Anti-money laundering and counter-terrorist financing measures

Japan

Mutual Evaluation Report

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Executive Summary

1. This report summarises the anti-money laundering and counter-terrorist financing (AML/CFT) measures in place in Japan as at the date of the on-site visit (29 October - 15 November 2019). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Japan's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

a) Japan has a good understanding of the main elements of money laundering (ML) and terrorism financing (TF) risks, mainly based on the large number of assessments conducted. There are, however, a number of areas where the national risk assessment (NRA) and other assessments could be further improved. The assessment and understanding of TF risk is well demonstrated by counter-terrorism experts, but this does not extend to other Japanese officials with a role in CFT. National policies and strategies have sought to address some of Japan's higher risks, including virtual asset risks. However, these lack targeted AML/CFT activities. There is generally good interagency co-operation amongst most law enforcement agencies (LEAs) on AML/CFT operational matters, but more coordination is needed for the development of AML/CFT policies.

b) Some financial institutions (FIs) have a reasonable understanding of their ML/TF risks, including bigger banks (such as global systematically important banks, which are identified as higher risk institutions) and some MVTS. Other FIs have a limited understanding of their ML/TF risks. Where FIs have a limited understanding of ML/TF risks, this has a direct impact on the application of the risk-based approach (RBA). They do not have an adequate understanding of the recently introduced/modified AML/CFT obligations, and have no clear deadlines to comply with these new obligations. Designated non-financial businesses and professions (DNFBPs) have a low level of understanding of ML/TF risks and of their AML/CFT obligations. Virtual asset service providers (referred to as virtual currency exchange providers (VCEPs)) have general knowledge about the crime

risks associated with virtual assets (VA) activities and apply basic AML/CFT requirements. Suspicious transaction reporting (STR) is increasing, with a majority of reports from the financial sector and good reporting records from VCEPs, but overall STRs tend to refer to basic typologies and indicators. Not all DNFBPs are under an obligation to report, including some facing specific ML/TF risks.

c) Understanding of risk by the different financial supervisors is uneven but is adequate for the most part. The Japanese Financial Services Agency (JFSA), the main financial sector regulator and supervisor, has taken relevant initiatives from 2018 that led to an improvement of its understanding of risks. The application of a risk-based approach (RBA) is still at an early stage, including for JFSA and the depth of its AML/CFT supervision is gradually improving. JFSA showed that once it engages in a dialogue with an FI, there is a tight follow-up process. Financial supervisors, including the JFSA, have not made use of their range of sanctions to take efficient and dissuasive actions against FIs. Japan has implemented a targeted and timely regulatory and supervisory response to the VCEP sector. The conduct of supervision based on ML/TF risks needs to be improved, noting that the JFSA has taken swift and robust actions to address VCEP deficiencies. DNFBP supervisors have a limited understanding of ML/TF risks and do not conduct AML/CFT supervision on a risk-basis.

d) Japan has taken important steps towards implementing a system that allows competent authorities to obtain beneficial ownership (BO) information, with all FIs and DNFBPs obliged to maintain BO information. Nevertheless, accurate and up-to-date BO information is not yet consistently available on legal persons. There are challenges in relation to the transparency of domestic and foreign trusts, in particular trusts that are not created by or administered by trust companies. LEAs do not appear to have the necessary tools to establish the BO associated with more complex legal structures, and the risks associated with legal persons and arrangements are not well understood.

e) Financial intelligence and related information are widely developed, accessed and regularly used to investigate ML, associated predicate offences and potential TF cases. This is based on Japanese LEAs' own intelligence development and a good range and quality of intelligence developed by the FIU (JAFIC). JAFIC adds value in complex financial investigations. LEAs tend to use financial intelligence to support targeting suspects and understanding the connections between them, but use for tracing assets requires further enhancement.

f) ML investigations pursued by Japanese LEAs are in line with some of the key risk areas. LEAs demonstrated extensive experience with investigating less complex ML cases and some experience of conducting complex investigations in particular organised crime targets and ML cases involving foreign predicate offences. There are particular challenges in investigating larger scale ML cases of cross-border and domestic drug trafficking. All ML prosecutions that have been undertaken have secured a conviction. However, authorities are only prosecuting ML in line with the overall risk profile to some extent. Custodial sentence available for ML are at a lower level than those available for the predicate offences most regularly generating proceeds of crime in Japan. In practice, sanctions applied against natural persons convicted of ML are generally in the lower end of the range. Suspended sentences and a fine are often imposed.

g) Restraint and confiscation are well demonstrated in relation to fraud cases, but not for some other high risk ML predicates. Japan pursues a generally successful approach to confiscating instruments of crime, with the exception of the large amounts of seized gold. Challenges arise with the confiscation of proceeds, instrumentalities and property of corresponding value from the overall level of suspended prosecutions (predicates and ML). Despite the cross-border cash smuggling risks, Japan has yet to demonstrate effective detection and confiscation of falsely/not declared cross-border movements of currency.

h) Japan provides constructive and timely international cooperation. Domestic processes for responding to mutual legal assistance (MLA) requests operate well. Japan has provided assistance to other countries in confiscating property of equivalent value in Japan, although it has limited experience with assets being repatriated from other jurisdictions. Japan has demonstrated its ability to execute extradition requests from other jurisdictions, although the judicial framework for extradition should be reinforced. Japan routinely uses other forms of international cooperation in a timely manner, for exchanges of information relevant to AML/CFT functions including supervision, ML and predicate investigations.

i) Japanese LEAs effectively investigate and disrupt potential TF, using information and financial intelligence from a wide range of sources. However, deficiencies in the TF Act, and a conservative approach to prosecution (see IO.7 above) constrain Japan's ability to prosecute potential TF and punish such conduct dissuasively. Japan has a limited understanding of at-risk non-profit organisations (NPOs), which has impeded competent authorities' ability to conduct targeted outreach to bolster NPOs' CFT preventive measures. This has placed Japanese NPOs at risk of being unwittingly involved in TF activity.

j) Japan implements targeted financial sanctions (TFS) with delays, which have been significantly reduced as a result of recent administrative changes to the process used to implement designations. A number of other measures targeting the proliferation of Weapons of Massive Destruction (WMD) by DPRK, including comprehensive restrictions on trade and domestic designations, mitigate delays to some extent. This is particularly important due to Japan's context. Nevertheless, while screening obligations

require FIs, DNFBPs and VCEPs to implement TFS without delay, there are weaknesses in the implementation of TFS by FIs, VCEPs and DNFBPs. Authorities demonstrated good inter-agency cooperation and coordination on intelligence and law enforcement activities related to combating WMD, and effective and proactive outreach to some specific private sector entities at particular risk of unwittingly facilitating sanctions evasion.

Risks and General Situation

2. The main ML risks identified by Japan relate to: the activities of Boryokudan members, associates and other related parties including drug trafficking, theft, loan sharking, gambling and prostitution; transactions involving foreigners, mainly through illegal remittances and transfers; and specialised fraud of different types, from money extortion through phone calls or internet channels to stealing of bank accounts. Regarding TF, the main risks identified relate to the activities of "Islamic Extremists" associated with the Islamic State of Iraq and the Levant (ISIL), Al Qaida and other groups, as well as foreign fighters. Consistent with Japan's assessment, overall actual risk of TF appears to be relatively low.

Overall Level of Compliance and Effectiveness

3. Japan made major amendments to its AML/CFT legislative framework in 2011 and 2014 with the introduction of the obligation to identify/verify BO, the extension of the scope of the customer due diligence (CDD) measures to ongoing CDD and transaction monitoring, enhanced CDD for transactions with foreign politically exposed persons (PEPs), and stricter verification regarding correspondent banking relationships involving higher risk countries. Financial supervisors adopted enforceable guidelines in 2018 and 2019 that include binding requirements for FIs and were important steps to upgrade the implementation of ML/TF risk mitigation measures by FIs. Japan introduced measures to license, regulate and supervise virtual currency exchange providers (VCEPs) in 2016.

4. A number of technical shortcomings are noted which present challenges for effectiveness. There are gaps with certain preventive measures applicable to DNFBPs, including the absence of STR obligations for a number of DNFBPs. There are also technical deficiencies affecting the dissuasiveness of sanctions for the ML offence, physical elements of the TF offence, the transparency of legal persons and legal arrangements, the TFS regime and the regime applicable to NPOs at risk of TF abuse.

5. Japan achieves a substantial level of effectiveness regarding the assessment of ML/TF risks and domestic coordination, collection and use of financial intelligence and other information, and international cooperation. Japan demonstrates a moderate level of effectiveness in areas related to the supervision of FIs and DNFBPs, the implementation of preventive measures by FIs and DNFBPs, the prevention of misuse of legal persons and arrangements, the confiscation of criminals' proceeds of crime or property of equivalent value, ML and TF investigations and prosecutions, TF preventive measures and financial sanctions against terrorism and proliferation financing (PF).

Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)

6. Japan has a good understanding of the main elements of its ML and TF risks, mainly based on the large number of assessments of ML and TF risk conducted. There are, however, a number of areas where the NRA and other assessments could be further improved, including deepening the understanding of the broader risks across the Japanese economy, including cross-border risks; drawing on additional information from LEAs and independent sources, in addition to previous STR reporting; and increasing the focus on threats and vulnerabilities. Private sector institutions are aware of the results of the NRA and other risk assessments.

7. National policies and strategies have sought to address some of Japan's higher ML risks, including virtual asset risks. A number of other key risk areas are subject to robust national mitigation policies and activities (e.g. organised crime groups "Boryokudan", gold smuggling, drug trafficking), but these policies focus on criminals and on the smuggling of illegal goods and assets. They lack targeted AML activities. Nevertheless, key national authorities have taken steps to adjust some of their activities and priorities to be consistent with identified risks.

8. Noting the relatively low level of terrorism and TF risks that Japan faces, the assessment and understanding of TF risk is well demonstrated by counter-terrorism experts. However, this level of understanding does not extend to other Japanese officials with a role in CFT. CFT policies and activities are more focused on the risks, although there are weaknesses in relation to activities to prosecute TF, implementation of TFS, and support to the NPO sector to address TF risks.

9. There is generally good interagency co-operation and coordination amongst most LEAs on AML/CFT operational matters, but progresses could be made to improve co-operation and coordination in the development of AML/CFT policies.

10. Authorities demonstrated good inter-agency cooperation and coordination on intelligence and law enforcement activities related to combating proliferation of WMD.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

11. LEAs widely develop and use financial intelligence and related information to investigate ML, associated predicate offences and potential TF cases, and asset tracing to some extent. JAFIC's analysis and dissemination of financial intelligence and ongoing support to LEAs' specialist financial investigation teams is a strong contribution to effectiveness. JAFIC information is used as first step source of financial intelligence in all LEAs and substantial number of cases are initiated and completed based on JAFIC data. JAFIC adds value in complex financial investigations. LEAs make positive use of financial intelligence to support targeting and understanding the connections between suspects. However, identifying and tracing of assets need to be further developed and prioritized, including to target all relevant crime types.

12. ML investigations pursued by Japanese LEAs are in line with some of the key risk areas identified in NRA and other risk assessments, with the exception of domestic and transnational drug trafficking. The vast majority of ML cases pursued are for self-laundering, rather than 3rd party laundering. LEAs demonstrated some experience of conducting investigations on foreign predicate offences supported by international cooperation. LEAs demonstrated extensive experience of investigating less complex ML cases. LEAs demonstrated strong investigative focus on targets, in particular organised crime targets. However, there does not appear to be sufficient focus on the flow of money, including on the profit taking levels involving complex fraud, large-scale foreign predicate offences and proceeds from drug-related crimes. The Public Prosecution Office's (PPO's) suspension of a majority of ML prosecutions due to them involving very minor offences reinforces this concern.

13. While all ML prosecutions that have been undertaken have secured a conviction, authorities are only prosecuting ML in line with the overall risk profile to some extent. The proportion of completed ML cases (30%) that go to prosecution does not appear to be wholly justified taking into account the risks, however it is in line with other economic offences. While low sentences are applied for ML, including suspended custodial sentences in a sizeable majority of cases, it is in line with the Japanese context and their judicial system.

14. Confiscation is well demonstrated in relation to fraud cases, but not for other high risk ML predicates. LEAs and prosecutors appear to place a reasonable priority on forfeiture of proceeds of crime and Japan has a generally comprehensive conviction-based confiscation system to recover assets. Some challenges arise with the confiscation of proceeds, instrumentalities and property of corresponding value from the overall level of suspended prosecutions (predicates and ML). Japan pursues a generally successful approach to confiscating instruments of crime, although not in relation to the large amounts of seized gold. Despite the cross border cash smuggling risks, Japan has yet to demonstrate that confiscation of falsely/not declared cross-border movements of currency and bearer-negotiable instruments is being effectively applied.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

15. Japan aggressively investigates possible cases of TF, effectively using a range of tools to disrupt suspicious activity. Potential cases of cross-border TF are detected from a variety of sources, and the finances of domestic groups linked to or suspected of conducting terrorist activities in the past are closely monitored. Deficiencies in the TF Act limit investigations into TF activity not covered by the legislation, although competent authorities have been able to overcome this to some extent by making use of other criminal offences.

16. Although there is no comprehensive national counter-terrorism strategy that incorporates CFT, or standalone CFT strategy, local and national agencies coordinate and cooperate effectively. Limited outreach has taken place with FIs, VCEPs and DNFBPs, resulting in limitations in their understanding of TF risk.

17. Japan has not prosecuted a case of TF, with TF risks minor but present. Deficiencies in the TF Act restrict the possibility of prosecution, as funding of terrorists or terrorist organisations without a link to a specific attack is not an offence. In light of these deficiencies and Japan's conservative approach when prosecuting (see IO.7 on ML investigations and prosecutions), it is unlikely Japan could secure a conviction accompanied by dissuasive sanctions apart from circumstances where there is a clear case of directly funding a specific terrorist attack.

18. Japan implements TFS pursuant to UNSCR 1267/1373 through a combination of legislative instruments that prohibit payments with designated individuals or entities, in order to freeze assets in line with relevant UNSCRs. Designations have taken approximately one to three weeks to implement, with delays caused due to the steps required. Mechanisms for communicating designations before they come into effect in Japan limit this delay to a small extent, as well as obligations on FIs and VCEPs to conduct screening against sanctions lists. While the implementation of designations has been with significant delay, recent amendments to the process have reduced the delay for future designations to two to five days.

19. Despite the delays in implementation, uncertainty regarding the application of TFS when assets are held by third parties, and the complexity of the legislative framework, funds have been frozen in Japan under UNSCR 1267 in the past. While limited in amount and some time ago, this is not inconsistent with Japan's risk profile.

20. Japan has a limited understanding of the TF risks associated with the NPO sector, and has not applied any specific risk-based measures applicable to the sub-set of NPOs at risk of misuse for TF. A number of Japanese NPOs undertake important work in higher-risk regions, and an urgent increase in effective outreach and guidance by the Japanese authorities to the sector is needed. Comprehensive mechanisms to promote accountability, integrity and public confidence in the management of NPOs, including financial reporting, helps to mitigate the lack of CFT specific measures in Japan.

21. Similar to TFS for terrorism, Japan implements TFS for PF via a prohibition on payments with designated persons and entities, with delays. Delays have averaged five to ten days for recent designations under relevant UNSCRs, with new processes recently put in place to shorten delays to two to five days. Unlike the regime for TFS for TF, the regime for PF relies on legislation initially designed for the purposes of capital controls, and a gap exists should a Japanese resident be designated in future, with the framework unclear in its coverage in some areas including in its application to all types of funds or assets required to be subject to asset freezing measures.

22. Nevertheless, Japan has designated a significant number of UN-listed persons and entities domestically prior to UN designation, and a general prohibition on the transfer of funds or goods involving DPRK is in place that is robustly enforced. Mechanisms for communicating designations before they come into force in Japan are also in place, as well as obligations on FIs and VCEPs to conduct screening relating to sanctions, and Japan has frozen significant DPRK- and Iran-related financial assets, in line with Japan's risk and context. Targeted outreach by the authorities has supported the understanding of at-risk sectors, including trade finance, insurance, shipping and fisheries. Nevertheless, supervision by the Ministry of Finance and JFSA identified a large number of shortcomings related to the implementation of TFS by FIs (including regarding unilateral designations made by Japan in advance of UN designations), raising concerns about the extent of implementation, and the effectiveness of supervision.

