fund in accordance with UNSCR1483 in August 2003. There were some cases where assets belonging to designated entities/individuals existed in Japan such as the deposits in the name of entities related to the missile and WMD program of the DPRK that were designated under UNSCR1695 (total: USD 0.9 million).

302. It is more accurate to indicate that the effect of the decision was to remove the property from the impact of the licensing system in the Foreign Exchange Act as opposed to the removal of the equivalence of a securance order.

303. Japan also advised that the asset freezing is a measure to restrain the designated person's right of property. In their list of individuals or groups system the MoF requests the financial institutions and entities notify the MoF without delay when they hold deposits of any designee. Such coordination between the MoF and financial institutions helps prevent inadvertent asset-freezing. However the Foreign Exchange Act's licensing process merely covers scenarios where the account holder seeks to move assets into or out of Japan, where a Japanese resident makes a payment to a non-resident or where Japanese residents make a capital transaction in foreign currency. Assuming that the request was to move assets that were "funds or other property" within Japan by a Japanese national no license would be required and the asset would have to be dealt with through a domestic action under the Act on the Punishment of Organized Crime. Financial Institutions do provide suspicious transaction reports on terrorist property but the slower securance process in the Act on the Punishment of Organized Crime would have to be used.

304. Securance order provisions do include provisions giving a right to challenge a securance order (see Article 52). However, in light of the possibility that no securance order could be issued, especially if the funds or property was covered by Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation, this power is difficult to evaluate. In addition, Japan has yet to obtain a securance order in any terrorist property case.

305. Finally on this issue, Article 23 of the Act on the Punishment of Organized Crime provides that securance orders lapse if a prosecution is not commenced within 30 days of the date the order is issued. A public prosecutor may apply for a continuation or a series of continuations of such order under Article 23 (4). The option to obtain securance orders, without delay, is speculative. The

conclusion with regard to the Act is *i)* such a process cannot be instituted without delay, *ii)* the provision creates an automatic annulment of an order after 30 days if no prosecution is instituted and *iii)* extension applications have to be repeatedly made when the Recommendation deals with an obligation to freeze funds and other assets without delay.

Procedure to permit access to frozen funds

306. Japan advised that their Foreign Exchange Act's procedure provides access to assets. Japan's freezing measures are implemented by putting payments requests or account instructions with the designee under the MoF's license system. In such cases the MoF receives an application for a license for a payment, or payments necessary for basic expenses, the application is examined on a case-by-case basis, and the MoF advised that it will respond in consultation with relevant ministries such as the MoFA. So far, no such application has been filed in relation to UNSCR 1267.

307. Japan's licensing process can and does work. However it only works in a scenario where the designated person seeks to move assets into or out of Japan, make a payment from a Japanese resident to a non-resident or make capital transaction in foreign currency between residents. The system does not apply to domestic scenarios, with the exception of transactions in foreign currencies. Japan's Act on the Punishment of Organized Crime must be used in all other cases. The difficulty relative to the securance process, for property located in Japan that is never taken outside Japan, is inadequately addressed. The fact is that such property is not frozen without delay nor adequately considered and dealt with in Japan's terrorist property regime.

Challenge authority

308. The Foreign Exchange Act provides procedures regarding objections or applications for examination in relation to dispositions pursuant to the provisions of the act. If such action is taken, the Minister has to be satisfied to make a decision on the disposition after conducting a hearing (Article 56). When the objector is not satisfied with the result, action for rescission may be filed in accordance with the Administration Litigation Act. Once again this process pursuant to the Administration Litigation Act covers all the administration of the Act.

309. Japan responds to domestic terrorism scenarios using confiscation, collection, or securance under the crime proceeds provision in its Act on the Punishment of Organized Crime. Any affected person can file a complaint protesting the court's decision for preservation (Article 52, paragraph 1) as well as protesting at the trial conducted by the judge (Article 52, paragraph 2). However, in light of the possibility that no securance order could be issued, especially if the funds or property was covered by Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation, and the potential for application delays together with the fact that no securance order for such property has ever been obtained this assertion is difficult to evaluate.

Freezing, Seizing and Confiscation in other circumstances

310. Japan advised that compliance with Criteria 3.1-3.4 and 3.6 is ensured by the Act on the Punishment of Organized Crime. The relevant criterion is not concerned solely with the freezing of assets belonging to particular terrorists such as Al-Qaeda. If terrorist-related funds or property fall within the definition of crime proceeds as provided in the Act, as contemplated in the criterion, Japan argued that such funds or property could be preserved, seized or confiscated.

311. This assertion is problematic at best and completely untested. As indicated above the Act on the Punishment of Organized Crime does not specifically provide for freezing of terrorist property without delay in light of the selection of a limited definition using "funds". In addition there remains the possibility that no securance order could be issued, especially if the funds or property was covered by Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation and the delay in instituting an application is problematic, at best.

Protection for bona fide third parties

312. The Foreign Exchange Act, which has a function to implement asset-freezing, at least for payments or claims into or out of Japan, has no provision for the protection of the rights of *bona fide* third parties. Japan explains this deficiency on a “public welfare” justification, which is an exception in the Constitution allowing Japan to restrict property rights. Japan also advised that if *bona fide* third parties are involved, the MoF would examine the contract and other relevant facts, and consult the MoFA (or UN Sanctions Committee though the MoFA) as to whether approving the payment/transaction would violate a UN resolution.

313. On the other hand if the property was actually confiscated or made the subject of a collection order under the Act on the Punishment of Organized Crime, Article 13 would operate, in principle, in a case where the illicit or mixed property does not belong to any individual other than the offender. In a case where property covered by any surface right or hypothec or otherwise encumbered they are protected (Article 15, paragraph 2). In light of the possibility that no securance order could be issued, especially if the funds or property was covered by Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation, the problem is that, in the absence of an existing case where this relief is available, this scenario is difficult to evaluate. However the provisions do provide for adequate third party protection.

Capacity to monitor compliance

314. Japan penalizes entities and persons who make foreign exchange payments to the designee without a license pursuant to Article 70 of the Foreign Exchange Act. The institution or entity moving the money or claim is subject to possible imprisonment for not more than three years or a fine of not more than JPY 1 million, or both. However, if three times the illegal payment or transfer exceeds JPY 1 million (approximately EUR 6 100 – USD 9 500), a fine shall be up to three times the amount of the payment transferred without license. Finally the MoF conducts regular on-site inspections of financial institutions, and examines the implementation of the listing measure and compliance system. The MoF issues an administrative guidance or a rectification order to financial institutions when their compliance is not deemed to be sufficient.

315. Article 17 of the Foreign Exchange Act requires financial institutions to confirm that the customer obtains the necessary license. The Finance Minister has the authority to order financial institutions to take rectification measures, including temporary suspension of foreign exchange business. The approach to the issue of non-compliance supports the view that the relevant financial institutions and entities rigorously implement the law. No failures were disclosed by Japan in the course of their AML/CFT compliance examinations. Yet a deficiency is that the system assumes that the only relevant control issue is with respect to payments into or out of Japan or payments from a Japanese resident to a non-resident. Domestic payments are uncontrolled, apart from the AML compliance procedures and the filing of suspicious transaction reports on terrorist financing cases. This last aspect of the compliance criterion is considered in the review of statistics, below.

Additional elements

Best Practices Paper for SRIII

316. Japan advised that its implementation of the measures in the Best Practices for SRIII is centred upon the requirement to facilitate communication and co-operation with foreign governments and international institutions. Japan follows a mechanism which allows for joint action with other countries as much as possible in designations. Japan also maintains a mechanism for the exchange of information with other countries so as to improve identification of information about the sanctionees, the terrorists who are possible targets of the sanction and their activities. Japan also recognized the importance of collecting sufficient information on the targets so as to easily identify them and of submitting sufficient evidences to justify the designation. Finally Japan advised that the targets of the

measure and their identifying information are published on the website of MOFA as soon as possible after the implementation of measures.

Access to funds procedures

317. No information available.

Statistics (Recommendation 32)

318. The MOFA advised that as of July 2007 the numbers of individuals and entities subject to the asset-freezing measure in accordance with UNSCRs related to financing of terrorism are following:

- Individuals : 377.
- Entities : 147.

319. Japan's FIU advised that it received the following suspicious transaction reports related to terrorism:

Year	2001	2002	2003	2004	2005	2006	2007
Number of cases	191	40	96	238	169	198	299

320. No information was provided on the impact of the suspicious transaction reports. However there was no case where any type of securance (freezing) order was obtained relative to any of those cases.

2.4.2 Recommendations and Comments

321. It is recommended that Japan reconsider its reliance on the licensing process in its Foreign Exchange Act to provide for the freezing obligation imposed by the Convention and the Special Recommendation. That approach does not cover domestic property being available to fund terrorism nor domestic financial transactions in Yen. This approach merely deals with attempted transaction in foreign currency, with a non-resident in Japan or overseas transactions, or other support for listed terrorist entities and individuals. The licensing system in Japan means that there is no obligation on financial institutions to freeze funds and other assets of residents in relation to any Security Council Resolutions or to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions. Rather, the Japanese system assumes that all terrorist funds and assets would be prevented from entry to or exit from Japan (rather than frozen). In addition, when persons and entities are designated, there is no legal obligation for financial institutions to verify whether they have already funds in Japan and subsequently prevent their domestic use.

322. Japan should re-evaluate its reliance on the Act on the Punishment of Organized Crime's securance process relating to terrorist property. The limited duration of the securance order; together with the obligation to institute a prosecution within 30 days and the need to undertake continual extension applications means that the obligation to freeze relevant terrorist property is not achieved on a without delay basis.

323. Japan should reconsider its failure to define "funds" in its Act on the Punishment of Financing of Offences of Public Intimidation. That law, when considered against the Foreign Exchange Act's restrictions on payments into and out of Japan, and the Act on the Punishment of Organized Crime's limited reference to "funds provided for in Article 2 of the Public Intimidation

Act”, together with the law’s “crime proceeds” definition creates a risk that other property that could be used by terrorists cannot be frozen.

324. It is recognized that the licensing regime established by Japan does create a freezing mechanism, though it suffers from the concerns regarding delay and scope of “funds” illuminated above. Furthermore, the licensing regime establishes the required communication mechanism and adequately deals with the requirements regarding delisting, unfreezing, giving limited access to frozen funds and challenging freezing procedures under SR III. Japan also complies with the requirement to protect bona fide third parties. Thus, Japan has taken some substantive action and complies with some of the essential criteria of SR III.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> • The licensing process in the Foreign Exchange Act does not cover <i>i)</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 <i>ii)</i> 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 other property that could be used by terrorists cannot be frozen.

Authorities

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and Analysis

Functions and Responsibilities of the FIU

325. In Japan, a reporting system for suspicious transaction was established for the first time by enactment of the Anti-Drug Special Provisions Law in 1992. However, under this Law, predicate offences for suspicious transaction reports were limited to drug offences. In addition, as at that time a Financial Intelligence Unit (FIU) had not been established, suspicious transaction reports were managed separately by the relevant authorities for the submitting institution. As no head organization existed to provide financial institutions with guidance and incentives to report, the number of suspicious transaction reports had been limited to a few cases a year.

326. Subsequently, based on the Chapter 5 of the Act on the Punishment of Organized Crime enacted in February 2000, the Japan Financial Intelligence Office (JAFIO), as Japan’s FIU, was established within the Financial Services Agency (FSA), which at that time was the Financial Supervisory Agency. Concurrently, predicate offences previously limited to drug offences, were expanded to include over 200 offences, including homicide, robbery, fraud, embezzlement, breach of trust, and insider trading. In addition, pursuant to the Act on the Punishment of Organized Crime, money laundering itself became a criminal offence, and financial institutions were obligated to report any suspicious transactions they recognized as possibly involving money laundering. More specifically, pursuant to the Act on the Punishment of Organized Crimes Article 54, suspicious transaction reports have to be submitted if:

- (1) There is a suspicion that the assets collected by banks or financial institutions, etc. specified by Cabinet Order, or other entities specified by Cabinet Order (hereinafter referred to as “financial institution or the like.”) through conducting their business activities are criminal proceeds (relating to the more than 200 legally defined predicate offences) or drug offence proceeds. Or
- (2) It was suspected that concerned parties conducting the said transaction have committed acts as prescribed in Article 10 of this Act or Article 6 of Anti-Drug Special Provisions Law (concealment of criminal or drug offence proceeds).

327. The reports from financial institutions were to be consolidated by the Commissioner of the Financial Services Agency (Article 54, paragraph 4). The Commissioner of the Financial Services Agency was to provide the Judicial Police, Customs, or the Securities and Exchange Surveillance Commission with the information received from financial institutions, when an item related to a report of a suspicious transaction or results from their arrangement or analysis are recognized to contribute to the investigation of a criminal case by them (Article 56, paragraph 1).

328. The Japan Financial Intelligence Office was established within the FSA Planning and Coordination Bureau, General Coordination Division, based on the Act on the Punishment of Organized Crimes Chapter 5 and provided for by the Act for the Establishment of the Financial Services Agency and the Financial Service Agency Organization Regulations. In response to the above provisions of Chapter 5 of the Act on the Punishment of Organized Crimes, “the Organization and analysis of matters where a report has been received or information was provided, or the provision of information on suspicious transactions based on the provision of Chapter 5 of Act on the Punishment of Organized Crimes” was prescribed as a duty regulated by the Financial Services Agency pursuant to the Act for the Establishment of the Financial Services Agency (Article 4 Item 232 of the same Act).

329. Furthermore, the Organizational Regulations of the Financial Services Agency stipulated that the Japan Financial Intelligence Office (JAFIO) be placed within the General Coordination Division of the Planning and Coordination Bureau (Article 1, paragraph 1 of said regulations), and also stipulated that “the Japan Financial Intelligence Office shall handle the clerical duties of the Organization and analysis of matters where reporting has been received or information was provided on suspicious transactions based on Chapter 5 of Act on the Punishment of Organized Crimes” (Article 1, paragraph 6 of said Regulations).

330. Since its establishment, the Japan FIU has striven to offer guidance and incentives to financial institutions to submit suspicious transaction reports, and has pursued various measures to increase the quality and quantity of this information. These measures include creating and distributing sample reports, and holding nationwide training workshops on the provision of suspicious transaction reports. As a result, suspicious transactions reports and the distribution of information to law enforcement agencies, the number of reports has rapidly increased each year in Japan. Compared to 7 000 reports in 2000 – the year JAFIO was established – the number of reports rose to 110 000 in 2006, and in the same year JAFIO disseminated approximately 70 000 analyzed cases.

331. The Japan FIU also collects, analyzes, and disseminates information relating to terrorist financing. With the establishment of the Act on the Punishment of Financing of Offences of Public Intimidation in July 2002, terrorist financing became a criminal offence. The Act on the Punishment of Organized Crimes was also revised so that financial institutions were obligated to report suspicious transactions suspected of terrorist financing. In January 2003, the Customer Identification Act came into effect to ensure accuracy of information reported as suspicious transactions. Financial institutions were obligated to verify the customer when opening an account or conducting transactions above a prescribed amount. In January 2007, in line with FATF Special Recommendation VII, the revised Act took effect, and the threshold which requires customer identification in wire transfer was reduced to JPY 100 000 (approximately EUR 610 – USD 950).

332. The Act on the Prevention of Transfer of Criminal Proceeds first came into force on 1 April 2007. This Act was established with the purpose of implementing FATF Recommendations revised in October 2003. The scope of business operators obligated to undertake customer identification, record keeping, and suspicious transactions reporting was expanded to include DNFBPs. The provisions relating to the DNFBPs entered into force on 1 March 2008.

333. The Act also shifted the FIU function from the FSA to the National Public Safety Commission on 1 April 2007, while the rest of the provisions in the Act came into effect on 1 March 2008. The function of the FIU under the Act is performed by the Japan Financial Intelligence Center (JAFIC) within the National Police Agency, under the supervision of the National Public Safety Commission. Specifically, suspicious transaction reports are now ultimately filed to the National Public Safety Commission (JAFIC) through competent administrative agencies (Act on the Prevention of Transfer of Criminal Proceeds Article 9), and JAFIC provides law enforcement agencies with information or the results of its analysis, if it deems such information will contribute to their criminal investigations.

334. The Police Act and the National Police Agency Organizational Ordinances were revised. The revised Police Act states that “matters concerning collection, arrangement and analysis of information related to criminal proceeds as well as dissemination to related authorities” are to be handled by the National Police Agency under the management of the National Public Safety Commission (the Police Act, Article 5, paragraph 2, Item 8). The Organized Crime Department of the National Police Agency was charged with the tasks “concerning the prevention of transfer of criminal proceeds” (the Police Act Article 23, paragraph 1, Item 7). Moreover, the National Police Agency Organizational Ordinances charged the Director for Prevention of Money Laundering within the Organized Crime Control Department with the tasks of the Japan Financial Intelligence Center (JAFIC), including “the enforcement of the Act on the Prevention of Transfer of Criminal Proceeds” as well as “the general coordination with international organizations, international conferences and other international frameworks, and with foreign administrative organizations and other relevant organizations, relating to the prevention of transfer of criminal proceeds.” (the National Police Agency Organizational Ordinance, Article 29)

335. The JAFIC, as Japan’s new FIU, not only increased manpower (JAFIC has established framework with 41 personnel under supervision of Director General of Organized Crime Department and Councilor for Prevention of Money Laundering, compared to 20 for JAFIO) but also increased its access to various police information in performing its task of analyzing suspicious transaction reports.

336. Since 1 March 2007, a direct online STR reporting system to the FIU was implemented. The paper reporting system and floppy disk reporting system are still conducted through the designated regulatory agencies. This intermediary system is authorized by the Act. At the time of the on-site visit 25% of the STRs were submitted through the new online system and 75% through the old system. The reason justifying the old system is that STRs are sent by financial institutions to the regulatory agencies in accordance with the agency’s supervisory role – these agencies forward then the STRs to the FIU. Apart from supervision in respect of STR obligations by reporting entities, supervisory agencies do not play a role in the STR process. In practice, as STRs are provided to JAFIC promptly from financial institutions through their supervisory agencies, it is not an obstacle for FIU’s functions. However, supervisory agencies need to get the signature of an officer to forward an STR received to the FIU. In relation to jointly supervised financial institutions, signatures of all supervisory authorities are required. The team has been told that this signature process takes at the latest two days. Japanese authorities told the team that each agency takes information security measures and that there has never been a leak nor any issue raised concerning improper information management. However, this process, by its nature, could delay in the information of JAFIC and create a risk of loss of information. The new direct online STR reception system allows financial institutions and DNFBPs subject to the STR obligation directly to the FIU. Supervisory agencies have access to the e-platform and thus can supervise the STR obligation by financial institutions.

A National FIU

337. Until March 2007, the reporting system for suspicious transactions in Japan was based on Chapter 5 of the Act on the Punishment of Organized Crimes, and the FIU within the Financial Services Agency was established based on the same Chapter. With the implementation of the Act on the Prevention of Transfer of Criminal Proceeds on April 1, 2007, the functions of Japan's FIU are now carried out by the Japan Financial Intelligence Centre (JAFIC) that serves as a national and central agency for receiving, analyzing and disseminating disclosures of STRs. Suspicious transactions reports by specified business operators are filed directly to the National Public Safety Commission (JAFIC) or through the competent administrative agencies (Article 9). Suspicious transaction reports are analyzed and disseminated to the Public Prosecutors and law enforcement authorities when deemed to contribute to their criminal investigations (Article 11, paragraph 1) or to foreign FIUs when deemed to contribute to carrying out their duties (Article 12, paragraphs 1 and 2). JAFIC is established within the Organized Crime Control Department, Criminal Investigation Bureau, National Police Agency under the management of the National Public Safety Commission.

338. In 2007, JAFIC received 158,000 STRs from the specified business operators and 98 000 of these were disseminated to law enforcement agencies.

Guidance on Reporting

339. JAFIO, Japan's former FIU, accepted any of the three following reporting methods in receiving reports from financial institutions.

- (1) Report via the Internet through the FSA electronic application and report system.
- (2) Floppy disk report, either via post or delivery in person.
- (3) Hard copy report, either via post or delivery in person.

340. Reporting rates were approximately 25% for (1), approximately 70% for (2) and less than 5% for (3). JAFIO created the document "Request Regarding Suspicious Transaction Reporting Procedures and Report" to explain these three fundamental reporting methods. This document, which served as the starting point for all financial institutions obligated to submit reports, was distributed throughout the country via industry bodies such as the Japanese Bankers Association and the Regional Banks Association of Japan. It was also available at the FSA website.

341. The methods for completing a report, as explained in the "Request Regarding Suspicious Transaction Reporting Procedures and Report," were determined separately for each category of financial institutions. In addition to full instructions on the methods of completing the report forms, the three fundamental methods of submitting a report were also explained in detail. In particular, the first reporting method was explained in considerable detail to prevent information leakage. The details included how to connect to the FSA electronic application and report system and how to acquire electronic certification. The software to be used when notifying was also specified. There has been no substantial change, even after the transfer of the FIU from the FSA to NPA on 1 April 2007, since the reporting financial institutions continue to file their reports via FSA and other competent administrative authorities to the FIU.

342. The Act on the Prevention of Transfer of Criminal Proceeds also provides for the extension of the scope of business operators required to submit suspicious transaction reports to DNFBPs (Article 9, Article 2). As the said provisions came into effect from 1 March 2008, JAFIC has operated with each relevant administrative agency, so that documents explaining reporting methods would be available to them before that time, in addition to holding workshops and seminars around the nation as well as publicizing it through the website or by means of government public announcements.

343. Furthermore, to improve the quality of the contents of the suspicious transaction reports submitted by the financial institutions, and to show what kinds of transactions may be suspicious, JAFIO issued a series of “List of Reference Cases of Suspicious Transactions” adapted to the nature and the transactions carried out by the different types of financial institutions (banks, insurance and securities). Those lists illustrate examples of transactions that could be reported to the FIU. In addition to distributing this document to financial institutions via industry organizations, it had also been published on the FSA website. The details of the “List of Reference Cases of Suspicious Transactions” are as described in annex (also available on the JAFIC website). The contents of the “List of Reference Cases of Suspicious Transactions” are revised from time to time, based on updated information.

344. There have been no substantial changes since the establishment of JAFIC, and the FSA continues to publicly disseminate the “List of Reference Cases of Suspicious Transactions”. JAFIC is currently cooperating with each relevant administrative agency to prepare similar reference documents for those business operators, the DNFBPs that will newly come under the reporting obligation by the Act on the Prevention of Transfer of Criminal Proceeds.

FIU Analysis and Access to Information

345. Information from suspicious transaction reports is contained in the database within JAFIC. The primary analysis stage involves automatic cross-matching between the STR data and holdings of the JAFIC database. The system searches related reports in the database. In first instance, analysts inspect information in the report and rank it according to the degree they deem would contribute to a criminal investigation of Public Prosecutor or other law enforcement agencies and disseminate STRs to each law enforcement agency. The inconvenience of giving a rank to the STRs received based on the information already contained in the JAFIC’s database may result in the exclusion of some reports of an in-depth analysis, which would have been necessary regarding the sole transactions reported or the criteria of suspicious transaction as listed in the “Reference cases of suspicious transactions”, or of their transmission to the relevant law enforcement authorities. This primary analysis considers outstanding attributes of the individual, the transaction reported and matches with other STRs to give a primary rating. Analysts conduct further basic checks before deciding if dissemination is warranted at the primary stage. Approximately 60% of all STRs received are disseminated to law enforcement authorities with the matched data. JAFIC emphasizes dissemination of intelligence to law enforcement as soon as possible.

346. Further detailed analysis is conducted on certain STRs utilizing the Police information and publicly available information, and results of analysis are disseminated to relevant law enforcement. This in-depth analysis involves the development of a comprehensive intelligence file derived from the STR and includes cross matching police, administrative and open source databases. Typologies and methodologies are used in order to pick out STRs worthy of deep analysis. In 2007, out of the 158,000 STRs received, 971 secondary analyses have been conducted and among them 99 cases have been cleared. However, Japan’s officials ensured that the number of secondary analyses has noticeably increased: since the establishment of JAFIC as the FIU in April 2007 through March 2008 approximately 5,000 STRs were subject to in-depth secondary analysis. Among them, approximately 1,200 STRs were disseminated to law enforcement agencies. The more detailed analysis conducted on certain STRs, which includes analysis of and comparison with a variety of available information, contributes significantly to investigations conducted by the NPA and prefectural police.

347. JAFIC is recommended to improve its analysis ability by extensively using analysis tools such as strategic, tactical (trend and study of patterns of STRs), risk assessments of transactions, monitoring and more scrutinized financial analysis.

Access to Additional Information

348. JAFIC, as part of the NPA is legally able to access the NPA criminal database as part of its STR analysis. JAFIC also has access to administrative and commercial databases, such as property records and companies information. The FIU can, when necessary for the analysis of suspicious transaction reports and subject to approval by the Director, make requests for additional information from those financial institutions and the like that are obligated to submit suspicious transaction reports.

Dissemination

349. JAFIC is authorized by the Act on the Prevention of Transfer of Criminal Proceeds to provide Public Prosecutors, Judicial Police Officials, Customs Officers, or personnel of the Securities and Exchange Surveillance Commission with information, when an item related to a report of a suspicious transaction, information provided by foreign FIU, or the results from their arrangement or analysis are recognized to contribute to the investigation of criminal cases and inquiry into irregularities by them (Article 11, paragraph 1). The term "Judicial Police Officer" includes not only police officers, but also Coast Guard Officers, and Narcotics Control Officers. Based on this provision, JAFIC is providing information on a regular basis of once per week, except when it relates to a matter under investigation and when urgent dissemination is necessary. The amount of disseminated STRs to the law enforcement agencies in 2007 was 2/3 of all the STRs received by the FIU. The reason for such a high level of dissemination was to ensure the promptness of STRs availability to the various law enforcement agencies as explained by the JAFIC, and enable accumulation of financial intelligence for use across the respective investigations by these law enforcement agencies. In 2007, out of 98 000 STRs disseminated to the law enforcement agencies 23 000 STRs were used partly to investigate various forms of criminal activity.

Operational Independence

350. Under the Act on the Prevention of Transfer of Criminal Proceeds, the National Public Safety Commission undertake functions of Japan's FIU (Articles 9, 11, 12, etc.). Also, based on related acts and regulations such as the Police Act, the Japan Financial Intelligence Centre (JAFIC) in the NPA performs FIU's task of collection, arrangement, analysis and dissemination of suspicious transactions. Regarding this task, the National Public Safety Commission is to manage the NPA (the Police Act, Article 5, paragraph 2, Item 8), and the NPA Commissioner General is obligated to report to the National Public Safety Commission on the situation of the work process at least once each year (Rule for the Handling of Information on Suspicious Transactions (National Public Safety Commission Rule Number 9)).

351. On this point, the National Public Safety Commission was originally established to ensure the political neutrality and democratic management of the police. The Chairman of the National Public Safety Commission, who is a Minister of State, and the five other National Public Safety Commission Officers, must not have held a public position involving the duties of the police department or the prosecutors' offices in the previous five years, are to be persons of excellent character and discernment from the fields of academia, finance, the mass media, or former members of the civil service, and are to be approved by both Houses and appointed by the Prime Minister. Further, a majority of three members or above shall not belong to the same political party (Articles 6 and 7 of the Police Act). These measures ensure the freedom of the National Public Safety Commission from political influence or interference.

Information to be held securely

352. Members of JAFIC are all public servants of the Japanese government, and therefore not only during their tenure, but also after their retirement, they are required to keep confidential information related to the course of their duties (National Public Service Act, Article 100,

paragraph 1). Violators will be subject to imprisonment of a year with labour or a fine of JPY 500 000 (approximately EUR 3 100/USD 4 850) (National Public Service Act, Article 109, item 12). Moreover, members of JAFIC in charge of handling STR's are all law enforcement officers and each of them are trained on the importance of secrecy of information related to investigations. Their awareness towards secrecy is at a very high level.

353. The “Rule for the Handling of Information on Suspicious Transactions” established by the National Public Safety Commission provides procedures to be followed for storage and authorized dissemination of information. It also requires that the situation of handling information shall be reported regularly to the National Public Safety Commission.

354. Information held by JAFIC appears to be securely protected electronically, has limitation on access and use by staff and is subject to security audit.

FIU Typology Reporting

355. From its establishment in 2000 through to 2006, JAFIO (Japan’s former FIU), has publicly released on its website statistics (number of suspicious transaction reports received, the number of reports issued to investigative authorities and the report per business category past three years). It also introduced a history of Japan’s efforts to combat money laundering and terrorist financing in international society, published an explanation of the system for the reporting of suspicious transaction reports, and provided reference examples of suspicious transactions. Every year, from 2000, JAFIO had sent staff at assistant section chief level to every region throughout the country to hold training workshops for the employees of financial institutions, etc. responsible for money laundering countermeasures. In October and November 2006, it held 19 training workshops at 12 nationwide locations, and representatives of 963 financial institutions attended. In 2007, 12 workshops were organized for DNFBPs and 21 for financial institutions. In 2008, 2 seminars were hold for DNFBPs. In addition to lecturing these training workshops, utilizing information received from investigative institutions, it introduced on its website examples of suspicious transaction reports which subsequently became subject to investigation or which led to the discovery of hidden assets belonging to the suspected offenders. Moreover, in addition to actual examples of reports, it also introduced in detail the deposit and withdrawal characteristics frequently found in accounts used in the execution of a diverse category of crimes, including money laundering; money fraud using the financial systems; illegal drug trafficking; illegal account transfers; and underground banking system, etc.

356. JAFIC has established a website, and in addition to the information previously published by JAFIO, it will continue to promote participation in training workshops for specified business operators, and also provide the most important and detailed information on the latest methods and trends for crimes such as money laundering and terrorist financing.

357. The Act, in its Paragraph 1, Article 3, stipulates that the National Public Safety Commission (JAFIC) shall, in order to ensure that such measures as the identification of customers, preservation of transaction records, and reporting of suspicious transactions should be conducted appropriately by specified business operators, provide them with assistance including the provision of information on the modus operandi regarding the transfer of criminal proceeds, and shall endeavour to enhance public awareness on the importance of prevention of the transfer of criminal proceeds. Based on this Article, JAFIC is also participating in training workshop for entities obligated to submit suspicious transaction reports, and also provides the most concrete and detailed information on the latest methods and trends for crimes such as money laundering and terrorist financing, etc. as much as possible. Each year the NPA issues the “NPA White Paper”, a report entitled the “Situation for Organized Crime” and JAFIC Annual Report to introduce, in addition to AML/CFT, NPA activities, analysis and statistics of all types of crime situation. The NPA White Paper, the Situation for Organized Crime and JAFIC Annual Report are publicly released and available on the JAFIC website.

Egmont Membership

358. After its establishment in February 2000, JAFIO (Japan's former FIU) was approved membership of the Egmont Group at the 8th Annual Meeting in May 2000. Since then JAFIO has actively participated in Egmont Group business, including the Heads of FIU Meeting, Legal Working Group, Transition Subcommittee and the Implementation Committee. In April 2007, JAFIC was established as the new FIU in Japan and re-applied for membership to the Egmont Group. This application for membership of the Egmont Group was accepted in May 2007 at the 15th Egmont Group Annual Meeting.

Egmont Processes and International Cooperation

359. The means by which Japan has regard to the principles described in the Egmont Group's "Statement of Purpose of the Egmont Group of Financial Intelligence Units," and the "Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorist Financing Cases" is described under the following paragraphs.

Constructing cooperative relationships with foreign FIUs

360. Japan recognizes the importance of cooperating with foreign FIUs. Its former FIU, JAFIO, established a Framework for Exchange of Information with 10 countries and regions (the United Kingdom, Belgium, South Korea, Singapore, the United States, Australia, Thailand, Hong Kong, Canada and Indonesia) for the purpose of exchanging information. After JAFIC was established in April 2007, JAFIC established a Framework for Exchange of Information with 12 jurisdictions (Hong Kong, Thailand, Malaysia, Belgium, Australia, the United States, Canada, Singapore, Indonesia, the United Kingdom, Brazil and the Philippines) and is currently conducting negotiations with a view to establishing a Framework with more than 40 countries and regions, including South Korea, France, Germany, Italy, Switzerland, and Russia (as of October 2007). Furthermore, JAFIC sent liaison officers overseas to strengthen cooperation with each country's FIU to realize faster and more efficient information exchange. In October 2007, one liaison officer was dispatched to Australia and one liaison officer will be dispatched to the United States within fiscal year of 2007.

Cooperative efforts to establish relationships with foreign FIUs and improve capabilities

361. In May 2005, JAFIO, Japan's former FIU, sent a deputy director to the Workshop for Mongolia on Deposit Insurance and Anti-money Laundering, opened by the Bank of Mongolia and the Deposit Insurance Corporation of Japan. The JAFIO member was sent as an instructor, and gave lectures on the establishment of JAFIO and the start-up of Japan's system for money laundering-related suspicious transaction reports. These efforts contributed to the establishment of the Mongolian FIU.

362. Further, in December 2006, JAFIO accepted the request of the Indonesian FIU and received five of their staff, and provided information to them in relation to the various aspects of JAFIO, including its functions, analysis methods, and its specific financial information database. Also, in order to comprehensively explain Japan's money laundering countermeasures, it arranged visits for them to both the Japanese Bankers Association, which coordinates with banks notifying suspicious transaction reports, and also to the NPA, the body to which information is submitted. As a result of the increased information exchange with the Indonesian FIU officers during their period of stay in Japan, a stronger cooperative relationship between the two FIUs was established.

363. From its establishment in 2000 to 2006, successive Heads of JAFIO took a leadership role within the Financial Action Task Force (FATF) as chair of the Group on Non-Cooperative Countries and Territories (NCCT), assisting to achieve system reforms in non-cooperative countries within its region. This leadership contributed to establishing FIUs in non-cooperative countries. For example, in

October 2006, during the process to remove Myanmar from the NCCT list, JAFIO assisted with the creation of this country's FIU, and also encouraged its future membership of the Egmont Group.

364. During the Outreach Working Group convened in February 2007, JAFIO supported the Myanmar FIU application during the Egmont Group membership application review procedure. JAFIC has continued to support the Myanmar FIU's application to join the Egmont Group, again supporting its application during the Outreach Working Group opened in May 2007. JAFIC will act as a sponsor to advocate the Myanmar FIU position during the Egmont Group's Legal Working Group discussions.

Recommendation 30

Independence of the FIU

FIU Independence

365. Under the Act on the Prevention of Transfer of Criminal Proceeds, the National Public Safety Commission undertakes the functions of Japan's FIU (Articles 9, 11, 12, etc.). Also, based on related acts and regulations such as the Police Act, the Japan Financial Intelligence Centre (JAFIC) in the NPA performs FIU's task of collection, arrangement, analysis, dissemination, etc. of suspicious transactions. Regarding this task, the National Public Safety Commission is to manage the NPA (the Police Act, Article 5, paragraph 2 Item 8), and the NPA Commissioner General is obligated to report to the National Public Safety Commission on the situation of the work process at least once each year (Rule for the Handling of Information on Suspicious Transactions (National Public Safety Commission Rule Number 9)).

366. On this point, the National Public Safety Commission was originally established to ensure the political neutrality and democratic management of the police. The Chairman of the National Public Safety Commission, who is a Minister of State, and the five other National Public Safety Commission Officers, must not have held a public position involving the duties of the police department or the prosecutor's office in the previous five years, are to be persons of excellent character and discernment from the fields of academia, finance, the mass media, or former members of the civil service, and are to be approved by both Houses and appointed by the Prime Minister. Further, a majority of three members or above shall not belong to the same political party (Articles 6 and 7 of the Police Act). These measures ensure the freedom of the National Public Safety Commission from political influence or interference.

Sufficiency and Independence of the Funding Aspect

367. The 2007 budget for the Japan Financial Intelligence Centre (JAFIC) totalled about JPY 875 million (approximately EUR 5.4 million / USD 8.3 million). About JPY 740 million (approximately EUR 4.5 million / USD 7million) of this is for a new information system development and maintenance to handle the greatly expanded scope of business operators legally obliged to report suspicious transactions and upgrade analysis capabilities, new staff members... This compares with previous IT system development funding for JAFIO which was set at about JPY 70 million (USD 580 000) per year. About JPY 100 million (USD 830 000) of JAFIC's 2007 budget was assigned to international travel obligations, including attendance at international meetings and promoting more effective relations with foreign FIU's.

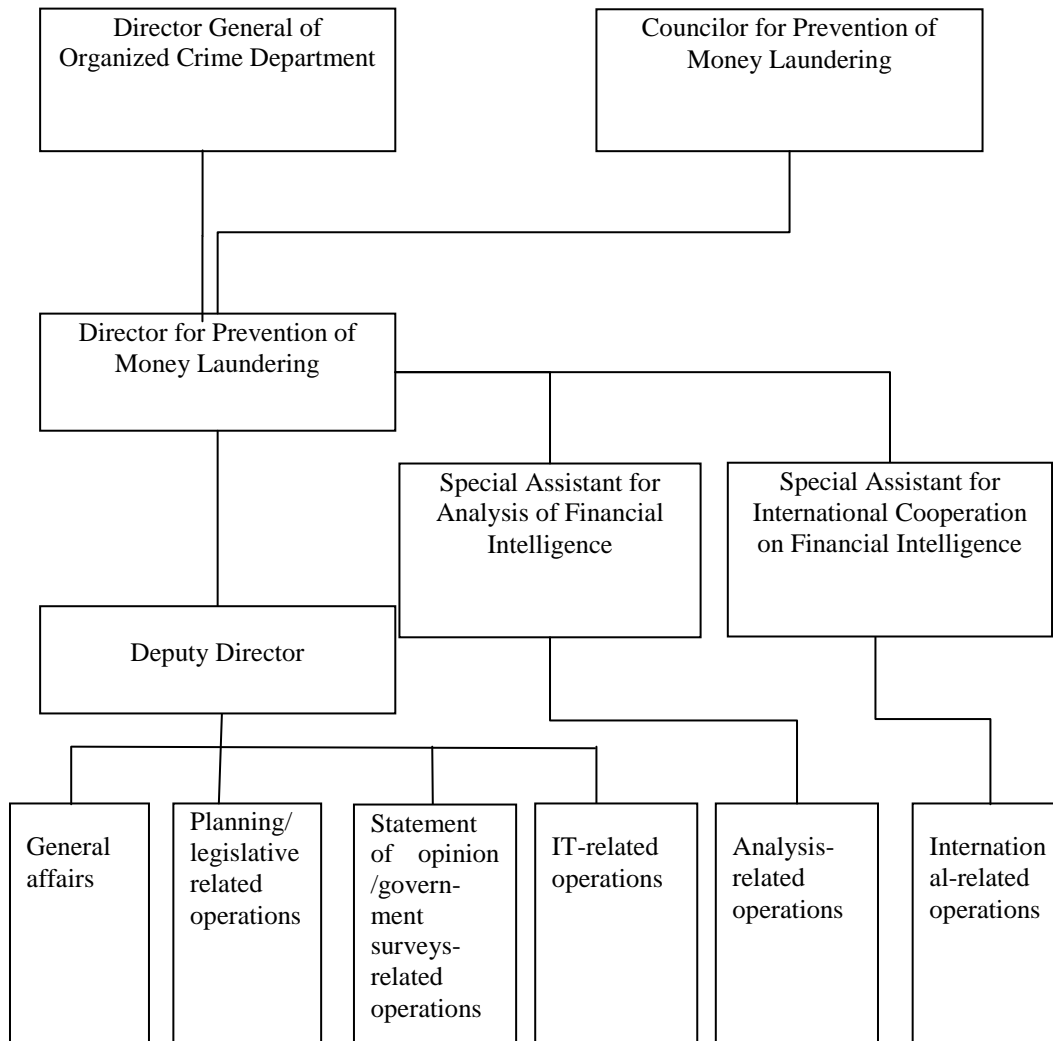
Human Resources

368. The previous FIU, the Japan Financial Intelligence Office (JAFIO), had 20 personnel to carry out its task, while the current FIU, the Japan Financial Intelligence Centre (JAFIC), has an established framework with 41 personnel under supervision of Director General of Organized Crime Department and Councillor for Prevention of Money Laundering. At the time of the onsite visit

almost half of the JAFIC's total staff were assigned to analyse STRs. This overall number is set to increase by 17 personnel in the upcoming financial year (*i.e.* from April 2008).

369. With regard to the number of STRs received in the past years and the fact that some categories DNFBPs are now subject to the reporting obligation, the limited number of staff, in particular the number of analysts in the FIU is of concern for the assessment team. Although JAFIC has advised the assessment team that it intends to increase the number of its staff, the proposed increase in the number of analysts remains low.

The following table sets out the organisation chart within JAFIC.



Organization of JAFIC is as follows

Confidentiality, Integrity and Skill

370. Since members of JAFIC are all public servants of the Japanese government, not only during their tenure, but also after their retirement they are required to keep confidential information obtained in the course of their duties (National Public Service Act, Article 100, paragraph 1). Breach of confidentiality obligations may result in conviction and potentially to imprisonment for a period of up to one year or fine of JPY 500 000 (approximately EUR 3 100/USD 4 850) (National Public Service Act, Article 109, item 12). Members of JAFIC in charge of handling STRs are all law

enforcement agencies and are trained on the importance of secrecy of information related to investigations.

371. JAFIC staff have a variety of experience in a number of law enforcement and regulatory agencies, which provides a good basis for dealing with JAFIC information. JAFIC intelligence analysts include staff from both police and customs agencies. While there are no accountants, a number of them have detailed experience with financial matters. FIU analytical staff have received a significant amount of analytical training, including national and international programmes. The anticipated increase in analytical staff is planned to include recruitment from the financial sector and regulators of other sectors, including DNFBP sectors.

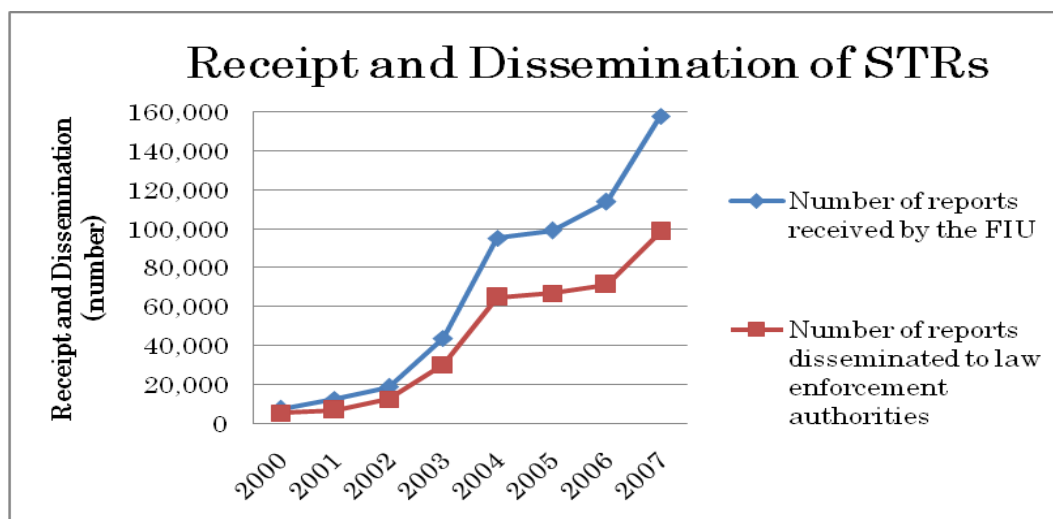
Training for FIU Staff

372. JAFIC staff have attended FATF / APG Mutual Evaluations training (including APG training in Singapore in July 2007), and staff who have received this training have returned to JAFIC and have provided instruction and guidance to JAFIC staff regarding the FATF Recommendations and details of its activities, the importance of strengthening of cooperative relations between FIUs

373. Further training for FIU staff has been provided specifically focused on money laundering and terrorist financing countermeasures. NPA attendance at FATF / APG typologies meetings and meetings such as the “Financial Crime Investigation Seminar” held in Hong Kong in November 2006, have enhanced FIU understanding and knowledge of criminal techniques used for money laundering and terrorist financing, and relevant countermeasures. The NPA has sent staff to each FIU of the U.S., UK, France, Belgium, and Australia to learn the analysis techniques at each FIU and on the occasion of the establishment of JAFIC, those staff were assigned to JAFIC, and have been providing guidance and instruction to staff newly appointed into the FIU. Other examples of training and enhancing knowledge include attendance at the Training Meeting on Cash Couriers in June 2007, which was held in the Philippines and sponsored by Australian Government, and to the Counter Terrorism Financing Workshop, which was held in Australia and sponsored by APEC in July 2007.

374. JAFIC are constantly researching and updating training and typologies material. In particular, all analysts meet monthly to discuss latest trends in AML and CFT experiences. Feedback from the NPA, Prefectural Police, Public Prosecutors Office and others relating to typologies and trends is received and included by JAFIC in monthly updates to staff. Over one hundred case study examples are used and regularly updated for staff training. By making the contents of these reports known to all of staff, JAFIC is constantly acquiring knowledge on the latest criminal techniques for money laundering offences.

Recommendation 32



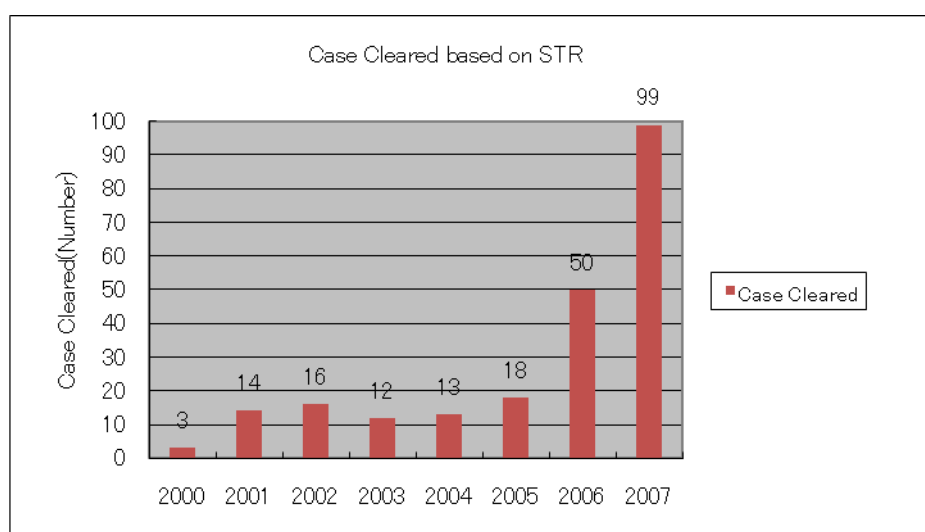
Breakdown of the entities that submitted the report

Category	2004		2005		2006		2007	
	Report	%	Report	%	Report	%	Report	%
Banks	82 325	86.37	85 248	86.17	93 426	82.05	133 699	84.6
Shinkin Banks and Credit Cooperatives	8 119	8.52	7 010	7.09	8 136	7.15	10 237	6.5
Insurance companies	16	0.02	19	0.02	33	0.03	48	0.1
Securities companies	339	0.36	572	0.58	656	0.58	1 174	0.7
Norinchukin Bank	40	0.04	92	0.09	89	0.08	294	0.2
Labour Bank	109	0.11	128	0.13	86	0.08	189	0.1
Money lending Business	1 152	1.21	1 175	1.19	805	0.71	397	0.3
Japan Post	3 159	3.31	4 555	4.60	10 509	9.23	11 859	7.5
Other	56	0.06	136	0.14	120	0.11	144	0.0
Total	95 315	100	98 935	100	113 860	100	158 041	100

STR Statistics and ML FT or other Prosecutions

The number of cases cleared based on suspicious transaction reports (limited to cases cleared by the police):

375. Until 2006, the NPA Strategy-Planning and Analysis Division, after analyzing and investigating information under Article 56 of the pre-revised Act on the Punishment of Organized Crimes, provided information to each prefectural police. Since the implementation of the Act, cases cleared based on suspicious transaction reports have increased year by year. With 99 cases cleared in 2007, the total number of cases cleared since implementation of the Act has reached 225.



376. Possible reasons for the sudden increase in the number of cases cleared based on suspicious transaction reports are as follows:

- (1) The improvement of prefectural police frameworks on AML.
- (2) Improvement of NPA analysis system on STR's.
- (3) Providing instruction and training from the NPA to AML departments of prefectural police.

Breakdown of cases cleared based on suspicious transaction reports

377. In the breakdown of all cases cleared based on suspicious transactions, fraud ranked first, violations of the Immigration Control and Refugee Recognition Act, second, and violations of the Bank Act, third.

Cases Cleared based on through STR

	Fraud	Violation against Immigration Control Act	Violation against Bank Act	Violation against Act on Controls, etc. on Money Lending·Business Act, Investment Act	Documentary Forgery	Others	Total
2000	2		1				3
2001	3	2	3	1	2	3	14
2002	2	5	3		1	5	16
2003	4	1	4	3			12
2004	6		1	3	2	1	13
2005	14	2		1	1		18
2006	34	12	1	2		1	50
2007	81	1	1	3	2	11	99
Total	146	23	14	13	8	21	225

2.5.2 Recommendations and Comments

378. The assessment team believes that placing the Japan FIU in the NPA was a positive step – the benefits to both JAFIC and to law enforcement agencies is apparent from this move. JAFIC have good access to law enforcement and other information with which to undertake analysis of STR's, including the ability to directly access additional information from banks. The STR reports appear to be comprehensive, with considerable additional information scanned and attached to reports received by JAFIC. JAFIC has sound information technology for matching information across Police intelligence databases, which enhances its analysis capability. JAFIC analysis is effectively disseminated to law enforcement for use in criminal investigations – there is effective interaction between Japan Police and JAFIC. Prefectural Police expressed a high level of satisfaction with the intelligence product of JAFIC and affirmed its utility for criminal investigations. Case examples were provided that demonstrate the importance of STR information for law enforcement. It seemed apparent that analysis is occurring and that value is being added to the STR information prior to it being passed to law enforcement authorities. However, the assessment team believes there is scope to improve the quality of analysis carried out by JAFIC, particularly in relation to the strategic

assessment of crime typologies and methodologies. An increased number of FIU Analysts is needed to ensure that JAFIC is able to maintain and improve its capability in this regard.

379. In addition to meeting with representatives from the NPA, and the Director of JAFIC, to discuss the FIU procedures and processes, members of the assessment team visited JAFIC and were shown through the unit. JAFIC manage significant volumes of STR reporting with the resources currently available. We were informed that the number of analysts is set to increase further staff in 2008, and there is an urgent need for this additional resource. As pressure continues for financial institutions and others to improve the level of reporting, this will undoubtedly have flow on effects for the FIU, which will require greater resources to maintain and improve its effectiveness.

380. In the less than 12 months since being established in April 2007 JAFIC has, in addition to establishing Egmont membership, completed memorandums with other Financial Intelligence Units for information sharing arrangements and is presently negotiating a further 45. Cases were provided of effective information sharing under these arrangements.

381. Information security and access to JAFIC databases appeared very sound. Safeguards included fingerprint access to the JAFIC analysis centre, and in addition to password security, fingerprint access to actually log into the FIU database. The transmission of the STRs received by the supervisory authorities and sent to JAFIC and the proper information management and security regarding these seem to be sound. For example, STRs are initially forwarded to the Ministry of Finance by reporting entities and then forwarded to JAFIC. Following analysis, the reports are disseminated to a wide range of agencies, including prefectural police, prosecutors, customs and coast guard, and also to the SESC.

382. Japan authorities are concerned by the sale of illegal drugs, often through organized crime groups, and most frequently it is believed that these drugs are sourced from overseas and imported into Japan. A natural consequence is the likely flow back to source countries of money from the sale of these drugs. The assessment team met with Customs and discussed border currency reporting and border security generally in relation to the movement of cash or other forms of currency / bearer instruments across the border. Matters associated with border cash reports are discussed in more detail later in this report, however the assessment team held serious concerns that information concerning border cash and other forms of reporting were not readily available to the FIU. In fact, it appears that there has never been an instance where a border currency report has been passed to the FIU. In the assessment teams experience there is no jurisdiction that has not encountered the movement of cash across the border – with Japan's situation regarding importing of illegal drugs, there seems very likelihood that information from cross border currency movements will be of direct relevance and of considerable importance to law enforcement investigations of cross drug importation and supply. This situation should be rectified as soon as possible.

383. The assessment team was provided with examples of alternative remittance and underground banking in Japan. At the present time JAFIC is focused largely on tactical reporting of STR cases for law enforcement purposes. However, the assessment team believes that there is an opportunity for JAFIC to develop on the work that has already been achieved in relation to alternative remittance typologies and methodologies, with a view to providing strategic intelligence reporting to law enforcement.

384. There appeared to be sound relationship and good interaction between JAFIC and financial institutions, although there may be scope to improve feedback by JAFIC to financial institutions. The opportunity to develop on strategic assessments may also benefit the feedback provided to financial institutions and better enable these to identify and report on suspicious activity to JAFIC. There may be further opportunities to provide feedback and enhances engagement with the broader financial sector, particular in relation to the securities industry.

385. The experience of jurisdictions that provide FIU access to tax related information has been that this adds an important dimension to the analytical capability for law enforcement and also builds on inter-agency cooperation. Japan may consider whether it is appropriate for JAFIC to have access in appropriate circumstances to tax related information.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	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.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R. 27 & 28)

2.6.1 Description and Analysis

386. The National Police Agency of Japan (NPA) and 47 Prefectural Police (PP) forces (in combination referred to as the Japan Police) have a responsibility to protect the lives, persons and property of individuals, as well as to take charge of the prevention, suppression and investigation of crime, apprehension of suspects, traffic control and other affairs concerning the maintenance of public safety and order (Article 2, paragraph 1 of the Police Act). The Japan Police are therefore responsible for AML and CFT investigations, and for the investigation of proceeds of crime matters in Japan. In the 2006 FY Japan had a total of 288 451 police personnel. The NPA had a total 7 524, and the PP a total of 280 927. The police budget is constituted of NPA budget and each Prefectural Police budget. For the fiscal year of 2006 the NPA budget was JPY 280 248 million (approximately EUR 1.7 billion / USD 2.6 billion), and the PP was JPY 3 385 959 million.

387. The Japan Public Prosecutors Office (PPO) is responsible for deciding whether or not to prosecute cases in court, and for bringing criminal proceedings for ML and TF related offences, and for enforcement of proceeds of crime freezing and confiscation. The PPO has a total staff of 11 532, which includes 2 490 Prosecutors and Assistant Prosecutors. The PPO manages 2 121 151 case referrals from Police, which includes 364 267 Penal Code cases. Of these, a total of 862 468 cases are referred for prosecution (1 061 501 were not proceeded with, and 215 588 were referred to the Family Courts). The 2005 Annual Prosecution Statistics Report notes that 89 058 offenders were sentenced to imprisonment with or without work.

Organization of Japanese Police:

Public Safety Commissions

388. The police are authorized to execute coercive powers. Therefore police operations must not be conducted with self-serving purposes and police must not be used for political means (Articles 5 and 38 of the Police Act). The National and Prefectural Public Safety Commissions are council organizations consisting of representatives of the people and are established in order to supervise the police. Democratic management and political neutrality of the police is maintained in this manner. The chairman of the National Public Safety Commission and the five other members are appointed by the Prime Minister with the approval of both houses and the Diet (Article 6 of the Police Act), in order to harmonize the two demands; political neutrality of the police and defining of government responsibilities towards public safety.

389. In Tokyo, Hokkaido, Kyoto, Osaka and prefectures with government-designated cities, Prefectural and Regional Public Safety Commissions are comprised of five full time members, and elsewhere they are comprised of three members who serve part-time. Members are appointed by the Prefectural Governors with the approval of the Prefectural Assemblies. Prefectural Public Safety Commissions (PPSC) generally meet three to four times per month to discuss matters impacting police enforcement.