Preventive measures (Chapter 5; IO.4; R.9–23)

23. Some FIs have a reasonable understanding of their ML/TF risks, including bigger banks (such as global systematically important banks, which are identified as higher risk institutions) and some MVTS. Other FIs still have a limited understanding of their ML/TF risks. Although some FIs have started conducting their own risk assessment, others do not apply mitigation measures based on risks. They do not have an adequate understanding of the recently introduced or modified obligations, such as ongoing CDD, transaction monitoring and BO identification/verification. They have a general awareness of the need to enhance their AML/CFT frameworks and practices but have no clear deadlines to meet the new obligations.

24. The overall number of STRs filed per year is increasing. Most of them come from the financial sector, with one third from the bigger banks but refer to basic typologies and indicators, based on the FIU guidance.

25. VCEPs have been under an obligation to register and have been regulated and supervised for AML/CFT purposes since 2017. VCEPs have general knowledge about the crime risks associated with VC activities. Their understanding of TF risks is generally limited. VCEPs tend to apply basic AML/CFT requirements, but in general, they do not have specific policies to tailor mitigation measures to their risks or to apply enhanced due diligence (EDD) or specific CDD measures. Some VCEPs apply enhanced measures to assist them in identifying the customer's identity. VCEPs' STR reporting has significantly increased since 2017, which was mainly the result of a series of awareness-raising events and guidance provided jointly by the FIU and the Japan Virtual and Crypto Assets Exchange Association (JVCEA).

26. DNFBPs have a low level of understanding of the ML/TF risks, but are generally aware of risks connected to business relationships involving DPRK, and of the gold bullions smuggling risks due to the recent cases. DNFBPs apply basic AML/CFT preventive measures, mainly identifying their customers and verifying that they are not members/associates of a Boryokudan group. There is not a clear understanding of the BO concept by all DNFBPs. Screening against TFS lists or checking the list of higher risk countries is mainly triggered if customers depart from the usual profiles.

27. Not all DNFBPs are covered by STR reporting obligations. For covered DNFBP sectors, the level of reporting is low, including for sectors identified as facing specific ML/TF risks.

Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)

28. Financial supervisors conduct standard "fit and proper" reviews for major shareholders and managers of FIs, but face challenges for screening beneficial owners (see transparency and beneficial ownership below). The detection of unregistered/unlicensed FIs is based on the information gathered from competent authorities and third parties. Competent authorities force detected unlicensed entities to shut down their business and publicize the measures in case detected entities do not comply, bringing reputational consequences to the managers.

29. Understanding of ML/TF risks by the different financial supervisors is uneven. The JFSA, which plays a leading role in AML/CFT supervision, has recently upgraded its AML/CFT risk understanding and supervision with the establishment of a dedicated AML/CFT team and the adoption of AML/CFT enforceable Guidelines (2018).

30. JFSA's AML/CFT risk based approach to supervision is still at an early stage but is gradually improving. An initial risk classification of FIs is in place, even though at this stage, the RBA is still mostly driven by inherent risks. The other supervisory authorities are at an earlier stage than JFSA in their implementation of a risk-based approach to supervision and understanding of risks.

31. AML/CFT supervisory focus is on bigger banks and VCEPs, which is appropriate from an RBA perspective. However, the number of AML/CFT targeted on-site inspections of FIs is limited. The supervisory focus on the three mega banks is based on a "through-the-year supervision" that encompasses permanent off-site monitoring and frequent meetings with FIs. For other FIs the supervisory approach is based on periodical submission of information and specific on-site/off-site activities when necessary, which is adequate.

32. JFSA showed that once it engages in a dialogue with a FI, there is a tight follow-up process. Similar efforts have not been taken for the whole financial sector, and supervisors have not imposed clear and prescriptive deadlines for FIs to promptly reach full compliance with their AML/CFT obligations.

33. Financial supervisors, including the JFSA, have not made use of their range of sanctions to take efficient and dissuasive actions against FIs, including banks.

34. JFSA, the VCEP supervisor, conducts fit and proper checks on directors and officers. Japan has successfully identified and taken action against unregistered service providers. JFSA's dedicated team for the supervision of VCEPs has a sophisticated understanding of the virtual currency (VC) ecosystem and of the VC services and products, including ML/TF risks to some extent.

35. Japan has provided a targeted and timely supervisory response to the VCEP sector. The conduct of supervision based on ML/TF risks needs to be improved. There is a substantial body of cases where sanctions have been imposed, including business suspension orders which show a more forceful approach to the one applied to FIs, as consumer protection was involved in most failures identified.

36. DNFBP supervisors conduct basic fit and proper checks when licensing/registering supervised entities. They have a basic understanding of the ML/TF risks of the sectors under their supervision, which is primarily based on the conclusions of the NRA. In general, they do not conduct AML/CFT supervision on a ML/TF risk-basis. Some DNFBP supervisors perform general compliance controls, which include an AML/CFT part. Some require supervised entities to provide an annual report on the application of AML/CFT controls. A very limited number of sanctions have been taken by DNFBP supervisors, mainly for failure to provide the annual report.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

37. Japan has an understanding of the ways that legal persons may be misused to some extent, but this understanding lacks depth, with sufficient understanding of the vulnerabilities associated with different types of legal person not demonstrated. There is no understanding of the risks associated with the misuse of legal arrangements. There appears to be a lack of understanding to some degree amongst LEAs of the sources of basic information and BO information to assist with investigations.

38. Japan has taken several important steps to ensure BO information is available, placing requirements on FIs, VCEPs and most DNFBPS to collect and verify BO information, and for notaries to check the BO information for new companies. However, these measures have not yet been fully implemented, and deficiencies in supervision and the application of preventive measures by FIs, VCEPs and DNFBPs (see Supervision and Preventive measures above) mean that adequate and accurate BO information is not available in all cases. Very few cases exist where Japan has made use of BO information as part of financial investigations, with almost all cases involving a single legal person or arrangement, triggered as part of an investigation into a predicate offence. It is not clear whether this is due to limitations in Japan's understanding of the ways that legal persons are being misused, the lack of available BO information, or another reason such as a lack of training.

39. Basic information is available from companies themselves - including detailed information on shareholders, with some basic information available from the company register. However, it is not clear that the information held by companies can be obtained in a timely manner. Sanctions for failing to provide basic information are not applied consistently.

International cooperation (Chapter 8; IO.2; R.36–40)

40. International cooperation in Japan is pursued in keeping with the risks and is generally timely and of good quality, both through formal and informal channels. Relevant authorities treat international cooperation as a priority. Japan has a generally comprehensive legal and institutional framework to support formal and informal international cooperation. The legal framework and arrangements are in place for MLA, including extradition, which enable AML/CFT related authorities to seek and provide formal cooperation with relevant foreign partners. In addition, other forms of international cooperation, including information exchange between FIU, LEAs and financial supervisors, are well supported and routinely used in Japan.

41. Some improvements are still needed, in particular regarding the extent to which formal MLA is used to investigate ML cases and to trace assets and regarding JFSA's international cooperation in AML/CFT supervisory matters. Equally, further efforts should be developed to enhance non-MLA forms of cooperation with international partners.

Priority Actions

Japan should:

a) Ensure that FIs, VASPs and DNFBPs understand their AML/CFT obligations and implement them in timely and effective manner, with priority on conducting enterprise risk assessments and the application of ongoing risk-based CDD, transaction monitoring, implementation of asset freezing measures and collecting and maintaining BO information.

b) Increase the use of the ML offence to target more serious predicate offences, including through consideration of ML at an early stage of predicate investigations and prioritisation of third party ML across a wider range of offences, particularly the high risk crime types at the high-end profit taking levels.

c) Explore and implement measures, between the National Police Agency (NPA), Ministry of Justice (MOJ) and PPO, to agree and enhance prioritization of prosecuting and investigating severe ML cases and improve prosecution rate of ML cases, including reconsidering PPO's application of discretion to prosecute and implement a policy to prioritise the prosecution of ML cases.

d) Increase the statutory maximum sentence for ML to at least the same level as the serious predicate offences most regularly generating proceeds of crime in Japan.

e) Give greater priority to pursuing asset tracing investigations, provisional measures and confiscation for priority risk areas and more consistently confiscate instruments of crime smuggled cash / BNI.

f) Strengthen AML/CFT supervision on a risk-basis, including enhanced frequency and comprehensiveness of the combination of off-site monitoring and on-site inspections for assessing safeguards in place, ensuring that dissuasive penalties and remedial measures are applied to ensure a positive effect on compliance by FIs, DNFBP and VASPs.

g) Adopt binding and enforceable means or amend the TF Act to ensure that the financing of an individual terrorist or terrorist organization in the absence of a link to a terrorist act is criminalized, and that the other technical deficiencies with Japan's criminalisation of TF identified in the Recommendation 5 analysis are rectified.

h) Ensure that the obligations on all natural and legal persons to implement TFS are clear and in line with the FATF Standards, with further improvements made so that TFS can be implemented without delay.

i) Ensure that there is a complete understanding of the NPOs at risk of abuse for TF, in particular those with operations in higher-risk regions, and undertake outreach, guidance and monitoring or supervision commensurate with the risks.

j) Continue to improve the methodology of assessments of risk and promote a more comprehensive understanding of ML/TF risks, which should include a particular focus on cross-border risks and risks associated to legal persons and arrangements.

k) Ensure that basic and beneficial ownership information on legal persons and arrangements becomes an established part of Japan's regulatory, supervisory and investigatory framework.

Effectiveness & Technical Compliance Ratings

Table 1. Effectiveness Ratings

IO.1 - Risk, policy and co-ordination	IO.2 International co-operation	IO.3 - Supervision	IO.4 - Preventive measures	IO.5 - Legal persons and arrangements	IO.6 - Financial intelligence
Substantial	**Substantial**	**Moderate**	**Moderate**	**Moderate**	**Substantial**
IO.7 - ML investigation & prosecution	**IO.8 - Confiscation**	**IO.9 - TF investigation & prosecution**	**IO.10 - TF preventive measures & financial sanctions**	**IO.11 - PF financial sanctions**	
Moderate	**Moderate**	**Moderate**	**Moderate**	**Moderate**	

Note: Effectiveness ratings can be either a High – HE, Substantial – SE, Moderate – ME, or Low – LE, level of effectiveness.

Table 2. Technical Compliance Ratings

R.1 - assessing risk & applying risk-based approach	**R.2** - national co-operation and co-ordination	**R.3** - money laundering offence	**R.4** - confiscation & provisional measures	**R.5** - terrorist financing offence	**R.6** - targeted financial sanctions – terrorism & terrorist financing
LC	**PC**	**LC**	**LC**	**PC**	**PC**
R.7- targeted financial sanctions - proliferation	**R.8** -non-profit organisations	**R.9** – financial institution secrecy laws	**R.10** – Customer due diligence	**R.11** – Record keeping	**R.12** – Politically exposed persons
PC	**NC**	**C**	**LC**	**LC**	**PC**
R.13 – Correspondent banking	**R.14** – Money or value transfer services	**R.15** –New technologies	**R.16** –Wire transfers	**R.17** – Reliance on third parties	**R.18** – Internal controls and foreign branches and subsidiaries
LC	**LC**	**LC**	**LC**	**N/A**	**LC**
R.19 – Higher-risk countries	**R.20** – Reporting of suspicious transactions	**R.21** – Tipping-off and confidentiality	**R.22** - DNFBPs: Customer due diligence	**R.23** – DNFBPs: Other measures	**R.24** – Transparency & BO of legal persons
LC	**LC**	**C**	**PC**	**PC**	**PC**
R.25 - Transparency & BO of legal arrangements	**R.26** – Regulation and supervision of financial institutions	**R.27** – Powers of supervision	**R.28** – Regulation and supervision of DNFBPs	**R.29** – Financial intelligence units	**R.30** – Responsibilities of law enforcement and investigative authorities
PC	**LC**	**LC**	**PC**	**C**	**C**
R.31 – Powers of law enforcement and investigative authorities	**R.32** – Cash couriers	**R.33** – Statistics	**R.34** – Guidance and feedback	**R.35** – Sanctions	**R.36** – International instruments
LC	**LC**	**LC**	**LC**	**LC**	**LC**
R.37 – Mutual legal assistance	**R.38** – Mutual legal assistance: freezing and confiscation	**R.39** – Extradition	**R.40** – Other forms of international co-operation		
LC	**LC**	**LC**	**LC**		

Note: Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT OF JAPAN

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its on-site visit to the country on 29 October - 15 November 2019.

The evaluation was conducted by an assessment team consisting of:

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with the support from the FATF Secretariat of Anne-Françoise Lefèvre, Neil Everitt and Rui Liu[2], and David Shannon from the APG Secretariat. The report was reviewed by Darya Kudryashova (EAG Secretariat), Ian Lee (Singapore) and Paul Napper (UK).

Japan previously underwent a FATF Mutual Evaluation in 2008, conducted according to the 2004 FATF Methodology. The 2008 Mutual Evaluation report has been published and is available at www.fatf-gafi.org.

That Mutual Evaluation concluded that the country was compliant with 4 Recommendations; largely compliant with 19; partially compliant with 15; and non-compliant with 10 (one Recommendation was not applicable). Japan was rated compliant or largely compliant with 9 of the 16 Core and Key Recommendations.

Japan was placed under the regular follow-up process immediately after the adoption of its 3rd round Mutual Evaluation Report, and reported back to the FATF in October 2010, October 2011, June 2012, October 2012, February 2013, June 2013, October 2013, February 2014, June 2014, October 2014, February 2015, June 2015, October 2015 and October 2016. Japan was placed under targeted follow-up process in June 2014 and exited from the targeted follow-up process in October 2016.

1 On academic leave from the U.S. Department of the Treasury from September 2020 to March 2021, so did not participate in the December 2020 face-to-face meeting.

2 Until July 2020

Chapter 1. ML/TF RISKS AND CONTEXT

42. Japan is a sovereign state, located in Eastern Asia. Japan has five main islands (Hokkaido, Honshu, Shikoku, Kyushu and Okinawa) covering an area of more than 377 000 square kilometres. Japan's population is approximately 126 million. Japan is divided into 47 prefectures, and Tokyo is the capital city and political, economic and administrative centre.

43. The State of Japan is a constitutional monarchy with a parliamentary government. The head of state is the Emperor, and the head of government is the Prime Minister, elected by the Parliament (the Diet). The constitution of Japan[3] states the separation of powers in Japan's system of parliamentary democracy, which consists of executive, legislative and judicial branches.

44. The Cabinet represents the executive branch, and consists of one prime minister and 19 ministers. The Cabinet is appointed by the Prime Minister. The Diet represents the legislative branch, and consists of the House of Representatives (465 seats) and the House of Councillors (242 seats). The judicial branch is made up of 438 Summary Courts, 50 District Courts and Family Courts in each prefecture. There are eight High Courts and one Supreme Court. Judgements made by the Supreme Court are considered as legally binding on lower courts.

45. The legal system in Japan is based on the civil law system, but incorporates influences from the common law system. The hierarchy of law is the following: constitution; treaties and international agreements; codes and laws; cabinet orders; ministry ordinances and ministry notifications.

ML/TF Risks and Scoping of Higher Risk Issues

Overview of ML/TF Risks

46. Relative to other developed economies, rates of criminal offending in Japan are low[4]. Common predicate offences include theft and fraud. In 2017, the value of proceeds from property offences including theft[5] was estimated to be JPY 66, 7 billion (approx.[6] EUR 528 million/USD 642 million), and proceeds from fraud estimated to be JPY 61 billion (EUR 483 million/USD 587 million). The proceeds from illegal narcotic drugs and psychotropic substances represents a significant source of illegal proceeds. More than 1 000 kg of illegal narcotics was seized and confiscated at the Japanese border in 2017 (mostly methamphetamine).

3 The Constitution of Japan was promulgated on 3 November 1946, and came into effect on 3 May 1947.

4 See statistics published by UNODC www.unodc.org/unodc/en/data-and-analysis/crimedata.html

5 Robbery with violence, blackmail, theft, fraud, embezzlement and theft of mislaid property.

6 The exchange rate used throughout this document is the rate on 14th January 2021 (1 JPY=0.00963074 USD=0.00791857 EUR)

47. Organised crime groups (referred to as "Boryokudan[7]") are active in Japan, with related money laundering (ML) representing a significant risk. At the end of 2018, there were 24 groups listed as Boryokudan.[8] Estimated numbers of known, active, members have been decreasing since 2005, to almost 1/6 of that of the 1960s' (15 600 at the end of 2018). The estimated number of individuals affiliated but not official members has also decreased since 2010 (14 900 at the end of 2018) and Boryokudan members participate in a range of criminal offences, including extortion, drug trafficking, illegal money lending, illegal gambling and activities relating to sexual exploitation. Boryokudan launder the proceeds of crime in legitimate and illegitimate businesses. The mechanisms for laundering the proceeds of crime by the Boryokudan are, according to Japanese authorities, largely based on use of cash. The Boryokudan are known to conduct illegal activity, including ML, abroad.[9]

48. Japan is vulnerable to ML risks from overseas due to its position as a global financial centre, with three major banks designated as globally systemic.[10] Japanese headquartered financial sector groups have a significant presence across a range of markets through investments, branches and subsidiaries throughout Asia and throughout the world. This exposes Japan to potential cross-border ML threats, including from jurisdictions with weaknesses in their AML/CFT systems, and from the threats of illicit funds entering the Japanese financial system from abroad.

49. Japan currently faces a low domestic terrorism threat relative to many countries, although it experienced a material terrorism threat from the group Aum Shinrikyo during the mid-1990s. There have been relatively few Japanese nationals travelling (or attempting to travel) or returning from conflict zones. There are some vulnerabilities for terrorism financing (TF) linked to the global nature of the Japanese financial system, including cross-border financial flows associated with jurisdictions in Asia and the Middle East with a higher TF risk.

50. Japan's geographic proximity to the Democratic People's Republic of Korea (DPRK) and cultural links between some residents of Japan and citizens of DPRK exposes Japan to a heightened vulnerability of DPRK-related sanctions evasion. Trade volumes between Japan and Iran have substantially decreased over the last years due to the implementation of the global export control regime and of national measures restricting exports. Imports from Iran to Japan reduced from JPY billion 98.5 in 2017 (EUR 780 million/USD 949 million), to JPY 77 billion in 2018 (EUR 610 million/USD 742 million) and JPY 7.2 billion in 2019 (EUR 57 million/USD 69 million). Remittances from Japan to Iran have also significantly decreased, from JPY 159 billion in 2018 (EUR 1.26 billion/USD 1.53 billion) to JPY 4.9 billion in 2019 (EUR 39 million/USD 47 million).[11] These decreases have reduced vulnerabilities associated with Iran-related sanctions evasion. Exports from Japan to Iran remained less than around JPY 100 billion (EUR 792 million/USD 963 million) each year from 2014-18.[12]

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7 Boryokudan translates as 'anti-social forces'

8 Japan authorities

9 See https://home.treasury.gov/news/press-releases/sm499; 2018 NRA, p. 11

10 www.fsb.org/wp-content/uploads/P161118-1.pdf

11 Figures from the Ministry of Finance. Remittances decreased significantly over each six month period between 2018 and 2019, totalling only JPY 70 million (approx EUR 554 000 / USD 674 000) during the second six months of 2019.

12 Figures from the World Bank.

Country's Risk Assessment & Scoping of Higher Risk Issues

51. In 2013, Japan set up a working group consisting of relevant ministries and agencies involved in anti-money laundering and countering terrorism financing (AML/CFT) activities (National Police Agency (NPA); Japanese Financial Services Agency (JFSA); Ministry of Internal Affairs and Communications; Ministry of Justice (MOJ); Ministry of Finance (MOF); Ministry of Health, Labour and Welfare; Ministry of Agriculture, Forestry and Fisheries; Ministry of Economy, Trade and Industry; Ministry of Land, Infrastructure, Transport and Tourism; Cabinet Secretariat; and Ministry of Foreign Affairs (MOFA)) to conduct a national risk assessment (NRA). In 2014, the NRA of ML and TF (Baseline Analysis) was published. The National Public Safety Commission (NPSC), under the authority of which the FIU (Japan Financial Intelligence Center, JAFIC) sits, has started publishing NRA Follow-up Reports annually, as required by the revised Act on the Prevention of Transfer of Criminal Proceeds (APTCP), with all relevant authorities and private sectors involved. The fourth and most recent NRA Follow-up Report was adopted in December 2018.[13]

52. The 2014 NRA analysed the risks associated with types of transactions, customers, countries and regions, products and services, and transactions utilising new technology. Specific 'risk factors' were considered for the different types of transaction, customer or product or service that may pose a risk. For each 'risk factor', the 'inherent risks of ML/TF misuse', the measures taken to mitigate misuse (including regulatory or supervisory measures), the numbers of suspicious transaction reports (STRs) and the relevant cases of ML/TF concluded by the police and provided to prosecutors were analysed. Transactions, customers and products and services associated with financial institutions (FIs) and Designated Non-Financial Businesses and Professions (DNFBPs) are the focus of the NRA.

53. The 2014 NRA also covers risks associated to countries and regions, and describes the jurisdictions identified on the FATF public statement, the mechanisms used by Japan to help communicate the information in the public statement to FIs and DNFBPs, and some of the actions they are expected to take in response. The assessment of transactions utilising new technology includes information on the increasing use of 'electronic money' and bitcoin, and provides some cases of the former.

54. The 2018 Follow-up NRA concludes that high risk transaction types are non-face-to-face transactions, cash transactions, international transactions; countries or regions considered as high risk are those in the FATF public statement[14]; and customer attributes considered high-risk are Boryokudan, international terrorists, non-resident customers, foreign politically exposed persons, and legal persons without transparency of legal ownership. Transactions for which simplified CDD is permitted are also identified.

55. In addition to the NRA, other reports are available that include information relevant to ML/TF risk. These include 'JAFIC news alerts' provided to law enforcement authorities (LEAs), competent authorities and FIs and DNFBPs detailing cases with analysis on specific methods or trends. JAFIC annual reports contains information on STRs and cases of potential ML investigated by the NPA. NPA annual white papers include outlines of crime trends and statistics on predicate offences and estimates of the associated proceeds.

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13 www.npa.go.jp/sosikihanzai/jafic/en/nenzihokoku_e/data/jafic_nra_e2018.pdf

14 Iran and DPRK at December 2018.

56. The main ML risks identified by Japan on the basis of the assessments outline above relate to: the activities of Boryokudan members, associates and other related parties including drug trafficking, theft, loan sharking, gambling and prostitution; transactions involving foreigners, through illegal remittances and transfers; and specialised fraud of different types, from money extortion through phone calls or internet channels to stealing of bank accounts. Regarding TF, the main risks identified relate to the activities of "Islamic Extremists" associated to the Islamic State of Iraq and the Levant (ISIL), Al Qaida and other groups, as well as foreign fighters.

57. In order to identify areas of higher focus during the onsite, the assessors reviewed material Japan provided on its national ML/TF risks (as outlined above), and information from reliable third party sources (e.g. reports by governments or other international organisations). The assessors focused on the following issues which were to some extent consistent with the findings of the latest NRA:

a) *Proximity to the DPRK, and economic relationships with Iran.* Given the close geographic proximity and cultural links between Japan and DPRK, and the trade links between Japan and Iran (although recently substantially decreased). The assessment team looked at the effectiveness of implementation of UN sanctions and the measures taken to prevent sanction evasions in light of this context.

b) *Regional, financial hub.* The assessment team looked at the trans-national elements of Japan's financial sector, particularly those groups, subsidiaries and branches of Japanese FIs operating in higher risk markets or those with relatively weak AML/CFT controls. The team also focused on the vulnerabilities associated with money or value transfer service and unlicensed remittance providers following a sharp increase in foreign workers in Japan.

c) *Organised crime groups activities.* The assessment team looked at the strategic approach taken by Japan to address Boryokudan's ML activities, including cross-border activities. It also looked at measures to combat Boryokudan accessing banking and other services of FIs and DNFBPs. The assessment team also put some focus on foreign transnational crime groups targeting Japan as a destination and transit country for various criminal activities, including ML.

d) *Use of cash.* Cash continues to be the most frequent means of payment in Japan with more than 80% of the transactions settled in cash in 2014, although this is reducing.[15] The assessment focused on steps to improve transparency and traceability of cash payments, and to monitor the implementation of controls on the physical transportation of cash. Assessors also looked at the prevention and detection of trade-based ML in Japan.

e) *Virtual asset transactions and new means of payments.* Japan adopted regulatory and supervisory measures for virtual asset-related activities and market players for AML/CFT purposes, with cybercrime recognised as a threat, alongside the mainstream acceptance of virtual assets. The team focused on the understanding of risks associated to the use of virtual assets

15 2018 NRA, p. 79

and other digital means of payment and the measures taken to mitigate them.

f) *Terrorism financing risk.* Given the increase of the TF threat at a global level, including in parts of South East Asia, the assessment team focused on Japan's understanding of the vulnerabilities associated with its large international financial sector, and links with higher-risk jurisdictions in the region. The team also explored Japan's understanding of domestic terrorism and its financing, primarily relating to Aum Shinrikyo and successor organisations.

g) *Foreign bribery.* Japanese companies have operations in many of the emerging and at-risk markets in Asia. The assessment team considered the impact of this on ML risk, and in particular on the detection and investigation by Japanese authorities of the laundering of the proceeds of foreign bribery, and links to the effectiveness of international cooperation.

h) *Supervisory framework and resources.* Japan's financial sector is one of the biggest in the world. The structure of financial sector supervision includes national agencies and the designation of prefectural authorities to undertake some supervisory tasks. The team focused on the capacities and awareness of risk of the various authorities involved and the human and technical resources allocated to their AML/CFT activities as well as international cooperation between supervisors.

i) *Prosecution of ML.* Following on from the outcomes of the 2008 mutual evaluation report (MER) of Japan, the team sought to clarify the level of proof required to prosecute ML cases, the role of different types of evidence in trials.

Materiality

58. Japan had a nominal GDP of USD 4 873 billion in 2018[16] and is the world's third largest economy. The services sector makes up around three quarters of economic output (72.1%), followed by manufacturing (26.7%). The extraction and collection of natural resources makes up a very minor part of the economy (1.2%). Financial services, real estate, retail, transportation, telecommunications represent the largest industries within the services sector. Japan's manufacturing sector is highly diversified, with major industries including consumer electronics, car manufacturing, semi-conductor manufacturing, and optoelectronics.[17]

59. Japan is the world's fourth-largest importer and exporter of goods and services as of 2018.[18] Japan's largest export industries involve manufacturing (in particular car manufacturing including vehicle parts). The largest export destinations are China, the United States, South Korea, Australia, Thailand and Singapore. Raw materials represent the largest import sector, in particular oil and natural gas from Saudi Arabia and the UAE. Japan's main import partners are China, the United States, Australia, South Korea and Saudi Arabia.[19]

16 See IMF Article IV Consultation report www.imf.org/en/Publications/CR/Issues/2018/11/27/Japan-2018-Article-IV-Consultation-Press-Release-Staff-Report-and-Statement-by-the-Executive-46394

17 See Economic and Social Research Institute Cabinet office report www.esri.cao.go.jp/en/sna/data/kakuhou/files/2018/pdf/point_flow_en_20191226.pdf

18 See WTO statistical review, 2019 www.wto.org/english/res_e/statis_e/wts2019_e/wts2019_e.pdf

19 See Customs data www.customs.go.jp/toukei/shinbun/trade-st_e/2019/2019_115e.pdf

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60. Japan has one of the largest and most sophisticated financial systems in the world.[20] Japanese society is highly banked with more than 98% if the population aged 15 and more with access to a bank account.[21] More than half of total financial assets are held by commercial banks. Banks play a major role in financial intermediation in Japan, with three "mega banks" (classified as global systemically important banks (G-SIBs)) accounting for about 18% of financial assets, and regional and Shinkin banks making up 14% and 5% respectively (see Table 1.1).

61. The remaining half of financial assets are mainly shared among insurance companies (14% of total assets), pension funds (8%), securities firms (5%), and investment trusts (6%).[22] Japan's insurance sector is the world's second largest after the United States. Life insurance accounts for about 90% of the sector, with total financial assets of about 75% of GDP. Japanese securities markets rank among the largest in the world. The largest five firms—three of which are subsidiaries of the megabanks—are major players in global capital markets, investment banking, and asset management.

62. There are 19 virtual asset service providers registered in Japan (March 2019). Their total transaction volume in October 2019 was JPY 4 542billion (EUR 36 billion/USD 43 billion).[23]

63. A key feature of the Japanese economy is that the Japanese market is chiefly serviced by Japanese FIs. Foreign banks have a very small market share in Japan. At the same time, Japanese banks have significantly expanded, with foreign lending by Japanese banks rising steadily since 2010. The Bank of International Settlement (BIS) reported in 2017 that Japanese banks had become the largest foreign lenders (measured by consolidated foreign claims on borrowers outside banks' home country), with foreign claims over US$4 trillion as at the end of 2017 (excluding Japanese banks' claims on residents of Japan). The largest recipients of lending by Japanese banks were the US, Cayman Islands, the U.K., France, Australia, Germany, Luxembourg and the Netherlands, Thailand and China. [24]

Structural Elements

64. The main structural elements appear to be in place for an effective AML/CFT regime in Japan. This includes political and institutional stability, government accountability, rule of law, and a capable and independent judiciary.

20 See IMF 2017 FSAP www.imf.org/en/Publications/CR/Issues/2017/07/31/Japan-Financial-System-Stability-Assessment-45151

21 See Global Partnership for Financial Inclusion data http://datatopics.worldbank.org/g20fidata/country/japan

22 See IMF FSAP 2017 www.imf.org/en/Publications/CR/Issues/2017/07/31/Japan-Financial-System-Stability-Assessment-45151. Same source for other data of this paragraph.

23 See Japan Virtual and Crypto Assets Exchange Association (JVCEA) data (Japanese only) https://jvcea.or.jp/cms/wp-content/themes/jvcea/images/pdf/statistics/201911-KOUKAI-01-FINAL.pdf

24 www.bis.org/statistics/rppb1804.pdf

Background and Other Contextual Factors

65. Over the last years, Japan has faced major, long-lasting challenges which have impacted the Japanese society in general, and should also be considered in the overall context for AML/CFT policies. The 2011 Fukushima earthquake and tsunami and their terrible human and environmental consequences exacerbated the major social changes brought about by the low growth at the beginning of the 2010s. Japan's economy has also faced new economic conditions characterised by increasing competition from neighbouring markets, such as South Korean and China. In addition, Japan is an increasingly aging society[25] and as part of the solution, more foreign workers have been allowed to enter the country, in a controlled manner. Japanese authorities report that this new phenomenon in Japan, including the integration of foreign workers creates challenges for the society as a whole.

66. Japan ranks towards the top of the Transparency International Perceptions Index 2019 (20th of 180 jurisdictions from 'clean' to 'corrupt'),[26] with an overall assessment by the world justice project (2018/19) that 'civil justice is effectively enforced' and 'free of corruption'.[27]

67. Japan became a party to the UN Convention against Transnational Organised Crime (UNTOC) and the UN Convention against Corruption (UNCAC) in July 2017. The OECD Working Group on Bribery in International Business Transactions adopted its Phase 4 evaluation of Japan in June 2019.[28] Concern was raised at the enforcement of its bribery laws and the capacities of LEAs to proactively detect, investigate and prosecute the foreign bribery offence. However, amendments to the Act on Punishment of Organised Crimes and Control of Proceeds (APOC) to introduce the legal basis to confiscate the proceeds of foreign bribery and to criminalise the laundering of proceeds of foreign bribery were welcomed as a significant step.

AML/CFT strategy

68. In December 2013, Japan adopted a Strategy to make the country "the safest country in the world", in view of the Tokyo 2020 Olympic and Paralympic Games. The Strategy included a set of coordinated actions to improve safety and security, including actions to counter terrorism and to strengthen AML measures, mainly based on the results of the 2008 FATF mutual evaluation.

69. Combating Boryokudan' influence was a central part of this strategy. The objective, mainly for the NPA and the NPSC were to weaken the foundation for the existence of criminal organizations, including Boryokudan. Amongst other measures, the NPA instructed Prefectural police to investigate and clarify the situations of and promote crackdowns on Boryokudan and their affiliate companies. This was combined with the application of the 2007 Guidelines preventing private companies to establish business relationships with Boryokudan members of associates. By September 2012, the NPA and all relevant ministries and agencies had established a framework to exclude any companies affiliated with Boryokudan from any public works projects, and by 2016, all prefectures had adopted similar measures.

25 https://data.oecd.org/pop/elderly-population.htm#indicator-chart

26 www.transparency.org/country/JPN

27 http://data.worldjusticeproject.org/

28 www.oecd.org/japan/japan-oecdanti-briberyconvention.htm

70. In the context of the planned 2020 Olympic and Paralympic Games, Japan also adopted Counter Terrorism Guidance, which does not substantively include TF.