The National Police Agency

390. The (NPA) as a national institution assumes the role of police administration, dealing with planning of policies, public safety, operations concerning knowledge and skill, communication and forensics which serve as the base of police activities, and coordination related to police administration, (Article 17 and 5 of the Police Act). Regarding these stipulated duties of the NPA, the Commissioner General of the NPA, under the supervision of the National Public Safety Commission, directs and supervises the prefectural police (Article 16 of the Police Act).

The Prefectural Police

391. PP are responsible for police enforcement duties including criminal investigations and traffic regulation. As noted, in 2006 there was a total of 280 927 PP staff in Japan. In addition to the police headquarters and police academies, there were 1 218 police stations; 6 362 koban (police boxes); and 7 196 residential police boxes in the police system in all 47 prefectures.

392. Regional Police Bureaus assist with guidance and coordination to the PP regarding matters such as measures for organized crime, crimes committed by foreigners in Japan, and joint investigations of cases that require inter-prefectural handling.

Money Laundering and Terrorist Financing Countermeasures:

National Police Agency

393. The NPA Strategy-Planning and Analysis Division of the Organized Crime Department provides guidance to the prefectural police regarding money laundering offences under the Act on the Punishment of Organized Crimes, and deprivation of criminal proceeds in accordance with the system for seizure orders for confiscation before the institution of prosecution provided by the Act. In addition, based on the results of the analysis of suspicious transaction reports provided by JAFIC, the NPA carries out a range of further analysis, including in relation to the investigation of money laundering offences (Article 25 of the NPA Organizational Ordinances).

394. In terms of terrorist countermeasures, the Public Safety Division of the NPA Security Bureau provides instruction and coordination for the prefectural police investigations into terrorist and guerrilla-type incidents committed by violent extreme-leftist groups and rightists. (Article 37 of NPA Organizational Ordinance). The Foreign Affairs Division provides instruction and coordination related to investigations into so-called underground financiers carried out by the foreign affairs departments of the prefectural police (Article 39 of NPA Organizational Ordinances). And in order to combat the growing threat of international terrorism, the Counter International Terrorism Office became the Counter International Terrorism Division in April 2004. This division provides instruction and coordination for prefectural police investigations of terrorist financing based on information on suspicious transactions and other related sources (Article 40 of NPA Organizational Ordinances).

Prefectural Police

395. In the PP the departments in charge of organized crime and money laundering countermeasures used to be separated into different sections such as the Boryokudan Control Division, the Drugs and Firearms Control Division, and the International Investigation Division to

respond to each case individually. In order to put into practice effective and uniform organized crime and money laundering countermeasures for police nationwide, by release of the "Organized Crime Control Guidelines" in October 2004, the PP now have a structure that includes an Organized Crime Control Division responsible for dealing with countermeasures against organized crime and money laundering.

396. In consideration of the importance of organized crime and money laundering countermeasures, Organized Crime Control Departments independent of the Criminal Investigation Department have been established in the Metropolitan Police Departments with jurisdiction over Tokyo, the largest city in Japan. Furthermore, task forces specializing in investigation of money laundering, utilizing results of analysis of STRs provided by the NPA, have been established in these Organized Crime Control Divisions and Departments.

397. The PP, under instruction and coordination of the NPA, investigate any matters of suspected terrorist financing, in accordance with Article 2 and Article 36 of the Police Act. In particular, the security/public safety departments of the PP are carrying out the collection of information and crackdowns with the aim of preventing terrorist and guerrilla-type incidents committed by violent extreme-leftist groups and rightists. Security departments of the PP are working to clear criminal cases that encourage illegal over staying in Japan, such as the so-called underground financiers which could lead to terrorist activities, and to preventing the expansion of foreign criminal organizations that have established bases in Japan. With developing frameworks for counter terrorism, terrorist financing investigations are being carried out based on information of suspicious transactions and other related sources provided by the NPA.

Designated Law Enforcement Agencies for AML / CFT

398. The Japan Police are responsible for the prevention, suppression and investigation of crime, the apprehension of suspects, traffic control and other affairs concerning the maintenance of public safety and order (Article 2, Paragraph 1 of the Police Act). Given the scope of these responsibilities, the police are authorized and responsible for the proper investigation of money laundering and terrorist financing related offences.

399. The low number of AML/CFT prosecutions raises the issue of the effectiveness of the implementation by the Japan police of their responsibilities.

400. The NPA Guideline for Organized Crime Control (Article 6) notes that in order to promote the enforcement activities relating to organized crime, including intercepting crime fund sources, each PP will make efforts to utilize laws and ordinances, taking account of the proactive utilization of information related to suspicious transactions and the promotion of enforcement focused on criminal proceeds.

Measures to allow ML cases to postpone arrest

401. Police in Japan are able to use controlled delivery as a technique for the investigation of ML and TF offences, and for the investigation of predicate offences such as drug and firearm offences. The principal source of unlawful drugs in Japan is through drug smuggling activity through concealment in hand luggage and by small package smuggling through international postal services. Controlled delivery is especially relevant to these types of investigations in order to identify those people responsible for organizing the illegal importation. The following table provides the number of controlled delivery investigations conducted between 2002 and 2006.

Conducting of Controlled Delivery

	2002	2003	2004	2005	2006	2007
Case Conducted	26	63	78	42	29	39

402. The investigation technique used to postpone the arrest of any offenders when the authority knows that they are engaged in the commission of an offence is allowed as part of an optional investigation because it does not employ any coercive power over the offenders or impose upon them any obligation not to interfere. Japan has a policy of strictly controlling the imports or exports of controlled substances. In addition to punishing the illegal export or import of controlled substances, the Immigration Control and Refugee Recognition Act prohibits foreign nationals who illegally possess controlled substances from entering Japan. Japanese Customs Law, for its part, stipulates those controlled substances as goods that are not importable. Consequently, if officials at the immigration authorities or customs let criminals who intend to enter the country possessing controlled substances pass through immigration and customs without confiscating such substances, such officials are knowingly permitting the criminals to enter the country and such controlled substances to be brought into the country, which will violate the Immigration Control and Refugee Recognition Act, as well as Customs Law, and would likely cause such officials to be held administratively responsible. However, under Articles 3 and 4 of the Anti-Drug Special Provisions Law, it is permissible to allow individuals who illegally possess controlled substances to enter the country and for controlled substances to be imported if there is a need to postpone the arrest of suspects or the seizure of their property, provided that an adequate surveillance system is always in place to prevent controlled substances from dissipating and offenders from escaping.

403. Japanese law enforcement authorities have access to a limited range of special investigative techniques when conducting investigations of ML and FT, which include surveillance and interception capabilities, in addition to provision for the use of controlled deliveries. Further development of capability regarding undercover deployment and witness protection are areas that Japan may be able to develop further.

404. The Japan Police have institutional mechanisms for reviewing law enforcement practices and procedures in order to learn from their experience. The Police Administration General Review Commission is a commission that was established on 1 July 1994, and is tasked with contributing to the improvement of police administration by comprehensively reviewing general police practices in order to adapt to changes in social conditions in Japan and abroad, and to manage police administration in an appropriate and rational manner.

405. In the NPA, as one part of the improvement of the information collecting system, the Committee on Organized Crime Countermeasures was established in 2003 under the Police Administration General Review Commission, and has held consultations, from time to time on several policies to implement effective countermeasures against organized crime.

406. The Executive Intelligence Committee for Organized Crime Countermeasures has been established under the Committee on Organized Crime Countermeasures. Every month officers from the Criminal Investigation Bureau (including the Organized Crime Control Department), the Community Safety Bureau, the Security Bureau, and the Traffic Bureau in charge of duties that could possibly be connected to organized crime attend the Executive Intelligence Committee and share information across relevant bureaus regarding trends in countermeasures against *Boryokudan* and foreign criminal organizations operating in Japan, reports on cleared cases, money laundering offences committed by criminal organizations, and investigative techniques.

407. The previous Japan FIU (JAFIO) had organized periodically “Typology Study Meetings” with these law enforcement authorities for the purpose of exchanging information on specific examples where information on suspicious transactions had been utilized in investigation of criminal cases (there were over 100 total example cases accumulated), and latest trends of crimes where financial institutions had been exploited. JAFIC also continues to hold these meetings and is closely exchanging information with the law enforcement authorities. In addition, the NPA receives reports from each Prefectural Police on case examples of money laundering offences and cases cleared based on suspicious transaction reports. By making the contents of these reports open to all of the staff, JAFIC is constantly acquiring knowledge on the latest criminal techniques for money laundering offences.

408. JAFIC is planning to hold intensive training workshops to teach high-level analysis techniques for prefectural police officers engaging in analysis of criminal proceeds. (the first training workshop being scheduled for March 2008). In the workshop, JAFIC will provide trainings related to know-how of analysis on STR, general financial analysis, accounting, and securities expertise as foundation for analysis, identifying of organized crime and other relevant techniques.

Recommendation 28

Competent authorities to have power to investigate ML, FT and predicate offences

409. Responsibilities of the police shall be to protect the lives, persons and property of individuals, as well as to take charge of prevention, suppression and investigation of crime, apprehension of suspects, traffic control and other affairs concerning the maintenance of public safety and order (Article 2, paragraph 1 of the Police Act). Regarding the scope of these responsibilities, police are appropriately authorized to identify and trace property that is, or may become subject to confiscation or is suspected of being the criminal proceeds.

410. Specifically, a judicial police official shall, when he deems an offence has been committed, investigate the offender and evidence thereof (Article 189, paragraph 2 of the Code of Criminal Procedure). With regard to the investigation, such examination as may be necessary for attaining its object may be made and public offices or public or private organizations may be asked to make reports on necessary matters relating to the investigation (Article 197 of the Code of Criminal Procedure). Records, documents or information obtained are available for use in investigations or prosecutions of money laundering, terrorist financing and other underlying predicate offences, as well as in confiscation of criminal proceeds.

411. A judicial police official may ask any suspect to appear at the police offices (attendance is voluntary) and may question that person, if it is necessary for pursuing a criminal investigation (Article 198, paragraph 1 of the Code of Criminal Procedure). Where there exists any reasonable cause enough to suspect that an offence has been committed by the suspect, a judicial police official may arrest that person upon a warrant of arrest issued in advance by a judge (Article 199, paragraph 1 of the Code of Criminal Procedure). Moreover, if necessary for the investigation of an offence a judicial police official may affect seizure, search and inspection of evidence upon a warrant issued by a judge (Article 218 of the Code of Criminal Procedure).

412. Upon application by a judicial police officer, a court may proscribe the disposition of any property by issuing a sequestration order for confiscation before the institution of a prosecution (Article 23, paragraph 1 of Act on the Punishment of Organized Crimes). The purpose for this provision is that even before prosecution, as well as after prosecution, there is the possibility that assets may be disposed of by an offender and may no longer be confiscated. There can be several cases where the primary investigating authorities, the police, hold prima facie evidence related to the sequestration of confiscation, and appropriate measures should be taken in emergency. Effective measures may not be taken if a sequestration order for confiscation always requires the prosecution’s

application. Therefore, the judicial police officer has the right to apply for a seizure order for confiscation before the institution of prosecution.

413. Pursuant to provisions within the Code of Criminal Procedure, as a general rule, a warrant issued by the court authorizes the investigative authorities to search persons or buildings and seize any necessary property, such as transaction records maintained by financial institutions, other businesses or individuals, identification data obtained through customer identification data and other documents or information held by financial institutions.

414. As provided for in Article 321 of the Code of Criminal Procedure, the police are authorized to obtain witness statements. There is no restriction on police when interacting with a witness to an offence in terms of speaking to that person and taking a statement from the person. Competent authorities can *ex officio* use declarations given by eyewitnesses for the investigation or prosecution of money laundering, terrorist financing, or any other predicate offences or related acts.

Recommendation 30 - Structure, Staff and Resources

Independence and autonomy of Law Enforcement and Prosecutions

415. As stated above, the Japanese police are under the supervision of Public Safety Commissions, which are council organizations that operate as an independent administrative committee. The NPA and the prefectural police are supervised by the National Public Safety Commission and the Prefectural Public Safety Commissions, respectively. (Article 5 and 38 of the Police Act) Civilian control and political neutrality of the police is ensured by the Public Safety Commission system. Therefore, there is no political interference in investigative activities, which ensures the freedom of police activities from undue political influence or interference.

416. Police have established a financial investigation training institute at the National Police Academy, and conduct training for investigators regarding necessary financial expertise and technology. In addition, accountants, persons with experience in the banking industry, and others with a high level of financial accounting expertise are specially employed as financial investigators (as of July 2007 there were 51 persons nationwide). These provide specialized knowledge to fully utilize money laundering investigative techniques.

417. The police are making efforts to improve the capabilities of investigators by conducting training related to crimes by terrorist organizations with the objective of fund-raising, crimes which could lead to terrorist activities, viewpoint and obtaining source of information for building a case, and effective use of investigative methods including search, seizure or confiscation, using examples of various incidents and the results of the analysis of the methods of relevant crimes as its teaching materials.

418. The National Police Academy provides:

- Training related to investigations into terrorist and guerrilla-type incidents committed by violent extreme-leftist groups and rightists, for personnel responsible for investigating terrorist and guerrilla-type incidents committed by violent extreme-leftist groups or rightists.
- Training related to investigations into so-called underground financiers for personnel responsible for cracking down on illegal stay in Japan.
- Training related to terrorist financing investigations for personnel responsible for counter international terrorism.

419. At the Tokyo Metropolitan Police Department, the police department of the capital of Japan, in order to contribute to investigations into terrorist financing, police officers who received systematic

training for financial investigations have been assigned in the Public Security Department, which is responsible for counter terrorism and investigations into illegal export of materials related to weapons of mass destruction.

The Public Prosecutor's Office

420. The FY2006 initial budget for the Public Prosecutor's Office was JPY 104 040 864 00, which accounts for 0.13% of the national general expenditures. Within that budget, JPY 721 173 000, or 4.95% of the budget after excluding personnel expenses, was assigned for expenses related to anti-organized crime measures.

421. The office's personnel are divided into the prosecutors who conduct the affairs relating to investigations and public trials, and the assistant officers to the prosecutors. As of April 2006, the fixed number of positions for prosecutors is 2 490 and for secretaries, 9 042. The Public Prosecutors Office Law provides that the Public Prosecutor's Office shall supervise affairs performed by prosecutors, each of whom has the independent authority to exercise prosecutorial power for the benefit of the nation. This is because prosecutorial power is closely related to judicial power and significantly influences judicial operations and, therefore, as is the case with judicial power, any unjust influence upon prosecutorial power from others should be avoided to ensure independence. For matters regarding the relationships between the Ministry of Justice and the Public Prosecutor's Office, the Justice Minister is able to generally direct or supervise prosecutors in their exercise of prosecutorial power while, in dealing with individual cases, the Minister is able to only direct the Public Prosecutor General. "Generally," as used above, means indicating general criteria for processing the affairs of prosecution, giving instructions for the prevention or suppression of crimes, or providing administrative law interpretations.

High Standards of Confidentiality Amongst LEA's

422. The personnel of the police must observe the National Public Service Act and the Local Public Service Law, which stipulates the public duties that should be observed by public servants (Article 98, paragraph 1 of the National Public Service Act or Article 34 of the Local Public Service Law), including the duty of confidentiality (Article 100 of National Public Service Act and Article 32 of Local Public Service Law). When the police recognized a delinquency case such as a violation of the duty of confidentiality, according to its contents the case is surveyed or investigated to the fullest possible extent, by the cooperation of the investigation department and the inspection section. The case is then dealt with rigorously, including the application of disciplinary action, according to the facts. In addition, if necessary, it is handled as a criminal case based upon the evidence and upon the law.

423. In terms of disciplinary proceedings, in order to preserve proper order among public servants, those who have authority to appoint personnel inquire into the responsibility of the personnel, and enforce sanctions against personnel who violate their working code of conduct. Four types of measures are stipulated in the National Public Service Act and Local Public Service Law: dismissal, suspension, reduction in pay, and reproof. The NPA or prefectural police report disciplinary cases to the National Public Safety Commission or Prefectural Public Safety Commission respectively in an appropriate and timely manner, whereupon they receive necessary inspection and instruction from a third-party perspective (Article 56, paragraph 3 of Police Act).

424. Also, in order to secure human resource with high integrity and diversity, the police conduct active recruitment activities and maintain the competitive ratio at a certain degree as well as make assessments in terms of multifaceted perspectives such as knowledge, skill and aptitude and keep high professional standards with personnel appropriately skilled. In order to promptly control cyber crimes, international organized crimes, corporate crimes, etc. that have been developing as serious and complex problems in recent years, the prefectural police are actively adopting the mid-career

recruitment of individuals who have specialized skills and knowledge related to language, financial analysis, and computers.

425. In addition, in order to cultivate police personnel, who have high ethics and official skill and technique, endorsed by pride and vocation, the police are devising enhanced and reinforced educational training at police schools or police station based upon Police Education Regulations. Initially, at the prefectural police schools, regional police schools, and at the National Police Academy, the police carry out initial training, training for promotion and specialized educational training based on the rank and position of the trained personnel.

426. Subsequently, at police stations, the police take efforts to improve official skill and technique by giving individual instruction in accordance with knowledge or responsibilities of each police personnel, or having study meetings, etc. Besides, the police hold lectures by general experts in order to carry out appropriate work duties and cultivate high ethics. Regarding duty of preservation secrecy (Article 100 of National Public Service Act and Article 34 of Local Public Service Law), the police educate on confidentiality in work ethics and duty and service for community police activities during initial training.

427. Japanese prosecutors are tasked with both crime investigation and the proper punishment of criminals, and are thereby responsible for preserving society's justice and safety by carrying out investigation and trials. Prosecutors are therefore required to perform their duties based on law and evidence. For employment, prosecutors are required to have high-level legal credentials and experience, and therefore must satisfy unique, rigorous requirements that are additional to the employment requirements for general public employees (pursuant to Articles 18-20 of the Public Prosecutor's Office Law) and, further, their qualification for performing prosecutor's duties is reviewed regularly or occasionally by the Public Prosecutor's Qualification Examination Committee (Article 23). Training provided to prosecutors includes lectures on ethics for public servants.

Adequate / Relevant Training

428. At the National Police Academy, the police conduct lectures related to money laundering for police officers who are promoted to the rank of Police Inspector and above, and necessary training on subjects such as the general outline of various laws, the range of predicate offences, methods of money laundering and terrorist financing, procedures for confiscation of criminal proceeds, methods of using various types of information, and essentials for direction of money laundering investigations.

429. In addition, procedural documentation (such as compilations of examples of cases cleared of money laundering and manuals for analysis of STRs) are produced for investigators, and efforts are being made to improve investigators' awareness and knowledge concerning money laundering investigation.

430. With regard to training for senior police officers in Japan, officers have 4 months of training on promotion to Police Inspector, and have 5 months of training at an institution for special executive investigators. In addition to this, a number of specialized training courses for intellectual crime investigation leaders have been conducted.

431. Money laundering countermeasures are included as one part of the curriculum in these trainings for senior police officers. They receive these trainings from NPA officers in charge of anti-money laundering, not instructors at the police academy.

432. Since 2005, NPA officers in charge of anti-money laundering have made official trips to prefectural police investigators engaged in the investigation into money laundering offences to provide instruction and training on the legal system and investigative methods related to money laundering. These visits to provide instruction and training for prefectural police officers at the front

line may have contributed to the increase in the number of cases of application of the Organized Crime Punishment Act since 2005.

433. Regarding the investigation of drug offences, senior investigative officers at the ranks of Superintendent or Police Inspector are assigned as designated “Drugs and Firearms Offences Investigative Instruction Officer”. Every year approximately 20 officers among them have ten days of training on drug offence investigation, investigation of money laundering cases in which drug offences are the predicate offence, special investigative techniques such as controlled delivery, case examples and methods related to these offences, communications interception and other relevant subjects. Thus, the police have been making efforts on learning necessary expertise and investigative techniques for drugs and firearms offences countermeasures including AML.

434. The police are making efforts to improve the capabilities of investigators. This includes training related to crimes by terrorist organizations with the objective of fund-raising, crimes which could lead to terrorist activities, and in effective use of investigative methods including search, seizure or confiscation. Examples of various incidents are used and the results of the analysis of the methods of relevant crimes provide important material for training.

435. Within the Tokyo Metropolitan Police Department, the police department of the capital of Japan, officers who have received systematic training for financial investigations have been assigned in the Public Security Department, which is responsible for counter terrorism and investigations into illegal export of materials related to weapons of mass destruction.

Additional Elements

436. In terms of general education and Judges, the Legal Training and Research Institute of Japan conducts judicial research on the confiscation of crime proceeds and the results are distributed to each court in the form of reports. Judges use the reports for their training. In study seminars for judges, lectures on confiscation of profits from crimes, etc., are provided.

437. Training and Research Institute for Court Officials provides trainees in a court clerk training course the practical education necessary for court clerks on confiscation, and collection of equivalent values.

2.6.2 Recommendations and Comments

438. Moving the FIU into the NPA has resulted in a more seamless, integrated financial intelligence product being available for police investigations, and has better enabled Japan to effectively assign responsibility for ML and TF investigations.

439. However, additional resources within both the NPA and the PP are needed so as to facilitate more ML investigations and to enable a greater focus on proceeds of crime confiscation. This includes an increase in the number of analytical staff within JAFIC.

440. There would seem to be very few ML prosecutions taken outside of specialist ML investigative groups. There needs to be a greater emphasis on training for AML, CFT and proceeds confiscations, especially for general investigations staff, for prosecutors, and for other law enforcement agencies – which may help Japan to mainstream the concept of ML as a more general law enforcement technique.¹⁴

441. The legal basis for these designated agencies to conduct wide ranging investigations into ML and TF could be further enhanced, for example to provide for undercover policing techniques and provision for a witness protection programme.

¹⁴ A joined up approach referred to in some jurisdictions as a cluster of law enforcement bodies or CLB's.

442. There is presently no access to tax information by Police in Japan. Consideration should be given to providing for this, even if this access is restricted to staff within JAFIC – this has the potential to add considerable scope to the intelligence product disseminated to law enforcement in Japan.

2.6.3 Compliance with Recommendations 27 & 28

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	LC	<ul style="list-style-type: none"> More training and investigatory resources are needed for AML/CFT law enforcement authorities.
R.28	C	<ul style="list-style-type: none"> The Recommendation is fully met.

2.7 Cross Border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

General Description¹⁵

443. The Foreign Exchange Act obligates those who export/import, *i*) means of payment and securities exceeding JPY 1 million, and *ii*) precious metals (gold bullion whose rate of gold content in the gross weight is 90 over 100 (90/100) or more) of more than 1 kilogram, to notify to the Finance Minister (Article 19 Section 3). The means of payment includes: banknotes, cheques, including traveler's cheques, bill of exchange postal money orders, letter of credits, proprietary nature inputted in vouchers, and promissory notes. The notification system is applied only to export/import by the person by hand.

444. The authority for receiving this notification is entrusted to the Chief of Customs and the notification is to be made to customs. Since March 2004, an electronic notification system has been in place. Notification by this system is to be submitted to MoF headquarters directly. The International Bureau of the MoF collects and calculates the submitted notifications by destination/origin of the export/import. The statistics regarding the notifications are not published, but these are disclosed in some cases (*e.g.* in response to a request from the Diet.). Those who have exported/imported means of payment, securities, or precious metals exceeding the thresholds without notification or with a false notification may be subject to imprisonment for not more than 6 months, or fine not more than JPY 200 000 (Article 71).

445. Although the evaluation team met with the Japan Coast Guard this agency does not have a role in relation to AML / CFT enforcement or investigations. Japan Customs is the principal agency responsible for border enforcement activity in Japan.

The system for detecting cross border transportation

446. The Foreign Exchange Act obligates those who export/import, *i*) means of payment and securities more than JPY 1 million, and *ii*) precious metals (gold bullion whose rate of gold content in the gross weight is 90 over 100 (90/100) or more) of more than more than 1 kilogram, to notify to the Finance Minister (Article 19, Section 3 of the Foreign Exchange Act). The notification system only applies to physical carriage by the person across the border and does not apply, for example, to postal articles.

¹⁵ Japan has implemented a new declaration system on 1 June 2008. It is not described in this section of 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 interested Japanese authorities. A presentation of the new system has been prepared by Japan and is available in Table 3 of the report.

Authority to request further information upon false or no declaration made

447. The authority of receiving this notification is entrusted to the Chief of Customs, and customs officers have the authority to confirm the truth of the notification. In case there is a discrepancy between notified amount and hand-carried amount, a customs officer requests the exporter/importer to correct the notified amount. However, Customs do not have authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use.

Authority to stop or restrain currency or bearer negotiable instrument

448. Under the Foreign Exchange Act, the Finance Minister may introduce a license system for export/import of means of payment when the minister deems it necessary for assured enforcement of other provisions of the Act (Article 19). For example, when a payment to a certain designee is restricted, the Finance Minister may restrict the export of means of payment with the aim of providing to the designee in order to ensure the effectiveness of the payment restriction.

449. Items to be notified are:

- (i) Name and address of the notifier.
- (ii) Kinds of payment instruments, amount of the instruments to export/import, destination/origin.
- (iii) Date of export/import (Article 8-2 of the Foreign Exchange Order).

450. However, there is no general provision to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of money laundering or terrorist financing may be found.

Information to be retained for use by appropriate agencies

451. Cross border notification documents are preserved in the International Bureau at the MoF on the basis of month and customs office received, and used for producing statistics by destination/origin of the export/import. However, no cross border notification has ever been provided to the FIU or to Police relating to a suspicious activity in relation to cross border movement of currency or bearer negotiable instruments, and there is no general provision for this information to be retained and used for this purpose.

Information available to FIU

452. As for cross-border transportation of currency and bearer negotiable instruments, the Customs authority may offer to FIU the information relating to the concerned transportation if the authority detects suspicious transportation relevant to the crimes ruled by Law for the Punishment of Organized Crimes (Article 10), Act on the Punishment of Financing of Offences of Public Intimidation (Article 2), and Anti-Drug Special Provisions Law (Article 6). Such offers are part of the mutual cooperation among related authoritative agencies ruled by Act on the Prevention of Transfer of Criminal Proceeds (Article 3(3)).

453. However, no such report has ever been provided to the FIU and the cross border reports are not otherwise available to the FIU.

Coordination between relevant agencies

454. Under Customs Law, any person who intends to export or import goods shall declare to the Chief of Customs the description, quantity and price of those goods. Customs officials have authority to enquire into the quantity and value of the goods. If necessary, a Customs Official may question any person concerned and may carry out an examination of the goods. Customs have the power to carry out an on-the-spot investigation, including the search and seizure of goods under the authority of a warrant issued in advance by a judge. Where necessary any Customs official may request assistance from the Police or Maritime Safety officials.

455. However, there is no legislation or process that provides for co-ordination among customs, immigration and other related authorities on issues related to the implementation of Special Recommendation IX. At an operational level there appears to be no coordination between these agencies in relation to cross border currency reporting.

Cross border cooperation

456. Japan has concluded Customs Mutual Assistance Agreements (CMAA) with the United States, South Korea, China and the European Commission (EC). Japan has also concluded EPAs which include the provisions on Customs mutual assistance with Singapore, Malaysia, Thailand, Philippine and Brunei Darussalam and Indonesia. These arrangements provide for information exchange for Customs enforcement activities.

457. However, outside of the mutual assistance of Customs, there is no authority or provision for co-operation and assistance amongst competent authorities, consistent with the obligations under Recommendations 35 to 40 and Special Recommendation V.

Sanctions for failing to report or false reporting

458. Individuals who export or import without notification or with a false notification are liable to imprisonment for not more than six months, or fine not more than JPY 200 000 (Article 71 of The Foreign Exchange Act). However, no such sanction has ever been applied in Japan. In addition, this sanction does not extend to legal persons or to company directors or senior management.

Confiscation and forfeiture of cross border currency, etc., involved in ML or TF

459. The Act on the Punishment of Organized Crimes provides that any person who conceals crime proceeds shall be punished and that such crime proceeds can be seized and confiscated. Consequently, if the money or other assets associated with terrorist financing or money laundering is crime proceeds and is physically transported across national borders with the intention of its concealment, then persons involved therein could be punished, and the money seized for confiscation.

460. However, there is no provision for seizure of suspected proceeds or instrumentalities of ML or TF, and no such action has been taken in Japan.

Notification to origin / destination country, cooperation with foreign jurisdiction

461. Where a Customs official discovers an unusual cross-border movement of gold, precious metals or precious stones, there is no authority to notify the Customs Service or other competent authorities of the countries from which these items originated and/or to which they are destined. As such, there is no ability, outside of the three CMAA's, to co-operate with a foreign jurisdiction with a view toward establishing the source, destination, and purpose of the movement of such items and toward the taking of appropriate action.

Safeguards to ensure proper use of transactional information

462. The notification of export/import of means of payments carried by hand is made by submitting the document. The documents are preserved at the International Bureau of the Ministry of Finance. The MoF officials are obligated to maintain confidentiality under the Act on National Government Officials. As individual notifications contain personal information, these documents are not to be disclosed even under the disclosure system.

2.7.2 Recommendations and Comments

463. Customs is one of the responsible authorities for AML CFT enforcement. However, in discussion between the evaluation team and Custom officials, Customs advised that their enforcement capability is focused on smuggling and trafficking control and they do not have an AML/CFT enforcement capability.

464. Customs further advise that they have never encountered an example of concealed cash being moved through the Japan border and that no reports relating to cross border currency have been made to the FIU. Customs have never encountered suspicious circumstances relating to cross border movement of currency. As far as they are aware no border cash report has ever been forwarded to FIU by MOF.

465. It appeared that in fact Japan Customs has little or no capability in regard to international money remittance as this relates to AML / CFT. Rather, the Customs role in relation to border currency and bearer negotiable instrument reporting is for administrative purpose arising under the Foreign Exchange Act. Japan Customs do not share information or intelligence with the FIU.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	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.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

466. In July 1990 the Japanese Ministry of Finance first requested financial institutions to conduct customer identification, but no formal regulation or binding guidance was issued to implement this requirement. In 1992, the Anti-Drug Special Provisions Law obligated financial institutions to report suspicious transactions related to proceeds of drug crimes. The adoption of the Act on the Punishment of Organised Crime in February 2002 reinforced the STR obligation, expanded the scope of predicate offences to “certain serious crimes” and required covered persons to submit STRs on suspected terrorist financing offences.

467. The Customer Identification Act, enacted in January 2003, obligated financial institutions to conduct customer identification and to keep identification and transactions data.

468. In March 2007 the Act on the Prevention of Transfer of Criminal Proceeds transferred the FIU functions from the FSA to the National Public Safety Commission (Japan Financial Intelligence Centre – JAFIC, established within the NPA.) This act was partially enacted on 1 April 2007 and entered in force fully on 1 March 2008. The full entry into force of the Act on the Prevention of Transfer of Criminal Proceeds abolished the Customer Identification Act and Section 5 of the Act on the Punishment of Organised Crime.

469. The Act on the Prevention of Transfer of Criminal Proceeds contains a list of legal and natural persons subject to its provisions, the specified business operators (Article 2) and various provisions, related to:

- Customer identification (Articles 4 and 5), record keeping (Articles 6 and 7), and suspicious transactions reporting obligations (Article 9).
- The role and the powers of the FIU (Articles 3, 11, 12).
- Sanctions (Articles 14 *et seq.*).

470. The Act is implemented by the Cabinet Order for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds (“the Order”) and the Ordinance for enforcement of the Act on the Prevention of Transfer of Criminal Proceeds (“the Ordinance”).

471. Those subject to the provisions of the Act on the Prevention of Transfer of Criminal Proceeds (“specified business operators”) include persons engaged in all the categories of financial activities listed in the Methodology’s definition of financial institution.

Types of financial activities to which the FATF 40 Recommendations apply	Types of financial institutions in Japan that conduct these specified activities
Acceptance of deposits and other repayable funds from the public	Banks, long-term credit banks, trust banks, cooperative financial institutions
Lending	Banks, long-term credit banks, trust banks, cooperative financial institutions, moneylenders, financial instruments business operators, insurance
Financial leasing	Financial leasing companies (Articles 2.2.(34) of Act on the Prevention of Transfer of Criminal Proceeds).
The transfer of money or value	Banks, long-term credit banks, trust banks, cooperative financial institutions

Types of financial activities to which the FATF 40 Recommendations apply	Types of financial institutions in Japan that conduct these specified activities
Issuing and managing means of payment (e.g. credit cards and debit cards, cheques, traveller's cheques, money orders and banker's draft, electronic money)	Banks, long-term credit banks, trust banks, cooperative financial institutions credit card companies(Articles 2.2(35) of Act on the Prevention of Transfer of Criminal Proceeds)
Financial guarantees and commitments	Banks, long-term credit banks, trust banks, cooperative financial institutions, credit guarantee corporations
Trading in money market instruments (cheques, bills, CDs, derivatives etc.)	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in foreign exchange	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in exchange, interest rate and index instruments	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in transferable securities	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, insurance companies
Trading in commodity futures trading	Futures commission merchants
Participation in securities issues and the provision of financial services related to such issues	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators
Individual and collective portfolio management	Trust banks, financial instruments business operators, trust companies
Safekeeping and administration of cash or liquid securities on behalf of other persons	Banks, long-term credit banks, trust banks, cooperative financial institutions, financial instruments business operators, trust companies
Otherwise investing, administering or managing funds or money on behalf of other persons	Financial instruments business operators, trust companies,
Underwriting and placement of life insurance and other investment related insurance	Insurance companies
Money and currency changing	Banks, long-term credit banks, trust banks, cooperative financial institutions, money exchangers

472. In addition to the Act on the Prevention of Transfer of Criminal Proceeds and the Order and Ordinance for its enforcement, the Financial Services Agency (FSA) has issued a series of “Comprehensive Supervisory Guidelines” for the banking, securities, and insurance sectors for use by supervisory authorities in assessing the internal controls that financial institutions are expected to maintain to ensure the safety and soundness of their operations. In addition to covering a wide range of prudential considerations, the various guidelines elaborate on the anti-money laundering/countering the financing of terrorism requirements of the Act on the Prevention of the Transfer of Criminal Proceeds.

Comprehensive Supervisory Guidelines as “other enforceable means”

473. The extent to which the Comprehensive Supervisory Guidelines can be deemed “other enforceable means” is a crucial issue for the assessment of financial sector preventative measures and one to which the assessment team devoted careful consideration.

474. Japan considers these guidelines as constituting “other enforceable means” for addressing several mandatory elements of the Methodology. In particular, Japanese authorities rely exclusively on the guidelines for compliance with Recommendations 6, 7 and 8, in addition to the requirements under Recommendation 5 pertaining to ongoing and enhanced due diligence and for elements of Recommendations 11 and 21.

475. The FATF Methodology requires assessors to consider all of the following factors when determining whether a document contains requirements that amount to “other enforceable means”:

- The document must set out or underpin requirements in the FATF Recommendations.
- The document must be issued by a competent authority.
- There must be sanctions for non-compliance which should be effective, proportionate and dissuasive.

476. Below is an assessment of the supervisory guidelines against these key factors.

1. The document sets out or underpins requirements

Scope

477. The guidelines contain a series of “major supervisory viewpoints” consisting of questions on the internal controls, including AML/CFT controls, that financial institutions are expected to implement in relation to “customer identification under the Customer Identification Act and suspicious transactions reporting under the Anti-Organised Crime Act¹⁶”. In this area, the guidelines expand upon the requirements of the Banking Act and the AML/CFT laws with respect to FATF Recommendations 15.

478. Japanese authorities rely exclusively on the guidelines for compliance with key elements of the FATF Methodology, including Recommendations 6, 7, and 8 as well as those portions of Recommendation 5 pertaining to ongoing and enhanced due diligence, in addition to key elements of Recommendations 11 and 21. As described in Section 3, however, the coverage of these Recommendations is both indirect and incomplete. The guidelines therefore do not comprehensively and clearly set out or underpin the requirements of the FATF Recommendations.

Nature of the language

479. It is evident from the nature of the language contained within the guidelines that they are not intended as an independent source of legally binding obligation. On the contrary, they appear to serve as a source of advice to supervisors, and not to the financial institutions themselves. Indeed, the “Comprehensive Supervisory Guidelines for Major Banks” state that it is intended as a “reference book that provides supervisory officers with interpretations of laws and regulations so as to ensure consistent regulatory enforcement.” Further, “the relevant sections and offices of the FSA shall...take care not to apply the guideline in a mechanical and uniform manner.”¹⁷ Supervisors are left with a substantial degree of discretion concerning the application of the guidelines which suggests that the individual provisions of the guidelines do not themselves create independent obligations.

¹⁶ Although the Comprehensive Supervisory Guidelines for Major Banks were updated in May 2008, they still refer to the Customer Identification Act and the Article 54 of the Act on the Punishment of Organised Crime pertaining to STR reporting. Both the Customer Identification Act and those provisions of Article 54 of the Act on the Punishment of Organised Crime pertaining to STR reporting were abolished with the entry into force of the Act on the Prevention of Transfer of Criminal Proceeds on 1 April 2007.

¹⁷ “Comprehensive Supervisory Guidelines for Major Banks” pp. 5 and 12.

Language of the document

480. The major supervisory “viewpoints” contained in the guidelines are framed as a series of questions. FSA officials argue that the interrogative nature of the guidelines indicates that they are mandatory. However, there is no explanation in the guidelines justifying this interpretation although other FSA documents (*e.g.* “Inspection Manual for Deposit Taking Institutions”) expressly identify interrogatives as obligatory. It is unclear why the supervisory guidelines do not contain similar language.

2. The document is issued by a competent authority

481. The FSA supervises and administers dissuasive penalties to regulated financial institutions by delegation of powers of the Prime Minister.¹⁸ As a financial supervisory body, the FSA is a competent authority.

3. Effective, proportionate and dissuasive sanctions for non-compliance

482. It is not clear that financial institutions are either directly or indirectly subject to sanctions for non-compliance with the provisions of the various guidelines as required of documents considered to be “other enforceable means” by the FATF standards. The guidelines themselves contain no specific sanctions and none of the administrative actions taken against financial institutions for AML/CFT violations cite the guidelines as a basis for the remedial action required.¹⁹

483. The Methodology does not, however, require that specific sanctions be attached to the guidelines for them to be considered “other enforceable means.” It is acceptable for supervisory authorities to use sanctions available under broader prudential or other legal authorities (*e.g.* the Banking Act) provided that there is a clear link between the violation of an AML/CFT provision of the guidelines and the imposition of the penalty.

484. None of the AML/CFT sanctions levied by the FSA demonstrate this link. The administrative improvement orders provided to the assessment team relate to customer identification or suspicious transaction reporting deficiencies covered in full by the Customer Identification Act (superseded by the Act on the Prevention of Transfer of Criminal Proceeds) and the Act on the Punishment of Organised Crime respectively. In those areas of the FATF Recommendations where the guidelines are the sole source of obligation (*e.g.* Recommendations 6, 7, and 8 as well as elements of Recommendation 5), no penalties have been levied. In addition financial institutions met by the assessment team hold differing views on the legal status of the guidelines with some viewing them as the practical equivalent of law or regulation and others as a source of non-binding guidance. The assessment team cannot therefore conclude that appropriate sanctions exist for violations of the guidelines.

Conclusion

485. Because of the limited scope of the guidelines, the ambiguous nature of the language employed, and the absence of a clear link between the guidelines and appropriate sanctions, the various supervisory guidelines cannot be considered “other enforceable means” for the purposes of the Methodology. Nevertheless, for the purposes of a full description of the Japanese AML/CFT

¹⁸ See Article 4 for the Establishment of the Financial Services Agency; Article 24-28 of the Banking Act; Article 128, 131-134 of the Insurance Business Act; Articles 51-52, 56 of Financial Instruments and Exchange Act; Articles 13-16 of the Act on the Prevention of the Transfer of Criminal Proceeds

¹⁹ www.fsa.go.jp/news/newse/e20051118.html; www.fsa.go.jp/news/newse/e20050921.html; www.fsa.go.jp/news/newse/e20041216.html; www.fsa.go.jp/news/newse/e20040917.html; www.fsa.go.jp/news/newse/e20040220; www.fsa.go.jp/news/newse/e200600303.html.

system, the guidelines will be discussed in the analysis of compliance with the various elements of the Methodology but will not factor in a determination of the ratings.

3.1 Risk of money laundering or terrorist financing

486. The application of Japanese AML/CFT measures to financial institutions and DNFBPs is not based on a risk assessment.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5

487. With limited exceptions, the Act on the Prevention of the Transfer of Criminal Proceeds (Article 4) requires financial institutions to identify their customers. There are concerns, however, about the reliability of some accepted identification documents and the adequacy of secondary verification procedures. There are no requirements for financial institutions to: *i*) obtain information on the intended nature and purpose of the business relationship; *ii*) identify beneficial ownership; *iii*) conduct ongoing due diligence on all customers; and *iv*) subject higher risk customers/transactions to enhanced due diligence.

488. In practice, the level of compliance, *e.g.* with non-binding guidance, in the Japanese financial institutions interviewed by the assessment team is higher than what would be expected based on a reading of relevant laws and regulations.

Anonymous accounts and accounts opened in fictitious names

489. Article 4 of the Act on the Prevention of the Transfer of Criminal Proceeds requires financial institutions to verify customer identification data (*i.e.* name and domicile) and date of birth or name and location of the head/main office respectively for natural and legal persons. This requirement effectively prohibits the opening of anonymous accounts or accounts in fictitious names.

490. In certain circumstances, customers are allowed to use aliases (*e.g.* an actor/actress or writer using his/her stage or pen name) provided that full customer identification is conducted and the necessary records kept (Article 10 (xv) of the Ordinance for enforcement of the Act on the Prevention of Transfer of Criminal Proceeds).

491. Articles 6 and 8 of the Ordinance for Enforcement of the Act on the Prevention of the Transfer of Criminal Proceeds exempt certain categories of customers and transactions from CDD (*e.g.* customer-oriented money trusts, certain securities transactions, transactions with State and other public entities, etc.) creating a limited scope of potential anonymity. Given that the exemptions are for low-risk categories of customers and transactions, these provisions do not create a significant vulnerability in the due diligence regime. Nevertheless, this deficiency should be addressed through the imposition of customer identification requirements in these situations.

When CDD is required

(a) Establishing business relations

492. Article 4, paragraph 1 of the Act on the Prevention of the Transfer of Criminal Proceeds obligates financial institutions to identify and verify the identity of their customers when establishing business relationships. There is a comprehensive list of relationships contained in the Article 8 of the

Order for the Enforcement of the Act on the Transfer of Criminal Proceeds for which CDD (*i.e.* identification and verification of the identity) is required.

(b) Carrying out occasional transactions

493. Customer identification and verification for a variety of occasional transactions above the designated threshold of JPY 2 million (approximately EUR 12 200/USD 19 300) is required under Article 8, paragraph 1 (i) (p) of the Order. The threshold is lowered to JPY 100 000 (approximately EUR 600/USD 1 000) for wire transfers. The listing of occasional transactions covered by this provision is comprehensive and includes transactions “for receiving and paying cash, a check to bearer, cashier’s check or a certificate or coupon of a public or corporate bearer bond,” as well as the exchange of Japanese or foreign currencies and the purchase or sale of traveller’s checks.

494. There is no provision for CDD in cases where several transactions below this threshold appear to be linked (*e.g.* structuring). JAFIC officials note that multiple below-threshold transactions repeated over time would cause the filing of a suspicious transaction report which, they argue, constitutes implicit CDD due to the fact that Article 14, paragraph 2(v) of the Order mandates the inclusion of name and address information in a suspicious transaction report. The CDD provisions of the Act on the Prevention of Transfer of Criminal Proceeds, however, require the requisition of specified documents to validate customer identification whereas Article 14, paragraph 2 (v) of the Order contains no such requirement creating the possibility that an institution could rely on a customer’s warrant alone when filing an STR. It should also be noted there is no explicit treatment of multiple, below-threshold transactions which appear to be linked in the various sector-specific lists of “Reference Cases of Suspicious Transactions.”

495. JAFIC officials argue, however, that their publicly disseminated interpretation of these regulations constitutes a requirement that financial institutions complete CDD on transactions below the threshold that appear to be linked. For example, JAFIC posted the following response on the NPA website to a question from a finance leasing company regarding structuring: “when several transactions appeared to be linked and can virtually be seen as one transaction, financial institutions are not exempt from the customer identification requirement.”²⁰ While this interpretation is noteworthy, it does not satisfy the requirement of the Methodology that the obligation be explicitly framed in law or regulation.

(c) Carrying out occasional wire transfers

496. Financial institutions are required to identify occasional customers conducting wire transfers above JPY 100 000 (approximately EUR 600/USD 1 000) and verify the identification documents provided, in a manner that is consistent with Special Recommendation VII.

(d) When there is a suspicion of money laundering or terrorism financing

497. There is no general requirement for financial institutions to conduct customer identification when there is a suspicion of money laundering or terrorism finance. Identification is required only upon establishment of the business relationship or with respect to above-threshold occasional transactions. As described below, financial institutions must conduct customer identification when it is suspected that a person is disguising himself/herself as a customer or that a customer has presented false identification data, which is common in money laundering or terrorism finance situations (Article 11, paragraph 2, items (i) and (ii)). Because not all money laundering or terrorism finance schemes involve false identification or identity disguise, this provision does not constitute a general requirement to conduct CDD when there is a suspicion of money laundering or terrorism finance.

²⁰ http://search.e-gov.go.jp/servlet/Public?ANKEN_TYPE=3&CLASSNAME=Pcm1090&KID=120070024&OBJED=&GROUP

498. As previously described, there are a variety of transactions/customers exempted from identification requirements under Japanese law. These include occasional transactions below the designated threshold of JPY 2 million as well as for categories of transactions/customers elaborated under Articles 6 and 8 of the Ordinance. There is no requirement to conduct CDD in these instances even when there is a suspicion of money laundering or terrorism financing although there is a requirement under Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds to file a suspicious transaction report in such circumstances. As stated above, however, STR filing cannot satisfy the CDD requirement.

(e) Doubts about the veracity or adequacy of previously obtained customer identification data

499. Financial institutions are required to conduct due diligence when there are doubts about the veracity of previously obtained customer identification data pursuant to Article 11, paragraph 2 (i) (ii) of the Order for Enforcement of the Act. According to JAFIC, financial institutions must conduct customer identification in situations where previously obtained information is later deemed inadequate, because Article 4, paragraph 1 of the Act obligates financial institutions to conduct full customer identification prior to the initiation of the business relationship. If financial institutions fail to comply with this obligation, they are subject to sanctions under Articles 16 and 25 of the Act.

Required CDD measures

500. Article 4, paragraph 1 of the Act obligates financial institutions to verify a natural person's name and domiciliary address (P.O. Boxes are not permitted) and date of birth by reviewing the customer's driver's license or by "any other method specified by an ordinance of the competent ministries." Article 4, paragraph (i) of the Ordinance further describes a wide array of acceptable identification documents which, in addition to driver's licenses, includes less common documents such as "a membership certificate of the mutual aid system for private school personnel." The Ordinance also permits financial institutions to accept unspecified documents issued by unidentified "public agencies" provided that name, residence and date of birth are included (Ordinance, Article 4, paragraph (i) (g)). Only one form of documentation is required and not all have a photograph or unique identification number.

501. Financial institutions are required to verify the name and location of the head or main office of a legal person using either a "certificate of registered matters"²¹ "seal registration certificate" or any other document issued by a "public agency" which includes this information. (Article 4, paragraph 1 of the Act and Article 4, paragraph (ii), (a) (b) of the Ordinance). Only one form of documentation is required.

502. For both natural and legal persons, all identification documents with an identified expiration date must be valid as of the date of presentation. Documents lacking an expiry date must have been issued no more than six months prior to the establishment of the business relationship (Article 4 of the Ordinance). For foreign natural or legal persons, similar documents issued by a foreign government recognized by the Japanese government or issued by an authorized international organization are required (Article 4 (iv) of the Ordinance).

503. The only secondary verification of customer identification information (for both natural and legal persons) that is prescribed by law or regulation is an obligation to verify address information by sending registered mail to the domiciliary or main address of the customer or by physically visiting the address of the customer (Ordinance, Article 3, paragraph 1 (i) b, (iii) (b), paragraph 5). When registered mail is used, CDD is considered complete when the "mail is not returned (which means that the mail was successfully sent and received by the customer) within [a] rational timeframe after

²¹ In the case where the said legal person has not yet registered its establishment, a document prepared by the head of the administrative organ having jurisdiction over the legal person containing the name of the legal person and the location of its head office or principal office is required.

sending out the mail” or the financial institution receives a delivery confirmation receipt. The return of undelivered mail indicates that the customer may have provided false address information thereby triggering further investigation and possible relationship termination (Ordinance, Article 3, paragraph 1 (i) b, (iii) (b)).

504. JAFIC officials clarified that the additional step of sending registered mail (or of conducting a physical site visit) is only required in situations where non-photographic identification is presented or when a business relationship is initiated remotely (*i.e.* “non face-to-face”).

505. An exception to this requirement is made for customers utilizing a National Health Certificate. These customers do not have to undergo this secondary level of verification despite the fact that this form of identification does not contain a photograph. Japanese officials note that every Japanese citizen is a member of the national health insurance system and that National Health Certificates are considered to be highly reliable given that they are issued by public agencies (*e.g.* the prefectural governments) and contain a unique identification number. Because there are citizens who do not possess photographic identification such as driver’s licenses or passports, the National Health Certificate has emerged as a common source of primary identification. Japanese authorities consider the potential restriction of acceptable identification documentation to those bearing photographs as constituting an undue burden on those citizens without access to such identification.

506. While the FATF Methodology does not expressly require jurisdictions to limit acceptable identification documents to those bearing photographs, the Basel Committee’s “General Guide to Account Opening and Customer Identification” encourages their use. Accordingly, Japanese authorities should reconsider the exemption from additional verification (*i.e.* address confirmation via registered mail) granted to customers presenting a National Health Certificate. Alternate forms of verification –such as those suggested by the Basel Committee- in addition to the use of registered mail could also be considered to mitigate the additional risk posed by non-photographic identification.

507. Customer identification and verification represent a weakness in Japan’s AML/CFT regime. Few of the recommendations contained in the Basel Committee’s “General Guide to Account Opening and Customer Identification” are observed. The Ordinance permits financial institutions to rely on virtually any “public document” that contains name and address information. The term “public document” is not defined although the list of documents provided for in the Ordinance suggests that the interpretation may be quite broad in practice. It is unclear whether document issuance standards are uniform throughout the Japanese national and prefectural governments and it appears that non-governmental public entities such as professional associations can issue documents that would be considered acceptable by financial institutions. The diversity and number of identification documents raises concerns about the quality of the information upon which financial institutions are permitted to rely. As previously described, a number of these identification documents contain neither a photograph nor a unique identification number.

508. There is no general requirement to verify customer information by requesting secondary identification or to independently verify customer address by utilizing a utility bill, tax statement or other appropriate mechanism. There is no obligation to authenticate customer identification documents by contacting the issuing agency or through notarization. Except when non-photographic identification is used or in non face-to-face situations, there is no requirement to develop independent contact with the customer via telephone, postal or electronic mail to verify the veracity of contact information. The verification procedures suggested by the Basel Committee for legal persons – such as review of Articles of Incorporation, annual reports, and commercial business databases and company site visits – are not required.²²

²² In situations where the primary identification document provided by the customer has outdated address information (or lacks address information entirely), Article 3, paragraph 2 of the Ordinance requires financial institutions to verify current address information by requisitioning additional documentation.

509. While the use of registered mail involves the acquisition by the Postal Service of the customer's signature, the identification and signature verification procedures employed by postal agents to ensure that others are not signing on behalf of the recipient are unclear. It is also possible that "postal service businesses" might serve as a means of circumventing the CDD safeguards intended by registered mail by accepting delivery of mail on behalf of clients.²³ JAFIC notes that this industry is fully covered by the Act which would prevent postal service business involvement in this activity. In response, the assessment team notes that the Act was only extended to postal service businesses in March 2008 – too recent for the team to assess effectiveness. The extent to which authorities enforce prohibitions against forwarding registered mail is also unclear.

510. Given the increasing sophistication of counterfeiters and the popular availability of the technological tools to create false documentation, Japan's due diligence measures create a potential vulnerability in the financial sector that could be exploited by criminal elements, such as Boryukudan. The number of fraud cases referred to the Prosecutor's office related to account opening suggest that there is cause for concern. Since 1999, according to JAFIC, there have been 1 140 cases involving the use of fictitious names and 114 cases involving the disguise of identify in account opening. It is likely that the use of false documentation was present in some of these cases.

Legal persons and arrangements

511. Article 4, paragraph 2 of the Act requires financial institutions to perform due diligence on the representative agent acting on behalf of a legal person. However, there is no provision stipulating that this due diligence extend to an affirmative responsibility on the part of the financial institution to verify whether or not the representative agent is so authorized. JAFIC officials explain that, in Japan, it is not common for a legal person to provide documentation stating that a representative or agent is authorized to act on behalf of the company or institution. As a result, in their view, a requirement for a financial institution to seek evidence that a representative agent is so authorized could not be implemented in practice. In response, the assessment team notes that evidence of authorization need not necessarily be in the form of a written document and can instead consist of independent telephonic or other contact with the legal person. JAFIC officials also argue that, in the course of due diligence on a representative agent, financial institutions will naturally discover if the purported agent is unauthorized. While this may be true in many instances, there should nevertheless be an express obligation for financial institutions to seek this information.

512. When the client is the state or public entity, financial institutions are instructed to "deem" the representative agent to be the customer and conduct CDD on the agent, but not on the state or public entity that is the ultimate beneficiary (Act on the Prevention of Transfer of Criminal Proceeds, Article 4, paragraph 3).

513. FATF standards require financial institutions to obtain information on a legal person's name, legal form and address in addition to information on the entity's director(s) and on the power to bind the legal person or arrangement. Article 4(ii)(a) of the Ordinance requires financial institutions to verify the name and location of the head or main office of a legal person by inspecting the "certificate of registered matters" or "seal registration certificate" but does not explicitly require financial institutions to obtain information on the entity's legal form, directors or provisions regulating the power to bind the legal person or arrangement. While this information is not required by the Ordinance, the certificate of registered matters and seal registration certificates viewed by the assessment team contained most of these additional details²⁴. Article 4 (ii) (b) of the Ordinance,

²³ Because the Act requires that postal service businesses identify their customers and maintain appropriate records, it should be noted that authorities would still be able to reconstruct transactions even if the postal service business unlawfully forwards registered mail to the customer. While the financial institution would not have access to the customer's actual domiciliary address, the postal service business would.

²⁴ The assessment team was provided with samples of both the certificate of registered matters and the seal registration certificate. The certificate of registered matters was the primary identification document cited by

however, allows a financial institution to rely on any document issued by a public agency provided that it contains the name and address of the legal person. It is not known whether these additional unspecified documents contain adequate information.

Beneficial owner

514. There is no requirement in Japanese law or regulation to identify the beneficial owner and take reasonable steps to verify the identity of the beneficial owner. Financial institutions are not required to determine whether the customer is acting on behalf of another person and to take reasonable steps to verify the identity of that other person. There is no requirement for financial institutions to understand the ownership and control structure of a legal person customer nor is there an obligation to determine who is (are) the natural person(s) who ultimately own(s) or control(s) the legal person or arrangement.

515. There are specific instances in which identification of beneficial ownership is called for under the Order. For example, financial institutions are required to conduct CDD on both the settlor and beneficiary of a trust and on the beneficiary of an insurance contract (Order, Article 8, paragraph 1, item (i), (c)(d)(g)). These specific examples, however, relate to particular instruments which, by their very nature, create an expectation of a separate beneficiary. These provisions are not a general requirement for financial institutions to identify beneficial ownership prior to establishing a business relationship.

516. Japanese authorities interpret the term “customer, etc” used throughout the Act and its implementing regulations to encompass beneficial ownership. During the drafting of the Act, they explain, it was decided that the term “customer, etc.” shall be “used as a technical term to express beneficial ownership.” A “customer, etc” was determined to be the person to whom the profit or gain actually revert. It was also decided that financial institutions should conduct customer identification of both the representative and the natural or legal person beneficial owner. In response to a question from a financial institution during the public comment procedure of the Act JAFIC publicly disseminated this interpretation via its website. However, this interpretation is not clearly provided for in any provision of the Act or its implementing regulations and therefore does not satisfy the Methodology requirements.

Purpose and intended nature of the business relationship

517. Financial institutions are not obligated to obtain information on the purpose and intended nature of the business relationship. FSA cites Article 40 (1) (i) of the Financial Instruments and Exchange Act which requires securities broker-dealers and other investment firms to avoid soliciting investors in a manner which is deemed to be inappropriate in light of the customer’s knowledge, experience, status of property, or purpose of concluding the contract. Similar language is present in Article 24.2 of the Trust Business Act, Article 13.7 of the Banking Act, Article 53.7 of the Ordinance for Enforcement of Insurance Business Act, and Article 9.2 of the Act on Sales of Financial Products. The purpose of these provisions, however, is investor protection rather than AML/CFT and to ascertain whether a particular investment vehicle is appropriate for a particular customer. The due diligence required by these provisions does not envision gathering information on the customer’s

both government and private sector officials. It contains additional information on a company’s date of establishment, lines of business, capital, number of shares issued (and rules concerning transfer of shares) as well as the name, address, and date of nomination of the company’s director. The seal registration certificate, which registers a company’s seal, contains additional information including the company’s seal registration number, the name and date of birth of the company’s president or principal officer as well as seal of the Regional Legal Affairs Bureau (*i.e.* the local office of the Ministry of Justice) responsible for the registration. Both sample documents provided to the assessment team contained information on the company’s legal form but it should be noted that it was not a required field on the form. Neither document contained information on provisions regulating the power to bind the legal person or arrangement.

business profile for the purpose of subsequent account and transaction monitoring. These specific provisions cannot be viewed as a general requirement and therefore cannot satisfy the criteria of the Methodology.

518. The “Comprehensive Supervisory Guidelines for Major Banks”²⁵ instructs supervisors to ascertain whether financial institutions have an internal control environment sufficient to “ensure appropriate response and management of customer... identified as problematic in light of customer attributes,” and to monitor “suspicious customers or transactions... in a manner consistent with its business size and profile” (Comprehensive Supervisory Guidelines for Major Banks” Section III-3-1-3-1-2, paragraph 1 (v), 2 (i)). The reference to understanding a customer’s attributes and business profile implies some level of investigation into the purpose and nature of the business relationship. However, these references are made in the context of dealing with politically exposed persons and suspicious transactions and it is therefore unclear whether institutions are expected to undertake this level of due diligence with all customers, including those not initially deemed suspicious.

519. Similarly the “Comprehensive Supervisory Guidelines for Financial Instruments Business Operators” instruct supervisors to ascertain whether institutions in the securities industry consider “business size and profile” of a customer when considering the filing of a suspicious transaction report. (Comprehensive Supervisory Guidelines for Financial Instrument Business Operators Section III-2-6, paragraph 2 (iv)). Knowledge of a customer’s business size and profile suggests an indirect expectation to understand the intended nature and purpose of the business relationship. Again, however, this reference is in the context of suspicious transaction reporting and does not constitute a general expectation with respect to all customers. The “Comprehensive Supervisory Guidelines for Insurance Companies” do not contain similar provisions.

Ongoing due diligence

520. There is no direct obligation in law or regulation for a financial institutions to conduct ongoing due diligence on the business relationship. Japanese authorities cite Article 11, paragraph 2, item i-ii of the Order which requires CDD in situations where there are *ex post* concerns about the veracity of previously provided identification documents or some suspicion that the customer is disguising his/her identity. It is unclear whether these provisions create a proactive and ongoing obligation to conduct periodic reviews of existing customer records or, rather, constitute a specific, reactive requirement which is only triggered when a specific suspicion of concealment arises. There is no direct and independent requirement in the Order to monitor transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution’s knowledge of the customer, their business and risk profile and source of funds.

521. The suspicious transaction reporting regime, however, can be viewed as creating some *de facto* ongoing transaction monitoring requirements. Article 9 of the Act clearly obligates financial institutions to report suspicious transactions to competent administrative authorities and a number of financial institutions have been subject to sanctions for non-compliance by the FSA.²⁶ Compliance with this obligation presupposes the existence of customer due diligence in order to allow the institution to distinguish suspicious activity from the customer’s normal pattern of behaviour.

522. To facilitate compliance with the STR reporting requirement, the FSA has circulated a variety of “Reference Cases of Suspicious Transactions” which presuppose that financial institutions conduct ongoing due diligence. These “red flag” transactions, for example, include *inter alia* cash

²⁵ The Comprehensive Supervisory Guidelines for Small and Medium-sized/Regional Financial Institutions contain the same AML/CFT provision as the Comprehensive Supervisory Guidelines for Major Banks.

²⁶ www.fsa.go.jp/news/newse/e20051118.html; www.fsa.go.jp/news/newse/e20050921.html; www.fsa.go.jp/news/newse/e20041216.html; www.fsa.go.jp/news/newse/e20040917.html; www.fsa.go.jp/news/newse/e20040220; www.fsa.go.jp/news/newse/e200600303.html.

transactions which are excessively high relative to a customer's income and assets as well as cases in which a civil servant or company employee conducts a transaction with an excessively high value relative to his or her income.²⁷ In order to file STRs in these scenarios, financial institutions in practice need to have an understanding of a customer's income and asset levels and actively screen transactions against this profile.

523. The Reference Cases, however, are a source of advice to financial institutions about potential suspicious activity and do not independently create a legal obligation. Moreover, these "red flags" are not comprehensive and deal only with transactions that are unusual given a customer's asset and income level. They do not encompass other transactions that might be inconsistent with a customer's business profile, such as a pattern of transactions with counterparties that are irrational given the customer's known business activities.

524. The "Comprehensive Supervisory Guidelines for Major Banks" direct supervisors to assess the monitoring regime financial institutions establish for "problematic customers." For example, the guidelines instruct supervisors to ascertain whether or not financial institutions have an internal control environment sufficient to "ensure appropriate response and management of customers... identified as problematic in light of customer attributes," and that "suspicious customers or transactions... are detected, monitored and analyzed with the use of computer software and manuals, etc in a manner consistent with its business size and profile." (Comprehensive Supervisory Guidelines for Major Banks, Section III-3-1-3-1-2, paragraph 1 (v), 2 (i)) Similarly, the "Comprehensive Supervisory Guidelines for Financial Instruments Business Operators" requires supervisors to ascertain "whether the business operator constantly makes sure to grasp up-to-date customer profile information though, e.g. ongoing monitoring of transactions with the customer." (Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, Section III 2-6, paragraph 1 (ii)) The "Comprehensive Guidelines for Insurance Companies" do not contain similar language.

525. While the STR reporting regime will indirectly result in a certain level of ongoing account monitoring, the FATF standard requires the obligation to be explicitly framed in law or regulation and include an obligation for financial institutions to understand a customer's business and risk profile, and source of funds.

Risk

Enhanced due diligence

526. There is no provision in law, regulation, or other enforceable means mandating enhanced due diligence for higher risk categories of customers, business relationships or transactions. There is, however, an indirect treatment of risk in the Comprehensive Supervisory Guidelines which instructs supervisors to verify whether a bank "has established and maintained an internal control environment, including the decision-making process at the senior management level, to ensure appropriate response and management of customer and transactions identified as problematic in light of the customer attributes (including his/her public status)." (Comprehensive Supervisory Guidelines for Major Banks, Section III-3-1-3-1-2, paragraph 1 (v)) Although there is no explicit reference to risk or enhanced due diligence in the guidelines, the expectation that a financial institution will ensure "appropriate response and management" of certain customers identified as "problematic" implies a level of additional diligence and scrutiny for higher risk categories of customers. Supervisors are further instructed to ascertain whether banks "detect, monitor, and analyze suspicious customers or transactions by using computer software and manuals." (Comprehensive Supervisory Guidelines for Major Banks, Section III-3-1-3-1-2, paragraph 2 (i)) The use of transaction monitoring technology can be considered one means by which financial institutions exercise enhanced due diligence.

²⁷ See FSA's "List of Reference Cases of Reference Cases of Suspicious Transactions," for depository institutions (case no 1 and 35), insurance companies (case no. 1 and 21), and securities companies (case no. 1 and 20).

527. The Japanese Bankers' Association (JBA) interprets the guidelines (in particular, the citations referenced above) as requiring financial institutions to implement the risk-based approach and provided member financial institutions with its comprehensive "Guidance Note on the Risk-based Approach." While the JBA is not a self-regulatory organization and the guidance it issues is non-binding, the Guidance Note is noteworthy as it suggests a majority interpretation among Japanese banks. The banks interviewed by the assessment team incorporated the risk-based approach into their compliance programs.

528. The various supervisory guidelines for insurance companies, securities broker-dealers, or foreign exchange providers do not provide for enhanced due diligence for higher risk categories of customers. Neither the Supervisory Guidelines nor the JBA Guidelines satisfy the FATF requirement that the risk-based approach be framed in law, regulation or other enforceable means.

Reduced due diligence

529. There is no provision in law, regulation, or other enforceable means allowing reduced customer due diligence for lower risk categories of customers. Article 6 of the Ordinance, however, exempts a variety of transactions from the customer identification requirements of the Act on the Prevention of Transfer of Criminal Proceeds on the grounds that they pose no or little risk of being used as a tool for money laundering or terrorist financing, and/or the "existence" of the customer concerned is clear. These transactions include *inter alia* "customer-oriented money trusts," certain securities transactions, and transactions with state or public entities (including the Bank of Japan).²⁸

530. In each instance, Japanese authorities have provided a rationale for the exemption. For example, with respect to customer-oriented money trusts, JAFIC explains that a customer-oriented money trust is a trust for customers of a securities company that enables them to recover their capital only under certain limited conditions such as the bankruptcy of a securities company. Since the trust is not under the control of the customers, the transactions, in JAFIC's view, pose little or no risk of money laundering or terrorist financing. Similarly, JAFIC argues that transactions with government or public entities pose little inherent risk of illicit activity. The Ordinance also exempts transactions related to the conclusion of securities contracts in a foreign country by a securities dealer licensed in that jurisdiction. (Ordinance, Article 6, item iv) According to JAFIC, since each securities market conducts a thorough examination of those participants in the market and since customer identification is included in the process, it is not necessary to require [the] specified business operator to conduct customer identification each time a contract is concluded.

531. As previously described, Article 4, paragraph 3 of the Act on the Prevention of Transfer of Criminal Proceeds exempts financial institutions from customer identification procedures when the state or other public entity is the customer, requiring only on the identification and verification of the identity of the representative agent. The Ordinance defines an additional category of persons as "equivalent to the state" and therefore exempt from identification requirements. (Ordinance, Article 8 (i-xi)) Persons exempted under this category include *inter alia* group investment funds (*e.g.* pension funds), employees having money deducted from their salaries for savings or investment purposes, or companies listed on foreign stock exchanges designated by FSA. JAFIC officials argue that the identity of state or public entities is self-evident and that transactions related to salary deductions for savings/investment purposes pose little risk of money laundering or terrorist financing since the origin of the funds (*i.e.* salary payment) is clear. Transactions with securities broker dealers listed on FSA-designated foreign securities exchanges (which includes exchanges in FATF and select APG countries) are exempted from customer identification on the grounds that such entities have already undergone "deliberate procedures, including customer identification upon listing or registering in a securities market." It should be noted that the individual brokers acting on behalf of a securities company must be subjected to customer identification procedures. While customer identification of

²⁸ See the Ordinance, Article 6, paragraph 1 for a comprehensive listing of transactions exempted from customer due diligence requirements.

the securities firm itself is not required, identification of the individual securities broker (as a natural person) who is acting on behalf of the securities company is a requirement.

532. While there are grounds for considering these categories of customers and transactions as lower risk and hence subject to reduced due diligence, there is no scope within the Methodology for the elimination of customer due diligence requirements except in the case of below-threshold occasional transactions. The elimination of all customer identification requirements creates a vulnerability, albeit a limited one, in the due diligence regime.

Prohibition against reduced CDD when there is a suspicion of money laundering or terrorism finance

533. For those transactions exempted from CDD under the law, there is no exception requiring CDD when there is a suspicion of money laundering or terrorism finance although there is a requirement under Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds to file a suspicious transaction report in such circumstances. As discussed previously, however, STR filing cannot satisfy the CDD requirement. There is a requirement to conduct CDD in situations where there are *ex post* concerns about the veracity of previously provided customer identification but a suspicion of disguise of identity is not equivalent to a suspicion of money laundering or terrorism finance (Order, Article 11, paragraph (i) (ii)), even if in some instances the provision of false documentation can be a key element of a money laundering or terrorism finance scheme.

Timing of verification

534. Financial institutions are required to complete customer identification “upon concluding a specified transaction,” such as the conclusion of a deposit/savings contract. (Act, Article 4, paragraph 1) In general, this means CDD must be completed before the customer is allowed to begin executing transactions. An exception is made, however, for situations in which registered mail is sent out to complete the customer identification process – *e.g.* when non-photographic identification is used to open an account and in non face-to-face transactions. In these situations, customers may be permitted to begin operating an account prior to completion of CDD. There is no requirement in such situations for financial institutions to mitigate the increased risk of transactions undertaken before completion of the full CDD process such as by limiting the number, type, and amount of transactions or by monitoring large or complex transactions.

535. JAFIC officials note that in practice very few transactions can be completed prior to the conclusion of the registered mail process as the customer will not have received his/her deposit passbook or ATM card (as they would have been included in the mailing.) Because some financial institutions may not require deposit passbooks or ATM cards for transactions, the potential for account activity during this period must be considered. In the event that CDD cannot ultimately be completed and the relationship must be terminated, a financial institution will have operated an account, albeit for the relatively limited period of time between the initiation and conclusion of the registered mail process, for an unidentified accountholder. This creates a gap in the CDD regime which could be exploited by criminal elements.

Failure to satisfactorily complete CDD

536. As previously described, with certain specified exemptions, the requirement to conduct customer due diligence is universal (Article 4, paragraph 1 of the Act on the Prevention of Transfer of Criminal Proceeds). The enforcement of this provision of the Act effectively prohibits institutions from opening an account or commencing a business relationship without completing customer identification. Financial institutions that open an account without satisfactorily completing the

customer identification process are subject to a range of administrative and criminal penalties under the Act on the Prevention of Transfer of Criminal Proceeds.²⁹

537. Article 5 of the Act on the Prevention of Transfer of Criminal Proceeds, entitled “Immunity of Specified Business Operators from Obligations,” also deals with situations where CDD cannot be completed and states that “a specified business operator *may* [emphasis added] when a customer... does not comply with the request for customer identification upon conducting a specified transaction, refuse to perform its obligations pertaining to the said specified transactions until the customer... complies with the request.” Given the title of the Article, the intention of this provision appears to be the provision of civil immunity to institutions that suspend a transaction when customer identification cannot be completed rather than to create an affirmative obligation to terminate a transaction or relationship. It should also be noted that the language of this section is non-binding, stating only that specified business operators “may” – rather than “shall” or “will” – refuse to perform obligations.

538. While financial institutions are required to file a suspicious transaction report when there is a suspicion that a transaction involves criminal proceeds, (Act, Article 9) there is no specific provision instructing financial institutions to consider failure to complete CDD as part of the STR decision-making process nor are such transactions identified as inherently suspicious in FSA’s various “Reference Cases of Suspicious Transactions.” In the “Reference Cases for Depository Institutions,” transactions “involving a customer who refuses to provide explanations and submit documents when requested to do so for identification of the actual beneficiary due to doubt as to whether the customer is acting on his or her own behalf,” are identified. (“Reference Cases of Suspicious Transactions for Depository Institutions,” Case No. 37) This case instructs banks to consider filing an STR in situations where CDD on a beneficiary cannot be completed but does not cover normal account opening scenarios where no other beneficiary is involved. Similar red flags are listed in the reference cases for securities and insurance companies.³⁰

Termination of existing relationships/consideration of STR filing

539. As previously described, with certain specified exemptions, the requirement to conduct customer due diligence is universal (Article 4, paragraph 1 of the Act on the Prevention of Transfer of Criminal Proceeds.) The enforcement of this provision of the Act effectively prohibits institutions from maintaining an account or commencing a business relationship without completing customer identification. Financial institutions that maintain an account without satisfactorily completing the customer identification process are subject to a range of administrative and criminal penalties under the Act on the Prevention of Transfer of Criminal Proceeds.³¹ There is no requirement to consider filing an STR when an institution cannot complete customer identification.

Existing customers

540. Financial institutions are broadly required to review CDD on pre-existing customers whenever new customer identification standards enter into force. This is to ensure that previously identified customers were subjected to CDD procedures equivalent to more recent standards. Ministry of Finance Circular 1700 (28 June 1990) established Japan’s first CDD regime by requiring financial institutions to identify customers based on “public or reliable ID document[s].”³² Customers subjected to these identification procedures (including record-keeping requirements) were later “deemed” identified under the Customer Identification Act of 2003 pursuant to Supplementary Provision of

²⁹ See Article 16, 23 *et seq.* of the Act.

³⁰ FSA’s “Reference Cases of Suspicious Transactions for Insurance Companies,” No. 23; “Reference Cases of Suspicious Transactions for Securities Companies,” No. 21.

³¹ See Article 16, 23 *et seq.* of the Act.

³² Circular Kura Gun No. 1700, June 28, 1990, Ministry of Finance.

Article 2 of the Order for the Enforcement of the Customer Identification Act if the procedures the financial institution applied under the 1990 Circular were equivalent to the requirements of the Customer Identification Act. New CDD for pre-existing customers was only required for those who did not pass this equivalency test. This process was repeated for customers identified under both the 1990 request and 2003 Customer Identification Act under Supplementary Provision of Article 3 of the Order for the Enforcement of the Act on the Prevention of the Transfer of Criminal Proceeds. According to JAFIC, the result of this process is that there are currently no longstanding customers exempted from CDD requirements demonstrably equivalent to those currently in place under the Act on the Prevention of Transfer of Criminal Proceeds. FSA officials indicated that supervisors inspect for compliance with these Supplementary Provisions. If financial institutions become aware that they lack sufficient information on these pre-existing customers they must conduct CDD or face sanctions under the Act. Financial institutions are also obligated to conduct CDD on existing customers in the previously described cases of disguise or document fraud.

541. There is no requirement to undertake CDD on the basis of risk or when it is otherwise appropriate to do so such as when a transaction of significance takes place or there is a material change in the way the account is operated.

Recommendation 6

542. There is no requirement in law, regulation, or other enforceable means for a financial institution to determine whether a customer is a politically exposed person. There is no specific guidance concerning what additional steps an institution must take to mitigate the risk of doing business with PEPs. In particular, there is no requirement to:

- Seek senior management approval prior to establishing the business relationship.
- Take reasonable measures to establish the PEP's source of wealth.
- Conduct enhanced ongoing monitoring of the relationship.

543. The various supervisory guidelines for banks and securities firms instruct supervisors to inspect the controls that financial institutions have in place to consider a customer's "public status" when performing due diligence. For example, FSA's guidelines for major banks state that supervisors should assess whether a bank has established internal controls to "ensure appropriate response and management of customers and transactions identified as problematic in light of customer attributes (including his/her public status)..." (Comprehensive Supervisory Guidelines for Major Banks, Section III 3-1-3-1-2 paragraph 1 (v)) The parenthetical reference to public status is unclear and the PEP concept is not further defined in other sections of the guidelines or elsewhere. Given the lack of information in the guidelines, it is possible for a financial institution to interpret the reference to "public status" as something other than an individual entrusted with a prominent public function (such as a position in government). An institution might, for example, interpret public status to mean well-known individuals such as celebrities. The supervisory guidelines for "financial instruments business operators" (*i.e.* securities firms) are more descriptive in that the term "politically exposed person" is actually used. (Comprehensive Supervisory Guidelines for Financial Instruments Business Operators, 1 (d)) Again, however, there is no further explanation of the concept. There is nothing in the supervisory guidelines for insurance companies or in the inspection manual for foreign exchange businesses concerning PEPs.

Additional elements

Extension of Recommendation 6 to domestic PEPs

544. Although there is no requirement in law, regulation or other enforceable means, the references to the “public status” of customers in the Comprehensive Supervisory Guidelines for Major Banks and to “politically exposed person” in the Comprehensive Supervisory Guidelines for Financial Instruments Business Operators are not limited to foreign persons. It is unclear, however, whether these provisions apply in practice to domestic PEPs.

2003 United Nations Convention Against Corruption

545. Japan signed the United Nations Convention Against Corruption in December 2003. The Diet approved the conclusion of the Convention in June 2006. Japan intends to conclude the Convention after the adoption of the draft law to amend relevant legislation in the Diet.

Recommendation 7

546. There is no requirement in law, regulation, or other enforceable means for financial institutions to understand fully the nature of a respondent institution’s business and to determine the reputation of the institution and quality of supervision, including whether it has been subject to a money laundering or terrorist financing investigation or regulatory action. However, the supervisory guidelines for major banks and for small and medium-sized/regional financial institutions instruct supervisors to consider whether the bank has “established and maintained an internal control environment to ensure that appropriate decisions, including those by senior managements, are made as to whether or not to enter into or continue a correspondent banking relationship after properly assessing the prospective or existing correspondent partner by ascertaining its customer base, business profile, local public supervisory system and that it is neither a fictitious bank (so-called shell bank) itself nor conducting any business with such a bank.” The financial institutions interviewed during the onsite visit confirmed that they take these factors into account when performing due diligence on respondent banks. Nevertheless, there is no specific requirement set out in law or regulation that financial institutions:

- Determine whether a respondent has been subject to money laundering or terrorist financing enforcement action.
- Assess the adequacy of the respondent institution’s AML/CFT controls.
- Obtain approval from senior management before establishing the relationship.
- Document the respective AML/CFT responsibilities of each institution.

547. FSA authorities informed the assessment team that Japanese financial institutions do not maintain “payable-through accounts.”

Recommendation 8

548. There is no broad requirement in law regulation or other enforceable means for financial institutions to establish countermeasures to prevent the misuse of technological developments in money laundering or terrorist finance schemes.

549. In the case of non face-to-face transactions, such as internet or telephone banking, the Ordinance (Article 3 (paragraph 1, item (i)(c))) requires financial institutions to verify address using registered mail or a physical site visit to mitigate the increased risk accompanying these transactions.

As previously described, there are questions about the reliability of registered mail as a secondary verification procedure.

550. Alternately, financial institutions can require remote customers to utilize an electronic signature as a means of verifying his/her identity (Ordinance, Article 3 (i) (e)). In this system, the customer can register a “public key” with either the local government or a specialized electronic certificate business operator. When the customer opens an account with a financial institution remotely, he/she can then transmit this key to the financial institution which, in turn, can confirm that the key belongs to the potential customer by contacting the issuer of the key (*i.e.* the local government or electronic certificate business operator.) While this is a helpful layer of secondary verification, the assessment team cannot accurately assess its reliability in situations where the certificate is issued by an electronic certificate business operator as the initial customer identification procedures of these businesses are unknown and outside the scope of the Act on the Prevention of the Transfer of Criminal Proceeds.

551. Beyond the election of one of the two measures described above, financial institutions are not required to take any additional steps to manage the risks of non face-to-face business such as by requisitioning additional documents to complement those which are required for face-to-face customers or by requiring the first payment to the account to be made from another bank subject to CDD standards and adequate AML/CFT supervision.

552. Various financial sector supervisory guidelines have been amended to instruct supervisors to assess the internal control systems established by financial institutions to prevent the misuse of electronic banking technologies (*e.g.* ATMs and internet banking) for fraud and other criminal purposes. These guidelines, developed as a result of an FSA-led study group on information security, require supervisors to assess whether financial institutions have developed an internal control system to prevent various theft and fraud schemes with respect to ATM cards and internet banking.³³

553. Although the guidelines do not address the use of these technologies for the purposes of money laundering or terrorism finance, some of the controls supervisors assess in the broader context of preventing ATM and internet-related crime have application in the money laundering and terrorism finance contexts. For example, the guidelines instruct supervisors to investigate whether a financial institution has procedures to identify risks related to the use of ATMs, including the placing of limits on transaction amounts (Comprehensive Supervisory Guidelines for Major Banks, III-3-6-2-2). Given that money launderers have been known to utilize ATMs to avoid interactions with bank staff for the placement of criminal proceeds, the limitation on ATM transaction amounts can be considered a money laundering countermeasure. With respect to internet banking, supervisors are directed to pay particular attention to customer identity certification.

3.2.2 Recommendations and Comments

554. The Act on the Prevention of Transfer of Criminal Proceeds and the relevant implementing regulations contain significant shortcomings in the areas of customer identification and verification, identification of the beneficial owner, ongoing monitoring, and enhanced due diligence. Japanese authorities should:

- Implement an explicit obligation in law or regulation to conduct CDD on multiple below-threshold transactions that appear to be linked and when there is a suspicion of ML or TF.

³³ Some of the risks FSA has identified with respect to ATM cards include illegal photographing of passwords and account numbers using hidden cameras and the installation of skimming devices in the ATM. With respect to internet banking, FSA has identified the leak of identification and certification information via spyware or the fraudulent acquisition of such information via phishing.

- Make the use of photographic identification a compulsory requirement for the establishment of an account or a business relationship; if photographic identification is not practicable in certain circumstances, additional secondary measures should be developed (such as those recommended by the Basel Committee) to mitigate the increased risk associated with non-photographic identification.
- Require more than one form of customer identification for verification purposes.
- Consider limiting the range of acceptable customer identification documents.
- Require financial institutions to obtain information on the customer's legal status, directors and provisions regulating the power to bind the legal person or arrangement when the customer is a legal person or arrangement.
- Introduce an obligation for financial institutions to verify that natural persons acting on behalf of legal persons are so authorized (Note: This verification need not be in the form of a written document granting this permission and can be accomplished through telephonic or other contact with the beneficiary institution).
- Require financial institutions to identify the beneficial owner and to understand the ownership and control structure of legal persons and determine the natural persons who ultimately own or control such entities.
- Introduce an obligation for financial institutions to determine whether the customer is acting on behalf of another person and to take reasonable measures to verify the identity of that other person.
- Implement a clear requirement for financial institutions to obtain information on the purpose and intended nature of the business relationship.
- Create a direct obligation for financial institutions to conduct ongoing due diligence on the business relationship.
- Require that higher risk categories of customers, business relationships and transactions be subject to enhanced due diligence.
- Require reduced CDD rather than eliminating the obligation entirely for lower risk categories of customers.
- Mandate CDD whenever there is a suspicion of money laundering or terrorism finance even when the customer would have been otherwise exempted from customer identification under the Act.
- Implement a 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.
- Expand the "Reference Cases for Suspicious Transactions" to include situations when CDD is unable to be completed.
- Clearly require customer due diligence on pre-existing customers on the basis of risk or when it is otherwise appropriate to do so such as when a transaction of significance takes place or there is a material change in the way the account is operated.

- Institute a requirement clearly obligating financial institutions to identify whether a customer is a politically exposed person.
- Require financial institutions 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.
- Implement an 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 respondent's AML/CFT controls; c) require senior management approval before establishing the relationship; and d) document the respective AML/CFT responsibilities of each institution.
- Explicitly require financial institutions to develop policies and procedures to mitigate the use of technological developments for the purposes of money laundering and terrorism finance.
- Require additional secondary verification for non face-to-face customers.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	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. • 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.

	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> • 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.
R.6	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.
R.7	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 respondent's AML/CFT controls; c) require senior management approval before establishing the relationship; and d) document the respective AML/CFT responsibilities of each institution.
R.8	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.

3.3 *Third parties and introduced business (R.9)*

3.3.1 *Description and Analysis*

555. Financial institutions in Japan are not permitted to rely upon intermediaries or other third parties to perform any elements of the customer due diligence process. The obligation to complete customer identification and verification procedures rests solely with the financial institution and introduced customers must be re-identified in accordance with Article 4 of the Act on the Prevention of Transfer of Criminal Proceeds. This recommendation is therefore not applicable.

3.3.2 Recommendations and Comments

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	NA	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

556. While there is no financial institution secrecy law in Japan, the Act on the Protection of Personal Information prohibits business operators, including financial institutions, from providing personal data to third parties without prior consent of the customer. Given the broad waivers in the Act on the Protection of Personal Information, however, it cannot be viewed as inhibiting the implementation of any of the FATF recommendations.

557. Article 23 of the Act on the Protection of Personal Information contains exemptions for cases in which the provision of personal data is “based on laws and regulations,” or “necessary for cooperation with a state organ, a local government or an individual or business operator entrusted by one in executing the affairs prescribed by laws and regulations.”(Act on the Protection of Personal Information, Article 23 (i-iv)) The third-party restrictions of the Act on the Protection of Personal Information therefore do not apply to competent authorities performing their functions in combating money laundering or terrorism finance under applicable laws and regulations. For example, the requirement for financial institutions to share information with government agencies under Article 9 of the Act on the Prevention of the Transfer of Criminal Proceeds (suspicious transaction reporting) as well as the general requirement to submit to inspections and furnish reports to supervisory agencies under Articles 13 and 14 of the same Act would trigger waivers in the Act on the Protection of Personal Information regime.

558. The implementation of the FATF recommendations requiring the sharing of information between financial institutions would also not be impeded by the Act on the Protection of Personal Information. With respect to Special Recommendation VII, the sharing of originator information between financial institutions participating in wire transactions is provided for under the Act on the Prevention of Transfer of Criminal Proceeds (including the Act and Ordinances issued hereunder) as well as the Foreign Exchange Act and would therefore qualify under the Act on the Protection of Personal Information exemptions.

3.4.2 Recommendations and Comments

559. The Recommendation is fully observed.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	C	<ul style="list-style-type: none">• The Recommendation is fully observed.

3.5 **Record keeping and wire transfer rules (R.10 & SR.VII)**

3.5.1 *Description and Analysis*

Recommendation 10

Transaction Records

560. Article 7 of the Act on the Prevention of Transfer of Criminal Proceeds requires financial institutions, upon concluding a transaction (international or domestic), to immediately prepare transaction records and to maintain those records for seven years from the day the transaction was conducted. (Act on the Prevention of Transfer of Criminal Proceeds, Article 7, paragraphs 1,3) Article 14 of the Ordinance mandates that transaction records consist of the following information:

- Account number and other “matters” to be used for the purpose of searching customer identification records (in case there are no customer identification records – such as in an occasional transaction – the customer’s name or “other matters sufficient for identifying the customer”).
- The date of the transaction.
- The type and value of the transaction.
- “Matters sufficient for identifying the original possessor and destination” for transactions with accompany the “transfer of property”.

561. JAFIC explains that the “possessor” and “destination” of transactions refers to the originator and beneficiary of a funds transfer. Transactions accompanying a transfer of property refer to any transfer of rights related to the possession of property which would include a typical bank account transfer and most other financial transactions. Examples of transactions which do not involve the transfer of property include informational activities such as the checking of account balances or recording balances in deposit passbooks.

562. There is no express requirement for financial institutions to record a customer’s name (except in situations where no account number is provided) or address. However, this information would be obtained during the establishment of the business relationship or in instances of occasional transactions above JPY 2 million. (Order, Article 8, paragraph 1 (i)) This information must be prepared and maintained as part of the customer identification record (Act on the Prevention of Transfer of Criminal Proceeds, Article 6, see below).

563. A minor gap in the record keeping regime relates to the transaction record-keeping exemption for “small transactions” contained in Article 13 of the Order. The transactions exempted from the record-keeping requirement include the following:

- Transactions without transfer of property.
- Transactions with transfer of property which amount to less than JPY 10 000 (approximately USD 100/EUR 63).
- With respect to money exchange businesses, the purchase or sale of foreign currency or traveller’s checks of less than JPY 2 million (approximately USD 19 900/EUR 12 700).

564. “Transactions without transfer of property” appear to pose no risk of illicit activity given that such “transactions” do not involve the transfer of value. The low value “transactions with transfer

of property” create only a limited vulnerability to illicit activity given the *de minimis* amounts involved. According to the FSA, in practice financial institutions maintain records on all customer transactions regardless of the amount as it is easier to implement universal record keeping than to create separate “carve outs” for small transactions. While these transactions may pose little or no risk of illicit activity, the Methodology does not allow risk to be considered when applying record-keeping requirements. The waiver for the purchase and sale of foreign currencies and traveller’s checks falls within the scope of exemptions allowed for occasional customers.³⁴

Account Records

565. Upon conducting customer identification, financial institutions are obligated to immediately prepare and maintain records for seven years from the day on which the business relationship is terminated (Act on the Prevention of the Transfer of Criminal Proceeds, Article 6). The following records are required:

- Name and other matters sufficient for identifying the person for whom identification was conducted.
- Name of the person who conducted the customer identification and name of the person who prepared the customer identification records.
- The date and time the customer identification document was presented in cases where the customer identification was conducted face-to-face.
- When registered mail is sent in the case of non face-to-face transactions, the date and time on which it was sent or received.
- The type of transaction for which customer identification was conducted.
- The method by which customer identification was conducted.
- The title of the customer identification documents, or copies thereof, the mark or number attached thereto, sufficient for identifying the document or copy thereof.
- The account number for searching transaction records (Ordinance, Article 10, paragraph 1).

566. Financial institutions are also required to attach to the aforementioned customer records the original identification documents or copies thereof used to verify the customer’s name and address information (Ordinance, Article 9, paragraph ii).

567. There is no explicit requirement, however, for financial institutions to maintain business correspondence files or more general account files not related to the information specifically enumerated above.

568. There are no obstacles preventing domestic authorities from accessing these records. As described previously, the third-party restrictions of Act on the Protection of Personal Information do not apply to government agencies exercising their powers under the law. Article 13 of the Act authorizes a “competent administrative agency” to require financial institutions to submit reports or materials concerning its business affairs. However, there is no specific provision in the law or in the regulation explicitly requiring financial institutions to ensure that this information is made available on a timely basis to domestic competent authorities.

³⁴ Given that money exchange businesses in Japan are limited to buying and selling foreign currencies and traveler’s checks, their major customers are occasional – tourists and other traveler’s changing currency.

569. The Code of Criminal Procedure, Article 197, paragraph 2 provides that “public offices or public or private organizations may be asked to make reports on necessary matters relating to investigation.” Again, however, there is no explicit provision specifying that this information must be provided on a “timely basis.” Given the high level of actual compliance in the Japanese financial sector, it is likely that financial institutions would comply with an official information request within the necessary timeframe, but the obligation must be clearly delineated in law or regulation.

Special recommendation VII

570. Because of the customer identification and record-keeping requirements previously described, financial institutions will have full originator information for all permanent customers originating a wire transfer. (Act on the Prevention of Transfer of Criminal Proceeds, Articles 4 and 6) For occasional customers, the Order requires customer identification for “transactions for receiving and paying cash which accompanies exchange [*i.e.* wire transfer] transactions, which amounts to more than JPY 100 000 (approximately EUR 610/USD 970)” in order to capture originator information (Order, Article 8, paragraph 1, item(i) (p));

571. The Foreign Exchange and Foreign Trade Act, which covers cross-border transactions, also requires financial institutions engaging in cross border wire transfers or in wire transfers between residents and non-residents to obtain and maintain the same customer identification information provided for in the Act on the Prevention of Transfer of Criminal Proceeds (Foreign Exchange and Foreign Trade Act, Article 18, paragraph 1; Article 18-3).

Requirement to transmit originator information in cross-border wire transfers

572. Article 10 of the Act on the Prevention of Transfer of Criminal Proceeds requires financial institutions engaging in cross-border wire transfers to “notify” the foreign institution of originator information (Article 10, paragraph 1). FSA and MOF officials confirmed that “notification” means that the financial institution must relay full originator information in the message or payment form accompanying the wire transfer. For wire transfers involving natural persons, name, address, and an account number or unique transaction reference number must be included in the message (Ordinance, Article 17, paragraph 1(i)); For transfers involving legal persons, name, location of head or main office, and an account number or unique transaction reference number are required (Ordinance, Article 17, paragraph 1(ii)).

573. Cross-border wire transfers are governed by Article 18 of the Foreign Exchange and Foreign Trade Act which covers payment from Japan to a foreign country. Pursuant to this Article, customer identification is required (name, domicile or residence and date of birth for natural persons and name and location of the main office for legal entities). Under the Act on the Prevention of Transfer of Criminal Proceeds, Article 10, paragraph 1, originator information must be included in the wire transfer.

574. Japanese authorities informed the assessment team that cross-border batch transfers do not exist in Japan. They indicated, however, that should such payments come into existence, the originator would be identified and the identification documents kept according to the aforementioned rules.

Domestic wire transfers

575. Financial institutions are not required to transmit originator information in domestic wires but are obligated to produce the information upon request of the beneficiary institution within three business days (Ordinance, Article 14, item (vi)). There is no explicit requirement to transmit either the originator’s account number or transaction reference number in the payment message as called for in the Methodology. The “Zengin System,” (operated by the Tokyo Bankers’ Association), which serves as the inter-bank electronic payment system for domestic depository institutions, requires the

population of the originator field with the originator's name, account number (and when this is not available, a unique transaction reference number) and the originator's "customer identification number." Thus, in practice, Japan is currently in a state of *de facto* compliance with this provision. However, because there is no requirement in law, regulation or other enforceable means as required by the Methodology, Japan could fall out of compliance should the technical specifications of the Zengin system change.

576. There is no express requirement for financial institutions to provide originator information to appropriate authorities within three business days. Article 13 of the Act obligates financial institutions to submit reports or materials concerning business affairs to competent authorities but contains no reference to timeframe. Law enforcement authorities conducting criminal investigations can compel production of originator information on the basis of Article 197, paragraph 2 of the Code of Criminal Procedure. However, there is no requirement for financial institutions to immediately provide this information to domestic law enforcement authorities. Given the high level of actual compliance in the Japanese financial sector, it is likely that financial institutions would comply with official information requests within the necessary timeframe, but the obligation must be clearly delineated in law, regulation or other enforceable means.

Transmission of originator information by intermediaries

577. Japanese financial institutions that have accepted the "entrustment or re-entrustment" of a payment from Japan to a foreign country (*i.e.* institutions serving as intermediary bank) are obligated to transfer the originator information to the beneficiary. (Act on the Prevention of Transfer of Criminal Proceeds, Article 10, paragraph 2) While there is no explicit requirement for intermediary financial institutions to transfer originator information in domestic wire transfers, this omission has no practical impact as all domestic wire transfers in Japan are conducted directly between the ordering and beneficiary institutions without the involvement of intermediaries.

578. There is a technical limitation in the Foreign Exchange Yen Settlement System (the foreign exchange settlement system for Yen-denominated wire transfers) which prevents the inclusion of originator information in the wire message. Financial institutions are therefore exempted from this obligation to transmit originator information until 2010, although they are still subject to the applicable originator identification and record-keeping requirements. Japanese authorities plan to update the Foreign Exchange Yen Settlement System by 2010 to transmit originator information automatically.

Obligation of beneficiaries receiving incomplete originator information

579. Financial institutions are not required to confirm that incoming wire transfers contain complete originator information. According to the MOF, "this is because an obligation to verify all incoming transfers/messages could undermine the smooth day-to-day operations of the remittance business."

580. In situations when an institution discovers incomplete originator information, there is no obligation to consider this as a factor in determining whether a suspicious transaction report should be filed. There is nothing in the various lists of "Reference Cases of Suspicious Transactions," to guide financial institutions towards this analysis. JAFIC officials highlighted case number 24 in the list of reference cases for depository institutions which flags "transactions involving a customer who provides vague information or information suspected of being false when making a remittance to foreign destinations." This case, however, relates to suspicions of the originating bank rather than the beneficiary bank and so does not apply to this criterion. MOF states that financial institutions are obligated to submit STR reports when customers or banks "provide continuously incomplete originator's information." There is no provision in law, regulation, other enforceable means, or non-binding guidance underpinning this statement.

581. There is no obligation for a beneficiary institution to consider failure of a foreign correspondent to include complete originator information in wire transfers as a factor in considering whether to continue its business relationship with the foreign institution.

Supervision and Penalties

582. There are no specific supervisory measures in place to effectively monitor the compliance of financial institutions with the originator identification and transmission requirements under the Act (see Recommendation 23). The applicable sanctions for violation of these obligations those described in Articles 13, 14, 15, 16, 23, 24, and 27 of the Act (see Recommendation 17). To date, no financial institution has been sanctioned for failure to identify the originator or to transmit the identification information.

Additional elements

Requirement that all incoming cross-border wire transfers, including those below EUR/USD 1 000 contain originator information

583. As previously described, financial institutions are not required to verify that incoming wire transfers contain complete originator information.

Requirement that all outgoing cross-border wire transfers, including those below EUR/USD 1 000 contain originator information

584. Article 10 of the Act on the Prevention of Transfer of Criminal Proceeds obligates financial institutions to transmit originator information in all outgoing cross-border wire transfers, regardless of the amount of the transfer.

3.5.2 Recommendations and Comments

585. Japan applies most of the record-keeping requirements of Recommendation 10. There are, however, deficiencies relating to the exemption for small transactions and the absence of an obligation to maintain business correspondence records/account files and the lack of an explicit legal obligation for financial institutions to make records available to authorities in a timely manner. Record-keeping requirements should be extended to these areas and a legal requirement to ensure proper prompt information sharing with domestic authorities should be implemented.

586. Most of the key elements of Special Recommendation VII are observed. There is no explicit obligation to relay originator account numbers (or unique transaction identification numbers) in domestic wire transfers, although Japan is in *de facto* compliance because of the technical specifications of the domestic inter-bank payment system. There are no requirements for financial institutions to make information available to supervisory authorities within three business days or to law enforcement authorities on an immediate basis.

587. Japanese financial institutions are not required to verify that originator information in incoming wire transfers is complete. Beneficiary financial institutions should be required to verify that incoming transfers contain this information and implement appropriate countermeasures, including considering the filing of an STR or terminating the business relationship (if it represents a habitual practice on the part of a specific financial institution).

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	LC	<ul style="list-style-type: none"> • Small transactions are exempted from the record-keeping requirements. • Financial institutions are not obligated to keep business correspondence and account files. • Financial institutions are not required to ensure that recorded information is made available to the competent authorities on a timely basis.
SR.VII	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.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

588. There is no requirement for financial institutions to pay special attention to complex, unusual large transactions, or patterns of transactions absent a suspicion that the transactions are related to the proceeds of crime.

589. Financial institutions are not obligated to examine the background and purpose of such transactions and set forth findings in writing nor are there related record-keeping requirements.

590. In the various "Reference Cases of Suspicious Transactions," however, financial institutions are provided with a number of "red flag" scenarios related to complex, unusual large transactions or patterns of transactions. The examples are provided below:

For depository financial institutions

- Transactions with excessively high value relative to the customer's income, assets, etc. and transactions conducted in cash when the use of a remittance or a check seems to be reasonable.
- Payment/receipt using an account held by a customer who has no obvious reason for doing transactions at the relevant branch office.
- A transaction involving an account through which a large amount of payment/receipt is made frequently.
- A transaction involving an account through which there is no fund movement usually but through which a large amount of payment/receipt is made suddenly.

- Cases which are abnormal from the viewpoint of economic rationality, such as a case where the customer refuses to accept high-yielding products when he or she has a large amount deposited in the account.
- A large amount of remittance made to a foreign destination for a purpose not economically rational.
- Receipt of a large amount of remittance from overseas that is not economically rational.
- Cases where a civil servant or a company employee conducts a transaction with an excessively high value relative to his or her income.
- A transaction whose circumstances are recognized by employees of the financial institution as unnatural in light of their knowledge and experiences and a transaction involving a customer whose attitude or behaviour is recognized as unnatural in light thereof.

For insurance companies

- Cases where a customer pays an excessive amount of insurance premiums relative to his or her income, assets, etc.
- Signing of an insurance contract with a customer who has no obvious reason for applying for insurance at the relevant branch office.
- A transaction that is abnormal from the viewpoint of economic rationality. Examples include cases where contracts are cancelled excessively early.
- Unscheduled repayment of a loan that was in arrears.
- Cases where a civil servant or a company employee pays excessively high insurance premiums relative to his or her income.
- A transaction whose circumstances are recognized by employees of the insurance company as unnatural in light of their knowledge and experiences and a transaction involving a customer whose attitude or behaviour is recognized as unnatural in light thereof.

For securities companies

- Transaction with an excessively high value relative to the customer's income, assets, etc.
- Sales/purchases of stocks and bonds and investment in investment trusts, etc. conducted with the use of an account held by a customer who has no obvious reason for doing transactions at the relevant branch office.
- A transaction involving an account through which no transaction is conducted usually but through which a large amount of investment is made suddenly.
- Cases where a civil servant or a company employee conducts a transaction with an excessively high value relative to his or her income.
- A transaction whose circumstances are recognized by employees of the financial institution as unnatural in light of their knowledge and experiences and a transaction involving a customer whose attitude or behaviour is recognized as unnatural in light thereof.

591. While these reference cases are provided in the context of identifying suspicious transactions, they seem to be broad enough to cover many instances of unusual activity. The internal controls that financial institutions develop to identify and report suspicious transactions will generally serve to uncover unusual account or transaction activity. If this activity triggers a suspicion on the part of the financial institution, a suspicious transaction report will be filed and maintained on record for seven years per the requirements of the Act on the Prevention of Transfer of Criminal Proceeds.

592. The reference cases serve as a source of guidance for financial institutions and do not create an independent legal obligation. Financial institutions are left with discretion over which transactions generate suspicion sufficient to cause the filing of an STR. The internal controls of financial institutions are, however, actively supervised for compliance with the general requirement to report suspicious transactions and administrative actions have been taken against non-compliant institutions.³⁵

593. The “Comprehensive Supervisory Guidelines for Major Banks” instruct supervisors to assess the internal control environment of financial institutions to determine whether the “bank has established and maintained an internal control environment to ensure that suspicious customers and transactions are detected, monitored and analyzed with the use of computer software and manuals, etc., in a manner consistent with its business size and profile.” (Comprehensive Supervisory Guidelines for Major Banks, Section III 3-1-3-1-2, paragraph 2 (i)) Similar provisions exist in the guidelines for small and medium-sized financial institutions and securities operators. The internal controls that financial institutions are required to develop to identify suspicious transactions can also indirectly serve to identify complex, unusual, or large transactions or patterns of transactions.

Recommendation 21

594. There is no requirement in law, regulation, or other enforceable means for financial institutions to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations. While there are demonstrated means of notifying financial institutions of weaknesses in the AML/CFT systems of other countries (*i.e.* those identified publicly by the FATF), Japanese authorities have employed only minimal countermeasures to mitigate the risk of transactions with such jurisdictions. In cases where these transactions have no apparent economic or lawful purpose, there is no requirement to examine the background and purpose of the transactions, set forth findings in writing and make them available to assist competent authorities.

595. Through the various financial sector supervisory bodies, JAFIC notifies financial institutions of jurisdictions identified by FATF as having AML/CFT deficiencies. For example, in response to the February 28 FATF statement expressing concern about the lack of comprehensive AML/CFT systems in Uzbekistan, Iran, Pakistan, Turkmenistan, São Tomé and Príncipe and the northern part of Cyprus, JAFIC forwarded the FATF statement to all Japanese financial institutions. The dissemination mechanism appears effective as the financial institutions the assessment team met with were familiar with the statements.

596. However, there is no specific provision describing the legal impact of these notifications. The cover note accompanying the above-mentioned FATF statement indicated only that the FATF issued a public statement and did not provide any information concerning the additional procedures a financial institution must follow when dealing with transactions involving the identified countries.

³⁵ www.fsa.go.jp/news/newse/e20051118.html; www.fsa.go.jp/news/newse/e20050921.html; www.fsa.go.jp/news/newse/e20041216.html; www.fsa.go.jp/news/newse/e20040917.html; www.fsa.go.jp/news/newse/e20040220; www.fsa.go.jp/news/newse/e200600303.html.

597. The various sector-specific STR reference cases identify transactions with certain jurisdictions as potentially suspicious. Reference case number 30 for depository institutions, for example, calls attention to:

“A transaction conducted by a customer based in a country or a territory not cooperative with anti-money laundering measures or by a customer based in a country or a territory producing or exporting illegal drugs. Particular attention should be paid to cases that involve territories and territories designated by the FSA for enhanced surveillance”.

598. The circulation of advisories in response to FATF actions coupled with the guidance contained in the reference cases concerning non-cooperative countries suggest that transactions with such jurisdictions will be viewed with increased scrutiny by financial institutions as part of their STR filing obligations under Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds. It should be noted that while the assessment team was provided with a number of examples of administrative actions taken against financial institutions for violations of the STR filing requirement, none of them concerned failure to file for transactions with high-risk jurisdictions.

599. The "Comprehensive Supervisory Guidelines for Major Banks" instruct supervisors to assess whether an institution has "considered various factors" such as a "customer's nationality (*e.g.* Non-Cooperative Countries and Territories listed publicly by the FATF" when developing its STR reporting regime. (Note: Similar provisions exist in the guidelines for small, medium-sized and regional banks as well as for securities companies although the insurance guidelines contain no such reference.) These guidelines amplify slightly the STR reference cases as they expand the scope of concern to include customers, wherever located, who are nationals of high-risk jurisdictions whereas the reference cases focus on transactions with customers physically located in the foreign jurisdiction.

600. Beyond the incorporation of transactions with non-cooperative jurisdictions into the STR reporting regime, Japanese authorities have implemented no additional countermeasures, including enhanced customer due diligence, monitoring, documentation (*i.e.* the preparation of written findings), reporting or limiting the range of transactions or services provided to persons in high-risk jurisdictions. There is no requirement for supervisory agencies to take significant AML/CFT deficiencies into account when considering requests from financial institutions to open subsidiaries, branches, or representative offices in problematic jurisdictions.

3.6.2. *Recommendations and Comments*

601. There are significant shortcomings in Japan's compliance with Recommendations 11 and 21. Rather than implementing the Recommendations through law, regulation or other enforceable means as is required by the Methodology, there is an over-reliance on the suspicious transaction reporting regime to attain compliance. In practice, however, there appears to be a relatively high-level of implementation in the financial sector based on the assessment team's interviews with financial institutions during the visit.

602. Japanese authorities should introduce a direct obligation in law, regulation or other enforceable means for financial institutions to pay special attention to all complex, unusual large transactions as called for under Recommendation 11. Financial institutions should also be required to examine the background and purpose of such transactions, set forth findings in writing and maintain records for competent authorities and auditors for at least five years.

603. While transactions with jurisdictions which either do not or insufficiently apply the FATF recommendations could be subject to suspicious transactions reporting, neither the Reference Cases nor the Supervisory Guidelines can be viewed as a source of independent obligation. Japanese authorities should implement a direct obligation in law, regulation or other enforceable means requiring special attention to business relationships and transactions with high-risk jurisdictions. This

special attention should include a requirement to investigate such transactions and prepare written records to assist competent authorities.

604. Clear guidance should be provided to financial institutions concerning the requirements of financial sector advisories issued in response to FATF findings although it should be noted that the dissemination mechanism itself appears to be effective based on the experience of the assessment team.

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	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.
R.21	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 relationships 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 countermeasures 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.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis³⁶

Recommendation 13 (STR and other reporting)

605. The financial institutions subject to the AML/CFT regime also called “specified business operators” are required to promptly report, to the competent administrative authorities, information on suspicious transactions when property received through “specified business affairs” is suspected to have been criminal proceeds, or when a “customer, etc.” is suspected to have been conducting acts constituting crimes set forth in Article 10 of the Act on the Punishment of Organized Crime or in Article 6 of the Anti-Drug Special Provisions Act (Act on the Prevention of Transfer of Criminal Proceeds, Article 9(1)).

Scope of Reporting Obligation

606. “Criminal proceeds” include funds that are the proceeds of all offences required to be included as predicate offences under Recommendation 1 (see Recommendation 1). Thus, the obligation to make STRs applies to funds that are the proceeds of all offences required to be included as predicate offences under Recommendation 1.

³⁶ The description of the system for reporting suspicious transactions in section 3.7 is integrally linked with the description of the FIU in section 2.5, and the two texts need to be complementary and not duplicative.

607. This requirement is a direct mandatory obligation set forth in Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds. However, the obligation applies to funds “accepted through specified business operators”. The assessment team understand that this provision only covers transactions which have been carried out by the financial institutions. The Japanese authorities assured the assessment team that attempted transactions are also subject to the reporting authorities and provided an extract from the “Interpretative Notes on 3 Acts related to Organized Crime Control”:

“With regard to “property accepted through specified business affairs”, transactions between a specified business operator and a customer is concluded, but with regard to “customer, etc. is suspected to have been conducting acts constituting crimes set forth in Article 10 of the Act on the Punishment of Organized Crime or crime set forth in Article 6 of the Anti-Drug Special Provisions Law with regard to specified business affairs”, not only concluded transaction, but also attempted transactions is included. For example, if a financial institution finds a customer suspicious and do not get in deals with the customer, the financial institution is required to make an STR. Article 1 paragraph 1 is stipulated in order to obligate a financial institution to report suspicious transactions when the financial institution suspects that a customer is involved in money laundering crime, and from this point of view, both concluded transactions and attempted transactions should be subject to STR requirement.”

608. JAFIC assured the assessment team that similar explanations are provided to financial institutions during the workshops held by the FIU and the reporting format contains a section where the reporting entity has to specify whether the transaction has been carried out or not. As JAFIC provided statistics for 2007 on attempted transactions reported to the FIU (4 150 STRs), the assessment team accepts that in practice attempted transactions are included in the scope of the suspicious transactions reporting requirement. However, no statistics on attempted transactions that were reported as STRs were maintained before 2007.

609. “Specified business operators” subject to a direct, mandatory STR reporting obligation under the Act on the Prevention of Transfer of Criminal Proceeds, Article 2(2)(i)-(xxxix) include banks, shinkin banks, insurance companies, securities companies, trust companies, moneylenders, financial leasing companies, credit card companies, money and currency exchangers. This definition covers all financial institutions as defined in *FATF Methodology, Glossary*, except credit guarantee corporations that provide financial guarantees, primarily to small and medium enterprises applying for loans from other financial institutions.

Reporting suspected terrorist financing

610. As referred to in the general description of SR.II, the Act on the Punishment of Financing of Offences of Public Intimidation (Terrorist Financing Act), which entered into effect in July 2002, typifies and defines terrorist acts that the UN Counterterrorism Conventions seek to criminalize, as “criminal acts intended to intimidate the public” (Act on the Punishment of Financing of Offences of Public Intimidation, Article 1). Thus, acts that finance terrorists or support terrorists in the commission of criminal acts that are intended to intimidate the public (*ibid.* Article 2, paragraph 1), and fund or support collection acts performed by individuals who plan to carry out criminal acts intended to intimidate the public, by soliciting, requesting, or other means for the commission of such criminal acts (*ibid.* Article 3, paragraph 1), and attempts thereof (*ibid.* Article 2, paragraph 2; *ibid.* Article 3, paragraph 2), are also punishable. Also, by the revision of Act on the Punishment of Organized Crime, proceeds from predicate offences stipulated in the Act on the Punishment of Financing of Offences of Public Intimidation was included in “criminal proceeds” (Act on the Punishment of Organized Crime, Article 2, paragraph 2, item (iv)). (See also SR. II).

STR reporting process

611. STRs are reported on a standard reporting template. Guidance in the form of “Lists of “Reference Cases of Suspicious Transactions” has been issued by the Financial Services Agency (FSA) to banks, securities companies and insurance companies, and by the Ministry of Economy, Trade and Industry (METI) and Ministry of Agriculture, Forestry and Fisheries (MAFF) to futures commission merchants and by METI to financial leasing companies and credit card companies. These Lists provide examples of suspicious transactions that have no economic or visible lawful purpose. These Lists also highlight transactions involving countries and territories designated by the FSA for enhanced surveillance, transactions with persons or involving a customer introduced by persons (including legal persons) based in a country not cooperative with anti-money laundering measures or in a country producing and exporting illegal drugs as potentially suspicious.