Legal & institutional framework

71. The AML/CFT legal framework in Japan is organised by the following Acts:

a) The APTCP was adopted in 2007. Major improvements to the APTCP were adopted in 2011 and 2014 and entered into force in 2013 and 2016 respectively. The APTCP requires the application of preventive measures, including STR reporting, by obliged entities (including virtual currency exchange service providers since 2016) and the conduct of AML/CFT supervision by relevant authorities.

b) The APOC was last amended in 2017. It criminalises ML and predicate offences (including tax crimes) and includes provisions on preservation of assets and confiscation.

c) The Act on Punishment of Financing to Offences of Public Intimidation (TF Act), which was adopted in 2002 and amended in 2015, and criminalises TF.

d) The (1949) Foreign Exchange and Foreign Trade Act (FEFTA) which requires asset freezing on foreign transactions, and the Terrorist Asset Freezing Act (TAFA), adopted in 2014 to supplement the FEFTA for the implementation of targeted financial sanctions, and requires asset freezing on domestic and foreign transactions.

Relevant Ministries

- The *FATF Inter-Ministerial Meeting* was set up in 2005 as a cooperation platform between public authorities involved in AML/CFT (MOF, the NPA, the JFSA and other AML/CFT supervisors, the MOJ, the MOFA, as well as the PPO, the Customs and the Coast Guards. The FATF Inter-Ministerial meeting is also responsible for the cooperation of authorities involved in counter proliferation financing activities.
- The *Ministry of Finance* (MOF) is in charge of the supervision of the implementation of targeted financial sanctions.
- The *Ministry of Justice* (MOJ) is responsible for the legislation on the trade register, and company law in general as well as law on associations and foundations. The Legal Bureau for company registration and trade register is part of the MOJ. MOJ is also in charge of the legislation on criminal law. It also plays a central role in mutual legal assistance.
- The *Ministry of Foreign Affairs* (MOFA) plays a role in the carrying out Japan's obligations concerning targeted financial sanctions, including implementing UN designations in Japan.
- The *National Public Safety Commission* (NPSC), under the direct authority of the Prime Minister, also plays an important role in implementing targeted financial sanctions.

Relevant AML/CFT supervisors

- The *Japanese Financial Services Agency* (JFSA) is the AML/CFT supervisor of all banks and a number of non-bank FIs. Some FIs under JFSA supervision are supervised in partnership with another Ministry given their specific customer groups or areas of activities (*Ministry of Health, Labour, and Welfare (MHLW); Ministry of Agriculture, Forestry and Fisheries (MAFF), Ministry of Economy, Trade and Industry (METI), Ministry of Land, Infrastructure, Transport, and Tourism (MLIT); MOJ, MOF*. The AML/CFT supervision of some regional and smaller FIs is performed by local financial bureaus (LFBs), which are part of the JFSA.
- DNFBPs are supervised for AML/CFT by MLIT, METI, MOJ, Ministry of Internal Affairs and Communication (MIC), MOF, the Japanese Federation of Bar Associations (JBFA) and also by JFSA.
- The *MOF* is also in charge of the supervision of the implementation of targeted financial sanctions (see below).

Criminal justice and operational agencies

- The *National Police Agency (NPA)* conducts police operations regarding cases involving national public safety and undertakes "horizontal" activities for all police forces, such as education and training, communications, laboratory investigations as well as the development of police administration. It is under the oversight of the NPSC. The *Prefectural police* is responsible for policing and cases at prefectural level. Prefectural police are placed under the authority of the Prefectural governor and the supervision and control of the NPA for its police duties.
- The *Japan Financial Intelligence Center (JAFIC)* is the FIU, which is under the Director General of the Organised Crime Department of the NPSC's Criminal Investigation Bureau. The FIU collects, analyses and disseminates STRs and is a member of the Egmont Group.
- The *Public Prosecutor's Office* (PPO) is affiliated to the MOJ and responsible for "superintending" prosecutors' affairs. The PPO as a secondary investigation agency, generally conducts investigation in cooperation with judicial police officials for all offences and has the authority to initiate investigations on its own initiative. PPO has carried out investigations of white-collar crime cases that require advanced legal expertise and sophisticated investigation techniques such as corruption or tax evasion, as well as other criminal offences. The PPO consists of four types of offices: the Supreme Public Prosecutors Office, the High Public Prosecutors Office, the District Public Prosecutors Office and the Local Prosecutors Office, which are located with the corresponding s courts.
- *Japan Coast Guard (JCG)* is in charge of maritime safety and security, including the prevention and suppression of crimes as well as investigations and arrests of criminals on the sea. JCG divides the country into 11 regions, and has established Regional Coast Guard Headquarters in each region.
- *The Narcotic Control Department (NCD)* is a department of the local Health and Welfare Bureau. They have investigative authorities over drug crimes including ML related thereto.

- Some other authorities have the power to investigate the predicate offenses that fall under their remit: National Tax Agency (NTA), Regional Taxation Bureau for tax crimes; Customs for investigations of customs crimes; and Securities and Exchange Surveillance Commission (SESC) for crimes connected to financial instruments and the submission of false securities registration statements.
- For TF, the Security Bureau of the NPA is responsible for gathering and analysing information on and combatting terrorism including TF. It guides and coordinates activities of the Prefectural Police which carries out terrorism and TF investigations. The *Public Security Intelligence Agency (PSIA)* also contributes to combat terrorism and TF, as part of its responsibilities to monitor and investigate terrorist organisations such as Aum Shinrikyo.

Financial sector and DNFBPs

Table 1.1. Financial institutions in Japan

Type of FI	Number (end March 2019)	Key figures (end March 2019 unless specific otherwise)	Key activities/characteristics
Banks[29]	138	Total assets EUR 11.58 trillion/USD 12.85 trillion	Key figures on the banking sector in Japan: www.zenginkyo.or.jp/en/stats/year2-01/2018-terminal/
Credit Cooperatives Federation of Credit Cooperatives	146 1	total assets EUR 199.75 billion/USD 221.74 billion total assets EUR 85.86 billion/USD 95.32 billion	
Mutual loan companies	1	Total assets EUR 103.57 million/USD 144.95 million (2019)	
Funds Transfer Service Providers	64	Annual handling amount EUR 11.12 billion/USD 12.34 (2018)	
Virtual Currency Exchange Service Providers (VCEPs)	19	Total active accounts: 1.79 million	
Shinkin Banks Shinkin Central Bank	259 1	Total assets USD 1,421 billion (approx. EUR 1,278 billion) Total assets USD 355 billion (approx. EUR 319 billion)[30]	Cooperative financial institutions, which finance members - SMEs and individuals domiciled in a certain area. Non-member lending is restricted to 20% of total lending but there is no limit on deposits acceptance from non-members.
Low cost/short term insurers	101	Total amount of premiums EUR 852.89 million/USD 946.78 million (2018)	Underwrite insurance business which period of insurance is not exceeding 2 years and the amount insured is less than JPY 10 million (approx. EUR 79 000/USD 96 000)

29 Japan counts three "mega-banks", i.e. banks that qualify as Global Systematically Important Financial Institutions (G-SIFI) according to FSB classification : Mitsubishi UFJ FG, Mizuho FG and Sumitomo Mitsui FG www.fsb.org/work-of-the-fsb/policy-development/addressing-sifis/global-systemically-important-financial-institutions-g-sifis/

30 Annual Report of Shinkin Central Bank (2019): www.shinkin-central-bank.jp/e/financial/pdf/all_2019.pdf

Type of FI	Number (end March 2019)	Key figures (end March 2019 unless specific otherwise)	Key activities/characteristics
Trust companies	75	The total balance of trusts under management EUR 9.93 trillion/USD 11.02 trillion	Companies that undertake the underwriting of a trust (regulated and supervised a FI although would meet the FATF definition of TCSPs).
Money market brokers/dealer for call loans	3	Total assets EUR 471 billion/USD 522 billion	Essentially do their business in inter-bank markets, facilitating money transactions of shorter-than-one-year period. Their clients are mostly banks.
Money lenders	1 770	Total loan balance EUR 208.34 billion/USD 231.28 billion	
Insurance companies (Foreign insurance companies)	71 24	Total amount of premiums EUR 361.98 billion/USD 401.83 billion (2018)	
Financial instruments business operators	1 963	Type I Financial Instruments Business Operators (260) Total assets; approx. EUR 1247 billion/USD 1385 billion	Business operators engaged in sales and solicitation of securities.
		Type II Financial Instruments Business Operators (1,196) AUM; approx. EUR 90 billion/USD 100 billion	Business operators engaged in sales and solicitations of illiquid securities
		Investment Managers (378) AUM; approx. EUR 4388 billion/USD 4871 billion	Business operators engaged in discretionary investment managements
		Investment Advisors (985) Advisory fees; approx. EUR 1 billion/USD 1 billion	Business operators engaged in investment advices
Securities finance company	1	Total assets approx. EUR 43 billion/USD 48 billion	Company engaged in lending to a securities company that is a regular member of a financial instruments exchange (a stock exchange), lending of short-term holding funds that a securities company needs in connection with underwriting and trading of bonds, as well as lending to individuals and corporations that make loans with collateralized securities.
Persons engaged in specially permitted services for qualified institutional investors	2 392	AUM; approx. EUR 158.6 billion/USD 176.1 billion	Operators which sale and solicit equity of collective investment schemes (CIS) to consumers where the equity holder of CIS are composed of (i) one or more qualified institutional investors (QIIs), and (ii) 49 or less than 49 persons who seem capable of judging investment decision appropriately.
Labor Banks Federation of Labor Banks	13 1	EUR 190 billion/ USD 211 billion EUR 82 billion/USD 91 billion	Cooperative FIs who serve members who are labor unions and consumer-livelihood cooperatives The Federation's services include: development and provision of products and services to Labor

Type of FI	Number (end March 2019)	Key figures (end March 2019 unless specific otherwise)	Key activities/characteristics
			Banks, adjustment of supply and demand between Labor Banks, efficient operation of surplus funds.
Agricultural Cooperatives Federation of Agricultural Cooperatives	628 32	(Agricultural Cooperatives) Total assets JPY 123, 435 billions (approx. USD 1,188,770 million/EUR 977,428 million) (Federation of Agricultural Cooperatives) Total assets JPY 76, 130 billions (approx. USD 733,188million/EUR 602,840 million)	Cooperative FIs engaged in a variety of activities and serve members who are farmers/fishermen, and fishery processors and cooperatives. Federations provide marketing services for their members, as well as supply services (ex. materials and machinery and daily commodities, and installation of facilities for joint use, transport, storage etc.).
Fisheries Cooperative Federation of Fisheries Cooperatives Mutual aid Federation of Fishery Cooperatives	76 28 1	(Fisheries Cooperative) Total assets JPY 1 188 billion (approx. USD 11,441/EUR 9,407 million) (Federation of Fisheries Cooperatives Total assets JPY 2 640 billion (approx. USD 25,425/EUR 20,905 million) (Mutual aid Federation of Fishery Cooperatives) Total assets JPY 472 billion (approx. USD 4,546/EUR 3,738 million)	
Fishery Processing Cooperative Federation of Fishery Processing Cooperatives	0 0	-	
Norinchukin Bank	1	Total assets JPY 105 953, 9 billion (approx. USD 1,020,414 million/EUR 839 003 million)	National-level financial institution for agricultural, fishery and forestry cooperatives.
Shokochukin Bank	1	Total assets EUR 90 billion/USD 100 billion	Stock company which finances SME cooperatives, other organizations that primarily consist of SMEs and their members.
Development Bank of Japan Inc.	1	Total assets JPY 16 82, .3 billion (approx. USD 162,018million/EUR 133,214 millions)	Financial institution with the mission of contributing to smooth supply of long-term business funds and the advancement of financial functions.
Currency Exchange Operators	620		
Specified joint real estate enterprises.	106	The amount of money JPY 70 billion (approx. USD 674 million/EUR 554 million)(2018)	Business operators that engage in business to buy, sell, lease real estate and to distribute its earnings.
Commodity Derivatives Business Operator	44	Margin balance JPY 125, 7 billion (2018) About 1,210 million USD, About 995 million EUR	A company that commodity derivative transactions as a business

Type of FI	Number (end March 2019)	Key figures (end March 2019 unless specific otherwise)	Key activities/characteristics
Organization for Postal Savings, Postal Life Insurance and Post Office Network		Deposit balance JPY 10 19 billion (approx. USD 9.8/EUR 8.06 billion (end Oct 2019) Insurance premium amount as of the end of Oct 2019 was JPY 160 Billion (approx. USD 1.5/EUR 1.3 billion).	Organization established in 2007 along with postal privatization. Purpose is, by appropriately and securely managing the postal savings and postal life insurance acquired from Japan Post and by securely performing the obligations in relation thereto, to contribute to postal privatization and, by delivering a grant for supporting maintenance of the post office network, to aim at providing basic services related to postal service business.
Financial leasing company	-	Lease handling JPY 5 trillion (2018) approx. 48.1 billion USD approx. 39.5 billion EUR	
Credit Card Companies	259	Amount of transactions via credit card JPY 66,688 billion (2018) approx. 642.2 billion USD approx. 528 billion EUR	Business operators who issue or grant credit cards and then deliver the amount that corresponds to the cost of goods or rights or the consideration for services to the sellers and receive the amount from the users.
Book-entry transfer institutions	2	Japan Securities Depository Center, Inc.: Total assets EUR 975 thousand/USD 1 082 thousand Bank of Japan: Total assets EUR 460 billion/USD 511 billion	
Account management institutions	Account management institutions are Banks and Financial instruments business operators.		Correspond to the "*Participation in securities issues and the provision of financial services related to such issues*" defined in FATF financial activities. The agencies transfers debentures and opens accounts for transferring debentures.
Electronic monetary claim recording institutions	5	Total assets EUR 91.7 million/USD 101.8 million	Correspond to the '*Safekeeping and administration of cash or liquid securities on behalf of other persons*' defined in FATF financial activities. The agencies just store, manage and disclose electronic records of claims when claims are generated or transfers to the third party.

Source: Japanese authorities

72. In Japan, two categories of DNFBPs do not fall under the APTCP scope:

- Casinos, as gambling is prohibited in Japan[31] and

31 A law to establish casinos resorts was enacted in 2018, but will only come into for three years after its promulgation (i.e. by July 2021).

- Notaries do not carry out transactions stipulated in the FATF Rec (R 22.(d)). The nature of duties of notaries is to engage in the notarization process, which is a public service. In addition, notaries do not receive any property in connection with their duties other than receiving fees and other necessary costs from their clients as provided in laws and regulations.

Table 1.2. DNFBPs in Japan

Type of DNFBP	Number	Key figures	Key activities/characteristics
Real estate brokers	123 782 corporations	JPY 12,628,339 million (approx. USD 121,620, million/EUR 99.998 million) (2016)	Business in which the buying or selling of building lots or buildings or the provision of intermediary or agency services for the buying, selling, or leasing of building lots or buildings is carried out in the course of business.
Dealers in precious metals and stones	Gold dealers:210 (2018) (Jewelry) Jewelry dealers: 7 134, incl. 5 262 corporations (2016)	(Gold) 367 ton (15 Billion USD/12.7 Billion EUR) Gold trading volume in Precious metal dealers (2018). (Jewellery) JPY 565, 3 billion of retail amount of jewellery trading in Precious metal dealers (2016) approx. 5,444 million USD approx. 4,476 million EUR	Business operators who trade diamonds and other precious stones, semiprecious stones, gold, silver, and their alloys or their products.
Lawyers Legal profession corporations	42 292, incl. 1 260 corporations (as of Oct. 31, 2019)	-	Specialists who conduct legal affairs such as lawsuits, non-contentious cases and complaint cases against the administrative agencies upon request of others.
Judicial scriveners and Corporations	22 516 incl. 662 corporations	-	Experts who, upon request of others, undertake procedures concerning registration and prepare documents to be submitted to the Legal Affairs Bureau (Minister of Justice), in charge amongst other things to maintain the Real Property Registration System and the Commercial and Corporation Registration System (Judicial scriveners and Corporation are also experts in the Real Property Registration).
Certified Administrative Procedures Legal Specialists and Corporations	49,444 incl. 676 corporations	-	Specialists who, upon request of others, prepare documents for filing with government and public offices.
Certified public accountants Audit firms	30 352 incl. 229 audit firms	-	Specialists who conduct audits or certifications of financial statements upon request of others and use the name of a certified public accountant to review financial statements.
Certified public tax	77 327 tax accountants of		Experts who, upon request of others, act as a proxy for

Type of DNFBP	Number	Key figures	Key activities/characteristics
accountants and Corporations	which; - 56 996 operate individua office - 5 900 belong to other person's individual office - 14 431 belong to tax accountants corporation 3 727 tax accountant corporations.		filing applications, requests, notifications, reporting, appeals, and preparation of tax documents based on tax laws and regulations to tax authorities
Postal receiving service providers	622 corporations (March 2019)	-	Permit a client to use the address of their domicile or office as the client's own in order for the client to receive postal mails, or where the operators receive postal mails which are then forwarded to the client (TCSP type of service – see R. 22 (e), 3rd bullet))
Telephone receiving service providers Telephone forwarding service providers	819	-	Telephone receiving service providers permit a client to use their telephone number as the client's own, receive calls to these numbers, and transmit the contents of the communications to the client. Telephone forwarding service providers permit a client to use their telephone number as the client's own and systematically forward the calls they receive to the telephone number designated by the client. (TCSP type of service – see R. 22 (e), 3rd bullet))

Source: Japanese authorities

73. The assessors ranked obliged sectors on the basis of their relative importance in the Japanese context given their respective materiality and level of ML/TF risks. Overall they concluded that implementation issues should be weighted as follows:

a) **Most significant**: the *banking sector* as it plays a predominant role in the financial sector in Japan and in the regional and international financial system. The banking sector is at higher risk for ML/TF as its relative size and openness makes it attractive to criminals seeking to hide the proceeds of crime among the huge volumes of legitimate business.

b) **Significant**: *the VCEP sector* as Japan has become the leader for developments in the virtual asset ecosystem and the mainstream adoption of virtual assets. This has brought major cybercrime risks, as evidenced by the hacking of Mt Gox in 2014 and most recently with Coincheck in 2018, which are posed by highly sophisticated actors in the region. In addition, financial intelligence indicates that criminal organisations in Japan are experimenting with virtual assets and the services offered by VCEPs. As this use will only increase with the expanding market of anonymising techniques (such as mixers/tumblers) and improvements in the speed of transactions, this leaves the sector at a higher risk for ML/TF abuse, despite the limited number of registered actors so far (19, see IO 1) Funds transfer service providers, trust companies, money lenders, insurance companies, financial instruments business operators, currency exchange operators, specified joint real estate enterprises, credit card companies, mainly due to the size of these sectors, which is important relative to the overall size of the financial sector in Japan, and the type of transactions which often present a number of higher risk factors. Regarding DNFBPs, real estate brokers, dealers in precious metals and stones, legal/accounting professionals, mainly based on the nature and level of risks

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of the transactions performed and the lack of AML/CFT regulation for some of them (no STR reporting obligation for ex, see TC Annex, R. 23);

c) Moderately significant: Financial leasing companies, postal receiving service providers, telephone receiving service providers and telephone forwarding service providers, mainly due to the limited volume of the transactions involved ;

d) Less significant: other sectors mainly due to their size and weight in the financial sector in Japan and/or their low vulnerability to misuse for ML/TF : low cost/short term insurers, money market broker/dealer for call loan, securities finance company, persons engaged in specially permitted services for qualified institutional investors, commodity derivatives business operator, account management institutions, electronic monetary claim recording institutions, book-entry transfer institutions and account management institutions which deal with national government bonds and Organization for Postal Savings, Postal Life Insurance and Post Office Network.

Preventive measures

74. The AML/CFT preventive measures in Japan are set out in the APTCP (see section *Legal & institutional framework*) which was adopted in 2007. The APTCP requires the application of preventive measures and the reporting of suspicious transactions by obliged entities, as well as the conduct of AML/CFT supervision by relevant authorities. Major amendments to the APTCP were adopted in 2011 and 2014 and entered into force in 2013 and 2016 respectively. They included the obligation to identify/verify beneficial ownership, the extension of the scope of the CDD measures to ongoing CDD and transaction monitoring, enhanced CDD for transactions with foreign politically exposed persons (PEPs), stricter verification regarding correspondent banking contracts involving higher risk countries.

75. In 2016, the APTCP was further amended in order to add VCEPs in the list of obliged entities. The scope of the VCEPs' definition does not cover all virtual asset service provider (VASP) activities and services, as defined by FATF (See TC Annex, c. 15.3).[32]

76. The APTCP, as other legal Acts in Japan, is complemented by a cabinet order (decree) and a ministerial ordinance, which together form the core AML/CFT framework in the country.

[32] Reference is made to Virtual Currency Exchange Providers (VCEPs) in the MER, given the scope issue with regard to Japan's definition of VASPs. The scope issue was addressed by a May 2019 amendment of the Payment Services Act which included custodial wallet services. The relevant requirements entered into force on 1 May 2020 after the onsite visit.

77. In February 2018, the JFSA adopted AML/CFT Guidelines in order to set a common minimum standard for the understanding of ML/TF risks by the financial sectors under its supervision. The Guidelines were amended in April 2019 to clarify that customer risk assessment should be conducted on all customers. Those Guidelines include binding requirements for FIs, and qualify as *enforceable means* as per the FATF *legal basis of requirement on FIs and DNFBPs*[33]. In August 2019, the METI published similar Guidelines for credit card companies, and jointly with MAFF, similar Guidelines for commodity derivatives business operators. In September 2019, METI also supervised the publication by the Japan Leasing Association of similar Guidelines for financial leasing companies.

Legal persons and arrangements

78. Legal persons in Japan are formed in accordance with the Companies Act (companies), and the Act on General Incorporate Associations and General Incorporated Foundations (associations and foundations). Stock companies by far are the most numerous type of legal person in Japan. At the end of 2018, approximately 1.9 million stock companies were incorporated in Japan.

79. The process of establishing a legal person in Japan involves the following steps:

a) Preparation of the articles of incorporation, which do not require a third party;

b) Certification of the articles of incorporation by a notary where relevant i.e. for stock companies and general incorporated associations and foundations;

c) Submission of the articles of incorporation at the Commercial and Corporation Registration System ('Commercial Registry')

d) Registration of incorporation at the location of the head office, with the assistance of a judicial scrivener.

Table 1.3. Total numbers of incorporated legal persons in Japan (thousands)

Type of legal person	2014	2015	2016	2017	2018
Stock Company	1 775	1 753	1 806	1 858	1 899
Limited Partnership Company	79	92	92	91	91
Limited Liability Company	74	94	115	139	165
General Incorporated Foundation	not available	not available	not available	not available	13
General Incorporated Association	not available	not available	not available	not available	57

Source: Japanese authorities

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Table 1.4. Characteristics of legal persons that can be incorporated

Type of legal person	Characteristics	Significance
Stock Company	Companies Act, Part 2 ✓ Shareholders' liabilities are limited to the value of their investment (limited liability). ✓ Fundamental matters (such as appointment of directors) are decided by the majority of shareholders (certain matters need special majority to be resolved). ✓ Directors are responsible for execution of the business. Transfer of shares is subject to approval of shareholder meeting or the board when the articles of incorporation provide so.	Both small and large company
Limited Partnership Company	Companies Act, Part 3 ✓ Some of the members are members with unlimited liability and other members are members with limited liability. ✓ Members both decide fundamental matters of the company and execute the business of the company unless otherwise provided for in the articles of incorporation. ✓ Transfer of membership is subject to approval of other members, unless otherwise provided for in the articles of incorporation. The names of all of the members are stipulated in the articles of incorporation of the company.	Generally small company
Limited Liability Company	Companies Act, Part 3 ✓ All of the members are members with limited liability. ✓ Members both decide fundamental matters of the company and execute the business of the company unless otherwise provided for in the articles of incorporation. ✓ Transfer of membership is subject to approval of other members unless otherwise provided for in the articles of incorporation. The names of all of the members are stipulated in the articles of incorporation of the company.	Generally small company
General Incorporated Foundation	Act on General Incorporated Associations and General Incorporated Foundations Part 3 ✓ When a General Incorporated Foundation is established, the properties contributed by founder is given a legal personality. ✓ A General Incorporated Foundation has councillors and directors. Councillors decide fundamental matters of the General Incorporated Foundation. Directors are responsible for execution of the business. ✓ Articles of incorporation of a General Incorporated Foundation shall not contain any provision which grants the founder the right to receive any surplus monies or residual assets.	Both small and large foundation
General Incorporated Association	Act on General Incorporated Associations and General Incorporated Foundations Part 2, ✓ A group of two or more members can establish a General Incorporated Association and obtain a legal personality. ✓ Fundamental matters of the General Incorporated Association are decided by the majority of members (certain matters need special majority to be resolved). ✓ Directors are responsible for execution of the business. ✓ Articles of incorporation of a General Incorporated Foundation shall not contain any provision which grants the members the right to receive any surplus monies or residual assets. ✓ Transfer of membership is subject to rules provided for in the articles of incorporation of the General Incorporated Association.	Both small and large association

Source: Japanese authorities

80. *Legal arrangements* - Trusts can be formed in Japan under the Trust Act. A trust comes into effect when a trust agreement is concluded between the settlor and trustee, a will is enacted, or a 'manifestation of intention' through a notarial deed or other document stated or recorded. Trusts are used in Japan for a range of purposes, from securitisation and pension vehicles to inheritance and real estate funds. A specific law was enacted in 1923 in order to govern the operation of 'trust businesses and companies', for trustees to offer commercial trust services. Trust businesses and companies continue to play an important role in the Japanese economy.

Table 1.5. Trust Companies and businesses licensed to provide trust services

Type of Trust Companies and businesses	2014	2015	2016	2017	2018
Investment-Based Trust Company	7	7	7	7	9
Custodian Type Trust Company	10	11	12	15	16
Financial Institutions which engage in Trust Business	41	41	41	43	48

Note: Investment-based Trust Company and Custodian Type Trust Company are 'Trust Company" under the Trust Business Act. Financial Institutions which engage in Trust Business are permitted by JFSA to run trust business as well as other businesses such as banking by the Act on Engagement in Trust Business by a Financial Institution.
Source: Japanese authorities

Table 1.6. Assets held in trust by licensed trust companies and businesses – [billion yen / c.10ms Euro-Dollar]

Type of asset	2014	2015	2016	2017	2018
Money Trusts	156,968	164,161	165,097	167,394	168,316
Pension Trusts	39,914	38,332	33,659	31,315	30,746
Asset Formation Benefit Trusts	32	30	30	30	32
Loan Trusts	14	12	10	-	-
Investment Trusts	145,295	167,227	182,447	201,706	209,982
Pecuniary Trust Other than Money Trusts	20,590	23,219	30,207	37,154	44,308
Securities Trusts	62,775	57,800	59,071	57,731	56,908
Monetary Claims Trusts	27,833	27,700	40,825	50,556	54,519
Movable Property Trusts	44	59	66	72	80
Real Estate Trusts	951	1,056	1,085	1,154	1,336
Composite Trusts	476,552	507,694	542,962	591,713	633,724
Total, Including Others	930,979	987,303	1,056,077	1,138,838	1,199,962

Source: Trust Companies Association of Japan

81. Japan is not a centre for the creation or administration of legal persons or arrangements. However, Japan is an important regional and global financial centre, and a global trade centre with significant volumes of goods and services imported and exported across a range of sectors around the world. Therefore there are a material number of foreign companies with legal persons registered in Japan (and vice versa).

82. There are a relatively small number of trust businesses and companies registered under the trust business act that are allowed to act as trustees on a commercial basis (see table 1.5 above), although significant amounts of assets are held in trust for these legal arrangements (see table 1.6 above). The Japanese authorities have estimated that there are few 'civil trusts' formed outside of the trust business act in Japan, although it is not possible to ascertain how many exist.

83. Japan was assessed to be Largely Compliant overall with the international standard of transparency and exchange of information on request for tax purposes in 2018.[34]

84. *Not-for-Profit entities (NPOs)* - Six laws impose certain obligations on legal-person NPOs and classify these legal persons into six sub-categories within the FATF definition of NPO, based on type of activity. The entities formed under the six laws capture the majority of entities undertaking 'good works' in line with the FATF definition of NPO in Japan.

[34] See www.oecd.org/japan/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-japan-2018-second-round-9789264302778-en.htm. The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

Table 1.7. Types and numbers of NPO entities

NPO category	Number	Relevant legislation	Designated responsible authority	Delegated Supervisory and Enforcement Authority
Public Interest Corporations	9 561 (1 Dec 2018)	Act on Authorisation of Public Interest Incorporated Associations and Foundations	Cabinet Office	Cabinet Office; Prefectural governments
Corporations Engaging in Specified Non-Profit Activities	51 610 (31 March 2019)	Act on Promotion of Specified Non-Profit Activities	Cabinet Office	Prefectural Governors; heads of designated cities
Incorporated Educational Institutions	7 976 (1 May 2018)	Private Schools Act	Ministry of Education, Culture, Sports, Science and Technology (MEXT)	MEXT; Prefectural governments
Religious Corporations	181 064 (31 December 2018)	Religious Corporations Act	Ministry of Education, Culture, Sports, Science and Technology (MEXT)	MEXT; Prefectural governments
Medical Corporations	54 790 (31 March 2019)	Medical Care Act	Ministry of Health, Labour, and Welfare (MHLW)	Prefectural governments; Designated cities
Social Welfare Corporations	20 838 (31 March 2018)	Social Welfare Act	Ministry of Health, Labour, and Welfare (MHLW)	MHLW; Prefectural governments; Designated cities

Sources: Cabinet Office; Ministry of Education, Culture, Sports, Science, and Technology; Ministry of Health

Supervisory arrangements

85. In Japan, all banks and a number of non-bank FIs are supervised for AML/CFT by the JFSA. For a number of those FIs, supervision is conducted in partnership with another Ministry, under the leadership of the JFSA. The AML/CFT supervision of some regional and smaller FIs, including banks (e.g. regional banks, Shinkin banks, credit cooperatives) is performed by local financial bureaus (LFBs), which are part of the JFSA.

86. VCEPs (see TC Annex, R.15) are considered as FIs and also supervised by JFSA. The MOF is in charge of the supervision of the implementation of targeted financial sanctions for FIs, VCEPs and DNFBPs.

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Table 1.8. FI supervisors in Japan

Type of FI	AML/CFT supervisor
Banks	JFSA
Credit Cooperatives Federation of Credit Cooperatives	
Mutual loan companies	
Funds Transfer Service Providers	
Virtual Currency Exchange Service Providers	
Shinkin Banks Shinkin Central Bank	
Low cost/short term insurers	
Trust companies	
Money market brokers/dealers for call loan	
Money lenders	
Insurance companies (Foreign insurance companies)	
Financial instruments business operators Securities finance company	
Persons engaged in specially permitted services for qualified institutional investors	
Labor Banks Federation of Labor Banks	JFSA and Ministry for Health, Labour and Welfare (MHLW)
Agricultural Cooperatives Federation of Agricultural Cooperatives	JFSA and Ministry of Agriculture, Forestry and Fisheries (MAFF), and prefectural governments for some of these FIs
Fisheries Cooperatives Federation of Fisheries Cooperatives	
Fishery Processing Cooperatives Federation of Fishery Processing Cooperatives	
Norinchukin Bank	
Mutual aid Federation of Fishery Cooperatives	MAFF
Shokochukin Banks	JFSA, Ministry of Finance (MOF) and Ministry of Economy, Trade and Industry (METI)
Development Bank of Japan Inc.	Ministry of Finance (MOF)
Currency Exchange Operators	
Specified joint real estate enterprises.	JFSA and Ministry of Land, Infrastructure, Transport, and Tourism (MLIT)
Commodity Derivatives Business Operators	Ministry of Agriculture, Forestry and Fisheries (MAFF) and Ministry of Economy, Trade and Industry (METI)
Organization for Postal Savings, Postal Life Insurance and Post Office Network	Ministry of Internal Affairs and Communication (MIAC)
Financial leasing company Credit Card Companies	Ministry of Economy, Trade and Industry (METI)
Book-entry transfer institutions	JFSA and Ministry of Justice (MOJ)
Account management institutions	
Electronic monetary claim recording institutions	

Source: Japanese authorities

Table 1.9. DNFBPs supervisors in Japan

Type of DNFBP	AML/CFT supervisor
Real estate brokers	Ministry of Land, Infrastructure, and Transport (MLIT)
Dealers in precious metals and stones	Ministry of Economy, Trade and Industry (METI)
Lawyers Legal profession corporations	Japan Federation of Bar Associations (JFBA)
Judicial scriveners Judicial scrivener corporations	Ministry of Justice (MOJ)
Certified Administrative Procedures Legal Specialists Certified Administrative Procedures Legal Specialist Corporations	The prefectoral governor
Certified public accountant Audit firm	JFSA
Certified public tax accountants Certified public tax accountant Corporations	Ministry of Finance (MOF)
Postal receiving service providers	Ministry of Economy, Trade and Industry (METI)
Telephone receiving service providers Telephone forwarding service providers	Ministry of Internal Affairs and Communication (MIAC)

Source: Japanese authorities

International co-operation

87. Tokyo is identified as a major world financial centre and Japan remains one of the most important financial hubs in the region. Japan counts a number of global financial players (see Table 1.1) and Japanese financial sector groups have a significant presence across a wide range of markets through investments, branches and subsidiaries, and ultimately support the circulation of domestic capital and in-flows of capital from abroad. Geographic proximity to DPRK exposes Japan to specific risks in relation to this country (see section *Country's Risk Assessment & Scoping of Higher Risk Issues*).