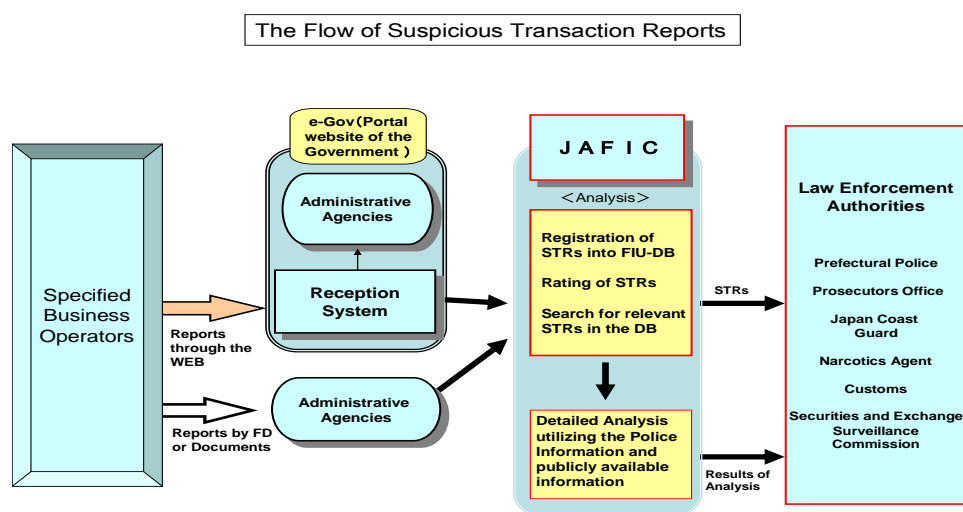
612. There are two ways for reporting entities to submit STRs. The first is through administrative agencies via hard-copy reports; the second is online submission direct to JAFIC through e-Gov, a portal website of the Japanese Government. (The e-Gov system replaced another online STR reporting system with effect from 1 Mar 2008.) The e-Gov option is available to all reporting entities, including DNFBPs. At the time of the on-site visit, about 25% of all STRs are reported online, and this proportion is expected to increase through greater outreach by JAFIC and awareness of the online option by reporting entities.

Reporting through administrative agencies

613. Reporting entities submit STRs to their competent administrative agencies, which are required by the Act on the Prevention of Transfer of Criminal Proceeds (Article 9(3)-(4)) to “promptly notify the matters pertaining to the said report of suspicious transactions” to JAFIC. These agencies have no role in processing or screening the STRs, and usually submit all STRs received to JAFIC within 1 to 2 days. Other than in the Act on the Prevention of Transfer of Criminal Proceeds, these working arrangements between the competent administrative agencies and JAFIC are not further elaborated in other formal procedures.

Reporting online through e-Gov

614. Reporting entities first register themselves with NPA to receive an ID and password for e-Gov. They then download and install special software to enable online STR reporting. Reports made through e-Gov are secured through encrypted transmission. When JAFIC receives these reports, it will forward a copy electronically to the competent administrative agency of the reporting entity.



Attempted transactions and those related to tax matters

615. As described above, Article 9 of Act on the Prevention of Transfer of Criminal Proceeds requires financial institutions to submit an STR when property accepted through specified business affairs “is suspected” to have been criminal proceeds, or when a customer “is suspected” to have been conducting acts constituting crimes, regardless of the transaction amount. There is also no exception allowed from the STR reporting requirement for the reason that the transaction may involve tax matters, or that the transaction was attempted but not completed. The financial institutions interviewed indicated they understood their STR obligation to include cases of attempted transactions and cases that may involve tax matters.

Category	2003		2004		2005		2006		2007	
	Cases	%	Cases	%	Cases	%	Cases	%	Cases	%
Banks	38 745	88.5	82 325	86.4	85 248	86.2	93 426	82.1	133 699	84.6
Post office	1 099	2.5	3 159	3.3	4 555	4.6	10 509	9.2	11 859	7.5
Shinkin bank and Credit Cooperatives	3 302	7.5	8 119	8.5	7 010	7.1	8 136	7.2	10 237	6.5
Securities companies	124	0.3	339	0.4	572	0.6	656	0.6	1 174	0.7
Money lending business	120	0.3	1 152	1.2	1 175	1.2	805	0.7	397	0.3
Norinchukin Bank	86	0.2	40	0.0	92	0.1	89	0.1	294	0.2
Labour bank	25	0.1	109	0.1	128	0.1	86	0.1	189	0.1
Insurance companies	20	0.1	16	0.0	19	0.0	33	0.0	48	0.1
Others	247	0.0	56	0.1	136	0.1	120	0.1	144	0.0
Total	43 768	100	95 315	100	98 935	100	113 860	100	158 041	100

STR relating to terrorist financing

Category	2003	2004	2005	2006	2007
Banks	89	169	149	193	280
Post office	0	65	15	0	1
Shinkin bank and Credit Cooperatives	5	4	2	3	5
Securities companies	1	0	0	0	0
Money lending business	0	0	0	0	0
Norinchukin Bank	0	0	0	0	0
Labour bank	0	0	0	0	0
Insurance companies	1	0	3	2	13
Others	0	0	0	0	0
Total	96	238	169	198	299

Note: In 2001 and 2002, respectively 191 and 40 STRs relating to terrorist financing have been submitted to the FIU.

Special Recommendation IV

616. The STR system is fully applied when “specified business operator” suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

617. This requirement is a direct mandatory obligation stipulated by Article 9, paragraph 1 of the Act. Article 9(1) of the Act on the Prevention of Transfer of Criminal Proceeds requires specified business operators to file STRs, when property accepted through specified business activities are suspected to be criminal proceeds or a customer, etc is suspected to have been conducted acts constituting crimes set forth in Article 10 of the Organized Crime Act, etc. The definition of “criminal proceeds” as provided in Article 2(1) of the Organized Crime Act includes “criminal proceeds, etc.” of Article 2(4) of the Organized Crime Act. Thus, criminal proceeds would also include funds related to an offence provided for in Article (Provision of Funds) of the Act on the Punishment of Financing of Offences of Public Intimidation. Regardless of the scope of Article 10 of the Organized Crime Act, the obligation to file STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

618. Before the entry into force of the Act on the Prevention of Transfer of Criminal Proceeds in 2007, Article 54 of the Act on the Punishment of Organized Crime required financial institutions to report suspicious transactions relating to terrorist financing. As this Act entered into force in 2002, the legal basis of the 191 STRs on terrorist financing submitted in 2001 was unclear. Japanese authorities advised that these STRs were made voluntarily based on the “Ministerial Notification etc. concerning Taliban and other terrorists etc. in accordance with UNSCRs”.

619. It should be noted that the Reference Cases of Suspicious Transactions established under the authority of the Act on the Punishment of Organized Crime do not contain any example of transactions that could be linked to terrorist financing. Japan should consider a revision of the Reference cases and include examples of transactions of terrorist financing.

Recommendation 14

Criminal and civil liability

620. Article 9, paragraph 1 of the Act on the Prevention of Transfer of Criminal Proceeds obligates financial institutions to report suspicious transactions to the FIU. There is no provision in this Act itself to protect the reporting institutions, their directors, officers and employees when they submit an STR in good faith to the FIU. However, Article 23 of the Act on the Protection of Personal Information prohibits “business operators” handling personal information from providing such information to a third party without obtaining the prior consent of the person, except in waiver cases. These cases include those “Cases in which the provision of personal data is based on laws and regulations” (Article 23(1)(i)).

621. Article 23 of the Act on the Protection of Personal Information appears to be broad enough to provide protection to financial institutions when they submit STRs in accordance with the requirements in Article 9, paragraph 1 of the Act on the Prevention of Transfer of Criminal Proceeds, because the STR obligation is “based on laws and regulations”.

622. In addition the Guidelines for Personal Information Protection in the Financial Field, promulgated pursuant to the Act on Protection of Personal Information, elaborate on the exceptions provided in the Act for providing personal data (as defined in the Act) to third parties, in Article 13 of the Guidelines. Article 13 of the Guidelines refers to cases listed in Article 5, including the case of suspicious transactions reported pursuant to the Act on the Prevention of Transfer of Criminal Proceeds.

623. As for protection from criminal liability for natural persons such as directors, officers and employees (permanent and temporary), Japan relies on Article 35 of the Penal Code, which provides that “an act performed in accordance with laws and regulations or in the pursuit of lawful business is not punishable”. As the Penal Code covers both natural and legal persons, and the STR obligation is based on law, Article 35 of the Penal Code is assessed to offer protection from criminal liability, as required in criterion 14.1 of Recommendation 14.

624. As for protection from civil liability for natural persons such as directors, officers and employees (permanent and temporary), Japan has advised that this protection is given under Article 90 of the Civil Code, which provides that “A juristic act with any purpose which is against public policy is void.” Japan has advised that “public policy” should be interpreted to mean the intent as expressed in laws and regulations, such as an STR obligation. In addition, Article 709 of the Civil Code also provides that “A person who has intentionally or negligently infringed any right of others, or legally protected interest of others, shall be liable to compensate any damages resulting in consequence.” A Supreme Court decision³⁷ has upheld the interpretation that a person, who has infringed the right of others because that person is acting in accordance with laws and regulations, shall not be liable for damages under Article 709. Applying this interpretation, a person who has made an STR in accordance with his STR obligation under law would not be liable under Article 709 of the Civil Code. Taken together, these Articles and the Supreme Court interpretation are assessed to offer protection from civil liability, as required in criterion 14.1 of Recommendation 14.

Tipping off

625. Article 9(2) of the Act on the Prevention of Transfer of Criminal Proceeds stipulates that specified business operators, including its executives and employees, shall not reveal to their “customers, etc” or relevant person that the specified business operator has filed an STR or is going to file an STR.

626. The Act on the Prevention of Transfer of Criminal Proceeds provides for administrative sanctions on specified business operators, and criminal sanctions on both specified business operators and natural persons, where they have violated the prohibition against tipping off in Article 9(2).

627. Article 16 however only provides for administrative sanctions against business operators, and not against the operator’s directors, officers and employees. While administrative sanctions against the business operators can be applied immediately upon occurrence of the tipping off offence (for example, in the form of a business improvement order), natural persons can only be penalised with criminal sanctions for violations of such orders. As a consequence of this, a natural person cannot be sanctioned for the initial commission of a tipping off offence, but only for violating the subsequent administrative order.

628. Criminal sanctions are provided for in Article 23, which states that a natural person who has violated an order issued under Article 16 shall be punished by imprisonment with work for not more than two years or a fine of not more than JPY 3 million, or both. Article 27 further provides that where a representative of a legal person or an agent, employee or other worker of a legal person or an individual has committed the violation, not only shall the offender be punished but also the legal person, with the legal person subject to a fine of not more than JPY 300 million.

³⁷ The Supreme Court case 1682 of 24 March 1988 states: “The Supreme Court decides whether damages caused by noise and dust by operation of a factory, in relation to the third party (plaintiff), are infringement of rights or interests of others by illegal acts, which is stipulated in Article 709 of the Civil Code. This shall be decided on the basis of how the rights of the people (plaintiff) are violated and the extent of violation, what kind of safeguard the company was taking and the effectiveness of the safeguard. These factors should be taken into consideration in order to decide whether the damages are infringement of rights by illegal acts.”

629. However, the prohibition in Article 9(2) of the Act on the Prevention of Transfer of Criminal against tipping off does not, in itself, fully satisfy the requirements of criterion 14.2 of Recommendation 14, as the provision covers only tipping off to the customers and relevant persons, but not all third parties.

630. Japan advised that the prohibition against tipping off all third parties is contained in Article 23(1) of the Act on Protection of Personal Information. This provides that a business operator handling personal information shall not, except in the exemption cases under the Act, provide personal data to a third party. Japan advised that “personal data” of a customer, which is broadly defined as personal information constituting a personal information database, would also necessarily contain information on whether an STR has been made against a customer or not. Moreover, the Act on Protection of Personal Information specifically distinguishes between “personal data”, which the customer cannot ask to be changed, and “retained personal data”, which the customer can access and ask to be changed. Business operators are not allowed to classify information such as STRs, and whether STRs have been made or not, under “retained personal data”, which the customer can ask to access, and to change or delete. This prohibition is explicitly stated in the Guideline for Act on the Protection of Personal Information. Therefore, as business operators as prohibited under Article 23(1) from disclosing personal data – including whether an STR has been made or not against the customer – to third parties, this prohibition is deemed to prohibit tipping off third parties.

631. The assessment team accepts in principle that the fact whether an STR has been made or not would be contained within the “personal data” of a customer, as defined in the Act on Protection of Personal Information. In fact, business operators who do not maintain information on whether a STR has been made or not would be sanctioned for inadequate record-keeping. There is potentially a small gap in that this may not catch the tipping off that may occur in the small window of time when this information has not been formally entered into the “personal data” records yet; for example, when the business operator has decided internally to file an STR but not yet sent the STR and entered it into the customer’s records. Nevertheless, this gap is small.

632. Nevertheless, Article 23(1) of the Act on Protection of Personal Information covers only business operators, and not natural persons such as these operators’ directors, officers and employees. Hence, there is still no prohibition in law against directors, officers and employees of business operators from tipping off third parties.

633. The sanctions against business operators for tipping off third parties are administrative sanctions under Article 34 of the Act on Protection of Personal Information, where the competent Minister may require the business operator to cease this violation. If the business operator violates this order to cease applied under Article 34, then Article 56 provides for a fine of not more than JPY 300 000 on legal persons. Article 58 further provides that where the representative person of a legal person or an agent, employee or other worker of a legal person or an individual has committed the violation, not only shall the natural person be punished but also the legal person, with the legal person subject to a fine of not more than JPY 300 000. However, while sanctions are available for tipping off third parties, these are not as severe as those available under the Act on the Prevention of Transfer of Criminal Proceeds for tipping off of customers and relevant persons. Moreover, natural persons cannot be sanctioned for the initial commission of a tipping off offence, but can only be penalised with criminal sanctions for violations of the order applied under Article 34.

Additional elements: Confidentiality

634. Information related to STRs filed by a “specified business operator” is kept confidential under “Rule for the Handling of Information on Suspicious Transaction” issued by the National Public Safety Commission. The Rule provides measures for maintenance of information on suspicious transactions, dissemination of the information to public prosecutor etc. or foreign agencies and so on (Rule, Article 1). The Director for Prevention of Money Laundering is required to arrange and maintain information so that they can be retrieved via computer (Rule, Article 4, paragraph 1), and the

Director is required to take necessary and appropriate measures to prevent such information from leakage, deletion or breakage (ibid. paragraph 3). Upon dissemination of information to public prosecutors etc. or foreign agencies, the Director is required to prepare records for each dissemination (Rule, Article 5, paragraph 4; ibid. Article 6, paragraph 2; ibid. Article 7, paragraph 2). The Commissioner General is required to report, to the National Public Safety Committee, situations concerning maintenance of information and such (Rule, Article 9). In such ways, the names and personal details of staff of financial institutions that make an STR are kept confidential and properly maintained by JAFIC.

635. Also, since members of JAFIC are all public servants of the Japanese government, not only during their tenure but also after their retirement they are required to keep what they learned in the course of their duties confidential (National Public Service Act, Article 100, paragraph 1). Violators will be subject to imprisonment of a year or less, or fine of JPY 500 000 (approximately EUR 3 100/USD 4 850) or less (National Public Service Act, Article 109, item 12). Moreover, members of JAFIC in charge of handling STR are all law enforcement authorities and each of them are trained on the importance of secrecy of information related to investigation.

Recommendation 25 (only feedback and guidance related to STRs)

636. JAFIC and competent administrative agencies provide STR reporting entities with general guidance and feedback as detailed below. Currently, JAFIC gives limited case-by-case feedback to reporting entities.

General feedback

- **National Police Agency (NPA) website:** JAFIC, within the NPA website, provides an introduction of JAFIC, AML/CFT measures taken in Japan including an overview of the Act on the Prevention of Transfer of Criminal Proceeds, international cooperation (write-up on FATF, APG, Egmont Group, FATF40+9 Recommendations, number of MOUs signed with foreign FIUs), statistics on number and origin of STRs. The website also provides information on the preparation of STRs to reporting entities.
- **Publications:** JAFIC's annual report containing information on AML/CFT matters, including the legal framework of AML/CFT, STR statistics and reporting process, and international cooperation in AML/CFT matters, is distributed to financial institutions, DNFBPs and the public. The NPA's annual "Whitepaper on Police" provides an analysis of crime and statistics including AML/CFT, and is available on the NPA website.
- **Outreach and training:** JAFIC organized workshops for financial institutions in October to November 2007 (for 14 days total with 1500 participants). In Tokyo, separate sessions are held for banks, securities and insurance while outside Tokyo sessions are held jointly for various categories of financial institutions. FSA and JAFIC also jointly hold training sessions for employees of financial institutions in AML/CFT matters, with 21 training sessions held in 2007.
- For **DNFBPs**, JAFIC organized workshops for dealers in precious metals and stones and trust and service providers in August, November and December 2007 (for ten days total with 500 participants) and for certified public accountants in December 2007 (for one day). During these workshops, JAFIC shares with participants the obligations in the Act on the Prevention of Transfer of Criminal Proceeds, statistics, trends and typologies in AML/CFT, sanitized examples of actual money laundering cases, and guidance on STR reporting. JAFIC has scheduled workshops with each category of DNFBP with the full enactment of the Act on the Prevention of Transfer of Criminal Proceeds on 1 Mar 2008.

- **List of Reference Cases of Suspicious Transactions:** As stated above, these Lists have been issued by the Financial Services Agency (FSA) to banks, securities companies and insurance companies, and by the Ministry of Economy, Trade and Industry (METI) and Ministry of Agriculture, Forestry and Fisheries (MAFF) to futures commission merchants and by METI to financial leasing companies and credit card companies. JAFIC is working with other competent administrative agencies to prepare similar reference lists for other institutions, including DNFBPs, with an STR reporting obligation.

Specific or case-by-case feedback

- **Acknowledgement of receipt of STR:** For STRs submitted online through e-Gov, JAFIC would automatically send an electronic acknowledgement to the reporting entity stating the reference case number of the STR. For STRs submitted through competent administrative agencies, these agencies would acknowledge receipt of these STRs to the reporting entity, but there would not be a further acknowledgement of receipt sent from JAFIC to the reporting entity.
- **Decision taken on STR:** JAFIC does not have a practice of informing reporting entities on the outcome of the STR, *i.e.* whether the case is closed with no further action, or disseminated to investigative agencies. For cases disseminated to investigative agencies, these agencies would contact the reporting entity directly for follow up.

Recommendation 19

637. Upon establishing the FIU (then JAFIO) in 1997, Japan considered the benefits and costs of requiring financial institutions to report all transactions in currency above a fixed threshold to a national central agency. Japan decided not to implement such a reporting system because:

- (i) Transactions required to be reported should be in some way linked or related to the proceeds of crime, and this reporting obligation is already provided for in revisions made in the AML/CFT legislation, most recently in the Act on the Prevention of Transfer of Criminal Proceeds.
- (ii) As cash transactions account for a significant share of all transactions conducted in Japan, the resulting large number of transactions would make it difficult to operate the FIU in a cost-efficient manner. There would also be significant resistance from financial institutions and the public.

638. Under Article 55-7 of the Foreign Exchange Act, the Ministry of Finance has introduced a transaction reporting system for moneychangers conducting business of more than JPY 1 million per month. These moneychangers are required to report their aggregate number of transactions, number of transactions of more than JPY 2 million, and the aggregate monthly transactions. However, these reports do not contain customer details that can be used for further analysis or investigation (see Recommendation 23).

639. In addition, for purposes of producing the Balance of Payments statistics, Article 55 of the Foreign Exchange Act mandates a reporting system on external payments that exceed JPY 30 million, and capital transactions of more than JPY 100 million the Finance Minister.

Statistics and effectiveness of the reporting systems

640. The second mutual evaluation report on Japan (see Section 1) highlighted the very low level of STR reports, which could be partially explained by the fact that predicate offences were limited to drug related offences. The number of STRs has appreciably increased, in particular in 2004 and 2006. However, the very large majority of reports is submitted by banks and represents 84% to 88% of the

total number of STRs. This situation is even more so for STRs relating to terrorist financing, where banks' reports represented from 2002 to 2007 between 88% and 93% of the total number of STRs, except in 2004, where the Japan Post submitted 65 STRs of out 238. It remains however of concern that only banks, Shinkin banks and credit cooperatives and the Japan Post together consistently submit the largest proportion of STRs. For example insurance companies only report a few number of STRs every year (the maximum was 48 in 2007) and the proportion of the STR reports submitted by securities companies never exceeded more than 0.7% of the total number of STRs. The assessment team were not provided with compelling explanations for the persistently low proportion of STRs submitted by these sectors.

641. The same also applies to STRs in relation with terrorist financing: banks, to a lesser extent Shinkin banks, credit cooperatives and the Post Office, provide the large majority of the reports. Since 2002, only one report has been submitted by a securities company, 19 by insurance companies. Money lenders, Norinchukin Bank and Labour Banks have not so far submitted any STRs in relation to terrorist financing. There is no apparent reason justifying the absence of reports from those categories of financial institutions.

642. There have been efforts by the supervisory authorities and industry associations to raise awareness in these important sectors. The Japan Securities Dealers Association has issued further guidance on STR cases to elaborate on the list of reference cases issued by FSA. For insurance, the insurance company interviewed by the assessment team indicated that insurance companies licensed in Japan only do domestic business.

643. STR reporting obligations on some categories of DNFBPs only took effect from full enactment of the Act on the Prevention of Transfer of Criminal Proceeds on 1 March 2008 and hence no STRs have been received from these DNFBPs at the time of the onsite visit. After the onsite visit, Japan presented statistics for the period March-May 2008 that showed a few STRs submitted by DNFBPs, including 3 from real estate agents and 9 from mail and telephone service providers.

3.7.2 *Recommendations and Comments*

644. It is recommended that Japan explicitly mention attempted transactions within the scope of the suspicious transactions to be reported, notwithstanding the fact that STRs have already been submitted to JAFIC in relation to attempted transactions.

645. Credit guarantee corporations should be subject to a direct, mandatory STR reporting obligation under Act on the Prevention of Transfer of Criminal Proceeds. It is recommended that Japan undertake actions to promote STRs filing by insurance and securities sectors.

646. It is recommended that the directors, officers and employees of business operators also be prohibited and sanctioned in law from tipping off third parties. In addition, directors, officers and employees of business operators should be sanctioned upon commission of a tipping off offence to the customer and relevant parties, not only after violation of the administrative order applied to the business operator.

647. The sanctions in the Act on Protection of Personal Information for tipping off third parties, which are lower than the sanctions in the Act on the Prevention of Transfer of Criminal Proceeds for tipping off customers and relevant persons, should be more dissuasive.

648. The FIU should give specific or case-by-case feedback to reporting institutions.

3.7.3 *Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV*

	Rating	Summary of factors underlying rating
R.13	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.
R.14	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.
R.19	C	<ul style="list-style-type: none"> • The Recommendation is fully observed.
R.25	LC	<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.
SR.IV	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.

Internal controls and other measures

3.8 *Internal controls, compliance, audit and foreign branches (R.15 & 22)*

3.8.1 *Description and Analysis*

649. Article 1 of the Banking Law stipulates:

“The purpose of this Act is, in view of the public nature of the business of banks and for the purpose of maintaining its credibility securing the protection of depositors, etc. and facilitating smooth functioning of financial services to ensure sound and appropriate management of the business of banks, thereby contributing to sound development of the national economy. In the application of this Act, due consideration shall be given for respecting banks’ voluntary efforts for management of their business.”

650. The violation of this broad and undefined obligation is set forth in the Article 26 of the same Law that stipulates:

“The Prime Minister may, when he/she finds it necessary for ensuring sound and appropriate management of the business of a bank in light of the status of the business or property of said bank or the property of said bank and its subsidiary companies, etc., seek said bank to submit an improvement plan for ensuring soundness in management of said bank or order a change to a submitted improvement plan by designating the matters for which measures should be taken as well as the due date, or, to the extent necessary, order suspension of the whole or part of the business of said bank by setting a time limit or order deposit of property of said bank or other measures necessary for supervision.”

651. On the basis of these broad provisions, Japan requires financial institutions (similar provisions exist in the various laws applicable to all types of financial institutions) to establish an internal control system, policies and procedures. For this purpose, the FSA and other supervisory bodies have issued Comprehensive Supervisory Guidelines and Inspection Manuals³⁸ for financial institutions to develop and implement internal AML/CFT policies, procedures and controls. These policies, procedures and controls include, amongst other things, CDD, record retention, the detection of unusual or suspicious transactions and the STR reporting obligation. However, besides the Comprehensive Supervisory Guidelines and Inspection Manuals, there are no other laws, regulations or other enforceable means explicitly requiring financial institutions to implement internal AML/CFT procedures, policies and controls.

652. Specifically with regard to AML/CFT controls, policies and procedures, the following is replicated in the various Supervisory Guidelines³⁹:

“III-3-1-3-1-2 Major Supervisory Viewpoints

In relation to the implementation of customer identification under the Customer Identification Act and suspicious transactions reporting under the Anti-Organized Crime Act with regard to banking operations, has the bank established and maintained an internal control environment as described below in order to avoid being exploited for the purpose of organized crime such as financing of terrorism, money laundering and fraudulent use of deposit accounts?

(1) Has the bank established and maintained centralized control over legal affairs so as to perform procedures for customer identification and suspicious transaction reporting properly? In particular, has the bank paid due consideration to the following points when establishing centralized control?”

Does the bank have appropriate policies for screening prospective employees and customers?

...

Has the bank developed manuals on methods for customer due diligence practices, including those for customer identification and suspicious reporting, and made sure to have all officers and employees acquainted therewith? Does the bank provide appropriate and ongoing employee training programmes that enable its employees to follow these methods properly?

Has the bank established an appropriate internal control environment (including policies, procedures, processes and information control systems) for reporting in cases of misuse of financial services by organized crime groups that are detected by employees, including those found through the implementation of procedures for customer identification and detection of suspicious transactions?

³⁸ Comprehensive Supervisory Guidelines have been published for different types of financial institutions: banks, insurance, money lenders, trust companies, agricultural and fishery cooperatives and Norinchukin Bank. Inspection Manuals include those for Deposit Taking Institutions, Financial Instruments Business Operators, Insurance Companies, Trust and Banking Companies, Agriculture and Fishery Cooperatives.

³⁹ Relevant sections on AML/CFT compliance framework in the various Supervisory Guidelines are: Major banks, issued Oct 2005 (III-3-1-3-1-2); Small and medium-sized / regional financial institutions, May 2004 (II-3-1-3-1-2); Financial instruments business operators, i.e. securities sector, Aug 2007 (III-2-6, III-1, III-2-1); Insurance companies, Aug 2005 (II-3-7); Trust companies, Dec 2006 (3-2); Moneylenders, Dec 2007 (II-2-4). As FSA is also joint supervisor for other depository financial institutions (including long-term credit banks, shinkin banks, labour banks, cooperatives including agricultural and fishery cooperatives and Norinchukin Bank), these sections also apply mutatis mutandis to these institutions.

Has the bank established and maintained an internal control environment, including the decision making process at the senior management level, to ensure appropriate response and management of customers and transactions identified as problematic in light of the customer attributes (including his/her public status) through procedures for customer identification or customer due diligence?

Has the bank appointed an AML/CFT compliance officer to conduct appropriate customer due diligence including customer identification and suspicious transaction reporting?"

(2) Has the bank established and maintained an internal control environment to ensure that when it reports a suspicious transaction, appropriate deliberations and decisions are made with due consideration of specific information that it retains on the said transactions, including the customer attributes and circumstances at the time of the said transaction?

In particular, does the bank pay adequate attention to the following viewpoints when establishing and maintaining an internal control environment to ensure reporting of suspicious transactions?

(i) Has the bank established and maintained an internal control environment to ensure that suspicious customers or transactions are detected, monitored and analysed with the use of computer software and manuals, etc. in a manner consistent with its business size and profile?

(ii) Has the bank, in the course of establishing and maintaining an internal control environment as described above, considered various factors concerned, such as the customer attributes including the customer's nationality (e.g. Non-Cooperative Countries and Territories listed publicly by the FATF), public status and business profile, as well as the characteristics of transactions, such as whether they are foreign exchange transactions or domestic transactions and the amount and frequency of the transactions vis-à-vis customer attributes?

(3) Has the bank established and maintained an internal control environment to ensure that in case where any doubt arises as to the veracity or adequacy of previously obtained customer identification data or where the customer is suspected of impersonating another person under whose name a transaction is made, the customer identity is re-verified through measures such as requesting customer to re-submit identification documents?

(4) Has the bank established and maintained an internal control environment to ensure that customer identity is verified and the purpose of a deposit account is ascertained as necessary when paying out deposits, in order to prevent fraudulent withdrawals of cash from accounts or fraudulent use of accounts by means of stolen passbooks or counterfeited seals? Has the bank considered how customer protection should be provided and taken necessary measures? In particular, in light of the growing public concern about vicious cases of misuse of deposit accounts, including cases where so-called black-market financial services providers collect debts through certain deposit accounts or deceive people into remitting cash to deposit accounts by sending fictitious bills, has bank established and maintained an internal control environment to the implementation of measures that contribute to the prevention of fraudulent use of deposit accounts, including suspension of depository transactions or closing of accounts in accordance with the terms and conditions described in deposit contracts?"

653. Under the Supervisory Guidelines, the notion of "internal control environment" is broad and includes policies, procedures, processes and information control systems. Only some elements of the customer identification and the suspicious transactions are dealt with. In addition, the new requirements of the Act on the Prevention of Transfer of Criminal Proceeds have not been integrated to the Guidelines yet, although the Supervisory Guidelines for Major Banks have been revised after the on-site visit to add in particular a question: "Has the bank appointed an AML/CFT compliance officer to conduct appropriate customer due diligence including customer identification and suspicious transaction reporting?". Finally, the Guidelines do not specify that procedures and policies should be updated and communicated to the employees.

Compliance management

654. Financial institutions are not required to appoint a compliance officer, as only the Comprehensive Supervisory Guidelines for Major Banks have been revised and mention the appointment of a compliance officer to conduct appropriately customer due diligence including customer identification and suspicious transaction reporting. Other provisions of the various Supervisory Guidelines specify in general that the Representative Director, the Board of Directors or the Executive Officers, depending on the form of the financial institution should be responsible for maintaining an appropriate internal control environment to ensure compliance with laws and regulations.

655. Apart from the appointment of an AML/CFT compliance officer, the tasks and missions of the compliance officer are not outlined, neither his position in the hierarchy of the financial institution nor his power to access in a timely fashion to customer identification data and other CDD information, transactions records and other relevant information.

656. Despite the vagueness in the Supervisory Guidelines, the financial institutions interviewed nevertheless indicated that they appoint an AML/CFT officer at management level, who reports regularly to senior management and/or the Board of Directors on changes in the AML/CFT regulatory framework, STRs submitted, instances of AML/CFT breaches. The institutions' broad policies and procedures on AML/CFT are also approved by senior management.

Independent audit function

657. The Supervisory Guidelines issued to the banking, securities, insurance, trust companies, agriculture and fishery cooperatives sectors explicitly set out that the internal audit function should be independent and adequately resourced.⁴⁰ Apart from these indications, the audit's role and functions, including with regard to AML/CFT, are not described (*i.e.* verification of the compliance with the procedures, policies and controls). The financial institutions interviewed by the assessment team indicated that their internal audit departments usually conduct audits of the AML/CFT compliance framework in the institutions once every year.

Employee training and employee screening

658. There is no reference to employee training, but as quoted above, the Supervisory Guidelines ask whether the bank has appropriate policies for screening prospective employees. The financial institutions interviewed by the assessment team indicated that they organise AML/CFT training for all new employees and refresher training regularly to all employees when there are changes in the AML/CFT regulatory framework. In addition, the Japanese Bankers' Association has also drawn up AML/CFT training materials, which are available commercially to banks for training their employees.

659. For employee screening, the financial institutions interviewed indicated they would screen their employees, at a minimum, against their internal list of Anti-Social Forces to ensure that criminal elements are not employed.

Effectiveness

660. Through onsite examinations, FSA jointly with other competent administrative agencies have assessed the financial institutions' internal control framework on AML/CFT, including CDD measures, STR reporting system, effectiveness of the internal audit function, and employee training

⁴⁰ Guidelines for Major Banks (III-1-2-1(5)); Small and Medium-Sized/Regional Financial Institutions (II-1-2(5)); Financial Instruments Business Operators (III-1(1)(iv)), Insurance Companies (II-1-2(5)); Trust Companies (3-2)(4); Agricultural Cooperatives (II-1-2-1(6)); Fishery Cooperatives (II-1-2(5)).

on AML/CFT. In these assessments, FSA inspectors review the AML/CFT compliance framework in the institution including whether AML/CFT matters are regularly reported through the responsible officer to senior management; internal audit reports on AML/CFT compliance and adequacy of remedial actions; and AML/CFT training programmes and staff attendance records at these training sessions.

661. The FSA ensured the assessment team that non-compliant institutions are required to submit a report (Article 24 of the Banking Law), and that the FSA can issue a business improvement order to the institution where warranted (Article 26 of the Banking Law). The assessment team was provided with examples of business improvement orders resulting from failures to establish and maintain effective AML/CFT internal control systems, including inadequacy in STR reporting, internal audit functions, management oversight, and inadequate employee training⁴¹. However, these administrative orders referenced the Banking Act as the basis for the actions, and not the Supervisory Guidelines.

Recommendation 22

662. As of March 2007, the categories of financial institutions with foreign branches and/or subsidiaries are banks⁴² (major banks, trust banks, first regional banks and other banks), securities companies, life and non-life insurance companies and trust companies.

663. There is no explicit direct requirement that financial institutions should ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (*i.e.* host country) laws and regulations permit. Financial institutions are not required to pay particular attention that this principle is observed with respect to their branches and subsidiaries located in countries which do not or insufficiently apply the FATF Recommendations.

664. However for bank branches, as these do not have the status of an independent legal person, they would be obliged to comply with AML/CFT requirements that are binding on the Head Office. For bank subsidiaries, the Banking Act states the general power of the Prime Minister (delegated to the FSA as supervisor) to set criteria with regard to bank subsidiaries and to require reports, when deemed necessary in order to ensure the sound and appropriate business operation of a bank (Articles 14-2(ii) and 24(2) respectively), implicitly including AML/CFT requirements.

665. There is no explicit requirement that where the minimum AML/CFT requirements of the home and the host countries differ, that branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that local (*i.e.* host country) laws and regulations permit. In practice, however, the financial institutions met by the assessment team indicated that their branches and subsidiaries would apply the higher of the two standards.

666. There is also no requirement that financial institutions should inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures because this is prohibited by local laws, regulations or other measures. To date, the FSA has not received such notifications from financial institutions.

667. The Comprehensive Supervisory Guidelines for Major Banks (III-3-9-2(1)) requires supervisors to assess the internal controls that banks develop to manage and supervise appropriately their foreign branches, and whether banks have persons with adequate knowledge and experience of the business situation in foreign branches and the local legal systems assigned to the respective

⁴¹ See for example www.fsa.go.jp/news/newse/e20051118.html ; www.fsa.go.jp/news/newse/e20050921.html ; www.fsa.go.jp/news/newse/e20041216-1.html ; www.fsa.go.jp/news/newse/e20040220-1.html

⁴² Japan Post Bank and Japan Post Life Insurance have no foreign branches or subsidiaries. Shoko Chukin Bank has a New York branch.

branches as internal auditors or compliance staff. However, the Guidelines do not deal with implementation of AML/CFT measures by foreign branches and subsidiaries.

668. There is one case of administrative action taken by FSA against a bank where it infringed on host, but not home, country regulations. While in practice this may ensure that the foreign branch or subsidiary complies with Head Office and/or host country AML/CFT requirements, there is no explicit guidance set out in cases where the AML/CFT requirements of the home and the host countries differ.

3.8.2 Recommendations and Comments

669. It is recommended that Japan explicitly require through enforceable means, that financial institutions to establish and maintain an AML/CFT internal control system, to designate an AML/CFT compliance officer at management level, with further guidance on the roles and responsibilities of the compliance officer, as well as to establish audit units in charge of ensuring the compliance with the procedures, policies and controls.

670. The compliance officer should have timely access to customer identification data and CDD information, transactions records and other relevant information.

671. Japan should explicitly require financial institutions to update and communicate the AML/CFT procedures and policies to their employees and to train the employees accordingly.

672. There is no requirement through enforceable means for financial institutions to adopt screening procedures to ensure high standards when hiring employees.

673. The requirements in Recommendation 22 should be explicitly imposed on financial institutions with regard to both their foreign branches and subsidiaries.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	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. There is no requirement to adopt screening procedures to ensure high standards when hiring employees.
R.22	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.

3.9 *Shell banks (R.18)*

3.9.1 *Description and Analysis*

674. Shell banks cannot legally operate in Japan. Although there are no specific provisions in the Banking Act or other regulations that prohibit the establishment of shell banks, the licensing process by the FSA for banks as described below, ensures that shell banks do not operate in Japan.

675. The application process for a banking licence in Japan is set out in Article 1-8 of the Ordinance for Enforcement of the Banking Act. The licence application has to be signed by all directors, and documents required to be submitted include the applicant's articles of incorporation, certificate of registered matters, minutes of the initial meeting, detailed business plan, resumes of all directors, company auditors and accounting advisors, locations of each business office, etc.

676. In its assessment of the application, FSA would rely on independent sources of public information on the bank (*e.g.* external ratings), and also make inquiries to the home country supervisor of the applicant on whether the applicant holds a banking licence in the home country, whether the home country supervisor is satisfied with the soundness and internal control environment of the applicant, and whether the applicant complies with the laws and regulations in its home country. If these criteria are satisfied, the FSA would then proceed to interview the directors and management of the applicant bank to assess whether they are fit and proper, and their level of experience. Following the award of the licence, FSA continues with offsite monitoring of the bank.

677. In the Comprehensive Supervisory Guidelines for Major Banks (II-3-1-3-1-2) and for Small and Medium-Sized/Regional Financial Institutions (II-3-1-3-1-2), supervisors are instructed to assess whether financial institutions have established and maintained an internal control environment which enables proper decisions to be made on whether or not to enter into or continue a correspondent banking relationship after properly assessing a prospective foreign financial institution, by ascertaining its customer base, business profile and local public supervisory system as well as whether it is not a shell bank. There is however no explicit prohibition against financial institutions entering into, or continuing correspondent banking relationships with shell banks.

678. There is no explicit requirement for financial institutions to satisfy themselves that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks, although this could form part of the financial institutions' assessment of its correspondent banks, depending on the level of due diligence done by the financial institution.

679. The assessment team notes that following the onsite visit, the Supervisory Guidelines for Major Banks have been modified to add in that the bank should satisfy themselves with regards to a correspondent banking relationship "after properly assessing the prospective or existing correspondent partner by ascertaining its customer base, business profile, local public supervisory system and that it is neither a fictitious bank (so-called shell bank) itself nor conducting any business with such a bank."

Effectiveness

680. The licensing process and ongoing monitoring by the supervisory authorities appear adequate to ensure that shell banks do not operate in Japan. For correspondent banking, the financial institutions interviewed by the assessment team indicated that in their due diligence on correspondent banks, they would send questionnaires to the correspondent banks that do require responses from the correspondent banks on their policies to ensure that they will not conduct transactions with or on behalf of shell banks.

3.9.2 Recommendations and Comments

681. It is recommended that Japan explicitly prohibit financial institutions to enter into or continue correspondent banking relationships with shell banks.

682. There should be an explicit requirement that financial institutions should satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	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.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

683. A full range of financial institutions, including those in banking, insurance, securities and futures, credit cooperatives, moneylenders, trust companies, financial leasing companies and credit card companies, are subject to a supervisory framework and AML/CFT obligations including CDD, record keeping and STR reporting requirements under the Act on the Prevention of Transfer of Criminal Proceeds. While money exchangers are no longer subject to prior authorisation procedures from 1998 onwards, they are still subject to AML/CFT obligations under this Act.

684. The table below shows the types of financial institutions subject to AML/CFT obligations and details of their supervisory authorities.

Type of Financial institution	Supervisor(s)
Bank	FSA
Shinkin bank	FSA
Federation of Shinkin banks	FSA
Labor bank	FSA/MHLW
Federation of labor banks	FSA/MHLW
Credit cooperative	FSA
Federation of credit cooperatives	FSA
Agricultural cooperatives	MAFF/FSA/Prefectural Governor
Federation of agricultural cooperatives	MAFF/FSA
Fishery cooperatives	MAFF/FSA/Prefectural Governor
Federation of fishery cooperatives	MAFF/FSA
Norinchukin Bank	MAFF/FSA
Shokochukin Bank	METI and FSA

Type of Financial institution	Supervisor(s)
Insurance company	FSA
Foreign insurance company, etc.	FSA
Small-claims/short-term insurance business operator	FSA
Financial instruments business operator	FSA
Securities finance company	FSA
Specially permitted business notifying person	FSA
Trust company	FSA
Person registered under Article 50-2, paragraph 1 of the Trust Business Act	FSA
Real estate specified joint business operator	MLIT/FSA/Prefectural Governor
Mutual loan company	FSA
Money lender	FSA, LFB, Prefectural Governor
Futures commission merchant	MAFF, METI
Book-entry transfer institution	FSA/MOJ/MOF
Account management institution	FSA/MOJ/MOF
Management Organization for Postal Savings and Postal Life Insurance	MIAC
Person who trades in currency exchange	MOF
Person who conducts a business purchasing machinery and any other articles as designated by customers and leasing such articles to the customer	METI
Person who conducts a business wherein the person issues or gives a card or any other object or a number, mark or any other code	METI

FSA

685. The FSA is an integrated regulator that supervises the banking, insurance, securities and futures,⁴³ trust and money lending sectors through the Banking Act, Insurance Business Act, Financial Instruments and Exchange Act, Trust Business Act and Moneylending Business Act. Under the Banking Act and other business acts, FSA jointly with other supervisory authorities have the responsibility to do onsite inspections (including of AML/CFT compliance) of other depository financial institutions: namely, labour banks (with MHLW); agricultural and fishery cooperatives, Norinchukin Bank (with MAFF)⁴⁴ and Shoko Chukin Bank⁴⁵. The privatised Japan Post Bank and

⁴³ Financial instruments business operators (securities sector) regulated under the Financial Instruments and Exchange Act include:

- a) securities, financial futures, OTC derivatives, asset management (“Type 1 financial instruments business”);
- b) trust beneficial interests sales, commodities investments sales, mortgage securities, solicitation to acquire equity in cooperatives (“Type 2 financial instruments business”);
- c) Investment advisory business;
- d) Investment management business; and
- e) Financial instruments intermediary business.

⁴⁴ Article 4 of the Act for Establishment of the FSA states that “...the FSA shall take charge of the following affairs: (iii)(c) Shinkin banks, labour banks, credit cooperatives, agricultural cooperatives, fishery

Japan Post Insurance are also supervised by the FSA under the Banking Act and Insurance Business Act respectively.

Other supervisory authorities

686. The players in the financial sector not supervised either solely or jointly by the FSA include:

1. Management Organization for Postal Savings and Postal Life Insurance (under the purview of MIAC): With the privatization of Japan Post, certain types of existing banking accounts (e.g. term deposits) and insurance contracts up to September 2007 are transferred to this Management Organization. After October 2007, this Organization no longer accepts new banking or insurance business, and any new accounts are opened with the privatized Japan Post Bank and Japan Post Insurance under the supervision of FSA.
2. Futures commission merchants (dealing in commodities futures transactions), credit card companies and financial leasing companies (under the purview of METI): Futures commission merchants are required to be licensed by METI and MAFF, and credit card companies are required to be registered with METI. METI and MAFF have powers to supervise and conduct onsite supervision of these entities. As for financial leasing companies, these are currently not required to be licensed nor registered.
3. Money exchangers (under the purview of MOF): These money exchangers engage only in money exchange business and not money value transfer business. They are not currently required to be licensed nor registered, but have reporting obligations (see write-up under Recommendation 23).

SROs - Japan Securities Dealers Association (JSDA)

687. Japan Securities Dealers Association is the sole organization in Japan authorized by the Prime Minister under Article 67-2 of the Financial Instruments and Exchange Act, and has securities companies and registered financial institutions as its members. As of March 2008, the JSDA has 315 regular members that are Japanese and foreign securities companies (corresponding to financial instruments business operators prescribed in the Financial Instruments and Exchange Act) and 220 special members that are registered financial institutions. It is funded by membership fees, operating revenues (registration fees collected from securities sales agents, fees for the qualification examination, etc.), and subsidies.

688. JSDA has self-regulatory functions including:

- establishing and enforcing self-regulatory rules
- conducting on-site inspections and off-site monitoring
- taking self-regulatory disciplinary actions
- implementing the examinations for qualification and training courses for qualification renewal, as well as and registering securities sales representatives
- providing counselling for complaints on securities transactions

cooperatives, the Norinchukin Bank, and other private business operators engaged in taking deposits and savings.”

⁴⁵ Article 43(2) of the Shoko Chukin Bank Law.

- developing and expanding the OTC bond market
- making rules for off-exchange transactions of listed stocks

689. Regarding AML/CFT actions, JSDA adopted the “Rules for Customer Due Diligence by Securities Companies” as a resolution of its board of governors in 1997. Subsequently, upon the promulgation of the Act on Customer Identification and Retention of Records by Financial Institutions, and Prevention of Fraudulent Use of Deposit Accounts in 2002, JSDA released “Qs and As on the Customer Identification Act” for its members, and then in 2005, gave a notice to the members regarding non-face-to-face transactions, entitled “Identification Method for On-line Securities Companies.” JSDA has also addressed customer due diligence in the Self-regulations entitled “Regulations Concerning Solicitation for Investments and Management of Customers, etc. by Association Members,” the resolution of the board of governors entitled “For Suppressing Transactions with Members of Organized Crime Groups and People Related to Such Groups,” etc.

Structure and resources of supervisory authorities

Supervisors – Structure, funding and resources

FSA

690. The FSA is established by the “Act for Establishment of the Financial Services Agency” as an organ of the Cabinet Office. Under Article 55 of the National Public Service Act, the Prime Minister has the authority to appoint the FSA Commissioner. Under Article 75 of this Act, the FSA Commissioner shall be demoted, suspended and dismissed against his will except for exceptional circumstances as set out in Article 78 of the Act. The FSA Commissioner has no fixed term specified in law. The authority to conduct onsite and offsite supervision, except the authority of granting or revoking licenses of financial institutions, has been delegated by the Prime Minister to the Commissioner based on each business Act (*e.g.* Banking Act). On the other hand, according to the Act of Establishment of Cabinet Office, the Minister for Financial Services is in charge of affairs under the FSA jurisdiction. Specifically, the Minister for Financial Services has the authority to grant and revoke licenses for financial institutions and to consult the Financial System Council.

691. The market surveillance, inspections and investigations regulation, and supervision of the securities sector is undertaken by the Securities and Exchange Surveillance Commission (SESC), which is a panel established under the FSA. The SESC’s Chairperson and two Commissioners are appointed by the Prime Ministers with the consent of both Houses of the Diet. Although the FSA has the authority to decide the budget and staffing of the SESC, the SESC Chairperson and Commissioners do not report to the FSA Commissioner and are allowed to exercise their authority independently and shall not be dismissed against their will during their term of office except in specified cases (Article 14, Act for Establishment of the FSA).

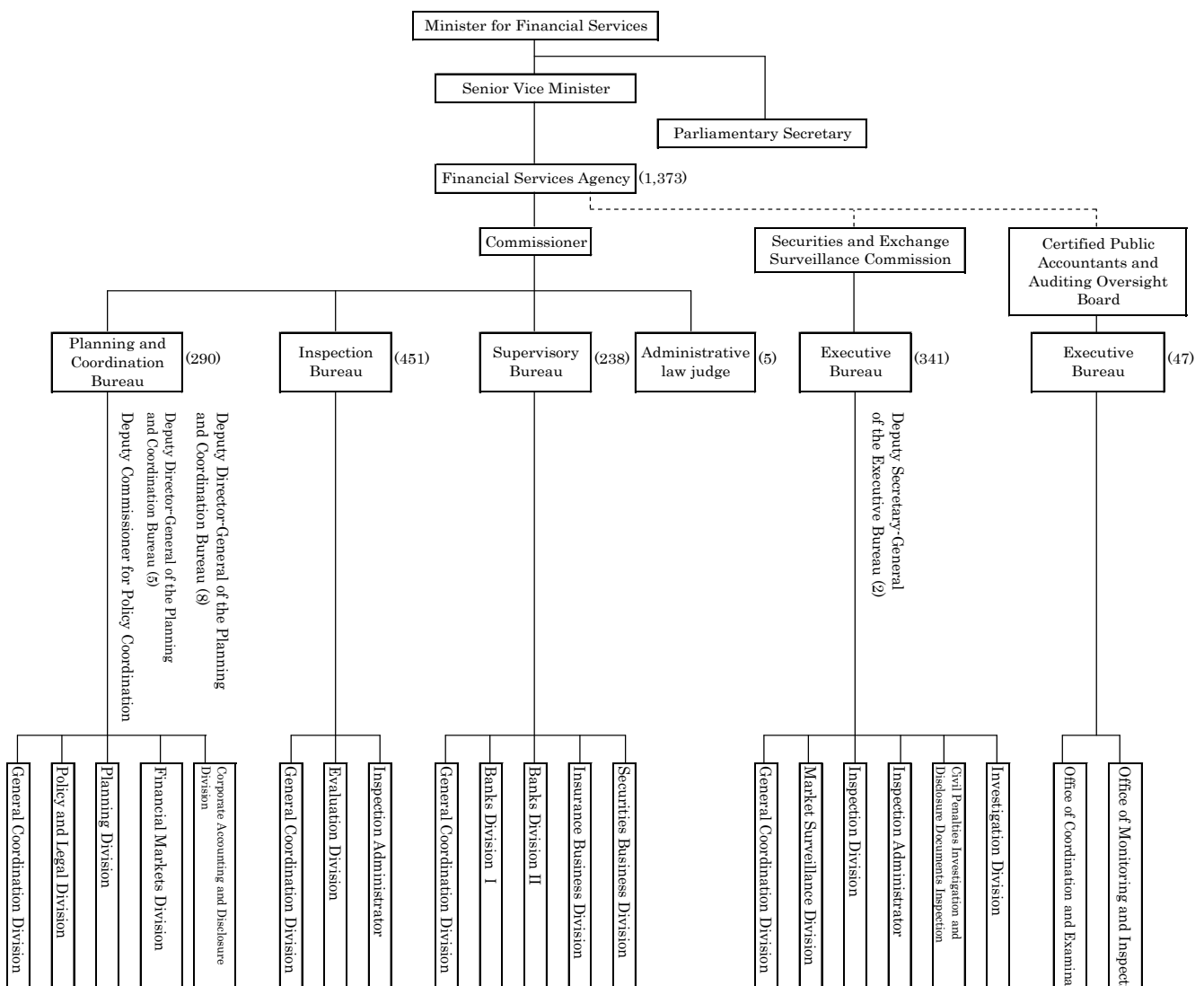
692. The FSA (inclusive of SESC) submits its annual budget request to the Ministry of Finance (MOF), which discusses with FSA and makes any necessary amendments before submitting the ministerial draft budget to Cabinet. The Cabinet budget is approved by Diet resolution. The household budget of FSA is shown below:

Million Yen	FY2007	FY2006	FY2005
Personnel Expenditures	13 208	13 234	12 473
Other expenditures	8 851	7 838	6 248
Total	22 059	21 072	18 721

693. Overall, FSA is adequately structured, funded and staffed, and provided with sufficient technical and other resources to fully and effectively perform their functions. As of end-FY2007, the FSA has 1 373 staff. The regulation and supervision of financial institutions, other than those in the securities sector, are undertaken by three departments in FSA all reporting to the FSA Commissioner (see FSA Organisational Chart FY2007):

- a) Planning and Coordination Bureau (290 staff): responsible for planning and policy matters concerning finance-related laws and regulations, coordination within FSA and with the Diet, public relations, international affairs and training programmes.
- b) Inspection Bureau (451 staff): responsible for inspection of banks, insurance companies, credit cooperatives, trust companies and moneylenders. The Bureau has developed inspection manuals, for example the Inspection Manual for Deposit-Taking Institutions), which are made available to financial institutions on its website.
- c) Supervisory Bureau (238 staff): responsible for offsite supervision of and licensing / registration of financial institutions.

FSA Organizational Chart (FY2007)



Staffing Resources of Supervisors (Professional Staff)

Supervisory staff – Professional standards, skills and confidentiality

694. The FSA has regular training programmes for all its officers, covering ethics training, basic supervisory skills and specialised sector-specific skills. Training in AML/CFT supervision is part of the course content in these programmes, for example, in specialised courses for FSA inspectors in assessing financial institutions' compliance with STR reporting and CDD requirements. Other training includes:

- **Ethics training** (one 1-day session per year): for all FSA staff, on the obligations required by the National Public Service Ethics Act;
- **Training for new recruits** (one 2-month session per year) **and transferred staff** (four 1-day sessions per year): training to impart basic knowledge on financial services and supervisory framework and code of ethics;
- **Sector-specific training** (one 3- or 4-day session per sector): training on supervision and inspection skills for supervision of banks, insurance companies and securities companies. More experienced officers may also participate in more advanced courses and seminars.

695. As the staff of the FSA and other designated supervisory authorities are national public officers, the National Public Service Act (Article 100) obliges them not to “divulge any secret which may have come to his knowledge in the course of his duties. This shall also be applied after he has left his position.” Any violation is punishable by imprisonment with work for not more than one year, or a fine of not more than JPY 30 000 (Article 109(xii)). FSA has also developed a code of conduct for its staff, which includes the obligation of confidentiality.

Other supervisory authorities

696. Details on the staffing resources and number of inspections by the supervisory authorities below, *i.e.* other than the FSA, are given in the tables under Recommendation 23 (ongoing supervision and monitoring). To summarise:

1. Management Organization for Postal Savings and Postal Life Insurance (under the purview of MIAC): MIAC has a team of eight offsite review officers and three onsite inspectors. This is assessed to be adequate given that the Management Organisation is no longer accepting new banking or insurance business.
2. Futures commission merchants dealing in commodities futures transactions (under joint purview of METI and MAFF): For the 70 futures commission merchants, METI and MAFF have 64 and 36 supervisory staff respectively, and on average 15 inspections would be conducted per annum. The supervisory resources for this sector are assessed to be adequate.
3. Credit card companies and financial leasing companies (under METI): METI has a team of nine supervisors each for credit card companies (340 companies) and financial leasing companies (277 companies), with no fixed inspection cycle. For credit card companies, Japan has explained that many of these are small operations, and assessed to be of lower AML/CFT risk given that the credit card payments would almost all be made through the banking system and not in cash. Financial leasing companies are currently not required to be licensed not registered, and this is noted as a concern under Recommendation 23.
4. Money exchangers (under the purview of MOF): MOF has a team of 52 inspectors for 440 money exchangers, with inspection cycles on a 3-year average. The supervisory resources for this sector are assessed to be adequate, although the assessment team has

concerns on the lack of a registration or licensing regime for money exchangers (see Recommendation 23 on market entry).

Authorities' Powers and Sanctions – R.29 & 17

Recommendation 29 (Supervisory powers)

Adequacy of powers, including onsite inspections and access to information

697. Article 13 of the Act on the Prevention of Transfer of Criminal Proceeds gives broad power to competent administrative agencies “to the extent necessary for the enforcement of this Act, request a specified business operator to submit reports or materials concerning its business affairs”. Although not specifically stated, the assessment team has been told that this broad power “to the extent necessary for the enforcement of” the Act on the Prevention of Transfer of Criminal Proceeds includes all necessary documents or information relating to AML/CFT obligations of the business operator, in particular accounts or other business relationships, transactions and STR reporting. This power to access and compel production of information is not predicated on a court order.