88. Japan cooperates with many countries and regions, and in recent years, the most frequently requested and requesting countries and regions have been: the United States; China; South Korea; Hong Kong, China; and EU countries. With respect to MLA requests, the MOJ is the central authority for incoming and outgoing requests and is communicating and coordinating with other countries as well as coordinating domestic stakeholders. The NPA is also the central authority that makes outgoing requests. JAFIC is responsible for information exchange with foreign FIUs.

Chapter 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key findings

a) Japan has a good understanding of the main elements of money laundering (ML) and terrorism financing (TF) risks, mainly based on the large number of assessments of ML and TF risk conducted, including a number of national risk assessments (NRA), threat assessments, typologies reports and some strategic intelligence products to assess elements of risk.

b) There are, however, a number of areas where the NRAs and other assessments could be further improved, including deepening the understanding of the broader risks across the Japanese economy, including cross border risks; drawing on additional information from LEAs and independent sources, in addition to previous STR reporting; and increasing the focus on threats and vulnerabilities.

c) Noting the relatively low level of terrorism and TF risks that Japan faces, the assessment and understanding of TF risk is well demonstrated by counterterrorism experts. However this level of understanding does not extend to other Japanese officials with a role in counter financing terrorism (CFT).

d) The Ministerial Meeting Concerning Measures Against Crimes (attended by the Prime Minister and all Cabinet Ministers) and the FATF Inter-Minister Meeting (the cooperation platform between relevant AML/CFT authorities) play a limited role in setting national AML/CFT policies and activities.

e) National AML/CFT policies, strategies and activities generally seek to address some of Japan's higher ML risks, including virtual asset risks. A number of other key risk areas are subject to robust national mitigation policies and activities (e.g. organised crime groups (Boryokudan), gold smuggling, drug trafficking), but these policies focus on criminals and on the smuggled or illegal goods or assets. They lack targeted activities to address the ML component.

f) CFT policies and activities are more focused on the risks, although there are weaknesses in relation to activities to prosecute TF, implement target financial sanctions (TFS), and support to the non-profit organisations (NPO) sector to address TF risks.

g) Key national authorities, including the Financial Intelligence Unit (JAFIC), the National Police Agency (NPA) and the Financial Services Agency (JFSA) have

taken steps to adjust some of their activities and priorities to be consistent with identified risks.

h) There is generally good interagency co-operation and coordination amongst most law enforcement agencies (LEAs) on AML/CFT operational matters. However, there are weaknesses regarding co-operation and coordination between agencies on the development and implementation of AML/CFT policies and activities to combat ML/TF.

i) Authorities demonstrated good inter-agency cooperation and coordination on intelligence and law enforcement activities related to combating proliferation of weapons of mass destruction (WMD).

j) Private sector institutions are aware of the results of the NRA and other risk assessments.

Recommended Actions

Japan should:

a) Continue to enhance stakeholders' understanding of ML and of TF risks including conducting follow-up assessments utilising improved risk assessment methodology, scope and process, including by:

   i. incorporating further operational input and the advice of expert practitioners from academia and the private sector, as well as an enlarged set of robust statistics;

   ii. deepening the use of additional information from outside of Japan (e.g. reports by international organisations) and further analysing external risks (such as cross border);

   iii. strengthening the analysis of the money flows and of the methods and techniques used to move proceeds, especially with regard to the business operations of the Boryokudan groups and the prevalence of the use of cash in Japan;

b) With regard to co-ordination and mitigation policies and measures :

   i. designate a joint-agency body responsible for setting national AML/CFT policies and activities;

   ii. articulate the national AML/CFT policies, objectives and activities in a strategic framework that sets AML/CFT policy priorities for the country beyond 2020 to effectively mitigate ML/TF risks;

   iii. give a leadership role to the main AML/CFT coordinating body, with the relevant powers and resources to drive the AML/CFT work, and clear definition of each authority's specific role in the AML/CFT system and their objectives and activities to effectively combat ML/TF; and

   iv. ensure that resources are allocated throughout the AML/CFT system according to the risks identified in the NRA.

89. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

90. The assessment team based its conclusions on a review of the available risk assessments and products, discussions with Japanese government departments, LEAs, other relevant agencies and obliged entities.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/TF risks

91. The main ML risks identified by Japan relate to: the activities of Boryokudan members, associates and other related parties including drug trafficking, theft, loan sharking, gambling and prostitution; transactions involving foreigners, mainly through illegal remittances and transfers; and specialised fraud of different types, from money extortion through phone calls or internet channels to stealing of bank accounts. Regarding TF, the main risks identified relate to the activities of "Islamic Extremists" associated to the Islamic State of Iraq and the Levant (ISIL), Al Qaida and other groups, as well as foreign fighters. Consistent with Japan's assessment, overall actual risk appears to be low.

92. Japan has a good understanding of the main types and categories of ML and TF risks it faces, but authorities need to strengthen their analysis of the money flows involved (both in and outside of Japan) and of the methods and techniques used to move the proceeds of crime. This will help authorities get a full understanding of the identified risks and take targeted and appropriate measures to efficiently address those risks.

93. Japan's understanding of risks is mainly based on the NRA, and complemented by risk assessment products produced by the JAFIC, the NPA and other agencies.

94. The NRA was published for the 1st time in 2014 and is a key reference point on ML and TF risks for a majority of Japanese authorities, as well as for the private sector. The NRA reviews the risk factors affecting the products and services provided by obliged entities, as well as the mitigation measures in place and determines the nature and level of ML/TF risks of these products and services. The NRA benefits from contributions from the private sector, which is a strength. It has been updated on a yearly basis since 2014, with the introduction of new or emerging elements of risks, such as the use of virtual assets (2015, see below) or the smuggling of gold bullion (2017).

95. Virtual asset-related activities have been assessed in the NRA since 2015, following the 2014 major bankruptcy Mt. Gox incident where 850 000 bitcoins (at current prices that is approx. EUR 5,99 billion/USD 6,5 billion) belonging to customers and the company were stolen. The use of virtual assets was first identified as high-risk services in 2016, which was based on the information provided by relevant authorities and private sectors. It has been maintained as a high-risk area in response to the extensive financial intelligence provided by relevant entities, including registered virtual currency (VC) exchange service providers. Furthermore, the 2018 NRA Follow-Up Report considers VCs to be high-risk due to their anonymity features, the potential volume of the market, the rapid expansion of business operations, their cross-border nature, and the fast changing developments of the market (see box 2.1 for a full overview on Japan's AML/CFT approach on VC).

96. In addition to the NRA, some authorities have produced thematic and stand-alone reports and assessments of relevance for ML/TF risks, for example on trends in illicit drugs and firearms smuggling in Japan (Customs and Tariff Bureau of the MOF, 2016), or on emergency countermeasures to "Stop Gold Smuggling" (Customs, 2017) or on the status of organised crime (NPA, 2018).

97. The NRA process and the in-depth knowledge by some authorities of specific risk areas with a direct impact on ML/TF risks indicate that Japan has the foundations for an effective system to understand its ML/TF risks. However, there are a number of areas where the NRA and other assessments could be further improved, mainly regarding the methodology and scope, which should be addressed to ensure a comprehensive understanding of the risks by Japanese authorities.

98. In the NRA, assessments of risks of proceeds of crime draw upon a wide range of inputs including STRs and confirmed cases. The filing of suspicious reports is primarily done on basic scenarios, based themselves on the general outline of the main ML/TF risks identified in the NRA. Not all DNFBPs are under an obligation to file STRs (see IO 4). This could create a risk that the NRA identifies risks and obliged entities confirm these risks through STRs.

99. Japanese authorities therefore need to broaden the identification and assessment of risks, to more comprehensively take into account other important information sources, including additional statistics and cases investigated provided by LEAs, such as the NPA and Prefectural Police; as well as independent sources, such as advice of experts in the field of AML/CFT and external reports, including by international organisations.

100. Japan's NRA usefully identified a number of key risk factors to help detect high-risk transactions. They are linked to the types of transactions, the countries/regions involved, and customer attributes, and include the use of cash, the exploitation of legal persons to conceal beneficial ownership and the extent to which the Boryokudan mask their engagement with the regulated sectors through third parties (e.g. by stealing or purchasing bank accounts and employing third parties to make cash deposits/withdrawals). However, Japanese authorities need to strengthen the analysis of these factors and their direct or indirect connections with or impact on the risks identified, as well as the mechanisms and channels involved. This would improve Japan's deeper understanding of the three main risks identified in the NRA.

101. JAFIC strategic analysis produces information reports on trends, patterns related to particular typologies that reflect high risk areas and emerging risks. These products are shared with government stakeholders to increase the understanding of risk. JAFIC has produced a total of 92 JAFIC News and 7 JAFIC Communications intelligence products, which were also considered when conducting the NRA. JAFIC annual reports and briefing sessions enable assessments of typologies and findings to be shared with the private sector.

102. The NPA develops and shares risk information internally and publishes annual White Papers which include analysis of crime statistics and information on trends and emerging threats and vulnerabilities. NPA White Papers include details of a range of high risk crime types, including updates on the changing nature of organised crime.

103. Assessments could be further improved to sufficiently focus on cross border risks and the extent to which informal, underground channels are being used to commit crimes and launder the proceeds. This is of particular relevance to the Boryokudan's criminal activities, noting that cash is used in their main laundering methods. For example, the sale of methamphetamine is one of the highest profit-generating crimes of the Boryokudan[35]. LEAs have tracked the smuggling and distribution of drugs but have not been equally active on tracing the corresponding flow of cash, especially across borders. This creates challenges for LEAs to understand how the Boryokudan are sourcing drugs from outside of Japan, and with which transnational crime organisations they are doing business, and how the AML/CFT system may be exposed to these risks.

104. Although the NRA identifies some legal persons as higher-risk (for example legal persons "without transparency") and some categories with higher exposure to ML risks (for example stock companies), the vulnerabilities associated with the different types of company structures do not seem to be sufficiently understood (see IO 5). There has been no comprehensive assessment of the risks associated with legal arrangements (also see IO 5).

105. Japan's assessment of 'low' TF risk appears accurate, notwithstanding Japan's role as an international financial hub (see IO.9). Understanding of TF risk is well demonstrated by counterterrorism experts. Authorities conduct robust surveillance, use financial intelligence, and exercise other measures to effectively understand and mitigate domestic TF risks. However the understanding of the nature of TF risk does not extend to other Japanese officials who nonetheless have important roles in countering TF. Moreover, the NRA does not reach a sufficient level of detail regarding TF risks to educate fully the latter category of officials and broader relevant audiences.

National policies to address identified ML/TF risks

106. In general over the last few years, most of the AML/CFT policy and legislative measures adopted and implemented by Japanese authorities sought to address the deficiencies highlighted in the 2008 mutual evaluation report and to implement the amended FATF requirements adopted in 2012. Some of these measures were included in the 2013 overarching strategy "to make Japan the safest country in the world", which included a set of coordinated actions to improve safety and security in the country, including actions to counter terrorism and to strengthen AML measures. That overarching strategy had a target date of 2020. There is a need to renew another long-term risk-based AML/CFT strategy, focused on following criminal money trails that would also serve Japan's priority of fighting organised crime groups.

107. Since the Mt Gox hacking in 2014, Japan has provided a policy response to the emerging, but fast developing, virtual asset technology and adopted measures to prevent the misuse of virtual assets.

35. www.npa.go.jp/english/Police_of_Japan/Police_of_Japan_2018_20.pdf; www.customs.go.jp/english/enforcement/report2016_e/2016b.pdf

Box 2.1. Japan's approach to regulating and supervising virtual asset activities and service providers

In May 2016, Japan amended the Payment Services Act (PSA) and the Act on Prevention of Transfer of Criminal Proceeds (APTCP) to regulate 'Virtual Currency Exchange Services' (limitations to the scope of the applicable requirements as compared to the FATF definition of Virtual Asset Service Providers are highlighted in the TC Annex, R.15.3).[36]

If a business provides this service, then they are required to register with JFSA. Since introducing this registration system, there have been 19 businesses registered as VCEPs as of March 2019. Due to the emergence of virtual assets as a high risk in Japan, the JFSA have implemented a rigorous registration process for those seeking to apply to become a VCEP which requires the applicant to provide an AML/CFT risk assessment and includes an on-site assessment and interviews with management and officers.

For those registered VCEPs, a dedicated monitoring team was established in August 2017 by the JFSA to strengthen guidance and supervision of VCEPs and conduct in-depth monitoring of their internal controls in order to mitigate the risks associated with virtual assets. This engagement was boosted in October 2018 with the JFSA certifying the Japan Virtual and Crypto Assets Exchange Association (JVCEA) as a self-regulatory body under the PSA.

The PSA provides that the responsibilities of the JVCEA include the administration of self-regulatory rules, the monitoring of member firms (including considering complaints and providing advice and warnings) and collaboration with relevant organisations (including government agencies). The self-regulatory rules, which were enacted in October 2018, contain rules on business management, auditing, and compliance, in order to ensure the proper conduct of a VCEP.

Furthermore, the self-regulatory rules focus on the risks associated with certain virtual assets, and prohibit registered businesses from listing anonymity-enhancing virtual assets. These virtual assets are considered to be high-risk due to their lack of traceability and predominance as a medium of exchange on Darknet marketplaces. This step is consistent with previous measures put in place by the JFSA, where a Business Improvement Order was issued in March 2018 to a VCEP to enhance AML/CFT defences which resulted into delisting certain anonymity-enhancing virtual assets due to concerns about internal AML/CFT controls.

In order to control the virtual assets that are listed for exchange in Japan, the PSA requires VCEPs to pre-notify the JFSA of plans to change their listing of virtual assets. Since October 2018, the JVCEA and the JFSA

36 The Payment Services Act was further amended in May 2019 to include custodial wallet services and the relevant requirements entered into force on 1 May 2020 after the onsite visit.

examine the proposed new listing and can reject the proposal. However, in the event that a service provider directly contravenes the JFSA and/or the JVCEA, the JFSA has ultimate authority to enforce sanctions against the service provider under the PSA.

Beyond the risks associated with certain virtual assets, Japan has conducted extensive work on identifying and managing unregistered service providers (see IO 3). If a suspected business ignores requests for engagement by the JFSA, then warnings on the business can be posted on the JFSA website and the matter can be referred to the NPA and Consumer Affairs Agency for further action. This work has also involved close cooperation with global VASP hubs in order to address the inherent cross-border risks associated with virtual assets.

In addition, the JFSA has sought to address the AML/CFT risks associated with virtual asset automatic teller machines (ATMs) by imposing virtual asset ATM-specific requirements on service providers that wish to roll out affiliated ATM networks. As a result, the earlier network of virtual asset ATMs was shut down and there are currently no virtual asset ATMs in Japan.

These measures have responded to and been tailored according to the risks of virtual assets in Japan. This includes the increasing exploitation of virtual assets by Boryokudan members to launder their proceeds of crime and transfer value to offshore networks and organisations. This trend is supported by a significant increase of over 900% in STRs from VCEPs from 2017 to 2018 (see IO 6).

108. For other high-risk crime types and vulnerable sectors, Japan developed national policies and activities over the last few years. Their scope was broader than AML with an impact on their overall AML effectiveness. For example, Japan adopted a set of actions to identify Boryokudan's members and associates and disrupt their activities. This included the 2007 Ministerial Guidelines to help companies, including FIs and other obliged entities, to cut business relationships with Boryokudan's members and associates. Combating Boryokudan' influence was also a central part of the 2013 "Strategy to make Japan the safest country in the world" in the perspective of the 2020 Olympic and Paralympic Games. These coordinated actions produced some results with a substantial reduction of the number of organised criminal groups and of their members and associates (from 53 500 in 2014 to 30 500 in 2018). [37] However, the focus of these actions was detecting, identifying and going after the criminals themselves, and not so much tracing and following the money flows associated to their activities (see below and IO 7 and 8).

[37] Figures provided by Japan authorities

109. While policy actions have resulted in reductions in the use of cash in the Japanese economy, insufficient priority has been given to responding to the high risks associated with large-scale use of cash overall and its use in ML schemes. Assessments by JAFIC and the NPA highlight that many criminals, including Boryokudan members, predominantly use cash. There are still insufficient measures to reduce the preponderance of large cash payments, or incentives to encourage people to move from cash to electronic forms of payment and storage. It is notable that in the context of high risks for cash-based ML and a highly cash intensive society, there is no cash threshold reporting obligation, and only the directly suspicious cross-border cash declarations are made available to the JAFIC and the NPA (see IO 6).

110. Response to large scale gold smuggling and associated tax fraud is a strong example where policies and activities of Japanese authorities have addressed a specific high ML risk. Challenges with very large-scale gold smuggling and related tax frauds were largely triggered when the consumption tax on gold increased from 5% to 8% in 2014. Authorities identified large scale smuggling of gold bullion into Japan (for example in Hong Kong, China), in order to sell the gold in Japan inclusive of the 8% tax, which was then claimed back as profit. Customs and other authorities took robust actions, including strengthening customs controls, increasing the sanctions for smugglers and greatly increasing detections, which have led to a greatly reduced trend in smuggling and associated tax fraud. This had a positive impact on addressing the ML component of the schemes.

Table 2.1. Seizure of gold bullions

	2013	2014	2015	2016	2017	2018	2019 (Jan/June)
Number of cases	12	119	465	811	1 347	1 088	9
Amount (kg)	133	449	2 032	2 802	6 277	2 119	146

Source: MOF

111. There is a gap with a body responsible for setting national AML/CFT policies and activities. There is the Ministerial Meeting Concerning Measures Against Crimes ('Ministerial Meeting'), which is chaired by the Prime Minister, attended by all Cabinet Ministers and was established to oversee the Strategy to make Japan "the safest country in the world". The Ministerial Meeting is convened to promote effective and appropriate measures against criminal activities that are considered threats to Japan's security, which may include money laundering and terrorist financing. However, there is no specific focus on ML/TF in the official mandate of the Ministerial Meeting, and it has not been involved in setting national AML/CFT policies and activities.

112. The FATF Inter-Ministerial meeting, which provides an annual report to the Ministerial Meeting Concerning Measures Against Crimes, is the cooperation platform between public authorities involved in AML/CFT (see Chapter 1) and this body was instrumental in the NRA work and policy preparations for Japan's engagement with FATF. It has had a limited role in the definition and development of national AML/CFT policies based on the findings of risk assessments.

113. There is an opportunity for one of these bodies to play a more prominent role in coordinating AML/CFT policy priorities, setting an approach that reflects the results of the NRA, and defining an action plan to carry out this coordinated and collaborative approach to addressing the risks identified in the assessments of risk.

114. CFT policies and activities are better focused on the risks, although there are weaknesses in relation to use of TFS and support to the NPO sector to address TF risks (see IO.10).

Exemptions, enhanced and simplified measures

115. The results of the NRA are used to support the application of enhanced measures since obliged entities need to consider the risk factors identified in the NRA as part of their assessment and to take enhanced due diligence measures where a transaction is identified as higher risk in the NRA (see TC Annex, c. 1.7 and 10.17).

116. The results of the NRA are also used to support the application of simplified measures as obliged entities are allowed to apply a simplified due diligence regime to lower risk transactions identified in the NRA (see TC Annex, c. 1.8 and 10.18).

117. There are no low risk situations in Japan which are exempted from some AML/CFT obligations (see TC Annex, c. 1.6).

Objectives and activities of competent authorities

118. There are a number of areas where national competent authorities focus on addressing key risks (e.g. Boryokudan, drug trafficking), but these activities lack sufficiently targeted AML-focus. Overall, objectives and activities of competent authorities are not yet sufficiently consistent with the areas of identified higher ML/TF risk.

119. As it was noted regarding AML/CFT policies (see above), in general authorities' preventive actions and investigations focus on the detection and the identification of criminals, but following the money or blocking the available funds or assets when it is possible is not a main part of their actions. LEAs would generally focus on the predicate offence and not so much on the ML part. The National Tax Agency or the Securities Exchange Surveillance Commission have shown for example that they investigate the predicate offences for which they are responsible, but would not flag any potential ML leads to the Public Prosecutors Office (PPO) or other relevant authorities (see IO 7).

120. Nevertheless, JAFIC and the NPA have taken steps to adjust their activities and priorities and showed for example that a large number of cases detected and investigated involve Boryokudan-led crimes, fraud or drug trafficking which are important risks in Japan (see IO 6 and 7).

121. The JFSA has rightly focused its supervisory activities on the banking and on the VCEP sectors, as the higher risk sectors under its supervision. It took robust supervisory actions regarding VC exchange providers leading to sanctions (see box above and IO 3 and 4). However, so far, there has not been sufficient dedicated AML/CFT review of the banking sector, including of "mega-banks". JFSA AML/CFT supervision on a risk-basis is still at an early stage. JFSA needs to more strongly prioritise AML/CFT activities and significantly increase resources allocated to AML/CFT to perform its functions on a risk-sensitive basis. Other AML/CFT supervisors, in charge of other FIs and of DNFBPs do not conduct AML/CFT supervisory activities on a risk-basis (see IO 3).

National co-ordination and co-operation

122. There is good interagency co-operation and coordination amongst most LEAs on AML/CFT operational matters, especially NPA and Prefectural police, and they receive good intelligence support from JAFIC (see IO 7). There is good cooperation between those LEAs, JAFIC and Customs on financial aspects of customs-related offences. However, there are some exceptions, for example the NPA and the PPO with regard to the investigation and prosecution of ML offences when the PPO finds that there is insufficient evidence. Japan did not demonstrate effective cooperation and coordination to address the gaps in evidence collection in this consistently large proportion of all ML cases (see IO 7).

123. Interagency co-operation and coordination for the development and implementation of AML/CFT policies and activities to combat ML/TF needs to be further enhanced. For example, the FATF Inter-Ministerial meeting could play a higher-profile role, and be driven by an agency with relevant powers and resources to lead the AML/CFT work in a proactive way, promote the fight against ML and TF as a policy priority in the country, set priorities reflecting the results of the NRA, define an action plan for a coordinated and collaborative approach in addressing the risks identified in the NRA.

124. JAFIC and JFSA cooperate, especially to help FIs improve their reporting policies and practices. Their cooperation to support supervisory authorities to publish "Reference Cases" for reporting suspicious transactions is a concrete example. JAFIC also provides analysis of specific reporting trends to JFSA, and to FIs, highlighting specific alert factors for suspicions, for example regarding illegal drug sales and loan shark practices. This cooperation is useful and should be developed further, especially regarding strategic analysis of higher risk areas (see IO 6) to support risk based approaches and inform obliged entities on their exposure to risk. Other financial supervisors and all DNFBP supervisors should also further cooperate with JAFIC in order to further educate on reporting suspicions and to provide tools to identify red flags.

125. There is close cooperation and coordination between NPA, JAFIC and JFSA on CFT issues, for example on the collection and analysis of TF risk indicators.

126. JFSA shares AML/CFT regulatory practices with other financial supervisors. For example, in 2019, the Ministry of Economy, Trade and Industry (METI), which supervises credit card companies and the Ministry of Agriculture, Forestry and Fisheries (MAFF), which supervises commodity derivatives business operators respectively, adopted similar AML/CFT Guidelines to the ones adopted by JFSA in February 2018. There would be benefits to expanding co-operation between all AML/CFT financial supervisors, on the one hand, and DNFBP supervisors on the other hand, to improve the approach to AML/CFT supervision on a risk-basis and increase the convergence of supervisory practices.

127. Authorities, including but not limited to the NPA, the Ministry of Foreign Affairs (MOFA), JAFIC, the Public Security Intelligence Agency (PSIA), MOF, and MOJ, demonstrated good inter-agency cooperation and coordination on intelligence and law enforcement activities related to combating proliferation of Weapons of Mass Destruction (WMD) (see IO 11).

Private sector's awareness of risks

128. JAFIC has been actively engaged in disseminating the various NRA reports to obliged entities as well as regularly issuing a range of intelligence products on trends and emerging risks. JAFIC supports the JFSA in outreach activities to FIs to raise awareness of ML/TF risks.

129. Since 2018 the JFSA, supported by the Japan Bankers Association, has held seminars, conferences and other training activities that have included information on findings of risk assessments. In particular, the Public-Private Partnership Conference for AML/CFT organized by the Japan Bankers Association since 2018 (see IO 3) is proactively utilized for enhancing the understanding of ML/TF risks among FIs. A number of DNFBP supervisors and other authorities have reached out to supervised entities, which has included awareness raising on ML/TF risks. Similar outreach has taken place with the JFSA working closely with the JVCEA to reach out to VCEPs on risk issues.

130. Japanese authorities (JFSA, NPA and JAFIC) have conducted limited outreach to FIs and DNFBPs on TF risks. There has been limited outreach to NPOs regarding TF risks.

Overall Conclusion on IO.1

Japan has a good understanding of the main elements of its ML and TF risks, based on the large number of assessments of ML and TF risk produced. The main reference document for public and private sectors is the NRA, which is being published on a yearly basis since 2014. Relevant public authorities and private sector provide input to the NRA. However, there are a number of areas where the NRA could be further improved, including deepening the understanding of the broader risks across the Japanese economy, including the use of informal, underground financial channels and cross border risks. This would be of specific importance for Japan, given the type of criminal activities conducted by organised crime groups (Boryokudan) which remain the primary source of ML risks in the country.

With the exception of risks relating to virtual assets, few national AML policies and activities have been aligned to address high risk crime types and vulnerable sectors. This includes controls on the cash economy identified as a higher-risk area in Japan. There are a number of areas where national policies and activities are strongly focused on addressing key risks (e.g. from the Boryokudan, gold smuggling, drug trafficking), but these policies lack targeted AML activities.

There is generally good interagency co-operation and coordination amongst most LEAs on AML/CFT operational matters, and authorities demonstrated good cooperation and coordination on enforcement activities relating to combating proliferation of WMD. Further progress is needed regarding cooperation and coordination for the development of AML/CFT policies and activities, including setting priorities that reflect the results of the NRA.

Japan is rated as having a substantial level of effectiveness for IO.1.

Chapter 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Use of financial intelligence (Immediate Outcome 6)

a) Financial intelligence and related information is used regularly to investigate ML, associated predicate offences, and potential TF cases. LEAs are well equipped and experienced in using and generating financial intelligence in investigations to uncover evidence of offences. LEAs tend to use financial intelligence to support targeting and understanding the connections between suspects, but use for tracing assets should be further enhanced (see IO 8).

b) LEAs draw on their wide range access to all relevant LEA, administrative, financial and public information to develop evidence on and investigate ML, TF and associated predicate offences. An exception to the wide access is taxation data. LEAs also actively and regularly use STR data as first step source of financial intelligence. The FIU (JAFIC) adds value in complex financial investigations.

c) LEAs request additional information and further financial intelligence based on FIU information and intelligence from other sources available by following the transactions from one account to another. Japan has a large number of reporting institutions, however there is no mechanism to centrally identify which institutions hold assets or customer relationships. The current approach may be time consuming and leaves possible gaps when tracing the assets.

d) The overall volume of STRs reported is high (over 400 000 p.a.). FIs file 96 % of all reports. Customs forward cross-border cash declarations to JAFIC to some extent.

e) JAFIC's automated cross-matching functionalities combine several reference data sets to help prioritizing and initiating analysis cases for all incoming STRs. Since the process is still heavily reliant on human resources, JAFIC is pursuing developments to increase the use of technologies.

f) JAFIC produces good quality and a reasonable number and range of operational analysis reports based on STRs. JAFIC disseminated 8 259 operational analysis cases in 2018 showing an increase and improvement for the last 5 years. Approximately 20 % of these analysis cases reflect more

complex matters which involve ongoing intelligence gathering. There were 1 124 new criminal cases initiated based on JAFIC data and LEAs completed 1 938 investigations where FIU information had been used. The main crime type was fraud. Altogether, 35 ML cases were completed by using JAFIC information in 2018.

g) JAFIC and LEAs demonstrated good cooperation, coordination and exchange of financial intelligence and typologies. Co-operation between JAFIC and AML/CFT supervisors needs to be further developed.

ML Investigation and prosecution (Immediate Outcome 7)

a) Japan's legal and institutional frameworks demonstrate compliance with the international standards with the exception of a minor gap in the range of environmental offences as a predicate to ML and LEAs powers to conduct undercover operations. This has some impact on effectiveness, taking into account Japan's risk profile.

b) LEAs prioritise the investigation of predicate offences and ML related to economic crime and organised crime groups, which is consistent with the main risks to some extent. However, it is unclear as to whether sufficient focus is made on the high-end profit taking levels involving complex fraud, large-scale foreign predicate offences and proceeds from drug-related crimes and other predicate offence such as environmental offences. Most of ML cases in Japan where ML prosecution is suspended involve very minor offences, which reinforces this concern.

c) There are particular challenges in investigating larger scale ML cases of cross-border and domestic drug trafficking.

d) LEAs demonstrated capacity and skills to investigate ML, with a reasonable number of less complex ML cases and some experience of conducting complex investigations involving foreign predicate offences.

e) ML offences are mostly investigated and prosecuted along with predicate offences. Investigation and prosecution of stand-alone ML offences and legal persons is limited.

f) All ML prosecutions that have been undertaken have secured a conviction. However, authorities are only prosecuting ML in line with the overall risk profile to some extent.

g) Custodial sentence available for ML are at a lower level than those available for the predicate offences most regularly generating proceeds of crime in Japan. As such, authorities lack proportionate and dissuasive sanctions to apply to criminals profiting from these serious offences.

h) In practice, sanctions applied against natural persons convicted of ML are generally in the lower end of the range. Suspended sentences and a fine are often imposed. While this creates a concern as to whether the sanctions being

applied and the statutory maximum penalty for ML offences are effective and dissuasive, it is in line with the Japanese context and their judicial system.

Confiscation (Immediate Outcome 8)

a) Japan has a reasonable legal framework for seizing and forfeiting criminal proceeds, instrumentalities and property of equivalent value. Japan does not have administrative or civil forfeiture and all forfeiture must be adjudicated by a court order upon conviction.

b) Japan has a stated commitment to deprive criminals of property through the seizure and confiscation of crime proceeds, however the scope of restraint and confiscation pursued is not in keeping with Japan's risk profile. Statistics confirm that the outcomes of confiscation actions are not effective. The very low prosecution rate for predicates and ML (see IO 7) has a direct impact on the effectiveness of the confiscation regime.

c) Restraint and confiscation of proceeds of the higher risk offences was only demonstrated in relation to complex fraud. Restraint and confiscation of proceeds associated with drug trafficking (domestic and trans-national) or Boryokudan was shown to be at a relatively low level compared to the risks. Challenges are noted with tracing assets associated with these crime types and groups. Noting the risk of gold smuggling and the large amounts of gold seized, relatively little gold was confiscated.

d) In the absence of any temporary freezing of assets (especially when possibility to freeze arises from STRs) authorities rely on voluntary actions by private sector entities, which is not a sufficient measure to safeguard later seizures or confiscation.

e) Regular or systematic confiscation of instruments of crime was not well demonstrated.

f) PPO requests to the courts for confiscation of property of corresponding value are consistently granted upon sentencing, which is a strength. Nonetheless, authorities did not clearly demonstrate that the rate of realisation of collection orders has been addressed.

g) Despite cross border cash smuggling risks, restraint or confiscation of falsely or undeclared currency and bearer negotiable instruments is not being effectively applied.

h) The low number of confiscation cases, range of assets targeted and the amounts recovered demonstrate that Japan has only to some extent, achieved confiscation results that reflect the assessment of ML/TF risks and national AML/CFT policies and priorities.

Recommended Actions

Use of financial intelligence (Immediate Outcome 6)

Japan should :

a) Ensure that LEAs and JAFIC have access to and use tax data whenever deemed to add value to improve the overall understanding of the target's financial position, legitimate or declared income and wealth, already in early stage of analysis.

b) Prioritise the development and use of financial intelligence targeted to trace, freeze and seize criminal assets at an early stage in the investigation process.

c) Parallel to following money of known accounts, set-up mechanisms (possibly centralized database of bank account holders, information exchange channels, contact lists) for JAFIC and LEAs to conveniently identify the obliged entities that hold an account or conduct transactions for targets of investigation.

d) Taking into account the risks of cash smuggling, evaluate and further develop the mechanism to share cross-border cash declaration reports between Customs and the JAFIC so that a greater range of reports are available to the JAFIC.

e) JAFIC and LEAs should issue enhanced guidance on TF typologies and more in-depth reference cases on ML to support obliged entities to better identify possible TF related STRs and a wider range and greater complexity of STR.

f) Further enhance JAFIC's initial processing of STRs with additional technologies (e.g. automated prioritization based on certain fine-tuned criteria on reference data) to concentrate on in-depth analysis of most complex, severe and significant cases.

g) Ensure proactive sharing of information and targeted strategic analysis products between JAFIC, JFSA and other supervisors to ensure JAFIC intelligence supports risk-based supervisory and also policy level purposes.