698. Article 14 of the Act on the Prevention of Criminal Proceeds further gives the competent administrative agencies broad onsite inspection powers to ensure compliance with the AML/CFT requirements under Act on the Prevention of Criminal Proceeds: “a competent administrative agency may, to the extent necessary for the enforcement of this Act, have its officials enter a business office or other facility of a specified business operator, inspect the books, documents, and any other objects of the said facility, or ask questions of the persons concerned with regard to its business affairs.”

699. These powers under the Act on the Prevention of Criminal Proceeds are supplemented by specific provisions under the business acts governing the various sectors. Under these various acts, the FSA has a broad range of powers to monitor and ensure compliance by financial institutions with AML/CFT requirements, including powers of offsite-monitoring and onsite inspections.

FSA

700. Powers of FSA to require FIs to submit reports or materials:

- Depository FIs: Banks: Article 24(1) of the Banking Act; long-term credit banks: Article 17 of the Long-Term Credit Bank Act; shinkin banks: Article 89(1) of the Shinkin Bank Act; credit cooperatives: Article 6(1) of the Act on Financial Business by Cooperative Associations; labor banks: Article 94(1) of the Labor Bank Act; agricultural cooperative associations: Article 93(1) of the Agricultural Cooperative Association Act; fishery cooperative associations: Article 122 (1) of the Fishery Cooperative Association Act, the Norinchukin bank: Article 83 (1) of the Norinchukin Bank Act.
- Insurance companies: Article 128(1) and 201 of the Insurance Business Act.
- Financial instruments business operators: Article 56-2(1) of the Financial Instruments and Exchange Act.
- Moneylenders: Article 24-6-10 of the Moneylending Business Act.
- Trust companies: Article 42(1) of the Trust Business Act.

701. Powers of FSA for onsite inspections on FIs:

- Depository FIs: Article 25(1) of the Banking Act, Article 89 of the Shinkin Bank Act, Article 94 of the Labor Bank Act, Article 6 of the Act on Financial Business by Cooperative

Associations, Article 94 of the Agricultural Cooperative Association Act, Article 123 of the Fishery Cooperative Association Act Article 84 of the Norinchukin Bank Act.

- Insurance companies: Article 129 of the Insurance Business Act.
- Financial instruments business operators: Article 56-2 (1)-(3) of the Financial Instruments and Exchange Act; inspection power delegated by FSA commissioner to SESC Article 194-7 (2) (i) and (iii).
- Moneylenders: Article 24-6-10 of the Moneylending Business Act.
- Trust companies: Article 42 of the Trust Business Act).

Other supervisory authorities

702. For financial leasing companies and credit card companies (under METI) and money exchangers (under MOF), the powers to request submission of reports or materials and for onsite inspection derive directly from the Act on the Prevention of Transfer of Criminal Proceeds. In addition, these powers are also contained in the relevant business laws for the following financial institutions:

- Management Organization for Postal Savings and Postal Life Insurance (under MIAC): Article 64(1) of Act on General Rules for Incorporated Administrative Agency
- Futures commission merchants dealing in commodities futures transactions (under joint purview of METI and MAFF): Article 231(1) of Commodity Exchange Act.

Powers of enforcement and sanction

FSA

703. The FSA and other competent administrative agencies have a broad range of powers of enforcement and sanction against financial institutions, including their directors or senior management, for failure to comply with AML/CFT requirements. These include powers to rescind the licence of a financial institution or to order the dismissal of an officer of the financial institution.

704. Powers of FSA to rescind the licence of an FI:

- Depository FIs: Banks: Article 28 of the Banking Act; long-term credit banks: Article 17 of the Long-Term Credit Bank Act; Shinkin banks: Article 89(1) of the Shinkin Bank Act; credit cooperatives: Article 6(1) of the Act on Financial Business by Cooperative Associations; labor banks: Article 95 of the Labor Bank Act; agricultural cooperative associations: Article 95-2 of the Agricultural Cooperative Association Act; fishery cooperative associations: Article 124-2 of the Fishery Cooperative Association Act.
- Insurance companies: Article 133 of the Insurance Business Act;
- Financial instruments business operators: Article 52(1) of the Financial Instruments and Exchange Act.
- Trust companies: Article 44(1) of the Trust Business Act.

705. Powers of the FSA to order the dismissal of an officer of a financial institution:

- Depository financial institutions: Banks: Article 27 of the Banking Act; long-term credit banks: Article 17 of the Long-Term Credit Bank Act; shinkin banks: Article 89(1) of the Shinkin Bank Act; credit cooperatives: Article 6(1) of the Act on Financial Business by Cooperative Associations; labor banks: Article 94(1) of the Labor Bank Act.
- Insurance companies: Article 133 of the Insurance Business Act.
- Financial instruments business operators: Article 52(2) of the Financial Instruments and Exchange Act.
- Trust companies: Articles 44(2) and 45(2) of the Trust Business Act.
- Moneylenders: Article 24-6-4 of the Moneylending Business Act.

Other supervisory authorities

706. For Management Organization for Postal Savings and Postal Life Insurance (under MIAC) and financial leasing companies and credit card companies (under METI), the sanction powers to derive directly from the Act on the Prevention of Transfer of Criminal Proceeds. In addition, sanction powers on futures commission merchants dealing in commodities futures transactions (under joint purview of METI and MAFF) are set out in Chapter 8 (“Penal Provisions”) of the Commodity Exchange Act.

Recommendation 17 (Sanctions)

Administrative sanctions

707. Article 16 of the Act on the Prevention of Transfer of Criminal Proceeds empowers competent administrative agencies to issue orders for rectification to specified business operators who have violated their core AML/CFT obligations, i.e. obligations of CDD, record-keeping and STR reporting: “A competent administrative agency may, when it finds that a specified business operator has violated the provisions of Article 4, paragraphs 1 to 3 (*i.e.* customer identification), Article 6 (*i.e.* customer identification records), Article 7 (*i.e.* transactions records), Article 9, paragraph 1 or paragraph 2 (*i.e.* transaction report and prohibition of disclosure), or Article 10 (*i.e.* notification of foreign exchange transactions) in the course of performing its business affairs, order the specified business operator to take any necessary measures to rectify the violation”.

708. Article 17 of the Act on the Prevention of Transfer of Criminal Proceeds also empowers the National Public Safety Commission, when it finds that a specified business operator has violated a rectification order, to state its opinion to the competent administrative agency, and to request the specified business operator to submit reports or materials concerning its operations or to direct the appropriate prefectural police to conduct necessary inquiries.

FSA

709. FSA has a range of administrative sanctions available, as set out in the Banking Act (with similar sanction powers in other sectors under its purview, including securities and insurance). In increasing order of severity, these are:

1. Orders for submission of a report (as a result of onsite inspection or offsite monitoring) and follow-up on corrective measures (Article 24).
2. Orders for business improvement (Article 26).
3. Orders for business improvement with suspension of business operations (Article 26).

4. Orders for suspension of business operations (Article 27).
5. Revocation of licence (Article 27).

710. Sanctions consisting of an order for suspension of business operations and revocation of license may also include dismissal of the director, executive officer, accounting advisor or company auditor of the financial institution.

711. These administrative penal provisions are also applied *mutatis mutandis* to other depository financial institutions, including long-term credit banks, Shinkin banks, labour banks, cooperatives including agricultural and fishery cooperatives and Norinchukin Bank; and to financial instrument business operators, insurance companies, trust companies and moneylenders.⁴⁶ The table in this section shows the number of such administrative actions taken, by type of financial institution.

712. These administrative sanctions are approved by the FSA Commissioner (or his delegated authority). Reports under (i) are usually required to be submitted from one month of the order, with ongoing reports every three months until satisfactory resolution of the issues. Suspension orders under (iii) could be imposed for a limited time period, or indefinitely. As a matter of policy, any administrative sanctions relating to breaches of AML/CFT obligations are published on the FSA website.

713. Financial institutions are allowed to either file a complaint (Article 6 of the Administrative Appeal Act) or to file a suit to have the administrative sanction annulled (Article 8 of the Administrative Case Procedure Act). According to the FSA, no such complaints or suits challenging administrative sanctions have been filed so far.

714. From April 2005, FSA introduced administrative civil monetary penalties for violations of the Securities and Exchange Law (now the Financial Instruments and Exchange Act). These penalties are available for securities offences such as market manipulation and insider trading. The SESC (Civil Penalties Investigation and Disclosure Documents Inspection Division) will investigate these offences and recommend to the FSA Commissioner on imposition of these civil monetary penalties, obtained by judgements by administrative law judges.

Other Supervisory Authorities

715. The competent authorities (MIAC, METI, MAFF and MOF) other than the FSA have a similar range of administrative sanctions available under the respective business laws. For example, the table in this section shows business suspension orders have been served on futures commission merchants, and business improvement orders on money exchangers.

Penal sanctions

716. If these orders for rectification are violated, Article 23 of the Act on the Prevention of Transfer of Criminal Proceeds states that the natural person violating the order shall be punished by imprisonment with work for not more than two years or a fine of not more than JPY 3 million, or both. The legal person violating orders for rectification shall be punished by a fine of not more than JPY 300 million (Article 27).

717. Articles 24 of the Act on the Prevention of Transfer of Criminal Proceeds sanctions a person who failed to submit reports or material or submit false report or material (Articles 13 and 17 of the

⁴⁶ Administrative penalty provisions are found in Articles 56-2(1), 51 and 52(1) of the Financial Instruments and Exchange Act; Articles 128 and 132 of the Insurance Business Act; Articles 43, 44 and 45 of the Trust Business Act and Article 24-6-3 and 24-6-4 of the Moneylending Business Act.

Act) and a person who gave false or no answer to inspectors or refused, obstructed or avoided inspections to imprisonment with work for not more than one year or a fine of not more than JPY 3 million, or both. Article 27 sanctions legal persons for the same violations to a fine of not more than JPY 200 million.

718. In addition to these penal provisions under the Act on the Prevention of Transfer of Criminal Proceeds related specifically to AML/CFT obligations, criminal and administrative sanctions are available to the FSA under the sector-specific business laws.

719. Paragraph 4 of Article 4 of the Act on the Prevention of the Transfer of Criminal Proceeds prohibits customers from providing false information to specified business operators. Pursuant to Article 25 of the Act, the sanction for providing false customer identification data is a fine not exceeding JPY 500 000 (approximately EUR 3 000 / USD 4 800). The fine amount is potentially too low to be considered as dissuasive particularly when contrasted with the relative profitability of criminal enterprises. In practice, however, a customer providing false identification information can be charged with a broader offence of fraud which is punishable by a maximum sentence of 10 years imprisonment.⁴⁷ It should be noted that these prohibitions and fines apply to customers rather than financial institutions.

720. The table below provides the number of cases of fraud related to customer identification submitted to the Prosecutor’s office over the four past years. The three categories of offence consist of situations in which an individual:

- 1) Opens an account under his/her real name with the intention to sell etc. to another person.
- 2) Uses a fictitious name when opening an account.
- 3) Disguises himself/herself as another person when opening an account.

Year	2004	2005	2006	2007	Total
Category 1)	1224	1005	1090	1288	4607
Category 2)	108	136	468	314	1140
Category 3)	33	81			
<i>Total</i>	<i>1365</i>	<i>1222</i>	<i>1558</i>	<i>1602</i>	<i>5747</i>

721. The relatively high number of cases referred for prosecution suggests that law enforcement authorities make aggressive use of the fraud offence against persons providing false information to financial institutions.

FSA

722. Penal provisions in the Banking Act are:

⁴⁷ Article 246, paragraph 1 of the Penal Code states that a “person who defrauds another of property shall be punished by imprisonment with work for not more than 10 years.” According to Japanese authorities, the Japanese Supreme Court has ruled that a person who opens an account under his/her real name with the intention of transferring or selling the passbook or banking card to another can be viewed as committing fraud under Article 246.

1. (i) A person who has failed to submit reports or materials as prescribed in Article 24(1) of the Banking Act or submitted false reports or materials shall be punished, pursuant to Article 63 of the same Act, by imprisonment with work for not more than one year or a fine of not more than JPY 3 million. Where an employee, etc. has committed this violation, the juridical person to which the employee, etc. belongs shall be sentenced to a fine of not more than JPY 200 million pursuant to Article 64(1)(ii) of the same Act.
2. (ii) A person who has violated an order of suspension of the whole or part of a business issued under Article 26(1) or Article 27 of the Banking Act shall be punished, pursuant to Article 62 of the same Act, by imprisonment with work for not more than two years or a fine of not more than JPY 3 million. Where an employee, etc. has committed this violation, the juridical person to which the employee, etc. belongs shall be sentenced to a fine of not more than JPY 300 million pursuant to Article 64(1)(i) of the same Act.

723. These criminal penal provisions are also applied *mutatis mutandis* to other depository financial institutions, including long-term credit banks, Shinkin banks, labour banks, cooperatives including agricultural and fishery cooperatives and Norinchukin Bank; and to financial instrument business operators and insurance companies.⁴⁸ These criminal sanctions are sought by the Public Prosecutor and imposed by the courts after conviction. There are no cases of appeal so far.

724. Between criminal penal sanctions (fines and/or imprisonment) that have to be sought through the court, and administrative sanctions, the approach of the FSA and the other supervisory authorities have been to rely on administrative sanctions. In particular, the administrative sanction of business improvement orders, with or without suspension of business, has been commonly used. The assessment team accepts that these administrative sanctions are effective and dissuasive as they impose both a monetary cost (similar to the effect of a fine) and also a reputation cost to the financial institution. The range of sanctions available is also broad and proportionate to the severity of a situation. In one case, a license revocation order was issued for violations related to AML/CFT.

Sanctions applying to directors and senior management

725. The only sanction applicable to directors and senior management is in Article 27 of the Banking Act which sanctions violations of “any laws or regulations, its articles of incorporation or a disposition by the Prime Minister based on any laws or regulations or has committed an act that harms the public interest, order said bank to suspend the whole or part of its business or to dismiss its director, executive officer, accounting advisor, or company auditor, or rescind the license set forth in Article 4(1)”.

726. The numbers of administrative actions taken against financial institutions for violation of the obligation for customer identification and/or suspicious transaction reporting over the past years are as follows. These include business improvement orders, with or without suspensions, and also in one case a license revocation order.

⁴⁸ Criminal penal provisions are found in Articles 198 and 207 of the Financial Instruments and Exchange Act; Articles 316, 317 and 321 of the Insurance Business Act; and Article 112 of the Trust Business Act.

Type of Financial institution	Number of institutions	No of inspections totally or partially dealing with AML-CFT during the last 5 years					Number of findings concerning AML-CFT	Actions taken	Sanctions: please specify.
		2003	2004	2005	2006	2007			
Bank	213	38	36	88	101	93	142 (BY2006)	142	12
Shinkin bank	287	98	24	116	103	122	154 (BY2006)	154	0
Federation of Shinkin banks	1	1	0	0	0	1	0 (BY2006)	0	0
Labor bank	13	7	5	5	5	5	4 (BY2006)	4	0
Federation of labor banks	1	1	0	0	0	1	0 (BY2006)	0	0
Credit cooperative	168	89	92	64	96	61	65 (BY2006)	65	0
Federation of credit cooperatives	1	0	0	0	1	0	0 (BY2006)	0	0
Agricultural cooperative	867	592	567	588	576	593	253 (FY2006)	253	0
Federation of agricultural cooperatives	36	46(6)	45(6)	44(4)	35(5)	36(4)	19 (FY2006)	19	0
Fishery cooperative	183	1 135	1 074	1 013	967	987	16 (FY2006)	16	0
Federation of fishery cooperatives	31	33(9)	33(7)	32(4)	31(4)	30(4)	48 (FY2006)	48	0
Norinchukin Bank	1	0	0	1(1)	0	1(1)	3 (FY2006)	3	0
Shokochukin Bank	1	6	59	66	6	60	0	0	0
Insurance company	61	13	14	12	12	13	4 (BY2006)	4	0
Foreign insurance company	26	0	0	3	1	2	5 (BY2006)	5	0
Small-claims/short-term insurance business operator	2	0	0	0	0	1	0 (BY2006)	0	0

Type of Financial institution	Number of institutions	No of inspections totally or partially dealing with AML-CFT during the last 5 years					Number of findings concerning AML-CFT	Actions taken	Sanctions: please specify.
		2003	2004	2005	2006	2007			
Financial instruments business operator	638 (319 securities companies, 123 Investment trust management companies and 196 Financial futures business operators)	117	96	115	121	156	34 (BY2006)	34	7
Securities finance company	3	0	0	0	0	0	0	0	0
Specially permitted business notifying person	4158	0	0	0	0	0	0 (BY2006)	0	0
Trust company	12	0	0	0	0	0	0 (BY2006)	0	0
Person registered under Article 50-2, paragraph 1 of the Trust Business Act	0	0	0	0	0	0	0 (BY2006)	0	0
Real estate specified joint business operator	114	0	0	0	0	0	0	—	—
Mutual loan company	1	0	0	0	0	0	0 (BY2006)	0	0
Money lender	11 832 (including registered by Prefectural Governors)	184 (only by FSA)	205 (only by FSA)	177 (only by FSA)	162 (only by FSA)	172 (only by FSA)	5 (BY2006)	5	0

Type of Financial institution	Number of institutions	No of inspections totally or partially dealing with AML-CFT during the last 5 years					Number of findings concerning AML-CFT	Actions taken	Sanctions: please specify.
		2003	2004	2005	2006	2007			
Futures commission merchant	70	20	13	16	15	17	16	Request for reports: 9 (2003-2007 fiscal year)	Improvement orders: 4 (2003-2007 fiscal year)
Book-entry transfer institution	2	0	0	0	0	0	0	0	0
Account management institution	1 233 (under Japan Securities Depository Center) 1 565 (under Bank of Japan)	0	0	0	0	0	0	0	0
Management Organization for Postal Savings and Postal Life Insurance	1	—	—	—	—	—	—	2 Collection of reports 1 Administrative Guidance	None
Person who trades in currency exchange	440 (as of June, 2007)	100	102	105	87	119※	Significant deficiencies in customer identification were found at two currency exchangers. The MoF requested them to review and strengthen their internal business procedures so as to ensure proper implementation of the customer identification.		
		※ Inspection Year is from July to June of the next year. The number of 2007 covers from July 2007 through March 2008.							
Person who conducts a business purchasing machinery and any other articles as designated by customers and leasing such articles to the customer	277 as of Aug 2007	—	—	—	—	—	—	—	—

Type of Financial institution	Number of institutions	No of inspections totally or partially dealing with AML-CFT during the last 5 years					Number of findings concerning AML-CFT	Actions taken	Sanctions: please specify.
		2003	2004	2005	2006	2007			
Person who conducts a business wherein the person issues or gives a card or any other object or a number, mark or any other code	340 as of April 2007	—	—	—	—	—	—	—	—

*Note: Data for agricultural and fishery cooperatives and their prefectural federations, and Norinchukin Bank, are for FY2002-2006, and figures in parentheses indicate the number of joint inspection made by MAFF and FSA.

Market entry – Recommendation 23

Banking, securities and insurance sectors

727. Prior to commencing business, financial institutions in the banking and insurance sectors are required to be licensed by FSA to carry on business in Japan. Financial institutions intending to conduct securities business as defined under the Financial Instruments and Exchange Act are required to be registered with the FSA. Other depositary financial institutions are similarly required to be licensed by competent administrative agencies.

728. In addition to licensing of the institutions, individual persons who engage in regulated activities under the Financial Instruments and Exchange Act and the Insurance Business Act are required to be registered individually, with the Japan Securities Dealers Association and with FSA respectively (Article 64 of the Financial Instruments and Exchange Act, and Articles 276 and 286 of the Insurance Business Act). These individuals are required to pass qualification examinations in their respective areas in order to be registered.

729. There are fit and proper requirements on directors, and some members of senior management, of financial institutions subject to the Core Principles, as follows:

- Banks: Article 7-2(1) of the Banking Act provides for the “qualification, etc. of directors, etc.” that “directors engaged in the management of a bank (or executive officers in the case of companies with committees) shall have the necessary knowledge and experience for performing the business management of the bank properly, fairly and efficiently, and have adequate reputations in society.” Major shareholders (defined as holding not less than 20% of shares) would require approval from the Prime Minister (Article 52-9).
- Securities: The Financial Instruments and Exchange Act shall register no person as a financial instruments company if (1) the person, (2) an officer or employee of the person, or (3) a main shareholder of the person falls under any of the following (Article 29-4(1) of the Financial Instruments and Exchange Act):
 - A person who was sentenced to imprisonment with work or a more severe punishment, where a period of five years has not yet elapsed since the person served out the sentence or ceased to be subject to the sentence.
 - An individual whose registration as a financial instruments company was rescinded, where a period of five years has not yet elapsed since the date of rescission.
 - An officer of a financial instruments company whose registration was rescinded, where a period of five years has not yet elapsed since the date of rescission.
 - An officer, etc. who was dismissed by an order of the authorities, where a period of five years has not yet elapsed since the date of dismissal. Or
 - A person who was sentenced to a fine for violation of the Financial Instruments and Exchange Act, Penal Code, Act on the Prevention of Unjust Acts by Organized Crime Group Members or other Acts, where a period of five years has not yet elapsed since the person served out the sentence or ceased to be subject to the sentence.
- Insurance: Officers of an insurance company shall not be appointed from among *i*) persons who were sentenced to punishment for violation of the Insurance Business Act, the Financial Instruments and Exchange Act, etc. where a period of two years has not elapsed since they served out the sentence or ceased to be subject to the sentence (Article 12(1), Article 53-2(1)(iii) and Article 53-5(1) of the Insurance Business Act) or *ii*) persons who were sentenced to imprisonment without work or more severe punishment and have not yet

served out the sentence or ceased to be subject to the sentence (Article 12(1), Article 53-2(1)(iv) and Article 53-5(1) of the same Act). The Insurance Business Act also has similar provisions to the Banking Act on qualification of directors and approval of major shareholders.

730. FSA confirmed that it would routinely screen senior management executives and directors of financial institutions subject to the Core Principles with the police to ensure that criminals or their associates do not obtain a significant or controlling interest, or hold a management function in a financial institution.

Financial institutions other than banking, securities and insurance sectors

731. In Japan, the following types of financial institutions are not subject to the Core Principles:

- (i) Trust companies that are non-financial institutions: required to be licensed or registered with FSA depending on type of trust business (see write-up in Section 4 on trust companies).
- (ii) Moneylenders: required to be registered with FSA.
- (iii) Futures commission merchants (dealing in commodities futures transactions): required to be licensed by METI and MAFF.
- (iv) Credit card companies: required to be registered with METI.
- (v) Financial leasing companies: not required to be licensed nor registered.
- (vi) Money exchangers: not required to be licensed nor registered.

732. Although not all of the above financial institutions are subject to licensing or registration, they are all included as specified business operators in the Act on the Prevention of Transfer of Criminal Proceeds and hence subject to AML/CFT obligations.

Money Exchangers

733. In Japan, the business of money exchange, *i.e.* “buying and selling of foreign currencies or traveller’s cheques” is governed by the Foreign Exchange and Foreign Trade Act (“Foreign Exchange Act”), which is administered by MOF. Money exchangers who engage in such business are not required to be registered nor licensed. Instead, there is a “transaction reporting system” for money exchangers conducting business of more than JPY 1 million per month (Foreign Exchange Act, Article 55-7). Such money exchangers are obliged to report: (a) the aggregate number of transactions, (b) the number of transactions of more than JPY 2 million, and (c) the aggregate amount of monthly transactions. This reporting is legally enforceable, and failure to report or submission of a false report is subject to criminal penalties of imprisonment with work for not more than 6 months or a fine of not more than JPY 200 000 (Foreign Exchange Act, Article 71).

734. Money exchangers other than licensed financial institutions are not permitted to engage in money value transfer (MVT) services. MVT services are considered banking business that would require licensing under the Banking Business Act. Article 2(2) of the Banking Act defines MVT services carrying out as “exchange transactions”, that require a licence under the same act.

735. Statistics on reports from money exchangers currently subject to the “transaction reporting system” are shown below:

Money exchangers – Transactions volume and regulations (June 2007)

	Transaction volume					Regulation		
	No.	Volume	More than 2 mil. Yen	Amount	Amount average	Type	Laws	E/C
Banks:				(mil. Yen)	(ths. Yen)			
- city banks	5	401 124	1 436	41 275	102.9	License	Banking Act	Yes
- local banks	106	267 343	1 262	27 368	102.4	License	Banking Act	Yes
- Shinkin banks	147	14 512	57	1 686	116.2	License	Shinyokinko Act	Yes
- foreign banks	32	25 195	641	10 175	103.8	License	Banking Act	Yes
- other ⁴⁹	2	40	1	12	300.0	License	Industry Act	Yes
<i>Subtotal</i>	<i>292</i>	<i>708 214</i>	<i>3 397</i>	<i>80 516</i>				
Inns, hotels	64	25 545	0	617	24.2	License	Inn Act	Yes
Travel agencies	53	35 599	35	3 171	89.1	Registration	Travel agency Act	Yes
Others ⁵⁰	31	186 899	293	11 257	60.2			
Non-regulated entities ⁵¹	4	697	3	41	58.8			
<i>Subtotal</i>	<i>152</i>	<i>248 740</i>	<i>331</i>	<i>15,086</i>				
Total	444	956 954	3 728	95 602	139.7			

736. As seen in the table above, money exchangers are either financial institutions or non-financial institutions (e.g. inns, hotels, travel agencies, antique shops, department stores, and amusement parks). Based on Jun 2007 statistics, financial institutions account for 74% of the total volume and 84% of the total amount of exchange business. Transactions above JPY 2 million, which are subject to customer identification, total 3 725 in number, with only 328 or 9% handled by non-financial institutions. Occasionally, transaction reports are submitted by money exchangers run by no-regulation money exchangers, such as money exchangers run by individuals, and as of Jun 2007 there are 4 such money exchangers reporting.

737. In terms of market entry requirements, there are no specific requirements under the Foreign Exchange Act for money exchangers. Nevertheless, for money exchangers that are legal persons, there are market entry or “eligibility” requirements to prevent certain persons from becoming managers of money exchangers under various sector-specific business laws for financial institutions (see section above on financial institutions) and non-financial institutions.⁵²

738. For the “mom-and-pop exchangers” run by individuals, there are no applicable laws with such eligibility clauses. From MOF statistics, there are only 4 such money exchangers with negligible share of the market (0.07% in volume and 0.04% in amount).

739. Money exchangers are included as “specified business operators” under Article 2(2)(xxxiii) of the Act on the Prevention of Transfer of Criminal Proceeds and subject to AML/CFT obligations, including CDD measures for transactions above JPY 2 million and STR reporting. MOF is the

⁴⁹ Agricultural Corporate, Rodo-Kinko, Shinkin-Chukin, Credit Union Rengokai.

⁵⁰ Antique shops, department stores, amusement parks, transportation companies, travel goods shops, etc.

⁵¹ Travel goods shops, foreign exchange business consultant...

⁵² Eligibility clauses in the various business laws prohibit registering or licensing if the person has been sentenced previously to penalties under those Acts. These clauses are: for **inns** (Inn Act Article 3); **travel agencies** (Travel Agency Act, Article 6), **antique shops** (Antique Business Act, Article 4), **moneylending businesses** (Money Lending Business Act, Article 6), **prepaid card issuers** (Act on Regulation of Prepaid Card Business, Article 9), and for **other corporations** (Corporate Act Article 329 on qualification of directors).

competent administrative agency for AML/CFT supervision of money exchangers. Nevertheless, as these money exchangers are not registered with or licensed by MOF, MOF has to inform these money exchangers of their obligations under the Act on the Prevention of Transfer of Criminal Proceeds via the various industry associations (*e.g.* for inns, hotels and travel agencies), through the authorities licensing or registering these entities (*e.g.* prefectural Public Security Office for antique shops) or the Japan Chamber of Commerce and Industry. MOF has also distributed a letter (dated 26 Feb 2008) and leaflets, and published these on its website to inform of AML/CFT obligations.

Ongoing supervision and monitoring – Recommendation 23

Banking, securities and insurance sectors

740. FSA is responsible for both onsite and offsite supervision of the banking, securities and insurance sectors. Onsite inspections are scheduled according to a baseline inspection cycle depending on the inherent level of risk of the financial institution. See the table below. For major banks, the inspection team would typically comprise 21 to 22 inspectors and spends 1.5 months onsite. For regional banks, the inspection team comprises 12 inspectors and spends 1 month onsite. For Shinkin Banks, the inspection team comprises 6-7 inspectors and spends 25 days. For Credit Cooperatives, the inspection team comprises 5-6 inspectors and spends 25 days.

Type of Financial institution	Number of inspectors		Number of inspectors specialized in AML-CFT		Nb of inspections totally or partially dealing with AML-CFT during the last 5 business years (from July to June).					Baseline inspection cycle (no. of years)
	Off-site	On-site	Off-site	On-site	2003	2004	2005	2006	2007	
Bank	FSA/63 (a) LFB/694(g)	FSA/451(f) LFB/519(i)	FSA/7(q)	FSA/6(z) LFB/6(aa)	38	36	88	101	93	Major Banks and Trust Banks: 1.1 years Regional Banks (first and second): 2.2 years Foreign Banks: 11.9 years Foreign Trust Banks: 12.5 years
Shinkin bank	FSA/22 (b) LFB/694(g)	FSA/451(f) LFB/519(i)	FSA/3(r)	FSA/6(z) LFB/6(aa)	98	24	116	103	122	2.4 years
Federation of Shinkin banks	FSA/22 (b) LFB/694(g)	FSA/451(f) LFB/519(i)	FSA/3(r)	FSA/6(z) LFB/6(aa)	1	0	0	0	1	
Labor bank	FSA/22 (b) LFB/694(g) MHLW/3(j) Prefectures/5	FSA/451(f) LFB/519(i) MHLW/6(l) Prefectures/5	FSA/3(r)	FSA/6(z) LFB/6(aa)	7	5	5	5	5	2.1 years
Federation of labor banks	FSA/22 (b) LFB/694(g) MHLW/3(j)	FSA/451(f) MHLW/6(l) LFB/519(i)	FSA/3(r)	FSA/6(z) LFB/6(aa)	1	0	0	0	1	
Credit cooperative	FSA/22 (b) LFB/694(g)	FSA/451(f) LFB/519(i)	FSA/3(r)	FSA/6(z) LFB/6(aa)	89	92	64	96	61	2.2 years
Federation of credit cooperatives	FSA/22 (b) LFB/694(g)	FSA/451(f) LFB/519(i)	FSA/3(r)	FSA/6(z) LFB/6(aa)	0	0	0	1	0	
Agricultural cooperative	Prefectures: 330(l)	Prefectures: 400(o)	MAFF/0	0	592	567	588	576	593	1.6 years
Federation of agricultural cooperatives	FSA/22 (b) LFB/694(g) MAFF/60(m)	FSA/451(f) LFB/519(i) MAFF/140(p)	MAFF/0 FSA/3(r)	0	46(6)	45(6)	44(4)	35(5)	36(4)	1.2 years
Fishery cooperative	Prefectures: 330(l)	Prefectures: 400(o)	MAFF/0	0	1135	1074	1013	967	987	2.5years
Federation of fishery cooperatives	FSA/22 (b) LFB/694(g) MAFF/60(m)	FSA/451(f) LFB/519(i) MAFF/140(p)	MAFF/0 FSA/3(r)	0	33(9)	33(7)	32(4)	31(4)	30(4)	Every year
Norinchukin Bank	FSA/22 (b) MAFF/60(m)	FSA/451(f) MAFF/140(p)	MAFF/0 FSA/3(r)	0	0	0	1(1)	0	1(1)	2.5 years
Shokochukin Bank	6	56	6	56	6	59	66	6	60	Not decided strictly. Inspection may be done at any time and have been done every 1 to 2 years recently.
Insurance company	FSA/37 (c) LFB/694(g)	FSA/451(f) LFB/519(i)	2 (s)	FSA/6(z) LFB/6(aa)	13	14	12	12	13	5.1 years

Type of Financial institution	Number of inspectors		Number of inspectors specialized in AML-CFT		Nb of inspections totally or partially dealing with AML-CFT during the last 5 business years (from July to June).					Baseline inspection cycle (no. of years)
Foreign insurance company	FSA/37 (c) LFB/694(g)	FSA/451(f) LFB/519(i)	1 (t) "t" is included in "s"	FSA/6(z) LFB/6(aa)	0	0	3	1	2	
Small-claims/short-term insurance business operator	FSA/37 (c) LFB/694(g)	FSA/451(f) LFB/519(i)	1 (t) "t" is included in "s"	FSA/6(z) LFB/6(aa)	0	0	0	0	1	NA
Financial instruments business operator	FSA/30 (d) LFB/694(g)	FSA/341(g) LFB/267(j)	2 (u)	FSA/3(ab)	117	96	115	121	156	3 years
Securities finance company	FSA/30 (d) LFB/694(g)	FSA/341(g) LFB/267(j)	2 (u)	FSA/3(ab)	0	0	0	0	0	NA
Specially permitted business notifying person	FSA/30 (d) LFB/694(g)	FSA/341(g) LFB/267(j)	2 (u)	FSA/3(ab)	0	0	0	0	0	NA
Trust company	FSA/63 (a) LFB/694(g)	FSA/451(f) LFB/519(i)	3 (v) "v" is included in "q"	FSA/6(z) LFB/6(aa)	0	0	0	0	0	NA
Person registered under Article 50-2, paragraph 1 of the Trust Business Act	FSA/63 (a) LFB/694(g)	FSA/451(f) LFB/519(i)	3 (v) "v" is included in "q"	FSA/6(z) LFB/6(aa)	0	0	0	0	0	NA
Real estate specified joint business operator	•7 inspectors •1 inspector in each prefecture.	•1-2 inspectors per inspection.	0	0	0	0	0	0	0	The inspection is not carried out on a regular basis.
Mutual loan company	FSA/63 (a)	FSA/451(f) LFB/519(i)	3 (x) "x" is included in "q"	FSA/6(z) LFB/6(aa)	0	0	0	0	0	NA
Money lender Person prescribed in Article 2, paragraph 1, item (v) of the Money Lending Business Act	FSA/18 (e) LFB/694(g)	FSA/451(f) LFB/519(i)	2 (w)	FSA/6(z) LFB/6(aa)	184 (only by FSA)	205 (only by FSA)	177 (only by FSA)	162 (only by FSA)	172 (only by FSA)	5 years (only by FSA)

Type of Financial institution	Number of inspectors		Number of inspectors specialized in AML-CFT		Nb of inspections totally or partially dealing with AML-CFT during the last 5 business years (from July to June).					Baseline inspection cycle (no. of years)
Futures commission merchant	MAFF: 6 METI: 9	MAFF Tokyo Office: 19 Regional Bureaus: 11 METI Tokyo Office: 32 Regional Bureaus: 23	MAFF: 6 METI: 9 (including staffs supervising from other point of view.)	MAFF Tokyo Office: 19 Regional Bureaus: 11 METI Tokyo Office: 32 Regional Bureaus: 23 (including staffs supervising from otherpoint of view.)	20	13	16	15	17	Based on the inspection plan about 15 inspections have been conducting per annum.
Book-entry transfer institution	FSA/2	FSA/341(g)		FSA/3(ab)	0	0	0	0	0	
Account management institution	FSA/140	FSA/451(g)		FSA/3(ab)	0	0	0	0	0	
Management Organization for Postal Savings and Postal Life Insurance	8	3	0	0	—	—	—	—	—	
Person who trades in currency exchange	0	52	0	52	100	102	105	87	119※	3 years
					※ Inspection Year is from July to June of the next year. The number of 2007 covers from July 2007 through March 2008.					
Person who conducts a business purchasing machinery and any other articles as designated by customers and leasing such articles to the customer	9		0		—	—	—	—	—	—

Type of Financial institution	Number of inspectors	Number of inspectors specialized in AML-CFT	Nb of inspections totally or partially dealing with AML-CFT during the last 5 business years (from July to June).					Baseline inspection cycle (no. of years)
Person who conducts a business wherein the person issues or gives a card or any other object or a number, mark or any other code	9	0	—	—	—	—	—	—

741. The inspections are carried out according to the Inspection Manuals for the respective sectors, and each inspection would include an assessment of AML/CFT compliance of the financial institution. For securities, FSA has also undertaken a thematic inspection for the first time in July 2007, on market integrity of 10 securities companies.

Average number of person-days per inspection

(=no. of days spent on on-site inspection x no. of inspectors deployed)

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Major banks, etc.	517.9	861.5	756.1	833.9	977.45
Regional banks	232.0	236.0	196.8	305.1	338.88
Insurance companies	301.5	297.2	238.0	373.8	253.2
Securities companies	99	101	103	69	128
Foreign securities companies	105	102	125	184	119
Trust investment companies	—	—	—	142	129
Financial futures business operators	0	459	0	63	101
Registered financial institutions ⁵³	21	53	42	47	46
Foreign banks ⁵⁴	—	—	—	—	—
Moneylenders ⁵⁵	—	—	—	—	—

742. For offsite monitoring, the process is set out in the Comprehensive Supervisory Guidelines (II-1-1-2) for banks, applied mutatis mutandis to the securities and insurance sectors. The Supervisory Bureau would set out an annual timetable of offsite monitoring at the beginning of each year. Offsite supervisory activities would typically include hearings, *i.e.* scheduled meetings with the financial institutions on different areas of focus, including on financial results, risk management structure, internal audit; and also would include data submissions and business reports required by regulatory reporting. The Supervisory Bureau would provide inputs to the inspection teams prior to the schedule inspection on the financial institution.

743. Besides the FSA, JSDA also provides regulations for the securities market as an SRO. Under Article 14 of JSDA's Self-Regulatory Rules, it has set out members' responsibilities to establish an internal control system to prevent money laundering. JSDA conducts onsite inspection to secure members' compliance with the rule.

Financial institutions other than banking, securities and insurance sectors

744. Non-financial trust companies, moneylenders, futures commission merchants, credit card companies, financial leasing companies and money exchangers are subject to AML/CFT obligations under

⁵³ Registered financial institutions are those conducting securities business as defined under the Financial Instruments and Exchange Act, and hence are required to be registered with the FSA. The SESC of the FSA conducts onsite inspections on these institutions. Financial institutions that can obtain such a registration include banks, cooperative structured financial institutions (such as Shinkin Banks and Credit Cooperatives), insurance companies, mutual loan companies and moneylenders.

⁵⁴ The previous table provides data on the number of inspections on foreign banks and moneylenders. For this table, however, Japan indicated that data on average number of person-day per inspection on foreign banks and moneylenders would not be meaningful, given that players within these two sectors varied widely in size and complexity, and there would be correspondingly wide variations in the number of person-day per inspection.

⁵⁵ *Idem.*

the Act on the Prevention of Transfer of Criminal Proceeds. Their respective competent administrative agencies have general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification in relation to AML/CFT requirements (Articles 13, 14 and 16 respectively).

Money Exchangers

745. MOF, which administers the Foreign Exchange Act, has no authority to license or register money exchangers. Nevertheless, under as the competent administrative agency for AML/CFT supervision of money exchangers, MOF has the authority to request money exchangers to submit reports, to do onsite AML/CFT inspections, to impose orders for rectification (Articles 13, 14 and 16 respectively of the Act on the Prevention of Transfer of Criminal Proceeds). MOF has a Foreign Exchange Inspection Manual covering areas on internal controls to ensure compliance with the Foreign Exchange Act and CDD measures. The number of inspections by MOF on money exchangers that are non-financial institutions are shown below. From these inspections, there have been two instances where MOF has issued administrative sanctions in the form of business improvement orders (one to an exporter of used cars and one to a ticket shop) for deficiencies in CDD measures based on the Act on the Prevention of Transfer of Criminal Proceeds.

	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
No. of inspections on non-FI money exchangers	1	0	0	9	11

Guidelines – R.25 (Guidance for financial institutions other than on STRs)

746. The Japanese Bankers’ Association (JBA) has issued a non-binding “Guidance Note on the Risk-Based Approach” in Nov 2007 to its members. This Note summarises the international standards and applicable AML/CFT laws to banks in Japan. It also sets out guidelines on identification and assessment of various dimensions of AML/CFT risks (including country/geographic risk, customer risk, and product/service risk) and the need for the banks’ CDD and monitoring procedures to be commensurate with the AML/CFT risk identified. JBA has also drawn up AML/CFT training materials, which are available commercially to banks for training their employees.

747. JSDA has adopted the “Rules for Customer Due Diligence by Securities Companies” as a resolution of its board of governors in 1997. Subsequently, upon the promulgation of the Act on Customer Identification and Retention of Records by Financial Institutions, and Prevention of Fraudulent Use of Deposit Accounts in 2002, JSDA released “Qs and As on the Customer Identification Act” for its members, and then in 2005, gave a notice to the members regarding non-face-to-face transactions, entitled “Identification Methods for On-line Securities Companies.” JSDA has also addressed customer due diligence in the Self-regulations entitled “Regulations Concerning Solicitation for Investments and Management of Customers, etc. by Association Members,” the resolution of the board of governors entitled “For Suppressing Transactions with Members of Organized Crime Groups and People Related to Such Groups,” etc.

Banking, securities and insurance

748. FSA maintains statistics on the onsite inspections of financial institutions that include AML/CFT in the scope of inspection. Within these core financial sectors (banking, securities and insurance), the assessment team noted from the interviews that there is a strong compliance culture throughout the industry.

Money Exchangers

749. MOF considers the transaction reporting system for money exchangers – without licensing or registration – sufficient to deal with the AML/CFT risk of this sector because:

- (i) The business of money exchangers is limited to selling/buying of foreign currencies and travellers' checks,
- (ii) A licence/registration system is in place under individual business laws and the Corporate Act is in place for most of the money exchangers, and
- (iii) Money exchangers who are not subject to existing regulations are limited in number and in transaction volume.

750. Nevertheless, it is unclear whether all money exchangers who should be caught under the transaction reporting system are reporting. In particular, the number of 4 “mom-and-pop” money exchangers seems low given the size of Japan’s economy. Moreover, so far, no person has been penalized for failure to report under the transaction reporting system. MOF has explained that this is unlikely because banks have been reminded to look out for non-financial institutions that bring large amounts of foreign currency (and who may be potential money exchangers), and peer institutions e.g. other hotels may also notify MOF if their counterparts are not reporting.

3.10.2 Recommendations and Comments

751. The assessment team is concerned over the dissuasive power of criminal monetary penalties for money laundering, relative to the potentially large amount of criminal proceeds.

752. Where administrative sanctions are concerned, however, these have been effectively applied to financial institutions in cases of AML/CFT violations.

753. The AML/CFT risk from money exchangers and financial leasing companies should be continually re-assessed, together with the need for registering or licensing these sectors.

754. It is recommended that fit and proper tests be extended to all senior management for financial institutions subject to the Basel Core Principles and include requirements on expertise for insurance and securities sectors.

755. The evaluation team is concerned by the limited number of inspections carried out in some categories of financial institutions (other than in the core sectors of banking securities an insurance, and cooperative sector) over the past five years and the limited number and type of sanctions applied, although supervisory bodies have sanction powers and a large range of sanctions available for failure to comply with the AML/CFT requirements.

3.10.3 Compliance with Recommendations 23, 30, 29, 17 & 25

	Rating	Summary of factors relevant to s.2.10 underlying overall rating
R.17	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.
R.23	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.
R.25	LC	<ul style="list-style-type: none"> For financial institutions the Recommendation is fully met.
R.29	LC	<ul style="list-style-type: none"> There are effectiveness issues: <ul style="list-style-type: none"> other than in the core sectors 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.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

756. In Japan, money or value transfer (MVT) services are “Kawase transactions”, which are defined as “banking business” and require a license from the FSA under the Banking Act (Article 2(2)). MVT operators, such as Western Union, are required to appoint banks as their agents to conduct MVT business, and are not allowed to have standalone branches in Japan.

757. A person who conducts Kawase transactions without being licensed shall be subject to penalties under the Banking Act (Article 61). A natural person may be punished with imprisonment with work for not more than 3 years and/or a fine of not more than JPY 3 million, while a legal person may be punished with a fine of not more than JPY 3 million.

758. Japan's system for monitoring MVT service operators (banks) and sanctions available to FSA as the supervisor are described in the sections under Recommendations 29 and 17 respectively.

759. There is a category of institutions called money exchangers, which are not subject to any authorisation procedures prior to starting business. However, money exchangers only buy and sell foreign currencies and traveller's cheques and do not conduct remittance business.

760. The FSA publishes a current list of licensed financial institutions on its website, which would by definition include those institutions licensed to conduct exchange transactions as banking business. The basic data on the website includes the name, address and contact information of each institution. As the financial institutions are licensed as banks to be able to provide MVT services, these banks would also be required to maintain a full list of their MVT service points, including those by agents.

761. As MVT services outside of financial institutions are illegal, MVT service operators are subject to the applicable 40+9 Recommendations, including the SR.VI. The supervisory framework for monitoring these financial institutions also extends to these institutions' activities of exchange transactions.

Statistics and effectiveness

762. The Metropolitan Police Department has seen typologies of criminal networks using foreign students to remit money overseas through licensed financial institutions, to disguise this money as foreign student remittances. In the past three years, there have consistently been some cases of underground banking, which were all prosecuted. Convictions with fines and imprisonment have been obtained in all prosecutions that have been concluded.

763. The Japanese authorities also announced that the Financial System Council under the FSA has discussed the establishment of a supervisory mechanism on new retail payment services such as MVT since May 2008, although this Council has not yet formulated any changes in policy regarding the supervision of MVT operators.

3.11.2 Recommendations and Comments

764. Although there are cases of prosecution of underground banking, the authorities should re-look at penalties for violation of Banking Act, in particular the financial penalty of JPY 3 million (Article 61 of the Banking Act) which seems rather low compared to the potential proceeds to be obtained from underground banking.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	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.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

4.1 *Customer due diligence and record-keeping (R.12)*

(applying R.5, 6, and 8 to 11)

4.1.1 *Description and Analysis*

765. In addition to financial institutions, the Act on the Prevention of Transfer of Criminal Proceeds also subjects other professions and businesses to the Japanese AML/CFT regime. Article 2 of the Act lists the covered businesses and professions:

- Real estate agents and professionals;
- Precious metals and stones dealers (including antique dealers);
- Postal service providers;
- Legal professionals and accountants: lawyers, judicial scriveners certified administrative procedures specialists, certified public accountants and certified public tax accountants.

766. Notaries Public in Japan are not permitted to manage clients' assets or serve as a company formation agent. The FATF recognised in the past that notaries' duties in Japan do not match with the definition of DNFBPs as set out in the Methodology. Therefore, Recommendations 12 16 are not applicable to this profession.

767. The Act on the Prevention of Transfer of Criminal Proceeds entered into force for DNFBPs on 1 March 2008, less than a week before the beginning of the on-site mission. The evaluation met with a large majority of representatives of those professions, but is not in a position to assess the effectiveness of the implementation of the new system due to the lack of feedback available at this stage.

Real estate agents

768. Any person who intends to operate real estate transaction business shall obtain a license from Minister of Land, Infrastructure, Transport and Tourism when the person establishes the offices in two or more prefectures, or from the prefectural governor having jurisdiction over the area where the office(s) is/are located when the person establishes the office(s) in one prefecture only.⁵⁶ As of February 2007, there are 130 603 licensed real estate agents in Japan, of which 2 000 are licensed by MLIT and the rest by the prefectural governors' offices. Most of these agents are independent rather than being affiliated with any large real estate agencies. Nevertheless, most belong to one of the 6 major industry associations, including 110,000 agents who are members of the largest industry association.

769. Real estate agents' main role in Japan is to market the property, including the buying, selling, leasing or exchange of property and acting as intermediaries for the buyer, seller or lessor. Real estate agents do not play any role in the legal or financial aspects of real estate transactions. The legal title registration of the property is performed by judicial scriveners, and the financial aspects by banks or other financial institutions providing financing.

⁵⁶ Building Lots and Buildings Transactions Business Law, Article 3.

Real estate specified joint business

770. “Real estate specified joint business” is a type of collective investment scheme whereby investors subscribe to invest in a pool of properties managed by the joint business operator. The Real Estate Specified Joint Business Law requires a person who intends to conduct a distribution of the profit that real estate business based on the contract of the voluntary partnership, silent partnership, or the lease of a common real estate, or the mandate contract of the lease or conduct a substitution or mediation of the conclusion of that contract as a business (defined as "Real Estate Specified Joint Business") to obtain a licence from MLIT when the person establishes the offices in two or more prefectures, or from the prefectural governor where the office(s) is/are located in one prefecture.

771. As of FY 2005, there are 72 such joint businesses by 11 enterprises that are still active in subscribing for investment, with total amount of investments at JPY 154.1 billion. If the number of investment schemes that are closed for investment is included, there are a total of 110 real estate specified joint businesses, with 37 licensed by MLIT and 73 licensed by the prefectural governors' offices. Trust companies can also carry out real estate specified joint business and currently there are 5 trust companies doing so. As these companies are already licensed as trust companies, they do not need another licence as a real estate specified joint business operator, but have notification requirements to MLIT.

AML/CFT risk assessment of real estate agents

772. NPA noted in its AML/CFT risk assessments of DNFBBPs that real estate, especially land and buildings, are high value and since the valuation of land and buildings are evaluated by their utility, criminal proceeds can be transferred with more value added to their original value. For these reasons, real estate agents have high risk of being used for transfer of criminal proceeds. Examples in Japan include real estate purchased by proceeds from various crimes such as fraud, illegal entertainment business or illegal industrial waste dealer.

Trust and Company Service Providers (TCSPs)

- Trust companies

773. Trust companies are regulated under the Trust Business Act. Trust business is defined as “the business of accepting trusts” (Article 2) and includes provision of services to form or create a trust, acting as a trustee or arranging for any person to act as trustee, and provision of trust administration services.

774. The Trust Business Act states that no persons other than business corporations licensed by the Prime Minister may conduct a trust business (Article 3), except for a “management-type” trust business defined as one in which the discretion of the trustee is restricted. Although a licence is not required for conducting a management-type trust business, this type of trust business may not be conducted by any persons other than business corporations registered by the Prime Minister (Article 7). The power to license and register trust companies has been delegated from the Prime Minister to either the FSA or Local Finance Bureaus under the MOF (Article 87).

775. Trust companies can either be *i*) banks or other financial institutions that are also licensed under the Trust Business Act to engage in trust business; or *ii*) non-financial institutions or general incorporated companies. The former category comprises mainly banks and as of end-March 2007, there are 58 such trust companies with JPY 739 trillion in trust assets.⁵⁷ These trust companies are licensed / registered and

⁵⁷ The 58 trust companies comprise the 5 major banks, trust banks and the Resolution and Collection Corporation. Trust assets data is based on public data issued by the Trust Companies Association of Japan on the aggregate amount of assets entrusted with the member companies of the association.

supervised by the FSA. The latter category of trust companies that are non-financial institutions are licensed / registered and supervised by staff in Local Finance Bureaus under MOF who have been delegated supervision powers from the FSA. As of end-March 2007, there are 12 such trust companies with trust assets of JPY 11.3 billion.

776. The Trust Act has been amended to allow persons to undertake “self-trusts” as prescribed by Article 3(iii) of the Trust Act, *i.e.* “by way of writing on notarised deeds or other documents matters necessary for specifying said purpose and property and other matters prescribed by ordinances of the Ministry of Justice or by way of recording said matters on an electromagnetic medium.” The intention of this amendment is to facilitate the formation of trusts (*e.g.* special purpose vehicles) for securitisation, trusts to inject business proceeds in, and in the civil society area, for disabled persons to set up self-trusts. A person who forms such “self-trusts” will however require registration under the Trust Business Act if the trust has more than 50 beneficiaries (Article 50-2 of Trust Business Act, Article 15-2 of Ordinance for Enforcement of the Trust Business Act). As the provision Article 3 (iii) of the Trust Act allowing such “self-trusts” shall not apply until one year has passed from the date of the enforcement of this act (30 Sep 2007), there are currently no such trusts in Japan.

- Postal receiving service providers

777. Postal service business operators provide customers with the service of using the address of their domicile or office as the customer’s own for purposes of receiving postal mail. METI (Commerce and Information Policy Bureau) is the competent administrative agency for these operators. There is currently no industry act that governs these operators, and these operators are also not required to be registered with or licensed by METI. Based on a 2007 survey by METI, there are 1200 such operators in Japan.

AML/CFT risk assessment of postal receiving service providers

778. NPA noted in its AML/CFT risk assessments of DNFBPs that postal receiving service providers can be used by criminals to disguise their actual addresses, and to acquire higher trust and credit (*e.g.* through having a midtown Tokyo business address through a postal receiving service provider). There have also been fraud cases using private mailboxes provided by postal receiving service providers.

779. When conducting customer identification in a non-face-to-face situation, the financial institution, upon receiving a copy of the customer’s identification document, is required to send documents pertaining to the transaction to the domiciliary address of the customer by “registered mail which shall not be forwarded” (Ordinance for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds, Article 3(1)(i)(c)). There is a risk that a criminal may conceal his real address by using the address provided by a postal service provider to receive account opening documentation. Postal service providers may forward the documents to the customer when required by their service contract, instead of returning the documents to the post office as required with undeliverable registered mail. According to the NPA, it is also difficult in practice to distinguish between an actual business or residential address and that of a postal service provider.

Dealers in precious metal or stones (antiques)

780. As of 2006, there were 641,252 businesses located in Japan involved in the selling and buying of antiques, including metals and precious stones. Persons and business carrying out those operations must be licensed by the Prefectural Public Safety Commission in the prefecture where the business is located.

Certified administrative procedures specialist

781. Certified administrative procedures specialists prepare documents on behalf of clients for filing with government and public offices. As of October 2006, there were 39 112 certified administrative procedures specialists and 101 certified administrative procedures specialist corporations.

Practicing attorneys

782. Practicing attorneys must be registered with the Japan Federation of Bar Associations through the local bar association of which they are a member. As of 31 March 2007 there were 23 119 members of bar associations in Japan and as of 1 April 2007 there were 252 foreign lawyers.

Judicial scriveners

783. Judicial scriveners provide various services, including representation in procedures related to registration or deposit administration; preparation of document or electromagnetic records to be submitted to a court, public prosecutor or Legal Affairs Bureau and performing services relating to minor court lawsuit representation. In addition, they can be a trustee, administrator or manage the property of another person, guardian or curator. As of 31 December 2006, there were 18 521 judicial scriveners and 195 judicial scrivener corporations located in Japan.

Certified public accountants (CPA)

784. The mission of CPA is to ensure the fair business activities of companies and the protection of investors and creditors by securing the credibility of financial statements and other related financial information from their independent standpoint as auditing and accounting professionals. As of the end of March 2007, 170 auditing firms and 17 264 persons were registered at the Japanese Institute of CPA. Supervision of this profession is the responsibility of the FSA, which can also impose sanctions.

Certified public tax accountants (CPTA)

785. The mission of CPTAs is to fulfil taxpayer expectations as independent and impartial tax experts in keeping with the spirit of the self-assessment system, and to promote the proper fulfilment of tax obligations as outlined in acts and regulations concerning tax. The CPTAs system has been established with the aim of contributing to the smooth and proper operation of the self-assessment system through the taxpayers' fulfilment of their own tax obligations with assistance from the CPTAs, and utilizing the capacity and insight of the CPTAs as tax experts. This is the public mission of the CPTAs and they shall act based on their good sense as independent and impartial tax professionals, without favouring either the taxpayers or the tax authorities in their work to help those taxpayers who request their assistance.

786. The number of registered CPTAs is 70 768. The number of notified CPTA corporations is 1 443 as of end of September 2007.

Jewel Dealers and Precious Metal Dealers

787. The Act on the Prevention of Transfer of Criminal Proceeds defines jewel dealers and precious metal dealers as business operators who conduct buying and selling of diamonds and other precious stones and gemstones and gold, platinum, silver and alloys and products thereof.

788. Jewellery and precious metals can be easily moved, easily integrated into goods and converted into cash elsewhere around the world.

789. Furthermore, precious metals have already been actively traded on markets and can be melted down and injected in various manners until they become visually undetectable. They are extremely attractive for persons who launder money or financial institutions related to the transfer and retention of terrorist funds and present a risk in that can't be easily detected.

Applying Recommendation 5

Real estate agents and specified joint business

790. Article 4 of the Act on the Prevention of Transfers of Criminal Proceeds requires real estate agents and real estate specified joint businesses, which are included as “specific business operators”⁵⁸ under the Act on the Prevention of Transfer of Criminal Proceeds, to identify their customers and verify customer identification. They are subject to these CDD obligations at the conclusion of a contract for buying and selling, or when acting as an intermediary or agent (Order for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds, Article 8(1)(iv)(a) and Article 8(1)(i)(m)), and also when there are transactions based on a contract prescribed above which fall under transactions for which a disguise of identity is suspected (Order for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds, Article 8(1)(iv)(b) and Article 8(1)(i)(w)). The limitations of the CDD obligation in Article 4 of the Act on the Prevention of Transfers of Criminal Proceeds as applied to financial institutions (see section 3) also apply here to DNFBPs.

791. The real estate agents interviewed indicated that after the AML/CFT obligations came into effect for them from 1 March 2008, they now perform the same level of CDD on the buyer whereas previously, they would focus on CDD on the seller. They would now need to keep CDD records on both the buyer and the seller, as well as record the purpose and nature of the transaction and the method of payment.

Trust companies

792. Article 4 of the Act on the Prevention of Transfer of Criminal Proceeds requires trust companies, or persons registered under Article 50-2(1) of the Trust Business Act (i.e. “self-trusts”), which are included as “specific business operators” under the Act on the Prevention of Transfer of Criminal Proceeds Article 2(2)(xxiii) and Article 2(2)(xxiv) respectively, to identify their customers and verify customer identification. The limitations of the CDD obligation in Article 4 of the Act on the Prevention of Transfer of Criminal Proceeds as applied to financial institutions (see section 3) also apply here to DNFBPs.

Postal service providers

793. Article 4 of the Act on the Prevention of Transfers of Criminal Proceeds requires postal service providers, which are included as “specific business operators” under Article 2(2)(xxxviii) of the Act on the Prevention of Transfer of Criminal Proceeds, to identify their customers and verify customer identification. They are subject to these CDD obligations at the conclusion of a contract and also when there are transactions based on a contract prescribed above which fall under transactions for which a disguise of identity is suspected (Order for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds, Article 8(1)(vi)). The limitations of the CDD obligation in Article 4 of the Act on the Prevention

⁵⁸ Real estate agents, defined as “building lots and buildings transaction business operators prescribed in Article 2(iii) of the Building Lots and Buildings Transaction Business Act, are included as “specified business operators” in Article 2(2)(xxxvi) of the Act on the Prevention of Transfers of Criminal Proceeds. Real estate specified joint business, defined as an operator prescribed in Article 2(5) of the Real Estate Specified Joint Enterprise Act, are included as “specified business operators” under Article 2(2)(xxv) of the Act on the Prevention of Transfers of Criminal Proceeds.

of Transfers of Criminal Proceeds as applied to financial institutions (see section 3) also apply here to DNFBPs.

Attorneys

794. Article 8 of the Act on the Prevention of Transfer of Criminal Proceeds delegates authority for customer identification rulemaking to the Japan Federation of Bar Associations (JFBA). JFBA implemented this obligation by adopting the "Regulation Relating to Identification of Clients and Record-Keeping," (Association Regulations No. 81, 1 March 2007.)

795. The Regulation, which came into force on July 1, 2007, requires practicing attorneys to identify and verify the identification data of their clients (when the client is a natural person, by his/her name, address and date of birth, and when the customer is a legal person, by its name and location of head office or main office), based on "documents prepared by the government or other authorities," when administering a client's account in a financial institution or other assets in excess of JPY 1 million (approximately USD9900/EUR6300) "in connection with handling legal matters." In particular, customer identification is required in the following situations:

- buying and selling of real estate;
- investing for the purpose of establishing or managing a company, or contributing similar funds;
- establishment of a legal person or a similar entity;
- conclusion of a trust contract; or
- buying and selling of a company

796. These categories of transactions correspond to the categories covered by the methodology.

797. The JFBA explains that it would be "procedurally cumbersome" to require identification for low value (e.g. transactions less than JPY1 million) and hence low risk transactions. While these transactions represent low risk, there is no scope in the Methodology for attorneys to exempt low value transactions from customer identification.

798. Attorneys are allowed to rely on a broader universe of documentation for customer identification than financial institutions. The JFBA regulations (Article 2, paragraph 1) allow attorneys to rely on documents issued by the government or "other" unspecified authorities, whereas the Act limits identification documents to those issued by "public agencies". JFBA publicly disseminated "Questions and Answers" concerning Article 2 of the JFBA Regulations that provide additional clarification on JFBA's interpretation of customer due diligence procedures for practising attorneys. These "Q & A's" indicate that acceptable documents also include those issued by a "reliable private" body when identifying a natural person. "Reliable private" bodies are not further defined.

799. The JFBA Regulations (Article 2, paragraph 1) contain several exemptions from CDD for attorneys engaged in a variety of financial transactions on behalf of clients. For example, the Regulations exempt attorneys from identification requirements when they:

- Are entrusted with money for the purpose of making a payment to a court, legal affairs bureau, financial institution or other institution as prepayment, deposit, bond, or the like on behalf of a client.

- Are entrusted with money in order to perform the obligations of [a] client or another party (including a case in which attorneys make a payment of debt on behalf of a client).
- Receive money from the counter party or another party on behalf of the client as tender, settlement, or the like on behalf of a client. Or
- Receive money as an advance for attorney's fees or expenses.

800. JFBA officials clarified that these exemptions are limited to cases in which attorneys administer a client's account in a financial institution, or take custody of, or administer, money, securities and/or other assets related solely to "legal matters" as described in Article 3, paragraph 1 of the Practicing Attorney Act. The Practicing Attorney Act defines legal matters as "lawsuits, non-contentious matters, appeals against dispositions made by administrative offices by such means as a request for investigation, raising of objections or requests for review, and other general legal matters." In the "Q & A's", the JFBA explains that these cases pose little risk of money laundering and that "requiring attorneys to verify a client's identification in these cases would pose an obstacle to their day-to-day operations."

801. Notwithstanding the JFBA explanation, the language of Article 2 is ambiguous and may allow for alternate interpretations of the CDD requirements. Some of the Article 2 provisions could be understood as exempting a number of transactions from CDD, including making payments of behalf of a client that could be used in a money laundering enterprise. The scope of the CDD exemptions should be clarified in the JFBA Regulations.

Other Legal Professionals and Accountants

802. Independent legal professionals (excluding attorneys) and accountants, including judicial scriveners, certified administrative procedures specialists (CAPS), certified public accountants (CPAs), and certified public tax accountants (CPTAs), are subject to the customer identification requirements of Article 4, paragraph 2 of the Act on the Prevention of Transfers of Criminal Proceeds.

803. The limitations of the CDD obligation for financial institutions (see section 3) apply equally to judicial scriveners, CAPS, CPAs, and CPTAs.

Dealers in Precious Metals and Stones

804. Dealers and precious metals and stones are subject to the customer identification requirements of Article 4, paragraph 2 of the Act on the Prevention of Transfer of Criminal Proceeds. The limitations of the CDD obligation for financial institutions (see section 3) also apply to dealers in precious metals and stones.

Applying Recommendation 6

Real estate agents and specified joint business

805. There are no specific requirements on real estate agents and real estate specified joint businesses to perform enhanced CDD measures in relation to politically exposed persons.

Trust companies

806. FSA, through its Comprehensive Supervisory Guidelines for Trust Companies advises supervisors to assess whether the company has considered profile information such as the customer's public status. The limitations of these Guidelines as applied to financial institutions (see section 3) also apply here to trust companies.

Postal service providers

807. There are no specific requirements on postal service providers to perform enhanced CDD measures in relation to politically exposed persons.

Attorneys, other Legal Professionals, Accountants, Dealers in Precious Metals and Stones

808. There are no requirements for attorneys, judicial scriveners, CAPS, CPAs, CPTAs or dealers in precious metals and stones to subject business relationships with politically exposed persons to enhanced due diligence.

Applying Recommendation 8

Real estate agents and specified joint business

809. There are no specific requirements on specified business operators, including real estate agents and real estate specified joint businesses, to perform enhanced CDD measures for non-face-to-face transactions or to pay special attention to any money laundering threats that may arise from new or developing technologies.

Trust companies

810. FSA, through its Comprehensive Supervisory Guidelines for Trust Companies advises supervisors to assess whether the company has considered specific characteristics of transactions, *e.g.* non face-to-face transactions. The limitations of these Guidelines as applied to financial institutions (see section 3) also apply here to trust companies.

Postal service providers

811. There are no specific requirements on specified business operators, including postal service providers, to perform enhanced CDD measures for non-face-to-face transactions or to pay special attention to any money laundering threats that may arise from new or developing technologies.

Attorneys

812. There is no requirement for attorneys to pay special attention to money laundering threats that may arise from new or developing technologies. No general guidelines are provided for CDD in non face-to-face transactions although the "Q & A's" provide some non-binding suggestions for specific scenarios. For example, attorneys are cautioned that, in cases where the customer is a foreign national, exclusive reliance on an affiliated legal office overseas to conduct identification may result in liability in the event that the identification performed by the affiliated office is deemed "non-authentic." The "Q & A's" also inform attorneys that, when conducting CDD on a corporation "located in a remote place", in addition to speaking with the senior managing official by telephone, it is "desirable" to request a copy of the official's business card and employee identification card.

Other Legal Professionals, Accountants, Dealers in Precious Metals and Stones

813. There is no requirement for judicial scriveners, CAPS, CPAs, CPTAs, or dealers in precious metals and stones to pay special attention to money laundering threats that may arise from new or developing technologies. As “specified business operators” subject to the Act on the Prevention of Transfer of Criminal Proceeds and the Ordinance, they are required to undertake the additional customer identification steps for non face-to-face customers/transactions described in Section 3.

Applying Recommendation 9

814. This Recommendation is not applicable to DNFBPs (see also Recommendation 9).

Applying Recommendation 10

Real estate agents and specified joint business, trust companies

815. As “specified business operators”, Article 7 of the Act on the Prevention of Transfer of Criminal Proceeds requires real estate agents and real estate specified joint businesses to prepare transaction records and to preserve these records for 7 years from the day on which the transaction concerned or the agent work was performed.

Postal service providers

816. As “specified business operators”, Article 7 of the Act on the Prevention of Transfer of Criminal Proceeds requires postal service providers to prepare transaction records and to preserve these records for 7 years from the day on which the transaction concerned or the agent work was performed.

817. However, postal receiving service providers are specifically exempted from record-keeping requirements for “transactions other than receipt and delivery of post containing cash” (Article 13, Order for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds). This exemption was given to reduce the burden of record-keeping on these providers. At the time of concluding the contract with the service provider, the customer will indicate whether he wanted to receive registered mail (which may contain cash or credit cards) through the provider. There is however an AML/CFT risk that cash may still be sent through mail routed through these providers, if there is intention to conceal the cash by not sending it through registered mail. In such cases, it will be up to the diligence of the providers to identify such cases and make suspicious transaction reports.

Attorneys

818. The JFBA Rules require attorneys to keep copies of customer identification documents for five years after the completion of an “asset administrative action” or transaction. (“Regulation Relating to Identification of Clients and Record-Keeping” Association Regulations No. 81, 1 March 2007, Article 3)

Other Legal Professionals, Accountants, Dealers in Precious Metals and Stones

819. As specified business operators under the Act on the Prevention of Transfer of Criminal Proceeds, judicial scriveners, CAPS, CPAs, CPTAs, and dealers in precious metals and stones are subject to the same record-keeping requirements as financial institutions as described in Section 3.

Applying Recommendation 11

Real estate agents and specified joint business

820. MLIT, together with JAFIC, has issued the “Guideline of STR report in selling and buying real estate” to real estate agents and real estate specified joint businesses. These include cases of complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, for which STRs should be submitted. However, this is a Guideline for reference and does not impose binding requirements with sanctions.

Trust companies

821. FSA, together with JAFIC, has issued the “Guideline of STR report” to trust companies that are financial institutions. These include cases of complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, for which STRs should be submitted. However, this is a Guideline for reference and does not impose binding requirements with sanctions.

Postal service providers

822. Together with JAFIC, METI and MIC has issued the “Guideline of STR report in the business of receiving postal services”. These include cases of complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, for which STRs should be submitted. However, this is a Guideline for reference and does not impose binding requirements with sanctions.

Attorneys, Other Legal Professionals and Accountants

823. There is no requirement for “specified business operators” including attorneys, judicial scriveners, CAPS, CPAs or CPTAs to pay attention to complex, unusual or large transactions or patterns of transactions. The indirect obligation to monitor unusual or large transactions as part of an STR filing regime does not apply to legal professionals and accountants as these professions are exempt from the filing requirement.

Dealers in Precious Metals and Stones

824. There is no requirement for “specified business operators” including dealers in precious metals and stones to pay attention to complex, unusual or large transactions or patterns of transactions outside the context of STR reporting. There is an indirect obligation to monitor unusual or large transactions as part of an STR filing regime and the JAFIC-issued “Guidelines for Suspicious Transaction Reporting for Dealers of Jewels, Precious Metals, and Stones,” include several cases of these types of transactions. The Guidelines, however, are for reference purposes and do not constitute a source of binding obligation. These Guidelines also do not apply to antique dealers who sell precious metals and stones. The various Prefectural Public Safety Commissions responsible under the Act on the Prevention of Transfer of Criminal Proceeds for supervision of antique dealers have not yet issued reference cases although they are currently in development.

Recommendation 17

825. As for the supervision and sanctions applicable for breaches of obligations under the Act, the applicable provisions are the same as those applicable to financial institutions. At the time of the on-site visit, no sanction had been applied to the recently subjected businesses and professions. Competent administrative agencies are authorized to:

- request a specified business operator to submit reports or materials in connection with its business affairs (See Article 13)
- conduct on-site inspections (See Article 14)
- give necessary guidance, advice and recommendations to specified business operators (See Article 15), or
- issue rectification order (to take necessary actions to remedy the violation) (See Article 16)

826. Failure to comply with the request above, to refuse the inspection, or failure to comply with the rectifications order is punishable with imprisonment with labor for not more than two years or a fine of not more than JPY 3 000 000, or both (See Article 23 and 24). If a representative or employee of a firm committed these crimes, the firm is also punishable (Article 27).

827. In addition, the National Public Safety Commission may, when it finds that a specified business operator has violated the provisions prescribed in the preceding Article in the course of performing its operations, state its opinion to an administrative agency to the effect that an order under the preceding Article should be issued against the specified business operator. In the case where measures such as the suspension of operation may be taken on the ground of the said violation under other laws or regulations, the Commission may state its opinion to the administrative agency to the effect that the said measures should be taken against the specified business operator. (Article 17).

828. The practicing attorneys are governed by the disciplinary powers of the Japan Federation of Bar Associations.

4.1.2 Recommendations and Comments

829. DNFBPs are subject to substantially the same regime as financial institutions with respect to Recommendations 5, 6, 8, 9, and 11 as the Act on the Prevention of Transfer of Criminal Proceeds includes DNFBPs under the definition of “specified business operator.” The limitations of the due diligence obligations for financial institutions described in Section 3 also apply to DNFBPs and the remedial measures recommended in Section 3 will likewise bring the supervisory regime for DNFBPs into compliance with the these recommendations.

830. Despite the uniform application of the Act on the Prevention of Transfer of Criminal Proceeds, the AML/CFT regime applied to DNFBPs differs from the obligations of financial institutions in several areas. Most significantly, a broad category of DNFBPs (e.g. attorneys, other legal professionals and accountants) is exempt from the suspicious transaction reporting requirement. This has implications not only for compliance with Recommendations 13 and 16 but for key elements of Recommendations 5 and 11 given Japan’s reliance on suspicious transaction reporting controls for ongoing monitoring and identification of unusual transactions. Japanese authorities should introduce a direct obligation in law, regulation or other enforceable means for financial institutions to conduct ongoing due diligence and monitoring of unusual transactions.

831. The JFBA Regulations subject attorneys to largely the same customer identification requirements as financial institutions under the Act although attorneys are allowed to rely upon a broader universe of acceptable documentation including those produced by unspecified “reliable private bodies.” The CDD exemptions under Article 2 of the JFBA Regulations are unclear and could be interpreted as exempting a large number of transactions. There are no general JFBA requirements for dealing with non face-to-face transactions although there are some non-binding suggestions for specific scenarios. The *de minimis* exemption from CDD for situation where total assets under management amount to less than JPY 1 million is not provided for in the Methodology.

832. Recommendations 6, 8 and 11 should be applied to DNFBPs.

833. Finally, as the AML/CFT obligations in the Act on the Prevention of Transfer of Criminal Proceeds only came into effect for DNFBPs on 1 March 2008, the effectiveness of the sanctions regime for non-compliance with CDD obligations is as yet untested.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	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 <i>de minimis</i> 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.

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15 & 21)

4.2.1 Description and Analysis

Applying Recommendation 13⁵⁹

Real estate agents, Trust companies, Postal service providers

834. Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds imposes the STR reporting obligation on real estate agents and real estate specified joint businesses, as they are included as “specific business operators” under the Act on the Prevention of Transfer of Criminal Proceeds.

Attorneys, other legal professionals and accountants

835. Attorneys, judicial scriveners, CAPS, CPAs and CPTAs are exempted from the requirement to file suspicious transactions reports.

Dealers in Precious Metals and Stones

836. Article 9 of the Act on the Prevention of Transfer of Criminal Proceeds imposes the STR reporting obligation on dealers in precious metals and stones. Dealers in precious metals and stones which are classified antiques are supervised by the National Public Safety Commission/NPA and dealers in precious metals and stones other than antiques are supervised by METI. METI has issued “Guideline for Suspicious Transaction Reports of Dealers in Jewel and Precious Metal and Stones” on 1 February 2008. JAFIC has issued a “List of Reference Cases of Suspicious Transactions for Antique shops” on 21 February 2008. These guidelines provide non-binding guidance on the types of transactions which necessitate the filing of a suspicious transaction report.

Applying Recommendation 14

837. The “safe harbour” provisions and prohibition against tipping off as applied to financial institutions also apply to DNFBBs, except attorneys, other legal professionals and accountants that are not subject to the obligation to report suspicious transactions.

Applying Recommendation 15

Real estate agents and specified joint business, Certified Public Accountants, Certified Public Tax Accountants, Certified Administrative Procedures Specialists, Judicial Scriveners and Dealers in Precious Metals and Stones

838. There is no legal or regulatory requirement to the profession mentioned above on establishing an appropriate AML/CFT internal control system.

⁵⁹ Since March 2008, date of the entry into force of the Act on the Prevention of Transfer of Criminal Proceeds for DNFBBs, through September 2008, a total of 45 STRs was submitted by DNFBBs: 35 STRs by postal services providers, 9 STRs by real estate agents and 1 STR by a dealer in precious metals/stones.

Trust companies

839. The “Comprehensive Supervisory Guidelines for Trust Companies” (section 3-2) issued by FSA requires supervisors to ascertain whether trust companies have established an internal control system to appropriately comply with AML/CFT obligations. However, these Guidelines are not legally binding and do not impose obligations with non-compliance sanctions.

Postal service providers

840. As these providers are neither licensed nor registered, there is no supervisory guidance given on establishing an appropriate internal control system.

Attorneys

841. The only AML/CFT obligations to which attorneys are subject relate to the customer identification requirements as described in the JFBA Regulations. Other than what is contained in these Regulations, the JFBA does not provide any specific supervisory guidance on the establishment of an internal control system.

Applying Recommendation 21

842. As previously described, there is no obligation in law, regulation, or other enforceable means requiring “specified business operators”—including DNFBBPs—to pay special attention to business relationships and transactions with persons from countries which insufficiently apply the FATF Recommendations. The various financial sector supervisory guidelines which identify transactions with jurisdictions identified by the FATF as potentially suspicious do not apply to DNFBBPs.

4.2.2 Recommendations and Comments

843. The legal profession (including attorneys, judicial scriveners and CAPS) and accountants are exempted from the requirement to file suspicious transaction reports for the categories of transactions designated by the FATF standards. Japanese authorities should extend the STR obligation to these professions.

844. As the AML/CFT obligations in the Act on the Prevention of Transfer of Criminal Proceeds only came into effect for DNFBBPs on 1 March 2008, the effectiveness of the STR reporting regime and the sanctions regime for non-compliance with AML/CFT obligations are both as yet untested. The limitations in Recommendation 14 as applied to financial institutions also apply to DNFBBPs.

845. DNFBBPs should be required to establish and maintain internal controls and to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.

846. None of the competent administrative agencies responsible for the supervision of DNFBBPs 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. This may partially be due to the fact that the Act on the Prevention of Transfer of Criminal Proceeds was extended to the DNFBBP sector only very recently, on 1 March 2008. Competent administrative agencies should begin developing such guidance and incorporate AML/CFT into the supervisory process.

4.2.3 *Compliance with Recommendation 16*

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	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.

4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 *Description and Analysis*

Recommendation 24

Real estate agents

847. Real estate agents and real estate specified joint business operators are required to be licensed by the Minister of Land, Infrastructure, Transport and Tourism when it establishes the offices in two or more prefectures, or by the prefectural governor having jurisdiction over the area where the office(s) is/are located when it establishes the office(s) in one prefecture only. MLIT also has general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively).

Trust companies

848. Trust companies are regulated under the Trust Business Act, and are subject to licensing or registration, and ongoing supervision and monitoring by the FSA. FSA has issued Comprehensive Supervisory Guidelines to trust companies and also conducts onsite inspections.

Postal receiving service providers

849. METI (Commerce and Information Policy Bureau) and MIC (Telecommunications Consumer Policy Division) are the competent administrative agencies for postal service operators. However, there are currently no industry acts that govern these operators, and these operators are also not required to be registered with or licensed. Nevertheless, the competent administrative agencies have general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively).

Certified Public Accountants

850. While CPAs are subject to supervision by FSA and the Certified Public Accountant and Auditing Oversight Board (CPAAOB) for general prudential purposes, this oversight does not extend to AML/CFT. Neither FSA nor the CPAAOB have developed supervisory guidelines or inspection manuals on AML/CFT for the CPA industry and CPAs are not subject to regular on-site examination by either authority.

851. FSA has general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively). However, no inspections have been conducted of CPAs under this authority although it should be noted that the Act on the Prevention of Transfer of Criminal Proceeds has been in force with respect to DNFBPs only since 1 March 2008. CAPS that do not comply with AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds are subject to the same administrative, civil, and criminal sanctions as financial institutions (see Section 3).

Certified Public Tax Accountants

852. While CPTAs are subject to supervision by NTA for general prudential purposes, this oversight does not extend to AML/CFT. The NTA has not developed supervisory guidelines or inspection manuals which directly focus on AML/CFT for the CPTA industry. There is no prescribed inspection cycle for CTPAs although CPTAs are subject to on-site examination by the NTA. These examinations do not incorporate assessment of CPTAs' AML/CFT controls.

853. NTA has general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively). However, no inspections have been conducted of CPTAs under this authority although it should be noted that the Act on the Prevention of Transfer of Criminal Proceeds has been in force with respect to DNFBPs only since 1 March 2008. CPTAs that do not comply with AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds are subject to the same administrative, civil, and criminal sanctions as financial institutions (see Section 3).

Certified Administrative Procedures Specialists

854. CAPS are not currently subject to AML/CFT supervision. The various Prefectural Public Safety Commissions, however, have general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively). No inspections have been conducted of CAPS under this authority although it should be noted that the Act on the Prevention of Transfer of Criminal Proceeds has been in force with respect to DNFBPs only since 1 March 2008. CAPS that do not comply with AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds are subject to the same administrative, civil, and criminal sanctions as financial institutions (see Section 3).

Judicial Scriveners

855. Judicial scriveners are not currently subject to AML/CFT supervision. The Ministry of Justice, however, has general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively).⁶⁰ No inspections have been conducted of judicial scriveners under this authority although it should be noted

⁶⁰ The Ministry has delegated its supervisory authority over judicial scriveners to its Regional Legal Bureaus.

that the Act on the Prevention of Transfer of Criminal Proceeds has been in force with respect to DNFBBs only since 1 March 2008. Judicial scriveners that do not comply with AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds are subject to the same administrative, civil, and criminal sanctions as financial institutions (see Section 3).

Attorneys

856. The only AML/CFT requirements to which attorneys are subject are the customer due diligence rules elaborated in the JFBA regulations. Attorneys are subject to supervision for compliance with these obligations by the JFBA, which can take disciplinary actions for non-compliance, such as reprimand, suspension of business for not more than two years, order for withdrawal from the association, or expulsion. However, no cases have been provided to the assessment team.

Dealers in Precious Metals and Stones

857. Dealers in precious metals and stones are not currently subject to AML/CFT supervision. METI and the various Prefectural Public Safety Commissions (in the case of antique dealers), however, have general powers under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections and issue orders for rectification (Articles 13, 14 and 16 respectively). No inspections have been conducted of CAPS under this authority although it should be noted that the Act on the Prevention of Transfer of Criminal Proceeds has been in force with respect to DNFBBs only since 1 March 2008. CAPS that do not comply with AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds are subject to the same administrative, civil, and criminal sanctions as financial institutions (see Section 3).

Recommendation 25

858. The feedback and guidance on STRs for DNFBBs are described in section 3.7.

859. JAFIC, in coordination the various competent administrative agencies and industry associations, has undertaken significant outreach concerning DNFBB obligations under the Act on the Prevention of Transfer of Criminal Proceeds. This outreach has primarily consisted of seminars held throughout the country to explain the requirements of the Act on the Prevention of Transfer of Criminal Proceeds. As previously described, JAFIC has developed suspicious transactions reference cases for the DNFBB sectors subject to the STR reporting requirement. However, no formal supervisory guidelines to assist CPAs, CPTAs, CAPS, judicial scriveners, attorneys, or dealers in precious metals and stones with AML/CFT compliance have been issued.

860. Some feedback has been provided to DNFBBs in accordance with the extension of AML/CFT obligations of the Act on the Prevention of Transfer of Criminal Proceeds is too recent for this to be expected.

4.3.2 Recommendations and Comments

861. Competent administrative agencies have been designated under the Act on the Prevention of Transfer of Criminal Proceeds for various classes of DNFBBs. However, as the AML/CFT obligations in the Act on the Prevention of Transfer of Criminal Proceeds only came into effect for DNFBBs on 1 March 2008, the effectiveness of the regulatory and monitoring regime is as yet untested. JAFIC, together with the competent administrative agencies and various industry associations, have been

organizing outreach programmes to DNFBPs on their AML/CFT obligations. There is however no schedule for regular ongoing outreach to new members of DNFBPs⁶¹.

862. DNFBPs are not, at this time, subject to offsite or onsite supervision by the various competent administrative agencies for AML/CFT compliance although all agencies are empowered under the Act on the Prevention of Transfer of Criminal Proceeds to request reports, conduct onsite inspections, and issue rectification orders. While the competent administrative agencies have been active in outreach in the run-up to the extension of the Act on the Prevention of Transfer of Criminal Proceeds to DNFBPs, and they have issued guidelines to facilitate compliance with the new obligations.

863. Competent administrative agencies should develop policies and procedures for extending AML/CFT supervision to the DNFBP sector. This supervision may be on a risk-sensitive basis and be less intensive than that which is applied to the financial sector. Supervisory guidelines for AML/CFT should be issued and once a suitable period of time has passed since the extension of the Act on the Prevention of Transfer of Criminal Proceeds to the DNFBP sector, appropriate feedback should be provided.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	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.
R.25	LC	<ul style="list-style-type: none"> No supervisory guidelines concerning AML/CFT obligations for DNFBPs have been issued.

4.4 Other non-financial businesses and professions

Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

864. Japanese authorities considered applying the AML/CFT obligations of the Act on the Prevention of Transfer of Criminal Proceeds to a variety of additional businesses and professions, including art, antique (beyond the sale of precious metals and stones), used car dealers and telephone service providers. It was determined, however, that the money laundering and terrorist financing threats in these sectors do not currently justify the burden that the imposition of these obligations would entail, except for telephone service providers that are subject to the AML/CFT obligations.

865. As for measures to encourage the development and use of modern and secure techniques for conducting financial transactions, the Act on the Prevention of Transfer of Criminal Proceeds provides for a verification method of receiving transmission of an electronic certificate issued by an approved person under the Act (Article 3(1)(i)(e) of the Ordinance for Enforcement of the Act on the Prevention of Transfer of Criminal Proceeds). In addition, legislation was promulgated in 2005 to protect depositors from having

⁶¹ Japan's official advised the evaluation team that since the on-site visit an AML/CFT reference manual has been elaborated and made available to DNFBPs through government websites.

their savings withdrawn through ATMs through forged or stolen card, whereby financial institutions shall compensate depositors for any such loss except in cases of gross negligence by the depositor. To comply with this Act, many financial institutions have issued ATM cards with integrated circuits, or implemented a verification system using biometrics.

4.4.2 Recommendations and Comments

866. The Recommendation to consider applying Recommendations 5, 6, 8-11, 13-15, 17 and 21 to non-financial businesses and professions (other than DNFBPs) that are at risk of being misused for money laundering or terrorist financing has been fully observed.

867. Japan has also taken measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	<ul style="list-style-type: none"> This Recommendation is fully complied with.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 *Legal Persons – Access to beneficial ownership and control information (R.33)*

5.1.1 *Description and Analysis*

868. The Japanese Companies Act authorises four types of companies: *i*) stock companies; *ii*) general partnership companies; *iii*) limited partnership companies and *iv*) limited liability companies. Stock companies are a type of companies with shares, the other types of companies are companies without shares. All companies have to be registered at the Legal Affairs Bureau (Ministry of Justice) responsible for the locations of their head offices (Articles 49 and 579 of the Companies Act).

869. Japan does not hold any statistics on companies and other legal persons.

870. Registration requires the incorporation accompanied by various corporate documents, including the articles of incorporation, along with the names and addresses of the incorporators or members. However their identification and the verification of their identity according to the FATF standards are not required. Any persons can obtain the extract of the registered matters pursuant to the provisions of Article 11 of the Commercial Registration Act. Changes in the registered matters have also to be notified and registered (Article 915 paragraph 1 of the Companies Act). In spite of this obligation, there is no requirement to gather information on the beneficial ownership and control of the legal person under the Companies Act.

871. Pursuant to Article 121 of the Companies Act, stock companies are required to record the names and addresses of shareholders (again the strict identification and verification of the identity of the shareholders are not required); the number of shares held and the day of acquisition of the shares. In cases where the Stock Company is a Company Issuing Share Certificates, the serial numbers of share certificates representing the shares must also be recorded. According to Article 125, paragraphs 2 and 4 of the Companies Act, the access to the shareholders registry is limited to shareholders and creditors of the company as well as shareholders of the parent company. Competent authorities have to rely on the police powers set forth under the Code of Criminal Procedure to access this registry and in case of a refusal to grant access to the register; the authorities would need a court order.

872. Pursuant to Article 331 of the Companies Act, stock companies' directors cannot be legal persons, "an adult ward, a person under curatorship, or a person who is similarly treated under foreign laws and regulations" or "a person who has been sentenced to a penalty for having violated the provisions of the Companies Act or the Act on General Incorporated Association and General Incorporated Foundation" or a person "sentenced to imprisonment or severer penalty and who has not completed the execution of the sentence or to whom the sentence still applies".

Bearer shares

873. Article 216 of the Companies Act requires stock companies to state on the share certificates (i) the name of the company and (ii) the number of shares represented by the certificate. The identification of the shareholder is not required on the certificate, but his name must be written in the company's registry pursuant to the provisions of Article 121 of the Companies Act. The rules governing the transfer of shares are set out forth in Article 130: "transfer of shares shall not be perfected against the Stock Company and other third parties unless the name and address of the person who acquires those shares is stated or recorded in the shareholder registry". However, Article 131 states the presumption that the possessor of the shares certificate is the lawful owner of the shares.

874. Japanese authorities assured the assessment team that the issuance of anonymous bearer shares (where the shareholder is completely anonymous to the company) is prohibited since the amendment of the Commercial Code by the Law No. 64 of 1990. Nevertheless, bearer shares issued before the entry into force of this law are still in circulation in Japan. The Japanese authorities estimate that their number is very limited but have no statistics on this.

5.1.2 Recommendations and Comments

875. The current registration system is held by local branches of the Ministry of Justice and information is not available on-line. This limits the scope of searches. In addition, beyond the cases of changes in the registered matters, there are no requirements to update the database or to conduct verification on the accuracy of their contents. Japan should adopt and implement measures ensuring transparency of the beneficial ownership and control of the companies.

876. Competent authorities should be given a direct access in a timely fashion to the shareholders registry.

877. It is recommended that Japan adopt and implement measures guarantying the identification and the verification of the identity of bearer shares holders and impose measures in favour of a control of anonymous bearer shareholders.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	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.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

878. In Japan, trusts are governed by the Trust law. Under Article 37, paragraph 2 of the Trust Law, a trustee is obligated to prepare once a year at a determined time balanced sheets, profit and loss statements and other documents or electromagnetic records prescribed by the applicable Ordinance of the Ministry of Justice. Interested persons can inspect and copy these documents and records (Article 38, paragraph 6, of Trust Law). Any trustee who fails to perform the obligation to prepare these documents and records is subject to a fine of JPY 1 million or less. There is no central filing requirement for trusts and no register of trusts in Japan.

879. Trusts in Japan are usually formed by trust companies. Trust companies are regulated under the Trust Business Act, and can either be (i) banks or other financial institutions that are also licensed under the Trust Business Act to engage in trust business; or (ii) non-financial institutions or general incorporated companies.

880. The Trust Act has recently been amended to allow persons to undertake “self-trusts” as prescribed by Article 3(iii) of the Trust Act. A person who forms such “self-trusts” will however require registration under the Trust Business Act if the trust has more than 50 beneficiaries (Article 50-2 of Trust Business Act, Article 15-2 of Ordinance for Enforcement of the Trust Business Act). As the provision Article 3 (iii) of the Trust Act allowing such “self-trusts” shall not apply until one year has passed from the date of the enforcement of this act (30 September 2007), there are currently no such trusts in Japan. (Please refer to Section 4 on trust companies for more details.)

881. Trust companies and persons who form “self-trusts” are both included as “specified business operators” under the Act on the Prevention of Transfer of Criminal Proceeds and are therefore subject to AML/CFT obligations, including CDD, record-keeping and STR reporting (see Section 3). The authorities may, to the extent necessary for the enforcement of obligations under the Act, including the implementation of the requirement for customer identification, collect reports from and conduct on-site inspections of trust companies (Articles 13 and 14).

882. Article 4 of the Act on the Prevention of Transfer of Criminal Proceeds requires trust companies, or persons registered under Article 50-2(1) of the Trust Business Act (i.e. “self-trusts”), which are included as “specific business operators” under the Act on the Prevention of Transfer of Criminal Proceeds Article 2(2)(xxiii) and Article 2(2)(xxiv) respectively, to identify their customers and verify customer identification. The limitations of the CDD obligation in Article 4 of the Act on the Prevention of Transfer of Criminal Proceeds as applied to financial institutions (see section 3) also apply here. These deficiencies include, among others, the absence of requirements for financial institutions to obtain information on the intended nature and purpose of the business relationship, identify beneficial ownership, to conduct ongoing due diligence on all customers, and to subject higher risk customers/transactions to enhanced due diligence.

883. Law enforcement agencies have powers to obtain information on trusts, including the settlor and beneficiaries, in criminal investigations. As trust companies are regulated by the FSA, FSA also has the full range of administrative powers of access to information held by trust companies (as described in Section 3).

5.2.2 Recommendations and Comments

884. Trust companies are regulated by the FSA under the Trust Business Act, and are also subject to AML/CFT obligations under the Act on the Prevention of Transfer of Criminal Proceeds. Their CDD obligations require them to identify their customer, including settler and beneficiaries of the trusts they form. Nevertheless, serious deficiencies in their CDD obligations to identify beneficial owner (Recommendation 5) also imply serious difficulties in transparency concerning beneficial ownership and control of trusts.

885. Law enforcement authorities have the authority to obtain or access available information on beneficial ownership on trusts in these trust companies only in case of criminal investigations.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	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.

	Rating	Summary of factors underlying rating
		<ul style="list-style-type: none"> 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.

5.3 *Non-profit organisations (SR.VIII)*

5.3.1 *Description and Analysis*

886. TF risks in the NPO sector in Japan are relatively low. NPOs in Japan are subject to a high degree of transparency and public accountability for their operations and there is a generally comprehensive regime of licensing, registration and oversight. While there is a wide range of national, regional and activity-specific regulators for NPOs, there is generally good coordination between regulators and investigation agencies.

Review of the domestic non-profit sector

887. In 2006 Japan undertook a review of its NPO sector to gain a better understanding of the sector, its terrorist financing risks and capacities to address the risks. The review provided an overview of the legislative arrangements for the sector, briefly considered regulatory controls and specific money laundering risks, including abuse of NPOs by organizations which committed indiscriminate mass murder. Japan shared a summary of its review findings with FATF and APG members. The range of relevant types of NPOs identified by Japan is set out below.

888. **Public interest corporations (PICs)** are formed under the Civil code (Article 34) and are supervised by the government agencies (Article 11). PICs may take two forms:

- **Incorporated Associations** - a group of people united under a certain purpose, with structure and will as an independent social entity - 12,749 incorporated associations in Japan as of October 1, 2004.
- **Incorporated Foundations** - exists as a collection of assets contributed, controlled and managed for a purpose of public interests. There are 12,792 incorporated foundations as of October 1, 2004.

889. Of the roughly 25 000 PICs, government ministries supervise about 7 000 and prefectural governments about 18 000. Prefectures become supervisory authorities over PICs whose range of business is restricted in one prefectural area. PICs generally undergo onsite supervision once every three years. PICs can receive preferential tax treatment, but must register their status with the National Tax Agency.

890. **School juridical persons** are defined by the Private School Law as foundations. There were 7,875 as of fiscal year 2006. 665 of them are under the jurisdiction of the Ministry of Education, Culture, Sports, Science and Technology (MEXT), and 7 210 under the jurisdiction of prefectural authorities.

891. **Religious juridical persons** are defined by the Religious Juridical Persons Law (1951). Approximately 183 000 exist (as of 31 December 2006), supervised by the MEXT and prefectural authorities.

892. **Medical corporations** are established under the Medical Services Law (1948) by receiving the approval of the Minister of Health, Labour and Welfare or the Prefectural Governor. As of March 2006 there were 41 720 Medical corporations supervised by the Ministry of Health, Labour and Welfare.

893. **Social welfare juridical persons** are incorporated under the Social welfare service Law (1951), with the purpose of performing social welfare activities, such as the management of a special elderly nursing home, and child-care centre etc. In 2006 there were 18 453 Social welfare juridical persons being supervised by the Ministry of Health, Labour and Welfare (MHLW). Social welfare juridical persons may receive preferential tax treatment, but must register their status with the National Tax Agency.

894. **Specified non-profit corporations** operate under the Act to Promote Specified Non-profit Activities (1998) which was revised in 2002. 32 089 Non-specified NPOs were registered as of 31 July 2007. The Cabinet Office and local Prefectural governments supervise, or the Prime minister (Cabinet) in the case where such a corporation has two or more offices in different prefectures.

Protecting the NPO sector from terrorist financing through outreach and effective oversight

895. All NPOs in Japan are subject to registration and supervision requirements that promote transparency, accountability, integrity and public confidence in the administration and management of NPOs (see below). However, Japan has not taken specific steps to raise awareness of risks of terrorist financing abuse in the NPO sector.

Purpose, objectives and control of NPOs

896. **Specified non-profit corporations** are required to submit a record of the purpose of the corporation, the kind of activities and business that the corporation will conduct and a list of officers who control the NPO, including their names and addresses. Specified non-profit corporations are obliged to prepare an annual update of its officers and activities and submit it to the registering authority.

897. **PICs** are obliged to state their purpose in the articles of incorporation or act of endowment, and should these change, PICs must acquire the permission of the supervisory authority. PICs are also obliged to report their business plan and business report to the supervisory authority every fiscal year and are obliged to report a change of their officers to the supervisory authority, including the names and addresses of directors. It is possible to access details of officers, directory of members, materials on the business plan and business report at their principal office of the PICs and with the supervisory authority, which is available via the internet.

898. At registration **religious juridical persons** are required to provide registration authorities with the details of 1) the purpose of their activities, and 2) the name, address and qualification of persons holding power of attorney and other particulars (Religious Juridical Persons Law, Article 52). Under article 26 religious juridical persons must apply to make changes to their constitution.

899. Any change to the articles of association of a **school juridical person** is subject to the approval of competent authorities, either the Minister of Education or the Prefectural Governor (Private School Law, Article 45). In addition, school juridical persons are required to register their purpose, the total sum of their assets, as well as the names, addresses and qualifications of their directors holding powers of attorney (Ordinance on the Registration of Associations, Articles 1 and 2).

900. The registration procedure for establishment of a **medical corporation** requires the registration of the purpose of the corporation's activities and its business and the name, address and qualification of persons holding power of attorney (Medical Service Law, Art 43). Any change to the articles of association of a medical corporation requires the approval of the Minister of MHLW or the Prefectural

Governor. Any change among the medical corporation's executives must be formally reported to competent authorities, which includes details of officers, directors and so on.

901. **Social welfare juridical persons** must register the purpose of their service, the name, address and qualification of the person holding power of attorney and details of other office holders (Social Welfare Law, Article 31). A change of articles of incorporation must be authorised by the competent authorities, however there is no clear requirement to report changes in office holders.

Sanctions

902. A range of graded sanctions are available in relation to oversight measures by NPOs, including removal of trustees and other office holders, fines, de-certification and winding up of an NPO.

903. **PIC** Regulators may issue a business improvement order to PICs conducting business outside the scope of its purpose(s). The competent authority may rescind its registration if the PIC continues to violate any conditions of establishment or any supervisory order or otherwise commits any act which is against the public interest, and if the purpose of supervision cannot be achieved by any other means (Civil Code Article 71). Civil, administrative, or penal action shall be taken against any tort committed by PICs and their officers.

904. Competent authorities may order the closure of a **school juridical person** (Article 13 of the School Education Law), the suspension of for-profit activities (Law on Private Schools, Article 61), or the liquidation of a school juridical person (Law on Private Schools, Article 62) if it is found to have violated legal regulations. In addition, in cases where the said school receives subsidies on the basis of the Private School Promotion Subsidy Law, authorities may also order, among other measures, the rectification of surplus numbers of regular student (Private School Promotion Subsidy Law, Article 12, clause 2), budget modifications when activities do not suit the purpose of the subsidies (Private School Promotion Subsidy Law, Article 12, clause 3), or the dismissal of directors found to have violated laws or regulations (Private School Promotion Subsidy Law, Article 12, clause 4).

905. If a school is wound up, the liquidation of a school juridical person and its assets is supervised by the court (Article 58 of the Law on Private Schools and Article 82 of the Civil Code). The remaining assets of a liquidated school juridical persons are to be returned pursuant to its articles of association (Law on Private Schools, Article 51, paragraph 1).

906. For **Religious juridical persons** Article 79 and 80 of the Religious Juridical Persons Law provides for suspending activities and withdrawal of approval to operate as an NPO. Article 81 provides for the court to order the dissolution of the religious juridical persons.

907. For **Medical foundations**, the Minister of MHLW and the Prefectural Governor can order improvement measures. In cases of continuing non-compliance, the governors can order the suspension of all or the part of the service, or make a recommendation on the dismissal of officials. The governors, when they order the suspension or make a recommendation to dismiss officials, must take into consideration the opinions of the Council on Medical Service Facilities of each prefecture in advance. As a final step, competent authorities are able to cancel the approval of establishment of a medical foundation (Medical Service Law, Articles 64-66).

908. **For Social welfare juridical persons** the MHLW is able to make orders for improvement. In cases of violation of the improvement orders, MHLW can order the Social welfare juridical persons to stop certain activities, dismiss officers and ultimately dissolve the juridical person. (Social Welfare Law Art 56)

909. For **specified non-profit corporations** Article 42 of the Act to Promote Specified Non-profit Activities provides for administrative improvement orders in a wide range of circumstances, including failure to meet registration requirements or is in violation of other laws and regulations, disposition by an administrative agency pursuant to laws and regulations, or its articles of incorporation, or when it finds that its operation is extremely inappropriate. Under Article 43 the competent authority has the power to rescind the license for continuing failure to comply. Articles 47 & 48 provide criminal provisions, under which persons (natural persons and the NPO) in violation of an order pursuant to the provision of Article 42 shall be punished by a fine up to JPY 500 000 (approx \$US 5 000).

Licensing or registration

910. All NPOs in Japan are obliged to obtain permission (in most cases a license is required) to operate through submitting articles of association, details of purpose, premises, assets, directors members etc as well as registering particulars of same.

911. NPOs are required to provide supervisory authorities with information on their financial activities, including for purposes of licensing and annual business reporting. Obligations generally relate to financial statements of income and expenditure, which generally provide sufficient details to verify that funds have been spent in a manner consistent with the NPO's stated purpose.

912. Beyond the requirement to submit business reports, including financial statements, to the supervisory authority, most categories of NPOs do not have specific record keeping requirements. Specified non-profit corporations are required to keep records under the Act, including an inventory of property, balance sheets and an income and expenditure statement for three years (Article 28). For those specified non-profit corporations that report to the Cabinet Office, they are also obliged to keep business report records for at least five years under Cabinet Document Management Regulations.

Targeting and attacking terrorist abuse of NPOs through effective information gathering, investigation:

913. As outlined above, NPOs in Japan are subject to a high degree of transparency and public accountability for their operations. In addition to periodic offsite reporting obligations regulators have powers to order reports on activities and records and, if necessary, go onsite to inspect all aspects of an NPO which is suspected of violating the terms of registration or license. NPO-specific legislation does not appear to create any obstacles to information sharing with investigations agencies.

914. Investigating police may obtain the information provided by NPOs to competent authorities with written inquiries of investigation-related matters in accordance with Article 197, paragraph 2 of the Code of Criminal Procedure. In light of Article 105 of the Code of Criminal Procedure, if the evidence required for the investigation is in the possession or under the control of a physician, dentist, midwife, nurse, or other specified persons, including a person engaged in a religious occupation, or any other person who was formerly engaged in any of these professions and has entrusted the privileged information due to the handling of their profession, an impediment to the collection of the evidence is possible. Such a person may refuse the seizure.

915. The police work closely with all relevant NPO regulators to share information on potential abuse of NPOs. There are, however, some challenges for police to have timely access to records held by the National Tax Agency for NPOs that are given preferential tax treatment.

916. The Public Security Intelligence Agency shares information with relevant organizations including the police based on the Subversive Activities Prevention Act and the Act Regarding the Control of Organizations Which Committed Indiscriminate Mass Murder.

917. There is active information exchange between the competent authorities and law enforcement agencies in relation to criminal activity involving the NPO sector. Japan has previously formed task forces for information exchange in cases where serious criminal activities related to the NPO sector was identified.

Responding to international requests for information about an NPO of concern:

918. Japan utilises law enforcement channels for international cooperation related to information requests regarding particular NPOs that are suspected of terrorist financing or other forms of terrorist support. This may take the form of police to police cooperation or more formal channels of MLA. However the police must operate within the restrictions established by the Code of Criminal Procedure and the provision protecting persons engaged in religious occupations.

5.3.2 Recommendations and Comments

919. Japan should conduct specific outreach to NPO sectors to raise awareness of risks of NPOs for abuse for terrorist financing and relevant AML/CFT preventative measures.

920. Japan should ensure that Social welfare juridical persons are required to update changes in their office holders in a timely fashion

921. Japan should ensure that police are able to have timely access to relevant taxation records of NPOs that receive preferential tax treatment.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	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 relevant taxation records of NPOs that receive preferential tax treatment. • Social welfare juridical persons are not required to update changes in their office holders in a timely fashion.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31)

6.1.1 Description and Analysis

Policy co-operation

922. Japan utilizes a multi-agency AML/CFT strategy involving the FIU, law enforcement, policy makers and supervisors. This effort is led by the “Ministerial Meeting Concerning Measures Against Crime”, held by the Prime Minister and the “Headquarters for the Promotion of Measures Against Transnational Organized Crime and International Terrorism”, held by the Chief Cabinet Secretary.

The Ministerial Meeting Concerning Measures against Crime

923. This Ministerial Meeting was established in September 2003 within the entire Cabinet, to re-establish Japan as “the safest country in the world”, in response to the worsening level of security in recent years (increase in the number of reported crimes and decrease in the crime clearance rate) as well as to growing concern for crimes as shown in various opinion polls.

924. In December 2003, the Meeting drafted the “Action Plan for the Realization of a Society Resistant to Crime” which defines three viewpoints essential for restoring security:

- assistance to the public to help them secure their own safety;
- improvement to the social environment and
- countermeasures against various crimes including the border control measures.

925. Five priority issues have been established:

- deterrence of crimes that threatens the peaceful daily lives of people;
- efforts by everyone in society to deter juvenile crimes;
- countermeasures against cross-border threats;
- protection of the economy and society from criminal organizations and
- development of infrastructure for the restoration of public security.

926. “Protection of the economy and society from criminal organizations” includes “promoting money laundering countermeasures; prevent the criminal proceeds to be used to sustain or enlarge a criminal organization or to be reinvested in future criminal activities, or its negative impact on legitimate economy when these criminal proceeds are invested in business activities, by making thorough efforts to investigate and prosecute money laundering offences or predicate offences. For this purpose, suspicious transaction reports from financial institutions etc. should be properly collected, arranged, and analyzed, and effectively utilized by investigative authorities”. Regular follow-ups are conducted on how the countermeasures are implemented.

The Headquarters for Promotion of Measures against Transnational Organized Crime

927. The Headquarters was established in July 2001 within the Cabinet for the purpose of comprehensively and proactively promoting effective and appropriate measures against international organized crimes through a close cooperation among relevant governmental agencies. In August 2004, terrorist financing was added to its tasks and it became the “Headquarters for Promotion of Measures against Transnational Organized Crime and International Terrorism”.

928. In December 2004, “Action Plan for Prevention of Terrorism” as Japan was designated as a target by international terrorists. It set forth 16 measures to prevent terrorism, including the full implementation of the FATF Recommendations. Nine relevant Ministries and Agencies were mandated to prepare a bill aimed at fully implementing the FATF Recommendations:

- (i) the National Police Agency (NPA)
- (ii) the Ministry of Justice
- (iii) the Financial Services Agency
- (iv) the Ministry of Economy, Trade and Industry
- (v) the Ministry of Land, Infrastructure and Transport
- (vi) the Ministry of Finance
- (vii) the Ministry of Health, Labour and Welfare
- (viii) the Ministry of Agriculture, Forestry and Fisheries
- (ix) the Ministry of Internal Affairs and Communications.

929. In November 2005, the Headquarters decided that the National Police Agency would lead the preparation of the bill, that the FIU would be transferred from the FSA to the NPA, and that the structure required for the FIU to sufficiently fulfil its functions would be secured, etc. In response to these decisions, the National Police Agency proceeded with the preparation of the said bill with the cooperation of relevant ministries and agencies, and presented the outline and concepts of the bill to the Headquarters in June 2006. The Bill for Prevention of Transfer of Criminal Proceeds was adopted by a cabinet meeting in February 2007, submitted to the National Diet and firstly entered into force on July 1, 2007.

Operational co-operation

930. Article 3 of the Act on the Prevention of Transfer of Criminal Proceeds established the National Public Safety Commission as a central body for the practical implementation of preventive measures for financial institutions and DNFBPs. This body is in charge of the operational cooperation and coordination between the FIU (JAFIC), law enforcement authorities and the supervisors.

Coordination between the FIU and law enforcement authorities

931. Article 3, paragraph 2 of the Act provides that the National Public Safety Commission (JAFIC) shall, as an FIU, promptly and appropriately collect, arrange and analyze information on criminal proceeds including information on suspicious transactions reported by financial institutions and DNFBPs so that such information can be utilised effectively in criminal investigations and foreign requests. JAFIC provides the Public Prosecutor's Office, Prefectural Police forces, Japan Customs, Japan Coast Guard, Narcotics Control Department and the Securities and Exchange Surveillance Commission with such information on a day-to-day basis.

932. In addition, the Japan Financial Intelligence Office (JAFIO, the former FIU) organized periodically "Typology Study Meetings" with law enforcement authorities for the purpose of exchanging information on specific examples where information on suspicious transactions had been utilized in investigation of criminal cases and presenting the trends of crimes involving financial institutions. JAFIC intends to continue to hold these meetings and is closely exchanging information with the law enforcement authorities.

Cooperation between the FIU and supervisory authorities

933. Article 3, paragraph 3 of the Act on the Prevention of Transfer of Criminal Proceeds stipulates that the National Public Safety Commission, other relevant administrative organs and local public entities' relevant organs shall cooperate with each other to prevent the transfer of criminal proceeds.

934. Basically, JAFIO, the former FIU, provided information to the Inspection Bureau of the Financial Services Agency in response to its requests prior to the inspection of a financial institution. This information consisted of the number of suspicious transactions reported by the financial institution over the past three years, and trends and problems in the details reported. JAFIO reported spontaneously to the supervisory authority in charge of a financial institution when difficulties with the trend of its reports were identified. The Japan Financial Intelligence Office also provided similar information every three months on the STR submitted by every financial institution to the Supervisory Bureau of the FSA.

935. In addition, supervisory authorities receive STRs non-electronically submitted (under the new reporting system established, STRs can be reported directly to the FIU by electronic means or through the supervisor when they are submitted by another means) by the financial institutions they supervise and have to address them promptly to the FIU.

Cooperation in Activities of the FIU and the Police

936. In the perspective of the entry into force of the Act on the Prevention of Transfer of Criminal Proceeds, the NPA elaborated and issued the "Guideline for Promotion of the Criminal Proceeds Control" in April 2007. They state that the Police should work closely together to promote effective criminal proceeds countermeasures, list items required to efficiently work for the prevention of transfer of criminal proceeds, weakening and destruction of criminal organizations and the prevention of terrorist financing. The guidelines also seek development of a criminal proceeds countermeasures promotion structure, accurate analysis and rapid dissemination of information on suspicious transactions by FIU, stronger international cooperation such as active information exchange with foreign FIUs and a smooth implementation of the Act on the Prevention of Transfer of Criminal Proceeds. They also provide for each related group in the Prefectural Police to develop an investigation structure for crimes related to criminal proceeds, along with establishment of a "Task Forces for Fact-Finding concerning Criminal Proceeds" in the Organized Crime Control Group. Based on this, a "Task Force for Fact-Finding concerning Criminal Proceeds" was established in each Prefectural Police. The Criminal Proceeds Investigation Section cooperates with each related section, promotes utilization of information on suspicious transactions provided by JAFIC, along with fulfilling the roles of providing guidance on its accurate handling, accumulation of practical know-how on money laundering case investigations such as investigation of concealment of criminal proceeds and forfeiture procedures before their prosecution, guidance and education to investigators, investigation support.

937. JAFIC also provides every year a five-day specialized training for the 51 investigators of the Criminal Proceeds Investigation Section established in each Prefectural Police. This specialized course provides basic education on the purpose and goals of the Act on the Prevention of Transfer of Criminal Proceeds and the basic way of thinking criminal proceeds countermeasures, in addition to practical education on techniques for analyzing information on suspicious transactions, recent criminal techniques and trends in money laundering and provision of terrorist financing, techniques of effective money laundering case investigation, trends of international efforts, etc. In addition, mainly for people who become new JAFIC staff, JAFIC also provides education on techniques for analyzing information on suspicious transactions, recent criminal typologies and trends for money laundering and terrorist financing, trends of international efforts.

938. In 2002 the Revised Foreign Exchange and Foreign Trade Act established a provision for the legislative grounds for information sharing among the relevant ministries and agencies in order to promptly and appropriately designate terrorists and other relevant persons or entities of which assets are to be frozen Article 69-4 of the Foreign Exchange and Foreign Trade Act . In line with the enforcement of this Act, in order to implement in good faith of United Nations (UN) Security Council Resolution 1373 required to freeze the assets of terrorists and other relevant persons or entities without delay, Japan has designated terrorists and other relevant persons or entities as -subjects to be taken measures including freezing assets and other enforceable means in accordance with Article 16 and 21 of the Foreign Exchange and Foreign Trade Act (payments and receipt of payments and capital transactions requiring license from Minister of Finance). Besides, “the Liaison Conference for Ministries and Agencies Involved in Freezing Terrorists’ Assets” composed of the Cabinet Secretariat, the National Police Agency, the Financial Service Agency, the Ministry of Justice, the Public Security Intelligence Agency, the Ministry of Foreign Affairs, the Ministry of Finance and the Ministry of Economy, Trade and Industry, was established in order to enable Japan to promptly adopt such measures. Information necessary for designating terrorists and other relevant persons or entities is shared at the Liaison Conference and at its subcommittee.

939. Regarding drug offences that are the predicate offence of money laundering, the police, in cooperation with relevant domestic institutions, primarily the Customs Service and the Coast Guard, periodically hold meetings for exchange of information related to drug control. The prefectural police hold contact meetings, joint training, and personnel exchanges among relevant institutions. In order to ensure the deprivation of drug offence proceeds or the like, the police provide tax authorities with information on such proceeds.

6.1.2 Recommendations and Comments

940. As JAFIC, the new FIU, has been created recently, it is not possible to assess how it cooperates and coordinates with the other authorities, except for the STRs dissemination.

941. Japan should reconsider and enhance the role of the cross-border agencies in the AML/CFT system and their reports of cross-border movements should be made available o the FIU.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	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. • 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.

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

942. Japan ratified the Vienna Convention in 1992 and signed the Palermo Convention in 2000. However, it has not yet ratified that Convention. In 2002 Japan ratified the International Convention for the Suppression of the Financing of Terrorism.

943. Japan implemented a listing regime, which includes a modified freezing of assets of individuals and entities associated with Al-Qaida and the Taliban, as required by United Nations Security Council Resolution 1267 and its successor resolutions through its reliance upon its Foreign Exchange and Foreign Trade Act, hereinafter referred to as the Foreign Exchange Act. The criminalization of acts of providing or collecting funds for terrorism, required by UNSCRs and the Convention were partially implemented as a result of the enactment of the Act on the Punishment of Financing of Offences of Public Intimidation (the Terrorist Financing Act) and reinforced through security order provisions in Japan's Act on the Punishment of Organized Crime, Control of Crime Proceeds and Other Matters, hereinafter referred to as the Act on the Punishment of Organized Crime and a licensing regime in the Foreign Exchange Act.

Ratification, become a party to, and fully implement, the Vienna, Palermo and the Terrorist Financing Convention.

944. Japan signed the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances on December 19, 1989 and ratified that Convention on June 12, 1992. Japan signed the United Nations Convention against Transnational Organized Crime (Palermo) on December 12, 2000 but it has not yet ratified that convention. Japan signed the 1999 International Convention for the Suppression of the Financing of Terrorism on October 30, 2001 and acceded the Convention on June 11, 2002.

945. Japan fully implemented the 1988 Vienna Convention as a result of its enactment of the "Law concerning Special Provisions for the Narcotics and Psychotropics Control Law etc. and Other Activities for the Prevention on Activities Encouraging Illicit Conduct and Other Activities Involving Controlled Substances Through International Cooperation", hereinafter referred to as the Anti-Drug Special Provisions Law. The Convention's obligations, in light of the Anti-Drug Special Provisions Law, which include provisions on money laundering and receiving the proceeds from drug crimes, as further augmented by the enactment in 2002 of the Act on the Punishment of Organized Crime, have been implemented. Japan, as more fully described in Recommendation 1, adopted an offence of criminal proceeds receipt to comply with Article 3 paragraph 1(c)(i) of the 88 Vienna Convention.

946. Japan, in order to implement the Palermo Convention, awaits the passage of a law which will criminalize conspiracy. That law is currently before the Diet, but the draft has not been provided to the assessment team. Pending that new offence Japan has enacted a broad law (the Act on the Punishment of Organized Crime) that criminalizes most of the other offence requirements, including money laundering, receiving property derived from crime and confiscation requirements of the Palermo Convention. Japan, as more fully described in Recommendation 1, adopted an offence of receipt of criminal proceeds to comply with Article 6 paragraph 1 (b)(i) of the Convention.

947. In order to implement the International Convention for the Suppression of the Financing of Terrorism, Japan enacted two domestic laws. The first was the Act on the Punishment of Financing of Offences of Public Intimidation. The second was an Act on Identification on Prevention of Fraudulent Use of Deposit Accounts, (Customer Identification Law) which has been significantly improved with the enactment of the Act on the Punishment of Organized Crime.

948. The Act on the Punishment of Financing of Offences of Public Intimidation criminalized the act of providing (Article 2) or collecting funds for terrorism (Article 3) which are requirements in Article 2 of the Convention. The funds as covered by the new offence provisions in the Act on the Punishment of Financing of Offences of Public Intimidation, partially achieve the obligation to identify, detect and freeze or seize any funds used or allocated for the purpose of committing offences as required by Article 8 of the Convention. However the restriction of the criminal offence to the concept of "funds" is a matter of significant concern. In Special Recommendation II Japan's approach to terrorist financing offences were

reviewed. The terrorist financing offences are: murder, bodily injury by using an offensive weapon or any other means which is likely to harm body seriously, abduction or taking hostages; or involves criminal acts against aircraft, shipping, transportation, including trains and transportation infrastructures or public or private utility facilities operating for the benefit of the public, when such actions are carried out for purposes of public intimidation. The definition includes offences from the Japanese Penal Code which reflect all of the offences listed in the Annex to the Terrorist Financing Convention pursuant to Article 2, paragraph 1 (a). However, it restricts the application of this law to instances in which such acts are carried out for purposes of public intimidation. Finally, measures on customer identification, a requirement in Article 18(1)(b) of the Convention, as is fully described in recommendation 5, are insufficiently implemented. In addition item 64 of the schedule to Japan's Act on the Punishment of Organized Crime includes Articles 2 and 3 but not the offences mentioned in Article 1 of the same Act if undertaken as an act of public intimidation.

949. Japan enhanced the freezing and confiscation requirement in domestic terrorism cases by adding a specific reference to Article 2 of the Act on the Punishment of Financing of Offences of Public Intimidation in the definition of "crime proceeds" in the Act on the Punishment of Organized Crime. Yet the scope of "crime proceeds" describes distinct types of things including words such as "any property" (article 2, paragraph 2(1); "any money" (article 2, paragraph 2(2) and "any property" (article 2, paragraph 2(3)) before the restrictive reference to "any funds" in article 2, paragraph 2 (4) of the Act on the Punishment of Organized Crime. In addition it is noteworthy that "funds" relative to Article 3 of the Act on the Punishment of Financing of Offences of Public Intimidation are indirectly included as crime proceeds. As a result "funds", which is an undefined term in either the Act on the Punishment of Financing of Offences of Public Intimidation or the Act on the Punishment of Organized Crime, may be preserved, or to use Japan's terminology "secured" pursuant to Article 23 and subsequently made the subject of an Article 13 confiscation order. That approach is neither direct nor effective.

Implementation of Security Council Resolutions

950. UN Security Council Resolution 1267 and its successor resolutions as well as UN Security Council Resolution 1373 are implemented through domestic a designation against the Taliban. Japan followed up with listing action under the requirement of S.C. Resolution 1333 and 1390 as additional names were established by U.N. Sanctions committee.

951. The MOFA advised that as of July, 2007 the numbers of individuals and entities subject to the asset-freezing measure in accordance with UNSCRs related to financing of terrorism are following:

Individuals: 377
Entities: 147
(as of July 13, 2007)

952. The Foreign Exchange Act is utilized to enforce the obligation to freeze the property of listed individuals or persons. The Finance Minister (MoF) or Ministry of Economy, Trade and Industry (METI) may issue a notification, using a Cabinet order process established in Article 10 of the Foreign Exchange Act to financial institutions and other entities in Japan. Japan then accomplishes its freezing obligation by its reliance upon a license system for payment and capital transactions. Article 16 of the Foreign Exchange Act allows for a license system, for a resident or non-resident of Japan, when the person "intended to make payment from Japan to a foreign state or resident". The license requires the person to first obtain permission for the foreign payment. Operationally the license system functions under provisions established in the Foreign Exchange Order (Cabinet Order No. 260). Pursuant to Article 6 of that order a payment or receipt of payment are controlled. The authority to license payments between nationals in Japan that may be "funds" are not subject to the Act. That approach may effectively work if the only

relevant terrorist assets were entering or leaving Japan. Domestic movements of terrorist funds or assets are inadequately covered. That is insufficient for the purpose of the Resolutions.

Terrorist financing as money laundering predicate offences

953. Japan implemented the criminalization of terrorist financing, as required under the International Convention for the Suppression of the Financing of Terrorism through two offences in the Act on the Punishment of Financing of Offence of Public Intimidation. The act of knowingly financing terrorists by providing “funds” to facilitate the commission of criminal acts intended to intimidate the public (Article 2, paragraph 1), and the act of knowingly collecting terrorist “funds” by individuals, who plan to carry out criminal acts intended to intimidate the public (Article 3, Paragraph 1), are offences. It does not matter if the actual terrorist offences to be funded occur.

954. Funds as referred to in the Act on the Punishment of Financing of Offences of Public Intimidation, according to Japan may be (i) cash or other means of payment that are provided or collected, their economic value being intended to be used for specific purposes (hereinafter referred to as “cash and the like”) or (ii) any other property that is provided or collected in the expectation of generating cash and the like as a fruit or will be exchanged for cash and the like. The assessment team was concerned that other assets were not covered. It asked about other property being included in the scope of the relevant articles in the Act on the Punishment of Financing of Offences of Public Intimidation and the authority to actually secure (freeze) such property in a domestic, as opposed to a foreign exchange case.

955. Japan advised that the intention was for the concept of “funds” to cover money and all other property. It advised the assessment team that they approached the obligation to freeze property that may be used as an integral part of the concept of “funds” in Articles 2 and 3. Those articles criminalise the provision of “funds” (undefined-see Article 2) and the collection of “funds” (undefined-see Article 3). Japan advised the assessment team they intended the concept of “funds” to include non-financial assets but the intended expansive definition is more theoretical than actual. The team was told that the scope of the word “funds”, both conceptually and in the opinion of the Minister of Justice as evidenced in a response to a question in the Diet debate on the Law, is sufficient to include other assets and property. The Act on the Punishment of Financing of Offences of Public Intimidation’s failure to specifically define “funds” in terms of funds and other property remains an open question.

956. The offence of financing terrorists by providing “funds” (Article 2, paragraph 1) and the offence of collecting “funds” for the commission of an act of public intimidation (Article 3, paragraph 1), as criminalized under the Act on the Punishment of Financing of Offences of Public Intimidation are punishable as independent offences. Attempts are also provided for as punishable offences pursuant to Paragraph 2 of each article. The Act on the Punishment of Financing of Offences of Public Intimidation does not include a conspiracy provision and such an offence does not currently exist in Japan. Japan’s authorities advised that conspiracy, as a concept, is punishable under Article 60 of the Penal Code as a co-principal. However, as canvassed in Recommendation 1, large groups of people may become criminally liable due to a common intent to commit a crime; it requires actions of at least one member of the group to raise the group to the level of an attempt to commit the agreed upon crime in order to incur criminal sanctions under Article 60 of the Penal Code. Equally abetting or aiding, according to the degree of participation in the offence of financing terrorists or collecting terrorist funds, would be covered by Articles 61 or 62 of the Penal Code. Japan also advised that their co-principal approach and the use of the word “contributes” in Paragraph 5(c) of Article 2 of the Convention means that its co-principal approach is sufficient. In light of Japan’s intention to enact a specific conspiracy provision to comply with the Palermo Convention a conspiracy provision with respect to the financing of terrorism should be re-examined.

6.2.2 Recommendations and Comments

957. Japan advised that their Foreign Exchange Act procedure effectively provides for access to assets since their freezing measures are implemented by putting payments requests or instruction with the designee under the MoF's license system. This licensing process can and does work in a scenario where the designated person seeks to move their property into or out of Japan. That is one possible scenario. Domestic possession of terrorist property is as important as the movement of such property into or out of the country. The difficulty of the securance process for property located in Japan, which is never taken outside Japan, is not addressed. The fact is that such property is not frozen without delay nor adequately considered and dealt with in the Japan terrorist property regime. As a result the absence of a clear process illustrates the inadequacy of the regime relative to domestic assets.

958. Japan has implemented most of the Palermo Convention obligations, except for establishing a conspiracy offence, by criminalizing obstruction of justice and inclusion of all "serious crime" as predicate offences for ML. That legislation is currently pending in the Diet. In light of the fact that Japan has not ratified Palermo, Japan should ratify the Convention immediately after the new law is passed and in force.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	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.
SR.I	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.

6.3 Mutual Legal Assistance (R.36-38, SR.V)

6.3.1 Description and Analysis

General

959. Mutual legal assistance, MLA, in Japan is governed by the Law for International Assistance in Investigation and Other Related Matters (Law No. 69 of 1980, hereinafter referred to as the Law for International Assistance in Investigation or LIAI. The LIAI applies to and is used in all MLA proceedings. In addition, the Act on the Punishment of Organized Crime, the Anti-Drug Special Provisions Law and the Law for Judicial Assistance to Foreign Courts also have provisions relative to mutual legal assistance, which are used in respective cooperation procedures.

960. Japan has also entered into a mutual legal assistance treaty (MLAT) with two countries, (South Korea and the United States)⁶². Japan, as a party to the 1988 UN Convention against the Traffic in Narcotic Drugs and Psychotropic Substances (the 88 Vienna Convention); the Suppression of the Financing of Terrorism Convention and the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, has multilateral mutual legal assistance obligations. It uses the LIAI, the Act on the Punishment of Organized Crime, the Anti-Drug Special Provisions Law and the Law for Judicial Assistance to Foreign Countries to satisfy its obligations under those multilateral agreements. Finally Japanese police undertake significant work to strengthen their relationship with foreign law enforcement agencies by undertaking non-coercive investigative cooperation through Interpol channels.

961. If Japan is asked to identify, seize or preserve the proceeds or instrumentalities of criminal offences, and execute a requesting state's final confiscation or collection (i.e. a collection of a sum of equivalent value) order, regardless of whether a treaty exists or not between Japan and requesting state, the Act on the Punishment of Organized Crime and the Anti-Drug Special Provisions Law, under the guarantee of reciprocity, are used by Japan to respond.

962. If Japan confiscates any property as the result of that assistance it may grant the property or money equivalent to the value to the requesting country at its request.

Provision of a wide range of mutual legal assistance in AML/CFT

963. The LIAI is the principal statutory authority for Japan to process a mutual legal assistance request. The LIAI cross references other laws, such as the Code of Criminal Procedure. Japan also relies upon domestic seizure and confiscation provisions in the Act on the Punishment of Organized Crime or the Anti-Drug Special Provisions Law, as well as document service provisions in the Law for Judicial Assistance to Foreign Countries, to execute a mutual assistance request.

Provision or assistance in a timely, constructive and effective manner

964. The LIAI serves as a self implementing MLA process in all cases where Japan does not have an existing Mutual Legal Assistance Treaty (MLAT). Japan has two existing MLATs, one with the United States and another with South Korea. In light of the absence of a large number of MLATs this evaluation shall focus on the LIAI provisions. MLATs will, as required, be referenced to illustrate alternatives or exceptions to the more common LIAI process. The LIAI and related laws, such as the Act on the Punishment of Organized Crime, the Anti-Drug Special Provisions Law and the Law for Judicial Assistance to Foreign Countries, collectively allow Japan to consider the provision of:

- (a) the production, search and seizure of information, documents, or evidence (including financial records) from financial institutions, or other natural or legal persons;
- (b) the taking of evidence or statements from persons;
- (c) providing originals or copies of relevant documents and records as well as any other information and evidentiary items;
- (d) effecting service of judicial documents;

⁶² Japan negotiated another mutual legal assistance treaty with a third country but that treaty was not in force at the time of the visit by the team or within a short time after the onsite visit. In addition that treaty was not provided to the evaluation team and it forms no impact upon the evaluation of the Recommendation.

(e) facilitating the voluntary appearance of persons for the purpose of providing information or testimony to the requesting country; and

(f) identification, freezing, seizure, or confiscation of assets laundered or intended to be laundered, the proceeds of ML and assets used for or intended to be used for FT, as well as the instrumentalities of such offences

965. The LIAI provides mutual legal assistance on the basis of specific requests that are accepted where there is no existing MLAT or the request was advanced by a state pursuant to a multilateral convention's mutual legal assistance obligation. In either scenario a requesting state would have to transmit their request through diplomatic channels. In addition in any non-multilateral convention scenario (such as all offences covered by *Palermo* since it is not yet ratified by Japan), the requesting state and Japan would also have to develop a case specific agreement to undertake the requested assistance. In the multilateral convention scenario Japan has signed and ratified the 1988 Vienna Convention, the Suppression of the Financing of Terrorism Convention and the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Those are relevant multilaterals providing for mutual legal assistance articles. The Palermo Convention is another potential and very relevant multilateral but it is currently not available to advance a request to Japan. As a result a request for assistance in a serious crime covered by the Palermo Convention could only be advanced by means of standalone case specific agreements under the LIAI.

The LIAI process for MLA

966. The LIAI involves two separate Ministries as important partners for almost all mutual legal assistance requests. First the Ministry of Foreign Affairs (MOFA) acts as the central authority to receive the initial request through diplomatic channels. The MOFA is required to consider the request, develop and attach an opinion on the request and forward both the request and the MOFA opinion on to the Ministry of Justice. The process was described as seamless and efficient but the use of diplomatic channels, as opposed to clear channels of communications for criminal matters, together with the MOFA opinion could slow many requests and potentially impede urgent requests.

967. Article 2 of LIAI provides that no request can be advanced if the foreign offence is a political offence. LIAI does not define a political offence. As a result it is difficult to evaluate the scope of that exception. However the Japanese authorities advised the team that this has not been a barrier to its provision of mutual legal assistance, with the result that this consideration does not effect the implementation of this recommendation. The same article, in paragraph 2, mandates a dual criminality requirement, which will be considered in Recommendation 37, below. Article 2, item 3 is a more significant issue in Japan's mutual legal assistance regime. It creates an impediment to assistance whenever coercive measures are required to obtain testimony. The salient paragraph provides that assistance shall not be provided:

“With respect to a request for an examination of a witness or a submission of material evidence, unless otherwise provided by a treaty, when the requesting country does not clearly demonstrate in writing that the evidence is indispensable to the investigation.”

968. The restriction concerning “indispensability” of the evidence appears to be both chilling and an unnecessarily restrictive requirement relative to a foreign request for investigative assistance in a foreign crime. The standard to undertake coercive investigative measures in the two existing mutual legal assistance treaties is necessity. The standard to obtain coercive measures in a domestic criminal investigation is necessity yet all other countries requesting the collection of evidence using coercive measures must establish that the evidence is indispensable. Japan advised the team that it uses a flexible

approach to be satisfied however the LIAI provisions create a two step approach. Article 8(2) of the LIAI provides that the prosecutor or police officer implementing the foreign request must first be satisfied, i.e. deem it necessary to undertake coercive measures after which a prosecutor may apply to a judge. The judge, pursuant to Article 12, needs to be satisfied that the evidence to be obtained using the coercive measures is indispensable. Japanese authorities advised that Japan uses a flexible approach, accepting the requesting states advice on indispensability. That approach may be sufficient to advance an application to the court for coercive measures but Article 13 of the LIAI allows the affected party to challenge the coercive measures, which would include a challenge of the grounds for indispensability. In light of the lesser `necessity` justification in domestic cases and in the two existing MLATs this condition is unnecessarily onerous. It is therefore reasonable to assume that it has an impact upon the number of LIAI requests by all countries as seen in the low number of total mutual legal assistance requests to Japan.

969. Looking beyond that issue, for the moment, the LIAI provides some examples of a bureaucratic process driven mutual legal assistance (MLA) regime. The LIAI authority may be summarized as follows:

- Article 3 requires MOFA to be the primary channel of communications for requests.
- Article 4 requires MOFA to forward a written request or their certification of receipt of a non written request, together with their opinion on the request to the Minister of Justice.
- Article 5 requires the Minister of Justice, using officials⁶³, to determine if the request is to be honoured and then forward the request to an appropriate prosecution office or investigative authority, such as the National Public Safety Commission,
- Article 7 requires the prosecutor, police or agency head to collect the evidence necessary for the request.
- Article 8 allows the public prosecutor or judicial police to ask for voluntary cooperation from a witness or voluntary production and non-compulsory inspection and production.
- Article 8, paragraph 2 gives the prosecutor or judicial police officer the right, if they deem it necessary, to collect the evidence by undertaking seizure, compulsory inspection or a warrant.⁶⁴
- Article 10 and 11 provide for court application for coercive measures if the witness refuses to provide evidence, attend for an interview or issue a certificate of authenticity for a document. In that case Article 2(3) requires the court be satisfied that the requested evidence is indispensable to the investigation.⁶⁵

⁶³ The relevant officials are assigned to the International Affairs Division in mutual legal assistance in criminal investigations. Their role is to accept requests from foreign countries for assistance, to examine those requests received, to forward them to the most appropriate organizations that could execute the requests, and to act as the liaison between those domestic organizations that execute the request and the requesting foreign countries.

⁶⁴ Given the authority in the Code of Criminal Procedure and cultural expectations in Japan voluntary cooperation is very common but the fact that the authority can unilaterally determine necessity, in a foreign mutual legal assistance request, may be problematic.

⁶⁵ That precondition may be displaced by the specific terms of any MLAT, such as Article 3, paragraph 2 of the Japan/United States MLAT.

- Articles 14 to 16 provide an intricate process for the post execution transmission of the requested evidence to the requesting state by means of a routing that requires the transmission through channels, with an opinion by each level up to and including the Minister of Justice.
- Article 14, paragraph 5 allows the Minister of Justice to impose conditions on the evidence that is ultimately sent to the requesting state.
- Article 19 to 26 provide for all procedures to transfer and accept transferred prisoners who have agreed to testify in proceedings.

970. Direct law enforcement to law enforcement channels of cooperation continue to exist. Article 18 of the LIAI, recognises enforcement requests for cooperation in criminal investigations. The article reflects a preference for requests generated through INTERPOL. The principle limitation is that no coercive investigative provisions may be used in such case. If such steps are required the formal LIAI procedure must be used.

971. By the provisions of LIAI and other laws, Japan can:

- Serve court documents using its Judicial Assistance Law;
- Obtain sworn evidence voluntarily using Articles 7 & 8 of LIAI;
- Obtain sworn statements or evidence, which may be authenticated, by compulsion using article 12 and 13 of LIAI and articles 218 *et seq* of the Code of Criminal Procedure and
- Exercise search and seizure powers using the same provisions.
- Finally, the Act on the Punishment of Organized Crime and the Anti-Drug Special Provisions Law allow Japan to provide freezing and confiscation assistance under the guarantee of reciprocity, regardless of whether a treaty exists or not between Japan and the requesting country.

972. Japan cannot request the interception of telecommunications (wiretap) under a LIAI request, a not unsurprising limitation since it cannot use that technique for most of its domestic investigations.

973. There is no bank secrecy law or restriction on the provision of mutual legal assistance by Japan. If a LIAI request for assistance is accepted and processed the Code of Criminal Procedure, other relevant law and the cooperation of the financial institutions in Japan will result in the authorities obtaining the requested information. That information could be turned over to the requesting state, subject to any conditions the Minister of Justice imposed upon the use of the evidence under the provisions of Article 14, paragraph 5 of the LIAI. Equally the LIAI does not impose any bar to executing a request on the basis that it involves fiscal matters.

MLATs with Japan

974. Japan has entered into a mutual legal assistance treaty (MLAT) with the United States and Korea. Japan also advised that it is now aggressively talking with other countries to further increase the number of MLAT. By entering into an MLAT, each party would be obligated, at the request of the other party, to provide mutual legal assistance in relation to investigation, prosecution, and other criminal proceedings. The specific MLAT designates respective central authorities, and they, consistent with Article 5 of LIAI, directly communicate with each other for assistance, rather than through more formal and traditional diplomatic channels.

975. As to the types of assistance, relevant mutual assistance obligations are listed, although the existing MLATs provide almost the same range of mutual cooperation as described above under the LIAI. The benefit of such an agreement is a more direct channel of communications and a means to work around the restriction built into Article 2, paragraph 3 of the LIAI.

Police to police cooperation

976. Japanese police carry out information exchanges with foreign law enforcement authorities through Interpol and diplomatic channels. The Japanese police actively engage in international investigation cooperation to meet requests from foreign law enforcement agencies. Upon receiving requests for investigation assistance or cooperation from foreign countries through Interpol or diplomatic channels, the National Public Safety Commission instructs the prefectural police to conduct the collection of evidence and other necessary measures. In the case of a request through Interpol, police officers can question related persons, carry out non-compulsory inspections, obtain the submission of documents and make inquiries to public offices.

Professional secrecy and confidentiality issues to assistance

977. The LIAI does not impose secrecy or confidentiality requirements on financial institutions or those in the DNFBP range of persons or entities. However the Code of Criminal Procedure, which is used to obtain evidence under the LIAI, does illustrate some barriers or ground for refusal of a request on the basis of professional secrecy or confidentiality. The Japan Federation of Bar Associations strenuously asserted to the assessment team that professional secrecy is very important in Japan. The Practicing Attorney Act of Japan (article 23), the Foreign Lawyer Act (Article 50) and the Judicial Scrivener Law (article 24) provide that practicing attorneys and foreign lawyers registered in Japan may refuse to provide information within the scope of their confidentiality obligation. That is not a surprising development.

978. However, assuming a coercive court order is obtained under LIAI to obtain evidence from some individuals, the Code of Criminal Procedure would apply to such orders as a result of Article 13. That brings the issue of indispensability of the evidence into focus of a challenge to the order. In light of Article 105 of the Code of Criminal Procedure, if the evidence required for the investigation is in the possession or under the control of a physician, dentist, midwife, nurse, attorney, including a foreign lawyer registered in Japan, patent attorney, notary public or a person engaged in a religious occupation, or any other person who was formerly engaged in any of these professions and has entrusted the privileged information due to the handling of their profession, an impediment to the collection of the evidence is possible. Such a person may refuse the seizure. That is a large category of protected individuals.

979. Protection is not limited to that group. If the evidence is in the possession of a member or ex member of the legislature, or a minister of the state and they object as the evidence is regarding their professional secrecy, Article 104 provides that the thing may not be seized without the consent of the house he/she belongs to or the Cabinet, which may not be refused except where the seizure may harm important national interests of Japan. In addition, Article 114 provides that if the necessary search is to be undertaken in a public office the office head or their deputy must be notified and attend on the search. None of those provisions are individually unreasonable but the issue is that a challenge of the indispensability condition can occur.

980. The authority to obtain a testimony from a person is also limited in some circumstances. Article 193 of the Code of Criminal Procedure does provide authority for a judicial police officer public prosecutor to ask a suspect to appear for an interview. An ordinary witness may be required to attend and provide information in light of Article 223. They can refuse to answer or assist. In addition, even if the claim for privilege by professionals were made, unless the professionals could substantiate the claim with

the *prima facie* showing, the law enforcement authority can conduct search and seizure results either in the abandonment of the search or, in rare instances, the seizure of the thing. If a seizure is undertaken the professional has the right to challenge the search and seizure. If that challenge is successful, as advised by the Japan Federation of Bar Associations, the thing may not be produced. Again, these provisions are not individually unreasonable but the issue is that a challenge of the indispensability condition can occur.

Implementing requests for assistance in Japan

981. Under LIAI, at the request of a foreign state submitted through diplomatic channels, a request is received and processed by MOFA. They subsequently forwarded it on to the Minister of Justice. That minister, through officials, process the request. Structurally this process effectively starts with the International Affairs Division within the Ministry of Justice. Their legal experts, experienced in prosecutorial work or other fields, are responsible for all cases of assistance requested of Japan. They process and coordinate an assistance request. The staffers experienced as prosecutors or prosecutor's assistant officers are stationed at Japan's embassies or other diplomatic missions in major cities overseas. They enhance the communication between the Ministry of Justice and foreign government with regards to the assistance. If the International Affairs Division finds that the request is sufficient and appropriate, it is forwarded to the Chief of an appropriate District Public Prosecutor's Office to procure evidence necessary for the assistance, or they may elect to forward the request for assistance to the National Public Safety Commission.

982. The chief of Prefectural Police who has received such a direction orders a police officer of the Prefectural Police concerned to effect dispositions for procuring evidence necessary for the assistance. Alternatively, examination of a witness are conducted by a judge at the request of the public prosecutor delegated the assignment. The interview of persons concerned other than examination of a witness, inquiries of public or private organizations, non-coercive inspection, search and seizure, coercive inspection, are performed by public prosecutors or police officers of prefectural police departments. The requested evidence is obtained and transmitted up the chain established by the LIAI to the Minister of Justice for a decision on transmission to the requesting state.

Conditions or restriction on assistance

Use restrictions on the evidence

983. Limitations on the collection of evidence, set out in the Code of Criminal Procedure, illustrate a potential barrier to the collection of evidence. In addition the requirement for dual criminality, as discussed below relative to recommendation 37, is another significant issue of concern. Assuming either can be overcome the LIAI permits conditions on use of the acquired evidence.

984. Articles 14 to 16 of the LIAI provide an intricate process for the post execution and receipt of the requested evidence for transmission to the requesting state by means of a routing that requires the transmission through channels, with an opinion by each level up to and including the Minister of Justice. One of the conditions that the Minister can and does impose is a restriction on use of the evidence in any procedure in the requesting state other than the proceeding used to justify the original request.

Avoiding conflicts of jurisdiction

985. The LIAI specifies that assistance is carried out when the Minister of Justice deems it appropriate to meet the request. Japan advised that obstacles identified in active investigations in Japan are one of the criteria it applies in making the Minister of Justice's determination to advance a mutual legal assistance request.

986. If the request for assistance does not necessitate the collection of new evidence and only relates to an already existing trial record held by a court, public prosecutor or police officer, the Minister of Justice sends the dossier pertaining to the request for assistance to the person holding the document concerned (Article 5, paragraph 2). The person holding the document then decides whether it is appropriate to provide the document, taking into consideration the effect this will have on investigations and court cases in Japan (Article 14, paragraph 4).

987. Japan further advised that, if it receives a foreign request for assistance in a case over which there is a conflict of jurisdiction, it will not refuse to provide assistance on account of the case being prosecuted in Japan. It can provide evidence to the requesting country subject to confidentiality or other conditions. Article 14, paragraph 5 of LIAI would apply in such a case. Japan further advised that if such submission of evidence interfered with the prosecution of the same case in Japan, Japan can and would temporarily postpone providing assistance.

Additional elements

988. The LIAI, as discussed above, allows for the execution of cooperation even in cases where the request for cooperation is made to Japan by foreign law enforcement authorities through Interpol rather than through diplomatic channels.

989. One implementation issue for any mutual assistance request, since they must be processed through diplomatic channels, is that they need to be in writing and contain some evidence of reciprocity. Neither, as Japan advised, is a real impediment and both conditions are reasonable. However the cumulative effect of diplomatic channels and multiple opinions attached to a request, in an era of internet and cross border crime, may lead to delay, although Japan advised that it will expedite the process by accepting drafts using facsimile and e mail. That allows for intermediate consultation between the requesting state's authority and Japan's allowing for a better and more formal written request. That approach is useful but it continues to require a formal written request through channels and, in addition, the LIAI has not been updated in years. As a result the concept of video testimony and internet communication is an unfilled expectation rather than a reality.

990. The final and most serious deficiency in the LIAI scheme is Article 2, item 3's requirement that the requesting state demonstrate the indispensability of the evidence when the request concerns examination of a witness or submission of material evidence. This is especially acute since a court order is required to obtain such evidence. Japan advised the team, regarding assistance in questioning the witness or submitting material evidence, where a failure to provide documents ascertaining that such evidence is essential for the investigation, that similar to its approach to dual criminality it does not apply overly strict interpretation to this principle. The problem is that the application is to a court. In addition any effected party could simply challenge the indispensability justification to delay or overturn the court order. The actual investigation or prosecution occurs in a foreign state. However the issue of indispensability is left to the vagaries of the party and unknown interpretations of a court in Japan. This is an invitation to delay and needless litigation, to the detriment of an international investigation.

Recommendation 37 (dual criminality) and SRV

991. Article 2, item 2 of the LIAI imposes a strict dual criminality requirement for mutual legal assistance requests. It provides, as follows:

“2: Assistance shall not be provided in any of the following circumstances:

(2) Unless otherwise provided by a treaty, when the act constituting the offence for which assistance is requested would not constitute an offence under the laws, regulations or ordinances of Japan were it committed in Japan”

992. The provision is strict. It applies to all requests other than those advanced under a treaty and Japan only has two mutual legal assistance treaties.

993. Japan negotiated a more flexible approach to its dual criminality concern in its MLATs. The United States and Japan Mutual Legal Assistance Treaty illustrates that different approach. Article 1, paragraph 4 of that treaty provides:

“Except as otherwise provided for in this Treaty, assistance shall be provided without regard to whether the conduct that is the subject of the investigation, prosecution or other proceeding in the requesting Party would constitute a criminal offence under the laws of the requested Party”

994. Article 3, paragraph 4 of the same treaty does incorporate a dual criminality consideration. However the treaty leaves that issue open for discussions and potential use or other conditions to assistance. In other words the mere fact that Japan, as the requested country, did not have an equivalent criminal offence, does not amount to a bar in processing a mutual legal assistance request. That is a more effective approach to a problem.

995. The distinction between an MLAT and the more routine LIAI request for mutual legal assistance is not insignificant. Japan advised that it flexibly applies its dual criminality requirement and the team accepts that view. Flexibility cannot fill serious gaps that operate to defeat sometimes routine criminal investigations in another country. It is possible to negotiate around the dual criminality restriction, as contemplated by Article 2, item 2 of the LIAI if an MLAT has been negotiated; otherwise the provision is a condition in law. However such an approach is cumbersome. This reality is best seen in the fact that, to date, Japan has two treaties. As a result every other country must use the LIAI process. That process does not lend itself to flexible communications between states, even if Japan accepts and uses facsimile and e mail to polish the ultimate formal written request. It does lend itself to a simple response to a foreign investigation that its criminal law provision is different from a case in Japan. Either dual criminality exists, for all purposes, or no mutual legal assistance can be provided.

996. A criminal conspiracy is an example of this issue. The requesting country, assuming that it applied through the LIAI process for assistance in its criminal conspiracy investigation, would not satisfy Article 2, item 2. Japan does not have a conspiracy offence. However flexible Japan may be, it does not have a means, in the LIAI, to obtain coercive measures to assist in such a case. As a result LIAI cannot provide any authority to use coercive measures to assist such a state that has requested essential, or for that matter merely useful evidence, since on the one hand the request fails to satisfy the dual criminality condition.

997. In addition for financing of terrorist cases Japan relies upon a licensing process in its Foreign Exchange and Foreign Trade Control Law to provide for the freezing obligation imposed by the Suppression of Terrorist Financing Convention and the UNSC Special Recommendation. It has also specifically limits itself, relative to its financing offences, to a concern with regard to “funds”, which is an inadequately defined concept. The absence of any definition of “funds” in Japan’s Punishment of Financing of Offences of Public Intimidation, in light of the obligation to have a dual criminality precondition to LIAI assistance is an impediment. Another country, investigating other property or assets used to finance or assist terrorist, which would not be “funds” as covered by Japan’s domestic offence, could not depend upon Japan’s prompt assistance in their terrorist financing investigation. Non coercive

measures and assistance would be available but mutual legal assistance regarding coercive measures depend upon the LIAI and the restrictions contained in Article 2.

Recommendation 38 and SR V

Laws on enforcement of confiscation orders

998. Articles 59 to 74 of the Act on the Punishment of Organized Crime, assuming reciprocity quarantines, provides for authority to obtain a securance (freezing) order to preserve the proceeds or instrumentalities of criminal offences, including an instrumentality intended to be used in the commission of a criminal act. The same law allows Japan to execute another country's final criminal confiscation or collection of equivalent value order, regardless of the existence of a bilateral mutual legal assistance treaty between Japan and the requesting country. In addition, Articles 21 and 22 of the Anti-Drug Special Provisions Law, provided that Japan and the requesting state are parties to the 1988 Vienna Convention, Japan may assist, subject to limitations set out in Article 21, paragraphs (1) to (6).

999. Third parties are fully protected as a result of Article 59, paragraph 3 of the Act on the Punishment of Organized Crime. In addition items 2 and 4 of Article 59 (1) operate to require that the relevant property would be subject to the confiscation order if the case had taken place in Japan.

1000. If the relevant property is moveable then it must be seized, using the LIAI and the Code of Criminal Procedure or relevant provisions under the Penal Code. Freezing provisions, known in Japan as a securance order, are available. A public prosecutor of the district public prosecutor's office where such property is located must apply to the judge for preservation of such property for confiscation (Articles 66 and 67). Article 68 deals with foreign requests where no prosecution has been instituted. In that case the securance order is valid for 45 days when it will lapse unless the court was notified that a prosecution commenced. If circumstances delay the foreign prosecution, Article 68, paragraph 2 allows for the court to approve a further series of 30 day extensions of the securance order. If necessary the judge in Japan may examine the facts supporting the foreign order pursuant to Article 70. Article 71 allows the public prosecutor to request the attendance of any person for interrogation and Article 73 applies the provisions of the Code of criminal Procedure to such cases. However the obligation to establish that the evidence is indispensable, as mandated by Article 2, item 3 of the LIAI would also apply to this application to attend and be interviewed.

1001. If the request seeks the actual confiscation of property on the basis of a final foreign confiscation order, as opposed to its securance pending a confiscation order from the requesting state pursuant to Article 59, the prosecutor requests a court review. That review begins, pursuant to Article 62, with all interested parties in Japan attending to determine if the case in question fits into a case of assistance in light of restriction set forth in Article 59. If it is determined that Japan can provide assistance for the whole or a part of the final adjudication relating to which the request was received, the court, pursuant to Article 62, paragraphs 3 to 9, issues its judgement. If the order involves a collection of equivalent value, Article 62, paragraph 4 provides that the final order of enforcement is made in yen. The relevant judgements can be appealed pursuant to Article 63. Finally, assuming unsuccessful appeals the confiscation order is executed as if it were a final judgment for confiscation issued by a Japanese court (Article 64) and Article 62, paragraph 5 provides that no challenge of the foreign order is made in Japan.

1002. Article 61 paragraph 1 of the Act on the Punishment of Organized Crime specifically reflects the channel of communications established pursuant to the LIAI. The second sentence in the paragraph 1 of article 61 of the Act on the Punishment of Organized Crime contemplates urgent cases and the procedure prescribed in treaties. In those cases, the Justice Minister may directly receive a request in the two existing bilateral mutual legal assistance treaties. In all other cases the diplomatic channels and the processing

approach described elsewhere has to be used to seek the enforcement of any seizure, freezing or confiscation order.

1003. Japan officials advised that property, which is confiscated or in a case where a collection order has been issued to collect an equivalent value and the money has been collected, the assets belong to the national treasury, except when it is transferred to the requesting country or is distributed to relevant victims. Japan also advised that as of the date of the on site visit no further consideration since the amendment of the Act on the Punishment of Organized Crime in 2006 had been made for establishing a “confiscated property fund” for use for law enforcement, health and medical care, education or other appropriate purposes.

1004. If Japan received a request from another country for assisting in the execution of the other country’s final confiscation or collection of equivalent value order, and the requesting country requests Japan to transfer property obtained by providing the assistance or an amount of money equivalent in value Article 64-2 of the Act on the Punishment of Organized Crime is available. Japan may transfer the whole or part of such property or amount, if the Justice Minister finds such transfer appropriate, to the requesting state.

Additional Element on enforceability of non conviction based orders

1005. Japan can enforce some foreign civil judgments. The judgement must satisfy the requirements of Article 118 of the Code of Civil Procedure. In addition, for enforcement purposes, Article 22, subparagraph 6, of the Law of Civil Execution, applies. Article 118 requires cumulative compliance with four preconditions, including reciprocity. This last condition, in light of the fact that Japan has conviction based on confiscation; this appears to be an insurmountable obstacle.

Recommendation 32 (Statistics)

1006. Law enforcement in Japan keeps statistics on the numbers of requests for assistance through diplomatic channels, requests through Interpol channels and requests for assistance exchanged with other central authorities under MLATs. The number of requests made or received by the NPA in a five-year period between 2002 and May 2006 is as follows:

Number of requests for Criminal Investigation Assistance from overseas

	2002	2003	2004	2005	2006	2007
ICPO Channel	827	985	1085	856	1193	995
Diplomatic Channel	19	13	13	30	25	14

Note: Requests through diplomatic channel in 2006 and 2007 include MLAT.

Number of requests for Criminal Investigation Assistance to overseas

	2002	2003	2004	2005	2006	2007
ICPO Channel (Cases)	871	817	534	485	483	458
Diplomatic Channel	15	10	14	14	30	26

Note: Requests through diplomatic channel in 2006 and 2007 include MLAT.

1007. This table reveals that between 2002 and 2006 the Japanese police received 4946 requests through Interpol channels, which all involved essentially non-coercive measures. In the same period they participated in 100 LIAI focused requests (through diplomatic channels). Conversely the requests from Japan in the same period were 3190 through Interpol channels and 83 through diplomatic channels.

1008. The relevant law enforcement statistics were also broken down for money laundering and terrorist financing cases. The following table reveals that there were 50 Interpol channelled cases for money laundering and 37 of terrorism. Conversely Japan submitted 24 of its own money laundering and 20 terrorism cases through Interpol channels.

1009. The Ministry of Justice's International Affairs Division maintains statistics on the number of requests received for assistance (number of cases on which the International Affairs Division forwarded the received requests to authorities that execute the request) and the number of cases in which Japan requested assistance from other countries (number of cases on which requests were sent from the International Affairs Division to the Ministry of Foreign Affairs or to the central authorities of the countries that are parties to an MLAT with Japan). The numbers of cases count only the number of requests that were formally received or sent and the figures reveal that Japan received 199 requests and it generated (by public prosecutors offices, not including requests generated by police or other investigative authorities) 51 cases to other countries between 2002 and 2007.

Requests received for assistance

		Money laundering	Predicate offences	Terrorist financing
2002	Number of cases	1	26	0
	Assistance provided	1	25	
2003	Number of cases	4	15	0
	Assistance provided	4	15	
2004	Number of cases	1	21	0
	Assistance provided	1	21	
2005	Number of cases	6	62	0
	Assistance provided	6	62	
2006	Number of cases	3	30	0
	Assistance provided	2	28	
2007	Number of cases	2	28	0
	Assistance provided	2	20	

Requests sent for assistance

		Money laundering	Predicate offences	Terrorist financing
2002	Number of cases	0	9	0
	Assistance provided		6	
2003	Number of cases	1	7	0
	Assistance provided	1	3	
2004	Number of cases	1	3	0
	Assistance provided	0	2	
2005	Number of cases	0	7	0
	Assistance provided		6	
2006	Number of cases	0	12	0
	Assistance provided		9	
2007	Number of cases	1	10	0
	Assistance provided	1	4	

6.3.2 Recommendations and Comments

1010. All LIAI requests for mutual legal assistance must be submitted through diplomatic channels. The LIAI process requires specific recommendations and advice throughout the submission stage to the Minister of Justice. Once the requested evidence is gathered each party must submit the evidence through internal domestic channels with an opinion on the evidence. The process was described to be efficient but the standard obligation to process the evidence, with written opinions may operate to delay mutual legal assistance requests and responses to such requests. Japan should reconsider its requirement to add layered opinions concerning the evidence it collects for a mutual legal assistance request.

1011. The absence of the Palermo Convention, as a relevant multilateral provision, is a significant gap. As a result a request for assistance in a serious crime covered by the Palermo Convention could only be advanced by means of case specific agreements. That is an impediment to timely constructive and effective provision of mutual legal assistance. The process required under the LIAI was described as seamless and efficient. However the use of diplomatic channels, as opposed to clear channels of communications for criminal matters, slows urgent requests. Article 2, item 2 of the LIAI mandates a strict dual criminality requirement. Item 3 of that article goes further to create a restriction concerning the “indispensability” of the evidence requested. That appears to be both chilling and unnecessarily restrictive, relative to a foreign request for investigative assistance in a foreign crime. It is recommended that Japan reevaluate both restrictions in the LIAI.

1012. The LIAI goes on to require that the police or prosecutor delegated with the obligation to collect the requested evidence must be satisfied that such evidence is necessary. In addition the court, before it issues a coercive evidence gathering order has to be satisfied that the evidence is indispensable. Japan, over the past 5 years has, depending upon the source of the statistics, received 100 or 199 requests for mutual legal assistance. The total number, for a country of Japan’s population, financial status and stated money laundering problems, is low. The impediments contained in Article 2 of the LIAI, as compared to the more reasonable resolution of the issue in the two MLATs, supports a suggestion that Japan re-evaluate the existing restrictions and its broader request processing approach, especially given the low number of bilateral MLATs.

1013. If coercive court orders are obtained under LIAI to obtain evidence from some individuals, the Code of Criminal Procedure would apply. In light of Article 105 of the Code of Criminal Procedure, if the evidence required for the investigation is in the possession of a category of individuals or professions. Such persons may refuse seizure. Some classes of witnesses may refuse to answer or assist. In addition even if the claim for privilege by professionals, was made, unless the professional could substantiate the claim with the *prima facie* showing, the law enforcement authority can conduct the search and seizure results either in the abandonment of the search or in rare instances the seizure of the thing. After the seizure has undertaken, the professional has the right to challenge the search and seizure. If that challenge is successful, as advised by the Japan Federation of Bar Association, the thing may not be produced.

1014. Japan’s provision on dual criminality is strict and broad. It is broad simply because it applies to all requests, other than those advanced under a bilateral treaty and Japan only has two such treaties. Japan advised that it flexibly applies its dual criminality requirement. No flexibility can fill serious gaps that operate to defeat proper criminal investigations in a requested country. It may be possible to negotiate around the dual criminality restriction, as contemplated by Article 2, item 2 of the LIAI. However such an approach is limited to bilateral treaties. Dual criminality exists as a statutory precondition, for all purposes in all other cases. It is clear that no mutual legal assistance can be provided if the foreign offence is unknown in Japan. This deficiency is seen in a foreign criminal conspiracy charge. The requesting country, assuming that it applied, through the LIAI process, for assistance in its criminal conspiracy investigation, would not satisfy Article 2, item 2.

1015. The authority for Japan to enforce a foreign confiscation order against property other than “funds” as covered by Japan’s Act on the Punishment of Financing of Offences of Public Intimidation, in light of the obligation to have a dual criminality precondition to LIAI assistance, can mean that another country investigating other property or assets, which would not be “funds” as covered by Japan’s domestic criminal provision, could not depend upon Japan’s prompt assistance in a terrorist financing investigation. Japan should re-examine its approach to terrorist funds.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	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.
R.37	PC	<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 persons.
R.38	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.
SR.V	PC	<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.

6.4 Extradition (R.37, 39, SR.V)

6.4.1 Description and Analysis

General

1016. Extradition from Japan is governed by the Law of Extradition as amended up to Law No. 84 of 2004, hereinafter referred to as the Extradition Act. The Extradition Act allows for extradition where the conduct for which extradition is sought is punishable by a custodial sentence of 3 years or more in both the requested and requesting states. Under the provisions of the Extradition Act, Japan cannot extradite its own nationals. However the extradition of a national may be specifically included in extradition treaties between Japan and other states.

1017. Japan has two extradition treaties. The first, a renegotiated and the revised Treaty between Japan and the United States came into force on March 26, 1980. The second treaty is with South Korea. It came into force on June 21, 2002. Both treaties provide for discretion to extradite a national of Japan. In light of the absence of a large number of extradition treaties this evaluation shall focus on the Extradition Act. Extradition Treaties will, as required, be referenced to illustrate alternatives or exceptions to the more common requests by the Extradition Act.

Provision of extradition in AML/CFT

1018. Article 3 of the Extradition Act envisages a request for extradition submitted through diplomatic channels. The originating submission is, pursuant to Article 3, sent to the Ministry of Foreign Affairs (MOFA). That submission requires a request for surrender by Japan consistent with restrictions set out in Article 2 and an undertaking concerning reciprocity with Japan in a request from Japan.

1019. Article 2 of the Extradition Act creates 9 separate exclusionary criteria for surrender of a fugitive, as follows:

- No extradition for a political offence (Article 2(1)).
- No extradition if the request is deemed to have been made to punish for a political offence (Article 2(2)).
- No extradition if the offence is punishable by a maximum term of less than 3 years (Article 2(3)).
- No extradition if the offence would not be punishable by Japan under its laws, regulations or ordinances for a term of 3 years or more (Article 2(4)).
- No extradition if it would be impossible to impose or execute punishment upon the fugitive if the act occurred in or was tried in Japan (Article 2(5)).
- Except for a request to surrender to serve sentence, no extradition absent probable cause to suspect the fugitive committed the offence (Article 2(6)).
- No extradition while a prosecution of the fugitive is pending or finalized in Japan (Article 2(7)).
- No extradition while the fugitive is serving or about to serve a sentence in Japan (Article 2(8)).

- No extradition where the fugitive is a Japanese national (Article 2(9)).

1020. Japan criminalized money laundering and related offences relative to proceeds of crime in two laws, the Law Concerning Special Provisions for the Narcotic and Psychotropic Control Law, hereinafter referred to as the Anti-Drug Special Provisions Law, and the Act on the Punishment of Organized Crime, Control of Crime Proceeds and Other Matters Act, hereinafter referred to as the Act on the Punishment of Organized Crime. They provide for a maximum punishment of five years for a money laundering offence and a maximum punishment of three years for receiving proceeds of crime offence. As a result either predicate offence is an extraditable offence in Japan.

1021. As at March 2008, Japan had extradition obligations through two (2) bi-lateral treaties. In addition multi-lateral extradition obligations, seen in the Suppression of the Financing of Terrorism Convention but also in provisions in the 1988 Vienna Convention and the OECD's Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, permit parties to those conventions to look to Japan to consider extradition in appropriate cases. Japan has signed but not yet ratified the Palermo Convention. However almost all of the relevant offences in that convention, other than conspiracy, are now found in the Act on the Punishment of Organized Crime. As a result the Extradition Act, which requires that an offence be punishable by 3 years or more, would permit the surrender of a Japanese resident, other than national, for those offences. In all other relevant crimes the provisions in the two existing bilateral extraction treaties, together with Conventions and the recent provisions in the Act on the Punishment of Organized Crime allow Japan to consider requests from other states for the surrender of non-nationals to a requesting state.

1022. Article 3 of the Extradition Act contemplates extradition from Japan to countries with which it does or does not have a formal extradition treaty. The law provides for extradition proceedings in a specified court in Japan (i.e. the Tokyo High Court). Two significant conditions apply, the first is, absent an extradition treaty the offence must provide for a sentence of 3 years or more and the second is that Japanese nationals cannot be surrendered. Different considerations apply to Japan's two bilateral treaties.

1023. The Japan-United States Extradition Treaty and the Japan- Republic of South Korea ameliorates the Extradition Act's restrictions concerning a relevant extradition offence's punishment and the complete prohibition on the extradition of nationals. Each Treaty provides for the possible extradition of nationals from Japan and the maximum sentence for an offence suitable for surrender is one year or more.

Japan's extradition process

1024. For all extradition requests to Japan the MOFA receives the diplomatic note containing the request to surrender a fugitive. MOFA, if satisfied on the issue of reciprocity or compatibility of the request with applicable extradition treaty, is required to send the request on the Minister of Justice for the Ministers consideration and action pursuant to Article 4 of the Extradition Act. The International Affairs Division, Criminal Affairs Bureau, Ministry of Justice is the relevant central authority for Japan to receive the requests forwarded by MOFA. On behalf of the Minister, this Division is responsible for reviewing the requests and determining if the request is appropriate. It initiates the practical arrangements when extradition is to take place. The Division liaises with requesting states and instructs the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to request the Tokyo High Court to examine if the received request fits into a case where the offender is extraditable (Article 4).

1025. The public prosecutor of the Tokyo High Public Prosecutors Office requests and if warranted by the Tokyo High Court then execute the order of the fugitive's detention (Articles 5 to 7) and requests the Tokyo High Court to examine the case and decide if the offence in question fits into a case where the offender is extraditable (Article 8). If the public prosecutor has the offender detained, the prosecutor must

request the court's examination within 24 hours of the time of the detention of the offender. At the request of the public prosecutor, the Tokyo High Court must promptly begin the examination and decide on the issue of surrender. If the offender is detained, pursuant to article 9, the court must decide on surrender within two months of the date of his/her detention. If the court decides on extradition, and, pursuant to Article 14, the Minister of Justice finds it appropriate; the Minister of Justice, within 10 days, shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to extradite the offender. The fugitive is surrendered, in accordance with article 15, within 30 days counted from the day following the day of the day of the order by the Minister of Justice.

Extradition of nationals

1026. Article 2 paragraph 9 of the Extradition Act specifically prohibits the surrender of a Japanese national unless an extradition treaty otherwise provides. Discretion to extradite nationals is authorized by Article 2 of the Extradition Act. As a result the law's prohibition against the surrender of nationals applies for all other purposes to all other states that do not have a bilateral treaty with Japan that provide for the discretion of extraditing Japanese nationals.

1027. The Japan-United States and Japan-Korea Extradition Treaties ameliorate the Extradition Act's Article 2, items (3), (4) and (9) restrictions concerning a relevant extradition offence's punishment (3 years or more) and the complete prohibition on the extradition of nationals. The Treaties provide for the possible extradition of nationals from Japan where the relevant term of imprisonment is 1 year or more

Extradition for money laundering without undue delay

1028. Japan's Extradition Act contemplates that every request to surrender a fugitive will be dealt with expeditiously. Article 8 starts many of the cases with an examination within 24 hours of the time of the detention of the offender or the time of the receipt of already detained offender. At the request of the public prosecutor, the Tokyo High Court must promptly begin the examination and decide. Article 9 provides that if the offender is detained a surrender decisions must be made within two months of the date of the fugitive's detention. Assuming a court agrees to the surrender and the Minister of Justice finds it appropriate, the Minister of Justice shall order the Superintending Prosecutor of the Tokyo High Public Prosecutors Office to extradite the offender. The extradition must be made, in principle, within 30 days counted from the day following the day of the order from the Minister of Justice.

Additional elements

1029. Japan requires all extradition requests to be submitted through diplomatic channels. Articles 23 to 31 of the Extradition Act provide for the provisional arrest of a fugitive. The provisional detention process commences with a request through diplomatic channels to MOFA. The lines of communication and approval of a formal extradition request apply to a request for provisional detention in anticipation of an extradition request. Article 29 provides that provisional detention is effective for two months (unless shorter period is determined in applicable extradition treaty) while the requesting state determines if will apply to extradite the fugitive and if the request was made, then the domestic process up till the Super Intending Prosecutor of the Tokyo High Public Prosecutors Office notify the detainee as required in the Article 27. Other than provisional arrest Japan has no simplified extradition procedures for a fugitive that consented to his/her extradition.

Recommendation 37

1030. Article 2, items 3 & 4 of the Extradition Act requires that the offence justifying the surrender of a fugitive must also be punishable under the laws, regulations or ordinances of Japan and the requesting country with the possibility that a sentence of death, life imprisonment or a punishment of 3 years or more.

In addition the criminal act also has to be an offence in Japan. Item 5 of Article 2 requires that no extradition would occur if it would be impossible for Japan to impose the sentence if the offence was committed in Japan or if the trial was held in a Japanese court.

1031. The preliminary consideration for dual criminality is that the requested state should ensure that its law does not restrict the analysis of dual criminality unreasonably. Japan does not take an unreasonably restrictive interpretation of dual criminality

1032. Japan advised the team that its courts do not examine the issue of dual criminality rigidly. One case, *Hanrei-Jihou No. 1305*, p.150, Tokyo High Court Case Review, March 30, 1989, interpreted the issue as follows:

“in considering dual criminality, it is not appropriate to simply compare the facts that are applied to the constituent element of offence because the manner by which one country defines the constituent element of offence differs from that adopted by another country in more than a few cases. We should examine if any act which would be regarded a criminal act under Japanese law is included among the facts, focusing attention on social facts while eliminating component of the constituent elements of the offence”

1033. In another case, decided on 30 March 1989, the Tokyo High Court determined that the request for extradition was satisfied because of facts which also involved the transportation of U.S. dollars in furtherance of a conspiracy charge in the requesting state. The court determined that the movement of the money at least fit into the offence of aiding imports of heroin under Japanese law. This case provides a useful illustration of the length that the court could go to fit an extradition request into the dual criminality requirement of Japan’s law.

1034. While these cases demonstrate flexibility they should be considered on the basis of the facts in the request relative to each case. As long as there are specific acts in furtherance of the conspiracy, which would be unlawful acts if they occurred in Japan, a court was prepared to surrender the fugitive. Absent such evidence the dual criminality requirement would bar an extradition request for a conspiracy offence. This is due to the fact that no conspiracy offence currently exists in Japan. The same limitation would also eliminate any chance for a domestic prosecution of a Japanese national in Japan in lieu of extradition.

1035. One solution to this difficulty is found in article II of the Japan-United States Treaty. The treaty provides a broad approach to criminal conduct through its incorporation, as a schedule to the Treaty, of numerous categories of relevant offences. Item 47 of the schedule includes “attempt, conspiracy, assistance, solicitation, preparation for, or participation in, the commission of any of [scheduled] offences”.

1036. The reference to conspiracy in that treaty is significant since Japan does not have a conspiracy offence in its criminal law, at the present time. As a result, for all other countries, any extradition request advanced on the basis of a conspiracy offence may have a problem with dual criminality. In addition, a domestic prosecution may be impossible. As a result an extradition request on the basis of such a foreign offence may become a barrier to surrender by Japan.

1037. This may not be a serious deficiency if a domestic prosecution is a reasonable alternative. This alternative suggests a secondary consideration to dual criminality through domestic prosecutions in lieu of extradition.

Domestic prosecution in lieu of extradition

1038. Japan has a broad extraterritorial jurisdiction in its Penal Code; the Act on the Punishment of Organized Crime; the Anti-Drug Special Provisions Law or, for terrorist funds, the Act on the Punishment of Financing of Offences of Public Intimidation. Those laws allow Japan to prosecute its nationals who are

alleged to have committed money laundering or who have acquired possession of proceeds of crime from drugs, serious crimes and terrorism offences. Japan's statistics on extradition reveal very few extradition requests. However on the basis of the statistics provided, as outlined below on statistics, out of 14 extradition requests 6 were refused. There was no evidence that a domestic prosecution was undertaken or considered in any of those 6 cases, indicating that none involved money laundering. In one the person was serving a sentence in Japan after which the person was removed from Japan. In 3 other cases the persons were not in Japan, while in the remainder other deficiencies in the request justified a decision not to extradite.

1039. Japan can request the foreign state to assist it in its domestic prosecution of a national. There is no barrier to such a request but for the fact that Japan only has two MLATs and two Extradition Treaties. In every other case Japan would have to rely upon good relations with and a reasonable expectation that a country requesting extradition, knowing of Japan's prohibition against extradition of its nationals, would be prepared to provide the evidence required for a Japanese domestic prosecution.

1040. Japan's maximum 3 year sentence for receiving proceeds of crime, with the absence of an offence of possession of proceeds of crime; illustrate a reason to consider this issue. The Extradition Act requires that the punishment for the extradition offence must be 3 years or more, unless that length of sentence is ameliorated in a bilateral treaty. The offence of receiving proceeds of crime provides for a maximum of 3 years, while the money laundering offence also satisfies the Act's requirements. However a country that criminalizes possession of proceeds of crime that were not acquired from another's crime (i.e. they possess their own proceeds) would not be committing an extraditable offence in Japan. Japan's provision is an acquisition offence rather than a possession offence.

1041. As previously indicated there is no requirement in the Extradition Act requiring officials to submit the foreign evidence, used or available in support of a request to surrender a Japanese national or residents, to authorities for prosecution consideration under Japan's domestic laws. The point is that a requesting state, by asking for surrender and assuming the costs for advancing a request, believes that the offence and the offender should be prosecuted. As a result, since a Japanese national cannot be extradited and neither a resident nor national may be extradited for conspiracy a gap is evident in the prosecution of crime. In addition, as described below the possibility of their prosecution, should be considered to be remote.

1042. The issue of dual criminality is relevant to the question of a domestic prosecution in Japan in lieu of an extradition option. In Recommendation 1 the actual number of prosecutions, as compared to cases cleared by the police was considered. The team received a pamphlet from Japan's Supreme Prosecutors Office. That pamphlet revealed that, for 2007, there was an 0.07% acquittal or dismissal rate for prosecutions that were undertaken in Japan. That is a noteworthy achievement by prosecutors. However examining the statistics from the perspective of the initialisation of a prosecution, rather than from results of a prosecution, in 49.6 % of all cases considered for prosecution no prosecution was instituted by Japanese prosecutors. There would obviously be a wide variety of reasons for a decision not to prosecute but the statistical number of non prosecutions in Japan is very high. This reality has to impact the possibility of Japan undertaking a domestic prosecution in lieu of extradition. In fact prosecutors advised that they would not prosecute a person in possession of their own proceeds of crime, acquired from foreign drug offences outside of Japan, since those proceeds were not received as required by the relevant offence in the Act on the Punishment of Organized Crime or Anti-Drug Special Provisions Law. In addition the prosecutors further advised that a foreign case built upon circumstantial evidence would generally not be prosecuted in Japan as a domestic case.

Recommendation 39 and SR V

1043. In the financing of terrorist regime used by Japan responds to the obligation to freeze using its Foreign Exchange and Foreign Trade Act, hereinafter referred to as the Foreign Exchange Act. Japan primarily addresses this obligation through reliance upon a licensing process in its Foreign Exchange Act to provide for the freezing obligation imposed by the Suppression of Terrorist Financing Convention and the UNSC Special Recommendation. The punishment for an offence contrary to the Foreign Exchange Act provides for a maximum term of prison for three years.

1044. Japan’s Act on the Punishment of Financing of Offences of Public Intimidation established two offences relative to the collection and solicitation of “funds”, which is an inadequately defined concept. The maximum punishment for those offences is 10 years. This ensures that the offence is a relevant extraditable offence. However the scope of the concept of funds, in the context of that law, the Foreign Exchange Act and the Act on the Punishment of Organized Crime raises a concern that other property would not be covered as an offence within Japan’s CFT regime. As a result both of the relevant terrorist financing laws are sufficient, as far as they go, to find that they are extraditable offence. The problem is that they do not go far enough to satisfy the Special Recommendations. They apply to funds alone. As important they are offences covered by articles 3 and 4 of the Penal Code for the purposes of jurisdiction to undertake a prosecution in Japan.

Recommendation 32 –Statistics

1045. The International Affairs Division maintains statistics on the number of requests received for extradition and the number of cases in which Japan requested extradition from other countries (number of cases on which requests were sent from the International Affairs Division to the Ministry of Foreign Affairs.

Number of requests of extradition of offenders received by Japan

Year	2002	2003	2004	2005	2006	2007
Money Laundering	0	0	0		0	0
Predicate Offences	3	2	2	6	1	8
Terrorist financing	0	0	0		0	0

Number of requests of extradition of offenders sent by Japan

Year	2002	2003	2004	2005	2006	2007
Money Laundering	0	0	0		0	0
Predicate Offences	0	0	0		0	0
Terrorist financing	0	0	0		0	0

6.4.2 Recommendations and Comments

1046. Japan’s receiving of proceeds of crime offences and its offence under its Foreign Exchange Law each provide for a maximum offence of 3 years in prison. Article 2 of the Extradition act specifies that the punishment for an offence justifying extradition must be 3 years or more. In Japan’s Extradition Treaty

with the United States the relative range of sentence is a period of more than one year. Japan should reconsider the 3 years sentence requirement for extradition in all non-treaty requests.

1047. Japan officials argue that its dual criminality and extended jurisdiction provision in the Penal Code, Act on the Punishment of Organized Crime and Anti-Drug Special Provisions Law cumulatively mean that it can institute a domestic prosecution against a national for a crime that would otherwise be extraditable. However the incidence of actual prosecutions, as opposed to cases that are not prosecuted, demonstrates the reality that a domestic prosecution may not occur. Indeed prosecutors advised that they would not prosecute a person in possession of their own proceeds of crime, acquired from foreign offences outside of Japan, since those proceeds were not received as required by the relevant offence in the Act on the Punishment of Organized Crime or Anti-Drug Special Provisions Law. In addition the prosecutors further advised that a foreign case built upon circumstantial evidence would generally not be prosecuted in Japan as a domestic case.

1048. The absence of a conspiracy offence, in spite of the extradition case decision to the contrary, absent evidence that would otherwise support a domestic prosecution, eliminates any possible extradition request for such an offence. Japan advised that it was creating a conspiracy offence to comply with obligations in the Palermo Convention.

1049. Japan should clarify its Extradition Act and create a provision requiring the submission of the requesting material in any case where extradition is refused on the basis of the nationality to the prosecution authorities for consideration as a domestic prosecution. In addition Japan’s prosecution authorities should be required to consider the foreign evidence, used or available in support of an extradition of a Japanese national, to support a prosecution under Japan’s domestic laws.

1050. The terrorist financing law in Japan specifically limits the relevant property to “funds”. That could have a negative effect on Japan’s authority to extradite under the Extradition Law. It could also prevent a domestic prosecution of a national of Japan, assuming that sufficient evidence existed to undertake that alternative. Japan should reconsider the definition of funds in its Act on the Punishment of Financing of Offences of Public Intimidation.

6.4.3 Compliance with Recommendations 37 & 39, and Special Recommendation V

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	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.
R.37	PC	<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.
SR.V	PC	<ul style="list-style-type: none"> • The three 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

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
		<p>property or assets.</p> <ul style="list-style-type: none"> As dual criminality is required, the limitation in the MI and TF offences limits the extent and effectiveness of Japan's ability to grant extradition requests.

6.5 Other Forms of International Co-operation (R.40 & SR.V)

6.5.1 Description and Analysis

Supervisory Authorities

1051. For supervisory authorities in general, exchange of information other than personal information held by supervisory authorities can be exchanged without any restriction. Article 4(xxiv) of the Act for Establishment of the FSA authorises it to engage in international cooperation related to its responsibilities. The team was told that similar provisions are in place for the other supervisory bodies. Exchange of information regarding personal information held by supervisory authorities are, in principle subject to the Act on the Protection of Personal Information (APPI) held by Administrative Organs (whereby supervisory authorities are included in the definition of administrative organs in Article 2(1)(iii) of APPI held by Administrative Organs). Article 8, paragraph 1 of the APPI held by Administrative Organs states that “the head of an Administrative Organ shall not, except as otherwise provided by laws and regulations, [...] provide another person with retained personal information for purposes other than the purpose of use.” Article 8 paragraph 2 of the Act states that notwithstanding the provision in Article 8(1), provision of retained personal information may be allowed provided that there are “special grounds” for providing this information. Exchange of information with foreign authorities for international cooperation constitutes a special ground according to the interpretation by the Ministry of Internal Affairs and Communications. Therefore, information exchange with foreign counterparts is presumed to fulfil this condition. Then, the decision to exchange information is taken on a case-by-case basis.

1052. Taking these elements together, the assessment team accepts that supervisory authorities are able to provide the widest range of international cooperation to their foreign counterparts, and that such exchanges of information should be possible both spontaneously and upon request. However, in the absence of statistics, the evaluation team was not able to assess the effectiveness of this system.

FSA

1053. As the financial institutions with international presence are supervised mainly by the FSA, as a matter of practice, the FSA is the main supervisory authority engaged in international cooperation matters. The FSA is authorised under Article 4(xxiv) of the Act for Establishment of the FSA to engage in international cooperation related to its responsibilities. International cooperation matters are under the charge of the International Affairs Office in FSA, with 38 officers under the supervision of 2 deputy commissioners for international affairs. Officers engaged in international cooperation are also stationed in relevant departments at the Inspection and Supervisory Bureaus and SESC in FSA.

1054. The FSA participates in various multilateral and bilateral forums with its regulatory counterparts. It is a member of the Basel Committee on Banking Supervision (BCBS), the International Organisation of Securities Commissions (IOSCO), the International Association of Insurance Supervisors (IAIS) and the Financial Stability Forum. On a bilateral basis, the FSA has been holding regular meetings with its foreign counterparts in the US, European Union, Germany, China, Korea and Singapore.

MOUs

1055. In the banking sector, the FSA has signed bilateral Exchange of Letters with some countries while in the securities sector, the IOSCO multilateral MOU (MOU) and concluded bilateral MOUs with six securities exchange regulatory authorities (Australia, China, Hong Kong, New Zealand, Singapore and US). In the insurance sector, the FSA is considering the MOU framework established by IAIS in 2007.

1056. Regardless of whether MOUs have been signed, the FSA has exchanged supervisory information with foreign counterparts. For example, the FSA's Inspection Bureau has exchanged information with host country authorities when it conducts onsite inspection of Japanese banks' overseas offices, and also with foreign regulators when they conduct onsite inspections of their regulated financial institutions' offices operating in Japan. The FSA has also posted a resident inspector to New York, London, Hong Kong and Singapore to facilitate cooperation with the overseas authorities and to examine the actual situation of overseas financial institutions.

Inquiries on behalf of counterparts and response to inquiries

1057. For the securities sector, the FSA can make inquiries on behalf of foreign authorities based on Article 189 of the Financial Instruments and Exchange Act providing for cooperation with foreign authorities. Information obtained through these means is for supervisory purposes, and cannot be submitted as evidence in court (this will require a mutual legal assistance request). There have been three sanction cases by foreign securities supervisors based on information provided by the FSA to its counterparts on a voluntary basis.

1058. For other sectors including banking, although there has been no express legal provision regarding information exchange with foreign supervisory authorities, FSA has confirmed that Article 4(xxiv) of the Act for Establishment of the FSA, which empowers FSA to engage in international cooperation, gives it general power to exchange information with foreign supervisory authorities. For instance, it has received requests in banking, securities and insurance for confirmations of the good standing of financial institutions or persons, and usually responds to these queries within 2 to 3 weeks.

1059. Information that the FSA has obtained is covered by the confidentiality requirements of the National Public Service Act.

JAFIC

1060. Article 12 of the Act on the Prevention of Transfer of Criminal Proceeds allows the share of information on suspicious transactions between JAFIC and foreign FIUs. JAFIC consent is required when this information is intended to be used for investigation on criminal cases. Paragraph 3 of the Article set forth cases in which this consent has to be refused: when investigating on a political crime, when the act subject to investigation does not constitute a crime in Japan and when reciprocity is not ensured.

1061. Since its creation in 2007, JAFIC has established an information exchange network with 12 countries and is negotiating with about 40 other countries and regions. So far, it received 25 requests and responded within 2 or 3 days. It appears that the number of STRs exchanged by the FIU with its foreign counterparts is very small, in particular by comparison with the number of requests received from foreign countries and that Japan's FIU does not provide information spontaneously.

Information exchange with foreign FIUs:

		2003	2004	2005	2006	2007
Information requested by foreign FIUs		47	69	66	46	42
Information disseminated by the FIU	STRs	2	0	6	3	3
	Related information except STRs	12	16	16	6	7
Information spontaneously disseminated by the FIU		0	0	0	0	0
Information received from foreign FIUs		0	1	3	7	33
Information received by the FIU	At the FIU request	0	0	0	0	16
	Spontaneously	0	1	3	7	17

NPA

1062. The Police issued in 2005 the “Guidelines for the Promotion of International Cooperation” setting some basic policies and practices for international cooperation, participates in international conferences (i.e. the Asia-Pacific Operational Drug Enforcement Conference and the Seminar on Control of Drug Offences) and has signed MOUs with the Public Safety Division of China in August 1999; the National Police Agency of Korea in March 2001; and with the Australian Federal Police in February 2006.

1063. As an Interpol member, the NPA uses Interpol’s channels for information exchange, and participates in a database project (IMLASS Project) currently under development in order that Interpol will be able to facilitate information exchange among FIUs. This database should include information related to suspicious transaction and information under investigation within the FIU could be checked with the Interpol database.

1064. Besides the MOUs, the International Criminal Investigation Assistance Law set forth the mechanism to be used when a request of a foreign state is received through diplomatic channel. Minister of Justice gives an order, when he deems it appropriate to respond to the request, to the appropriate District Public Prosecutor's Office to procure the necessary evidence for the assistance or forward it to the National Public Safety Commission. The National Public Safety Commission shall, on receiving the dossier, give directions, in transmitting the documents concerned, to an appropriate Prefectural Police to procure evidence necessary for the assistance (Article 6). The Prefectural Police then effect dispositions for procuring evidence necessary for the assistance (Article 7). With regard to this request, the police may question the concerned person; make a request for expert evidence; effect non-compulsory inspection; and effect search and seizure or inspection upon a warrant issued by a judge (Article 8). The same procedure applies to the case of requests for cooperation from International Criminal Police Organization (ICPO) in investigating a criminal case of a foreign country.

1065. Conditions under which assistance may be refused to a foreign country request are set forth in the International Criminal Investigation Assistance Law:

- When the crime for which assistance is requested is a political offence, or when the request for assistance is deemed to have been made with a view to investigating a political offence (Article 2, Item 1).

- When, except as otherwise provided in a treaty, if the act constituting the crime for which assistance is requested were performed in Japan, such act would not constitute a crime under the laws of Japan (Article 2, Item 2).
- With regard to a request for examination of a witness or submission of real evidence, when, except as otherwise provided in a treaty, there is no document wherein the requesting state has made it clear that the requested evidence is essential to the investigation (Article 2, Item 3).
- When the request for assistance has been made on the basis of a treaty and when the request does not satisfy the requirement of the treaty (Article 4, Item 1).
- When the request for assistance has been made not on the basis of a treaty, if there is no guarantee from the requesting state that it will honour a request of the same kind from Japan (Article 4, Item 2).

Customs

1066. Article 108-2 of the Customs Law set the conditions under which information can be shared with foreign authorities: the Minister of Finance may provide foreign authorities with information he considers of value to the execution of their duties, except in the cases where sharing this information would cause trouble to the proper enforcement of customs laws and regulations or infringe the interests of Japan.

1067. In addition, conditions of reciprocity and confidentiality as well as the insurance that the information won't be used by the foreign customs authorities for another purpose than the execution of their duties are required. The fiscal nature of the information does not prescribe its exchange.

1068. Besides this general framework, the Japanese Customs have concluded Customs Mutual Assistance Agreements with the United States, Korea, China and the European Community and has arrangements with Australia, New Zealand, Canada and Hong-Kong, China.

1069. In July 1993, the Customs Authority established the International Intelligence Office as an office specialized in international information exchanges and that constitutes a central contact point for the Japanese customs in term of information sharing. However, as mentioned in Section 2 of this report, Japanese Customs deal with predicate offences to money laundering, but not directly with money laundering.

Confidentiality

1070. Legal professions have a confidentiality obligation. Article 23 of the Practicing Attorney Act stipulates that "a practicing attorney or a person who was previously a practicing attorney shall have the right and duty to maintain the secrecy of any facts which he/she came to know in the performance of his/her profession; provided, however, that this shall not apply when otherwise provided for by any law". This provision applies *mutatis mutandis* to the foreign lawyers in Japan (Article 50 of the Foreign Lawyers Act). Article 24 of the Judicial Scrivener Law "A judicial scrivener or a person who was previously a judicial scrivener shall not, without due reason, divulge to others the confidential matters known to him or her through his or her practice". The Japanese authorities assured the assessment team that even if these legal professions objected the search, unless the professional could substantiate the claim with the prima facie showing, the law enforcement authority can conduct search and seizure. However, the professional can challenge the search and seizure. If it is successful, the thing may not be produced.

1071. There is no specific provision on the utilization and safeguard of exchanged information. Therefore the general provisions of the National Public Service Act and Local Public Service Act that establish high confidentiality and ethics standards are applicable.

6.5.2 Recommendations and Comments

1072. The assessment team is concerned about the absent of spontaneous STRs exchanges with foreign countries from 2003 through 2007 and very small number of STRs exchanged with foreign FIU, in particular by comparison with the number requests received from foreign countries.

1073. Except for the FIU, no statistics have been provided by Japan to prove the effectiveness of international cooperation between Japanese competent authorities and their foreign counterparts.

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	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 the effectiveness of international cooperation with foreign counterparts.
SR.V	PC	<ul style="list-style-type: none"> • The factors underlying the rating of Recommendation 40 are also valid to SR. V.

7. OTHER ISSUES

7.1 Resources and statistics

1074. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report *i.e.* all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	LC	<ul style="list-style-type: none"> • JAFIC needs to increase its human resources involved in STRs analysis.
R.32	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.

7.2 Other relevant AML/CFT measures or issues

1075. A potential money laundering vulnerability stems from the continued presence of anonymous bank debentures (including bearer bonds) in the financial system. Prefectural police agencies indicated that such instruments have historically been one of the preferred methods used by Japanese organized crime syndicates to launder money and the potential that such activity continues must be considered. However, Japanese authorities state that, in response to a non-binding government request⁶⁶, financial institutions have voluntarily suspended their issuance since the enactment of the Customer Identification Act in 2003. As a result, Japanese authorities assess that the outstanding amount in circulation has been steadily decreasing and are in a *de facto* process of phasing out given that the maximum maturity of these previously issued instruments was typically five years.⁶⁷

1076. Statistics provided by FSA indicates that the number of anonymous bank debentures (including bearer bonds) in circulation has been declining over the past several years although JPY 2.2 trillion worth remain outstanding.

Year	1999	2000	2001	2002	2003	2004	2005	2006	2007
Outstanding (trillion Yen)	5.7	5.5	4.8	4.1	3.5	3.0	2.6	2.5	2.2

1077. These instruments fall under the money laundering controls of the Act on the Prevention of the Transfer of Criminal Proceeds at issuance and redemption. Article 8, paragraph 1 (i) (p) of the Order requires customer identification of occasional customers who either purchase or present bearer negotiable instruments for redemption.⁶⁸

Year	2004	2005	2006	2007	Total
Number of cases	1 365	1 222	1 558	1 602	5 747

7.3 General framework for AML/CFT system (see also section 1.1)

1078. There are no further issues to be discussed in this section.

⁶⁶ This request occurred in 2003 – no further information is available.

⁶⁷ There are four categories of financial institutions permitted to issue bearer negotiable instruments (including bearer bonds) under Japanese law. These include long-term credit banks, shinkin banks, the Norinchukin Bank and the Shokochukin Bank pursuant to the Long-Term Credit Bank Act, the Credit Bank Act (Shinkin Bank Act), the Norinchukin Bank Act, and the Shokochukin Bank Act, respectively. Long-term credit banks no longer exist. There are a total of three financial institutions which are currently licensed to issue these instruments – one shinkin bank, the Norinchukin Bank and the Shokochukin Bank.

⁶⁸ Financial institutions will already have full customer identification information for permanent customers who present these instruments.

TABLES

Table 1: Ratings of Compliance with FATF Recommendations

Table 2: Recommended Action Plan to improve the AML/CFT system

Table 3: Authorities' Response to the Evaluation (if necessary)

Table 1. Ratings of Compliance with 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).

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
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-

⁶⁹ These factors are only required to be set out when the rating is less than Compliant.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<p>threshold transactions that appear to be linked.</p> <ul style="list-style-type: none"> • 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. • 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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<ul style="list-style-type: none"> 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

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<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 <i>de minimis</i> 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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
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. • 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

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<p>laundering also apply here.</p> <ul style="list-style-type: none"> • 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

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		branches or subsidiaries are unable to observe appropriate AML/CFT measures because of prohibition by local laws or regulations.
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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<ul style="list-style-type: none"> • 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. • 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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<ul style="list-style-type: none"> • 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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
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 persons. <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.
Nine Special Recommendations	Rating	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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
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 sequestration 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 other property that could be used by terrorists cannot be frozen.
SR.IV 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.
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

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
		<p>orders against property other than funds is unavailable.</p> <ul style="list-style-type: none"> • 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. <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.

Forty Recommendations	Rating	Summary of factors underlying rating ⁶⁹
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 relevant taxation records of NPOs that receive preferential tax treatment. • 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.

Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT system	Recommended Action (listed in order of priority)
1. General	No text required
2. Legal System and Related Institutional	
2.1 Criminalisation of Money laundering Measures (R.1 & R.2)	<ul style="list-style-type: none"> • Japan is recommended to ensure that the conspiracy offence to be voted is fully in line the FATF requirements. • Japan should extend the criminalisation of the receipt of crime proceeds to the payment of legitimate debts. • It is recommended that Japan adopt a more robust approach to prosecuting ML offences and take measures to strengthen the ability of prosecutors and police to uncover and prosecute ML offences and to confiscate funds involved. • The level of fines applicable to natural persons and legal entities other than financial institutions should be significantly increased.
2.2 Criminalisation of Terrorist Financing (SR.II)	<ul style="list-style-type: none"> • It is strongly recommended that Japan expand its definition of “funds” under the Act on the Punishment of Financing of Offences of Public Intimidation to include other assets than funds as required by international standards. • It is recommended that Japan criminalise funds collection by non-terrorists. • It is recommended that Japan’s law clearly criminalise indirect funds provision and collection as well as funds provision and collection for terrorist organisations or individual terrorists for any other purpose than committing terrorist acts.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	<ul style="list-style-type: none"> • It is recommended that Japan develop a proactive approach to confiscating crime proceeds and limit the use of collection orders. The collection order alternative should be subject to mandatory execution obligations and limited authority to revoke the order.
2.4 Freezing of funds used for terrorist financing (SR.III)	<ul style="list-style-type: none"> • It is strongly recommended that Japan expand its definition of “funds” under the Act on the Punishment of Financing of Offences of Public Intimidation to include other assets than funds as required by international standards and include the public intimidation offences in the Act on the Punishment of Organized Crime. • It is recommended that Japan reconsider its system under the Foreign Exchange Act and the Act on the Punishment of Organizes Crime to cover any domestic situations and allow terrorist assets freezing without delay. • The evaluation team also suggests that Japan verify whether listed persons already have funds in Japan at the time of their designation.
2.5 The Financial Intelligence unit and its functions (R.26)	<ul style="list-style-type: none"> • It is strongly recommended that JAFIC, Japan’s FIU, increase the number of analysts employed and develop its strategic analysis capability regarding, in particular ML and TF trends and methods, for dissemination to law enforcement authorities as well as for feedback to reporting persons. • JAFIC should have access to cross border currency reports.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	<ul style="list-style-type: none"> • It is recommended that Japan provide more training and investigatory resources for AML/CFT law enforcement authorities.
2.7 Cross Border Declaration & Disclosure	<ul style="list-style-type: none"> • Japan should ensure that the new provisions enacted in March 2008 and entered into force in June 2008 are fully in line with the FATF requirements.
3. Preventive measures – Financial institutions	
3.1 Risk of money laundering or terrorist financing	<ul style="list-style-type: none"> • It is strongly recommended that Japan undertake an AML/CFT risk assessment and prohibit total CDD exemption and require enhanced due diligence for higher risk customers, business relationships and transactions.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p><i>In relation to Recommendation 5:</i></p> <ul style="list-style-type: none"> • Financial institutions should be required to perform CDD in cases of structuring transactions and when there is a ML or TF suspicion. • It is recommended that Japan limit the range of identification documents accepted and to require as far as possible photographic identification documents. In exceptional cases when photographic document are not practicable, additional measures should be implemented to mitigate the increased risk associated with non-photographic documents.

AML/CFT system	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> • Verification of the identification should be made through more than one document. • Japan should introduce obligations requiring financial institutions to : <ul style="list-style-type: none"> – obtain information on the customer’s legal status, directors and provisions regulating the power to bind the legal person or arrangement when the customer is a legal person or arrangement; – verify that natural persons acting on behalf of another person are authorized to do so; – identify the beneficial owner and understand the ownership and control structure of legal persons and determine the natural persons who ultimately own or control such entities; – determine whether the customer is acting on behalf of another person and take reasonable measures to verify the identity of that other person; – obtain information on the purpose and intended nature of the business relationship; – conduct ongoing due diligence on the business relationship; – perform enhanced due diligence for higher risk customers, business relationships and transactions; – apply reduced diligence for lower risk situations, except when there is a suspicion of ML or TF; – develop internal controls to mitigate the increased risks posed by transactions undertaken before the completion of the CDD process; – consider filing an STR when it is unable to complete CDD; – perform CDD on existing customers on the basis of risk or when it is otherwise appropriate. <p><i>In relation to Recommendation 6:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan introduce a requirement obligating financial institutions to identify whether a customer is a politically exposed person. • Japan should further require financial institutions to take 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. <p><i>In relation to Recommendation 7:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan implement an obligation for financial institutions to: <ul style="list-style-type: none"> – determine whether a respondent institution has been subject to ML or TF enforcement action; – assess the adequacy of the respondent institution’s AML/CFT controls; – require senior management approval before establishing a correspondent banking business relationship; – document the respective AML/CFT responsibilities of each institution. <p><i>In relation to Recommendation 8:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan implement an obligation for financial institutions to: <ul style="list-style-type: none"> – develop policies and procedures to mitigate the use of technological developments for the purposes of ML and TF; – require additional secondary verification for non face-to-face customers.
3.3 Third parties and introduced business (R.9)	
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	<p><i>In relation to Recommendation 10:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan expand its record keeping obligation to cover small amount transactions and to keep business correspondence and account files.

AML/CFT system	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> • Japan should also require financial institutions to ensure that recorded information is made available on a timely basis to domestic competent authorities. <p><i>In relation to Special Recommendation VII:</i></p> <ul style="list-style-type: none"> • In addition to the technical specifications of the domestic inter-bank system, the evaluation team suggests that Japan require financial institutions to relay originator account number or unique reference number. • It is recommended that Japan require financial institutions to <ul style="list-style-type: none"> – provide originator information to supervisory authorities within three business days and immediately to domestic law enforcement authorities; – verify that incoming transfers contain complete originator information and consider filing an STR or terminating the business relationship if appropriate.
3.6 Monitoring of transactions and relationship (R.11 & 21)	<p><i>In relation to Recommendation 11:</i></p> <ul style="list-style-type: none"> • It is strongly recommended that Japan implement an obligation requiring 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. • Further, this obligation should require financial institutions to examine such transactions, set forth findings in writing and maintain appropriate records. <p><i>In relation to Recommendation 21:</i></p> <ul style="list-style-type: none"> • It is strongly recommended that Japan implement an obligation requiring financial institutions to pay special attention to business relationships 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 should be required to examine them and set forth their findings in writing. • It is further recommended that Japan obligate financial institutions to implement specific counter-measures to mitigate the increased risk of transactions with such jurisdictions. • Japan should adopt a mechanism to implement counter-measures against countries that do not or insufficiently apply the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p><i>In relation to Recommendation 13 and Special Recommendation IV:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan explicitly mention attempted transactions within the scope of the suspicious transactions to be reported and expand the scope of the reporting obligation to credit guarantee corporations. <p><i>In relation to Recommendation 14:</i></p> <ul style="list-style-type: none"> • It is strongly recommended that Japan prohibit and sanction directors, officers and employees of financial institutions from tipping off third parties and increase the level of sanctions applicable to financial institutions for tipping off third parties. • Japan should also implement a direct sanction for directors, officers and employees who tip off offence the customer and “relevant parties”. <p><i>In relation to Recommendation 25:</i></p> <ul style="list-style-type: none"> • Japan’s FIU should provide some feedback to reporting institutions. • In addition, Japan should undertake actions to promote STRs filing by insurance and securities sectors.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p><i>In relation to Recommendation 15:</i></p> <ul style="list-style-type: none"> • Japan should implement a legal or regulatory obligation requiring financial institutions to: <ul style="list-style-type: none"> – adopt and maintain an AML/CFT internal control system; – designate an AML/CFT compliance officer at the management level and to adopt some guidance on this officer’s role and responsibilities, including on timely access to customer identification and other CDD information and transaction records;

AML/CFT system	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> - maintain an independent audit function to test compliance with the procedures, policies and controls; - update procedures and policies and communicate them to the employees, who should be trained in their use; - adopt screening procedures when hiring employees. <p><i>In relation to Recommendation 22:</i></p> <ul style="list-style-type: none"> • It is strongly recommended that Japan implement this Recommendation with regard to both foreign branches and subsidiaries.
3.9 Shell banks (R.18)	<ul style="list-style-type: none"> • Japan should prohibit financial institutions from entering into or continuing correspondent banking relationships with shell banks. • Japan should impose an obligation on financial institutions to satisfy them that correspondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.
3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	<p><i>In relation to Recommendation 17:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan increase the level of sanctions to make them dissuasive. <p><i>In relation to Recommendation 23:</i></p> <ul style="list-style-type: none"> • Japan should implement a registration or licensing system for money exchangers and financial leasing companies. • Japan should address the risk that money exchangers do not fulfil their reporting obligation with adequate supervision. • Fit and proper tests should be extended to all financial institutions senior management and should include expertise for securities and insurance. <p><i>In relation to Recommendation 29:</i></p> <ul style="list-style-type: none"> • The evaluation team suggest that Japan increase the number of inspections in the categories of financial institutions that have not been subject to inspection or to a very limited number of inspections.
3.11 Money or value transfer services (SR.VI)	<ul style="list-style-type: none"> • It is recommended that Japan ensure the effective implementation of the FATF 40+9 Recommendations to MVT service operators. • Sanctions applicable to underground banking should be increased.
4. Preventive measures – Non-Financial Business and Professions	
4.1 Customer due diligence and record-keeping (R.12)	<p><i>In relation to Recommendation 5:</i></p> <ul style="list-style-type: none"> • The recommendations made on CDD obligations as applied to financial institutions also apply to DNFBPs. • The JFBA regulations should limit the universe of acceptable identification documents and should be reviewed in order not to be interpreted as permitting CDD exemptions. • The latter should also apply to other legal professions and accountants. <p><i>In relation to the other Recommendations involved:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan fully implement Recs. 6, 8-11 in DNFBPs. In particular, Japan should implement an obligation for DNFBPs to monitor complex, unusual large transactions, or patterns of transactions that have no apparent or visible economic or lawful purpose, as the current system relies upon the STRs obligation which not applicable to attorneys, judicial scriveners, CAPS, CPAs and CPTAs.
4.2 Suspicious transaction reporting (R.16)	<p><i>In relation to Recommendation 13:</i></p> <ul style="list-style-type: none"> • It is recommended that Japan extend the scope of the STR obligation to the legal profession and accountants. <p><i>In relation to Recommendation 14:</i></p> <ul style="list-style-type: none"> • The recommendations made on Recommendation 14 as applied to financial institutions also apply to DNFBPs. <p><i>In relation to Recommendations 15 and 21:</i></p>

AML/CFT system	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> Japan should fully implement Recs. 15 and 21 in DNFBPs.
4.3 Regulation, supervision and monitoring (R.24-25)	<p><i>In relation to Recommendation 24:</i></p> <ul style="list-style-type: none"> It is recommended that Japan conduct offsite and onsite supervision of DNFBPs. Each supervisory agency should develop policies and procedures for extending AML/CFT supervision to the DNFBP sector. <p><i>In relation to Recommendation 25:</i></p> <ul style="list-style-type: none"> Japan is encouraged to continue outreach programmes to inform DNFBPs on AML/CFT obligations and to issue AML/CFT supervisory guidelines for each category of DNFBP.
4.4 Other non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	<ul style="list-style-type: none"> It is recommended that Japan adopt and implement measures ensuring transparency of the beneficial ownership and control of companies. Japan should require a regular update of the information on companies registered and verify the accuracy of their content. Competent authorities should be given direct access in a timely fashion to the shareholders register. As to bearer shares, it is recommended that Japan implement measures guarantying the identification and the verification of the identity of bearer shares holders and impose control of anonymous share holders.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	<ul style="list-style-type: none"> As trusts and self-trusts are both financial institutions subject to the AML obligations under the Act on the Prevention of Transfer of Criminal Proceeds, the recommendations made on Recommendation 5 also apply to legal arrangements.
5.3 Non-profit organisations (SR.VIII)	<ul style="list-style-type: none"> Japan should conduct specific outreach to the NPO sector to raise awareness of risks of NPOs for abuse for terrorist financing and relevant AML/CFT preventive measures. Japan should require social welfare juridical persons to update changes in their office holders in a timely fashion. It is recommended that Japan ensure that police are able to have timely access to relevant taxation records of NPOs that receive preferential tax treatment.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	<ul style="list-style-type: none"> It is recommended that Japan reinforce the involvement of cross-border agencies in the AML/CFT system. Japan's FIU is encouraged to develop and consolidate its efforts in national cooperation and coordination.
6.2 The Conventions and UN special Resolutions (R.35 & SR.I)	<p><i>In relation to Recommendation 35:</i></p> <ul style="list-style-type: none"> It is recommended that Japan ratify the Palermo Convention and review its freezing system according to the TF Convention. <p><i>In relation to Special Recommendation I:</i></p> <ul style="list-style-type: none"> Japan should expand the scope of “funds” to cover “funds and any other property”. In addition, Japan should review and modify its freezing system to fully implement UNSCR 1267 and 1373.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	<ul style="list-style-type: none"> It is recommended that Japan ratify the Palermo Convention and consider entering into more MLATs to be able to provide assistance in more instances and in a timely fashion. Japan should also reconsider the requirement of the “indispensable” nature of the evidence requested and the number of protected categories of persons that can frustrate the MLA process. It is recommended that Japan reconsider the dual criminality requirement. Japan should consider the post-confiscation use of the confiscated property.

AML/CFT system	Recommended Action (listed in order of priority)
	<ul style="list-style-type: none"> • It is recommended that Japan extend the scope of “funds” to cover “funds and any other property”.
6.4 Extradition (R.39, 37 & SR.V)	<ul style="list-style-type: none"> • It is recommended that Japan ratify the Palermo Convention and consider entering into more extradition treaties to be able to grant extradition in more instances and in a timely fashion. • The minimum sentence for extradition in the Extradition Law should be reduced and put together with the one year threshold applicable in the Extradition treaties. • Japan should effectively prosecute its nationals in lieu of extradition. • It is recommended that Japan reconsider the dual criminality requirement. • It is recommended that Japan extend the scope of “funds” to cover “funds and any other property”.
6.5 Other forms of co-operation (R.40 & SR.V)	<ul style="list-style-type: none"> • Japan’s FIU is encouraged to improve information exchange with foreign counterparts, including spontaneous information exchange. • On the basis of the information available to the assessment team it is not clear whether supervisory agencies, other than the FSA, are able to exchange information with their foreign counterparts, and to what extent. It is recommended that Japan clarify this issue.
Other issues	
7.1 Resources and statistics (R.30 & 32)	<ul style="list-style-type: none"> • It is strongly recommended that Japan’s FIU increase its human resources involved in STRs analysis. • Japan should keep statistics on sanctions applied to legal persons convicted for ML; on the number of convictions for predicate offences and ML; and complete statistics on confiscation, collection and preservation. All statistics should be maintained on a systematic basis.
7.2 Other relevant AML/CFT measures or issues	
7.3 General framework – structural issues	

Table 3: Authorities' Response to the Evaluation (if necessary)

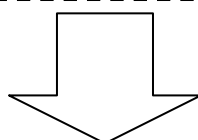
Relevant sections and paragraphs	Country Comments
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Japan has provided the following description and the extracts of the relevant laws and regulations in relation to the new declaration system implemented since 1 June 2008.

< The Amended Point >

People are obligated to declare in writing when they import/export cash (*) as personal effects, by the amendment (in March 2008) and enforcement (in June 2008) of Cabinet Order for Enforcement of the Customs Law.

(*): The "cash" above consists of (i) means of payment and securities exceeding 1 million yen, and (ii) precious metals (gold bullion whose rate of gold content in the gross weight is 90 over 100 (90/100) or more) of more than 1 kilogram.



< The Effect of the Amendment >

It becomes easier for Japan Customs to take stricter measures as below thanks to the amendment and Japan Customs comes to be able to take action for AML/CFT actively.

○ **It becomes easier for Japan Customs to seize and investigate imports/exports with no declaration or with false declarations ; offenses against Customs Law.**

(a) The authorities of Customs to offenses against Customs Law

- Question, Inspection, Retainment, and Request of Reports
- Inspection, Search and Seizure with warrant

(b) The penalty of an offence against Customs Law

- an imprisonment with labor for up to five years or a fine up to five million yen, or both.

○ **By compiling the declarations into databases, Japan Customs is able to strengthen the law-enforcement ability and the cooperation with agencies which are related.**

The Customs Law

(Permission for export/import)

Section 67 A person who wishes to export/import a cargo may declare the name of product, quantity, price (as for imported cargo, as for a special case declaration cargo, the cargo must be special mining products and the like which are prescribed in Temporary Tariff Measures Law Section 8-2, paragraph 1 issue 2 (preferential tariff and the like) and cargo which is eligible for the aforementioned section and other laws. number and price of taxation standard.) and other necessary matters of the aforementioned cargo to the director-general of Customs and receive a permission after the necessary inspection of the cargo.

(Authority of customs staff)

Section 105 Customs staff may take the following action in case it is recognized to be necessary for exerting his/her duty in accordance with regulation in those defined in the order in the law related to customs duty such as this law (except for Section 11 "investigation and action of criminal case" or the Customs tariff and duty rates law, within the limit that recognized to be necessary.

- (1) In regards to, foreign trading ship, etc, ship other than foreign trading ship or aircraft or vessel with foreign cargo loaded, cargo loaded on these, cargo located in or transported in and out of bonded zone, to question related parties such as owner, seizer, controller, ship captain, aircraft captain, carrier or, to inspect or, to have concerned document (in case, as substitute for generation or storage of electro-magnetic record (record generated by method which can not be recognized by human sense such as electrical, magnetic method and applied for information process by electronic computer, the same hereinafter in this issue) is generated or stored, includes the aforementioned electro-magnetic record) presented or, to have it submitted.
- (2) To inspect books and documents (in case electro-magnetic record as substitute for the generation and storage is generated or stored, includes the aforementioned electro-magnetic record, the same in Issue 4-2 to Issue 6 and the next section) in regards to cargo listed in the previous issue and, to seal the aforementioned cargo or its located place.
- (3) To collect sample or to have it submitted at inspection regulated in Section 43-4 (inspection at approval, etc. to place foreign cargo) (includes the case to apply mutatis mutandis in Section 61-4 and Section 62-15), Section 61, paragraph 3 (bonded work outside of free trade factory) (includes the case to apply mutatis mutandis in Section 62-7 and Section 62-15), Section 62-3, paragraph 2 (procedure concerning foreign cargo into free trade zone for exhibitions), Section 63, paragraph 2 (bonded transportation), Section 67 (permission of export or import) (includes the case to apply mutatis mutandis in Section 75), Section 67-11, paragraph 3 (cancellation of permission of export) or Section 76, paragraph 1 note (simplified procedure for mail import/export).
- (4) To board foreign trading ship or ship other than foreign trading ship or aircraft which load or will load foreign cargo or, to suspend operation of vehicle in and out bonded zone.
- (4)-2 In regards to exported cargo, to question related parties such as exporter, customs agent who processed customs clearance business concerning its export, assignor of the aforementioned export or, to inspect books and documents, etc. regarding the aforementioned cargo.
- (5) To inspect, cargo which reduced or be exempt from customs duty in accordance with regulation in the Customs tariff and duty rates law Section 13, paragraph 1 (duty reduction or exempt of manufacturing raw material) or Section 19, paragraph 1 (duty reduction, exempt or refund, etc. of manufacturing raw material of export cargo) or cargo concerning customs duty refund in accordance with the aforementioned paragraph or cargo concerning customs duty exempt in accordance with regulation in

the aforementioned section Paragraph 6, these products or manufacturing machinery instrument or, books and documents regarding them.

- (6) In regards to imported cargo, to question the related parties such as, its importer, customs agent who processed customs clearance business concerning its import, assignor of the aforementioned import, distributor of domestic distribution of cargo (includes that recognized as import of cargo dumped in accordance with regulation in the aforementioned section Paragraph 36) which was dumped (dumping regulated in the Customs tariff and duty rates Law Section 8, paragraph 1), or to inspect items such as the aforementioned cargo or books and documents regarding the aforementioned cargo.
2. Custom staff exert his/her duty in accordance with the regulation in the previous paragraph may need to wear uniform defined by the order of Ministry of Finance and to carry his/her identification and indicate it to related parties if requested.
3. The authority for question and inspection regulated in Paragraph 1 may not be recognized as authorized for criminal investigation.

(Request for assistance from public office and station, etc.)

Section 105-2 In case it is necessary for exerting duty in accordance with regulation related to customs duty such as this law or the Customs tariff and duty rates Law, customs staff may request cooperation such as browse or provision of item such as books and documents which can be reference of the aforementioned duty from the public office and station or the government organization.

(Information provision)

Section 108-2 The Minister of Finance may provide information recognized to contribute exertion of duty (limited to that equivalent to duty of customs regulated in the Customs duty Law, the same hereinafter in this section and the next section) to authority (“foreign customs authority”, hereinafter in this section and the next section) which exerts foreign decree that is equivalent to law (“customs duty decree”, hereinafter in this section and next section) related to customs duty such as this law, the Customs duty and tariff rates Law. However, in case the provision of the aforementioned information is recognized to prevent appropriate exertion of the Customs duty decree and will infringe benefit of Japan, it may be excepted.

- 2 The Minister of Finance may need to verify items listed in the following to provide information regulated in the previous paragraph to foreign customs authority.
 - (1) That the aforementioned foreign customs authority may be able to provide information equivalent to provision of information regulated in the previous paragraph to Japanese customs authority.
 - (2) That confidential information provided among that provided in accordance with regulation in the previous paragraph in the aforementioned foreign country is bonded to maintain confidentiality at the same level as in Japan by decree of the aforementioned foreign country.
 - (3) That the information provided in accordance with regulation in the previous paragraph may not be used for purpose other than purpose to contribute to exertion of the duty by the aforementioned foreign customs authority.
- 3 The information provided in accordance with regulation in Paragraph 1 may need to be taken appropriate measure not to be used for court or criminal procedure by judge in foreign country.

Section 111 Person who is applied for wither one of following issue may be, sentenced for up to 5 years in prison or up to JPY 5 000 000 fine or, sentenced for both.

- (1) Person who, exports cargo which is to receive permission in Section 67 (permission of import or export) (includes case applied mutatis mutandis in Section 75, the same hereinafter in the next issue and the next paragraph) without receiving the aforementioned permission or, imports it.
- (2) Person who, declares or attests false at declaration or inspection in Section 67 or, exports or imports cargo with submitting false documents.
- 2 Customs agent who, exports or imports cargo with false declaration or attesting of the customs agent or submitting false documents at declaration or inspection in Section 67 or, conducts the aforementioned action in case importing, may be sentenced as the example in the previous paragraph.
- 3 Person who attempted and did not conduct the criminal in the previous two paragraphs may be sentenced as the example in these paragraphs.
- 4 Person who prepares it for purpose to commit criminal in Paragraph 1 or Paragraph 2 may be, sentenced for up to 3 years in prison or up to JPY 3 000 000 fine or, sentenced for both.

Section 117 In case representative of corporate or delegate, hired-hand or other employee of corporate or person conducts violation action which applies for Section 108-4 to Section 112 (charge to export cargo prohibited to export, charge to import cargo prohibited to import, charge to place, etc. cargo prohibited to import at bonded zone, Charge to be exempt, etc. from customs duty, Charge to import/export, etc. without permission, charge to transport, etc. contraband cargo), Section 112-2 (charge to use for purpose other than original purpose), Section 113-2 (charge to not submit exceptional declaration form by due date), Section 114-2 (charge to default, etc. reporting), Section 115-2 (charge to default, etc. bookkeeping), or the previous section (except for those concerning Section 113 (charge to enter/depart to/from non-open port without permission), Section 114, Section 115 (charge to default, etc. reporting) in the aforementioned section), related to operation or estate of the corporation or the person, the violator may be sentenced for penalty and the corporate or the person may be sentenced for fine in the aforementioned respective section.

- 2 Prescription period in case to sentence corporation or person for fine regarding violation act in Section 110, Paragraph 1 to Paragraph 3 (charge to exempt, etc. from customs duty) in accordance with regulation in the previous paragraph, may be the prescription period regarding charge in the aforementioned respective paragraph.
- 3 Aggregate, etc. (aggregate or foundation other than corporation with definition of delegate or controller, the same hereinafter in the next paragraph) without personality may be regarded as corporation and applied for regulation in the previous two paragraphs.
- 4 In case that regulation in Paragraph 1 is applied for aggregate, etc. without personality, the delegate or controller represents the aggregate, etc. without personality in regards to its procedural act and applies mutatis mutandis for regulation in law related to criminal procedure with corporate as the accused or the suspect.

(Question , inspection and retain, etc.)

Section 119 In case it is recognized to be necessary for criminal case investigation, customs staff may be able to, request appearance of criminal suspect or witness or, question these persons or, inspect item that these person possess or item that criminal suspect left or, retain item that these persons voluntary submit or item that criminal suspect left.

- 2 Customs staff may request report of necessary issue by referring to public office and station or public or private organization in regards to investigation of criminal case.

(Official inspection, search or seizure)

Section 121 In case it is necessary to investigate criminal case, customs staff may officially inspect, search or seize in accordance with permission warrant which judge of district court or minor court that has jurisdiction over the seat of the public office and station issues previously.

- 2 In case it needs to be urgent in the case in the previous paragraph, customs staff may exert action in the previous paragraph with permission warrant which judge of district court or minor court, that has jurisdiction over, place where needs to be officially inspected or, body or item which needs to be searched or, the seat of the item which needs to be seized, issues previously.
- 3 Customs staff may need to supply information to indicate that the criminal case exists in case to request permission warrant (“permission warrant”, hereinafter in this section to Section 125) in Paragraph 1 or the previous paragraph.
- 4 In case request in the previous paragraph is requested, judge of district court or minor court may need to issue permission warrant to customs staff, on which, place to be officially inspected, place body or item to be searched or item to be seized and name and title of requesting staff, validation period, note states that action may not be exerted and it needs to be returned after validation period, issuing date and issuing court name, is stated with his/her own signature and seal placed. In case criminal suspect name and criminal fact is known, these items need to be described.
- 5 Customs staff may issue permission warrant to other customs staff and have him/her officially inspect, search or seize.

Cabinet Order for Enforcement of the Customs Law

(Formalities for export declaration)

Article 58 The declaration provided for in Article 67 (Permission of exportation or importation) of the Law with respect to any goods to be exported shall be made by submitting to the Director General of Customs, a written export declaration stating the particulars enumerated in the following subparagraphs. However, the Director General of Customs may, when he deems it unnecessary to state any of the particulars enumerated in the following subparagraphs taking into account the kind or value of the said goods, allow a statement of such particulars as deemed unnecessary to be omitted, and, when the said goods are personal effects of passengers or crew members (except when the personal effects are means of payment or securities prescribed in Article 8-2(1)(i) of Foreign Exchange Order or precious metal prescribed in Article 8-2(1)(ii) of the Order), allow the declaration to be made orally.

- (1) Marks, numbers, descriptions, quantities and values of the goods.
- (2) Destination of the goods.
- (3) Name or registered mark of the vessel or aircraft onto which the goods are to be loaded.
- (4) Place where the goods are stored
- (5) Any other relevant particulars.

(Formalities for import declaration)

Article 59 The declaration provided for in Article 67 (Permission of exportation or importation) of the Law with respect to any goods to be imported shall be made by submitting a written import declaration stating the particulars enumerated in the following sub-paragraphs, to the Director General of Customs. In this case the provisions of the proviso to the preceding article shall apply mutatis mutandis.

- (1) Marks, numbers, descriptions, quantities and values of the goods.
- (2) Places of origin and shipment of the goods.

- (3) Name or registered mark of the vessel or aircraft on which the goods were loaded.
- (4) Place where the goods are stored.
- (5) Any other relevant particulars.

Foreign Exchange and Foreign Trade Act

(Definitions)

Article 6

...

- (vii) The term "means of payment" shall mean the following.
 - (a) Banknotes, government money bills, small money bills, and coins
 - (b) Checks (including traveler's checks), bills of exchange, postal money orders, and letters of credit
 - (c) Proprietary nature inputted in vouchers, electronic equipment, or other objects (referred to as "Vouchers, etc." in Article 19, paragraph 1) by electromagnetic devices (meaning electronic means, magnetic means or other means that are imperceptible by humans), which may be used for mutual payment among unspecified or many persons (limited to those of which the status of use is specified by Cabinet Order as approximate to that of a currency)
 - (d) Those specified by Cabinet Order as equivalent to those listed in (a) or (b)

...

(Import and Export of Means of Payment, etc)

Article 19

- (1) When the Minister of Finance finds it necessary for assured enforcement of provisions of this Act or orders based on this Act, he/she may impose, pursuant to the provisions of Cabinet Order, on a resident or non-resident who intends to import or export means of payment (including vouchers, etc. in which means of payment is inputted, which is listed in Article 6, paragraph 1, Item 7 (c)) or securities the obligation to obtain permission.
- (2) When the Minister of Finance finds it necessary for assured enforcement of provisions of this Act or orders based on this Act or when he/she finds it particularly necessary for maintaining equilibrium of the international balance of trade or stability of currency, he/she may impose, pursuant to the provisions of Cabinet Order, on a resident or a non-resident who intends to import or export precious metal, the obligation to obtain permission.
- (3) When a resident or a non-resident intends to import or export the means of payment or securities prescribed in paragraph 1 or precious metal, he/she shall notify in advance the Minister of Finance of the content of the import or export, time of the import or export, and other matters specified by Cabinet Order pursuant to the provisions of Cabinet Order, except cases where the import or export of the means of payment or securities, or precious metal has been permitted by the Minister of Finance pursuant to the provisions of an order made pursuant to the provisions of the preceding two paragraphs and other cases specified by Cabinet Order.

Foreign Exchange Order

Article 8-2

...

- (1)(i) Means of payment or securities prescribed in Article 19, paragraph 1 of the Act (limited to those respectively specified by the Ordinance of the Ministry of Finance), for which the amount calculated as its value by a method specified by the Ordinance of the Ministry of Finance (where two or more means of payment are involved, where two or more securities are involved, or where two or more means of payment and securities are involved in total, the total of the amounts calculated by a

method specified by the Ordinance of the Ministry of Finance as the values of each) exceeds that equivalent to JPY 1 million

(ii) Precious metal (limited to that specified by the Ordinance of the Ministry of Finance) whose weight (where two or more precious metals are involved, the total of the weights of each) exceeds one kilogram.