ML Investigation and prosecution (Immediate Outcome7)

Japan should :

a) Increase the statutory maximum sentence for ML to at least the same level as the serious predicate offences most regularly generating proceeds of crime in Japan;

b) Increase the use of the ML offence to target ML associated with more serious predicate offences, including through consideration of ML at an early stage of predicate offence investigations and prioritisation of third party ML across a wider range of offences and particularly the high risk crime types. Increase the use of ML investigations on the high-end profit taking levels involving complex fraud, large-scale foreign predicate offences and proceeds from drug-related crimes and other predicate offence such as environmental offences.

c) Prioritise pursuing legal persons and ML based on foreign predicate offences in line with Japan's risk profile.

d) Explore and implement measures, between MOJ and PPO, to enhance prioritization of prosecuting ML cases and improve prosecution rate of ML cases, including reconsidering PPO's application of discretion to prosecute and implement a policy to prioritise the prosecution of ML cases.

e) Require PPO and LEAs to work together to systematically address the concerns raised by PPO with the evidentiary standard not being met in approximately 20% of ML briefs submitted to the PPO.

f) Develop guidelines so that PPO, at the point of sentencing, proactively ask for appropriate sentence which reflect the seriousness of criminality (i.e. higher in the range);

g) Give serious consideration to regularly filing appeals against any sentence which is manifestly inadequate

Confiscation (Immediate Outcome 8)

Japan should :

a) Give greater priority to pursuing asset tracing investigations, provisional measures and confiscation in relation to priority risk areas.

b) Either greatly increase the rate of prosecution for all crime types, or consider a form on non-conviction based forfeiture to allow authorities to confiscate proceeds and instruments of crime where sufficient evidence is available.

c) Actively target the seizure and confiscation of instruments of crime.

d) Address the time constraints and lack of focus on enforcement of orders for confiscation or collection

e) Address the gap in the current confiscation regime in relation to the confiscation of identified crime proceeds generated by crimes committed by criminals who have absconded, died or whose whereabouts is unknown.

f) Provide further guidance to LEAs involved in managing seized assets.

g) Fully empower Customs to restrain cash/BNI at the border to allow possible investigation of ML.

h) Consider having Customs share all cash/BNI declarations with JAFIC to enhance the detection of cross-border cash smuggling.

131. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

132. The assessment team based its conclusions on a variety of information including: statistics on the STR and other data collected by the JAFIC and accessed by LEAs; discussions with a wide range of LEAs; discussions with sources of financial intelligence and other information (e.g. Customs, reporting entities); and the team's review of numerous cases demonstrating that such information and intelligence is used in practice to support investigations and trace assets.

Immediate Outcome 6 (Use of financial intelligence)

Use of financial intelligence and other information

133. The PPO, the NPA, Prefectural Police and the FIU (JAFIC) have wide range access to all relevant LEA, administrative, financial and public information and registers to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. Access is partly direct and partly indirect. In JAFIC access to LEAs databases in mainly through online interface access. Indirect access is generally timely, but varies case by case depending of the complexity of the request. In urgent cases information may be accessed on the same day. LEAs (Customs, Coast Guard, National Tax Agency (NTA)) have good access to relevant information and use financial and other intelligence in their activities to supplement the data available from their own databases and sources. An exception to the wide access is NTA taxation data which NTA may decide to provide or can be made available based on a court warrant (see below more in detail), but in practice LEAs make relatively limited use of NTA data.

134. FIs and DNFBPs are obliged to file STRs to JAFIC and supervisors simultaneously. This is achieved automatically through the online reporting system (see TC Annex, R. 29). The analysis of the STRs is in the hands of JAFIC and the use of STRs for risk based supervisory purposes should be further enhanced.

135. JAFIC makes the vast majority of all STRs available online to all LEAs within a few days of their receipt from reporting entities. This follows the completion of 1st phase analysis in the JAFIC database. A small number of sensitive STRs related to existing cases are not available to all LEAs, but are flagged with the relevant investigating LEA.

136. There is a large volume of users of JAFIC information from all relevant LEAs including (in addition to JAFIC) PPO, NPA (including Prefectural Police), Customs, Coast Guard, NTA and Securities and Exchange Surveillance Commission (SESC).

137. LEAs make extensive use of STRs and JAFIC information to initiate new cases and support existing matters. LEAs' feedback confirmed that the quality of the data is good and the information has supported their investigations. Authorities use data components in STRs and annexes attached to them. Identity data, transaction data, possible photos, contact details and information on the origin of the funds contained in JAFIC disseminations are valuable to investigations.

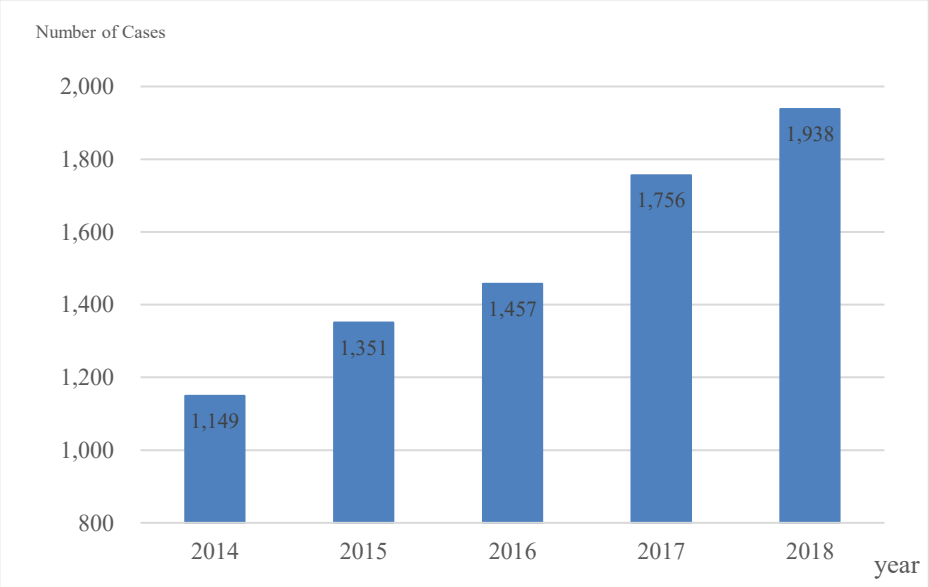
138. LEAs actively generate and use financial intelligence, drawing on JAFIC products and their wide range access to all relevant LEA, administrative, financial and public information and registers to develop evidence on and investigate ML, TF and associated predicate offences.

139. The figures show LEAs' steady use of JAFIC information for the years 2015-2018. In 2018 LEAs viewed JAFIC data over 2.5 million times. LEAs used the data, to some extent, to support investigations in over 300 000 cases. JAFIC information was used to initiate investigations in over 6 500 cases. JAFIC information was used in 1 938 cases. The number of completed investigations shows an increase and, at least in part, reflects the usefulness of the information. Altogether 35 ML cases were completed by using JAFIC information in 2018.

140. Financial intelligence and related information are used regularly to investigate ML, associated predicate offences, potential TF cases and to some extent for tracing criminal proceeds. LEAs are well equipped and experienced in using and generating financial intelligence in investigations to uncover evidence of offences. JAFIC, the FIU, adds value in complex financial investigations. LEAs tend to use financial intelligence to support targeting the suspects and understanding the connections between them, rather than for tracing assets.

141. Authorities did not demonstrate regular use of tax data in financial investigations to develop evidence and trace criminal proceeds related to ML, associated predicate offences and TF. Tax data is not easily accessible by JAFIC for its intelligence development or to LEAs for financial investigations. LEAs and JAFIC may obtain tax data held by any of the 525 local tax bureaus without a court warrant, but LEAs require a court warrant to access NTA taxation data. While NTA can provide taxation data to JAFIC, in practice there seems to be some judicial considerations on how and when tax information can be made available to JAFIC to be used for financial intelligence purposes. Within that regime, LEAs make requests to the NTA for taxation data on a case by case basis. JAFIC and LEAs make some use of tax data held by local tax bureaus, but this is not regularly pursued and there is no central point for handling requests for tax information amongst the 525 tax bureaus. Overall figures of the requests for taxation data have not been collected and qualitative examples do not demonstrate a well-developed use of such data in financial investigations.

Table 3.1. Number of completed cases where FIU Information was used



Source: JAFIC

142. LEAs use financial intelligence routinely in their investigations and automatically cross-match between different information sources, supported by interface connections. NPA and prefectural police have similar analytical capabilities to JAFIC to support their intelligence development. The NPA has specialized financial investigations experts who are reallocated to support the financial investigations in different prefectures or at the national level according to need. LEAs uses JAFIC support in financial analysis work and requests JAFIC analysis on financial flows in ML and predicate cases.

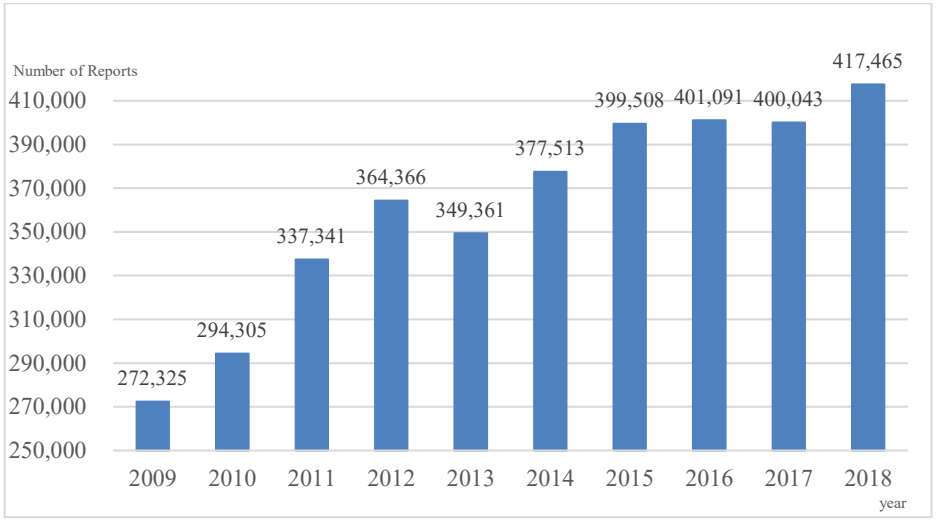
143. LEAs utilize financial intelligence (particularly STRs) to support targeting the suspects and understanding the connections between them, and also to some extent for tracing assets. LEA users give high importance to STRs and their detailed attachments as a first source of financial intelligence. STRs include detailed CDD information, copies of original documents and transaction data. All of these are a used by LEAs as initial intelligence. Customs uses large volumes of JAFIC data in its daily work, reflecting the high volumes of passenger and cargo entering and leaving Japan.

144. When seeking to identify accounts held by suspects, LEAs and JAFIC face challenges to identify in a comprehensive way in which FIs or DNFBPs hold accounts or conduct transactions. JAFIC and LEAs demonstrated that they can utilise the STR database to find accounts owned by targets of investigations in a timely manner and that they can acquire information on accounts based on inquiries to the banks or from any private sector entity. However, there is not a central mechanism to identify with which institutions suspected people have customer relationships. This is achieved through the use of reference data available JAFIC requests various FIs or DNFBPS by following the transactions from one account to another. Such requests are done by email, by fax, by phone or by onsite visits. JAFIC reported that it is able to access information in a timely manner under this system, however assessors note that Japan has a very large number of FIs and DNFBPs and the current mechanism may be time consuming and leave possible gaps when tracing the assets. It is also dependent of the reference data available in each case. Despite this, LEAs and JAFIC demonstrated that financial information is sought routinely and from different sources. There was no information or statistics available on how many requests of information each authority does annually.

STRs and other reports received and requested by competent authorities

145. JAFIC receives a consistently high volume of STRs report (over 417 000 reports in 2018). Over 98 % of all reports were filed electronically in 2018 (up from 78% in 2014). FIs account for 96 % of all reports, with the three megabanks (see section *Financial sector and DNFBPs*) accounting for approximately 1/3 of all STRs. VCEPs became subject to AML/CFT obligations in 2017 and STR volumes from the sector increased significantly (in 2018 from 669 to 7 096 reports). Reporting from DNFBPs is very low, with only dealers of precious metals and stones showing an increase from 146 to 952 reports from 2017 to 2018. Some of DNFBP sectors are not obliged to file STRs (judicial scriveners, certified public accountants, lawyers, certified administrative procedures legal specialist accountants, and certified public tax accountants) (see section *Reporting obligations and tipping off*).

Table 3.2. Number of STRs - 2009 to 2018



Source: JAFIC

146. JAFIC has issued the Guidance for STR reporting, including lists of possible typologies as reference cases, which outline subjective and objective criteria to support STR reporting. To maintain the quality of the STRs, this guidance and the reference cases are updated regularly based on information from JAFIC, LEAs and supervisory authorities. In seminars and individual visits the JAFIC provides guidance on high-risk transactions and the trends and methods of crimes. In April 2019, JFSA and JAFIC, together with relevant administrative agencies, updated the "Reference Cases on Suspicious Transactions" for FIs, by with the addition of reference cases focused especially on PF, human trafficking and IP addresses.

147. However, the assessment team has concerns that the guidance and reference cases are not sufficiently used by reporting entities, as STRs principally reflect major typologies and indicators.

148. JAFIC provides training to obliged entities to support the quality of STR reporting. JAFIC or supervisors hold seminars or conduct individual visits to obliged entities, mainly the bigger FIs, to give feedback on trends of STRs. JAFIC provides guidance/instruction while taking into account the needs of LEAs (see also section Reporting obligations and tipping off).

149. JAFIC guidance for STR reporting does not include specific TF related typologies but some elements (for example relation to conflict zones and areas) are included in STR reference cases. Separate typologies and possible TF specific reference cases could support the work in FIs and DNFBPs to better recognize possible TF related activities amongst their customers and transactions.

150. There has been no explicitly TF related STRs reported to JAFIC. When analysing the incoming STRs, JAFIC has identified possible patterns of transactions and remittance, certain customer behaviour or connection to conflict areas or high-risk jurisdictions which may indicate suspicion of possible TF. The number of identified possible TF related STRs reflects Japan's TF risk profile. These STRs have been carefully analysed and disseminated to relevant investigative units and used for intelligence development and the investigation of possible TF but so far there has been no TF prosecution in Japan (see IO.9).

151. Japanese authorities also use various types of information, including but not limited to STRs filed by FIs; foreign intelligence, tips from the public, and public reports by the United Nations Security Council and other reputable non-governmental organizations to identify potential TF.

152. With respect to STRs associated with security threats, including potential TF, JAFIC reviews each STR promptly by specialized analysts. Such transactions have included those involving conflict zones and other high TF-risk regions. Most of these STRs required and resulted in detailed analysis, and JAFIC determined that some of these STRs and analyses should be transmitted to the NPA (the Security Bureau (NPA) is responsible for gathering and analysing information) to allow for further investigation. The quality of analysis involves comprehensive asset-tracing and in-depth use of a wide variety of sources of information. JAFIC's analysis on the TF-related STRs that it receives sufficiently informs NPA's consequent investigations.

153. JAFIC guidance reference cases and typologies are used to support STR reporting and help JAFIC track the basis for filing STRs, as set out in the table below. The use on the typologies and reference cases may indicate how well FIs' reporting covers major risks, products and services, i.e. how well different business areas in FI and customer and transaction scenarios are covered by the ongoing monitoring mechanisms.

Table 3.3. Reference Case Typologies used in STR reporting: Summary of the main types of suspicion.

	2016		2017		2018
Cash	64 045	Cash	69 911	Cash	73 893 (20%)
Unnatural behaviour	69 043	Unnatural behaviour	66 574	Unnatural behaviour	67 507 (19%)
Others	68 652	Others	62 622	Others	65 568 (18%)
Organised crime	57 071	Organised crime	52 136	Organised crime	47 926 (13%)
Other typologies	52 791	Other typologies	51 078	Other typologies	46 946 (13%)
International transactions	46 303	International transactions	48 010	International transactions	50 602 (14%)
Fictitious names	12 031	Fictitious names	13 016	Fictitious names	10 938 (3%)

Source: JAFIC

154. FIs appear to chiefly report STRs that match with the major typologies and indicators, but do not extend to the variety of typologies and red flags available in STR Guidance. There are concerns that the range of suspicions is not better aligned with more elaborate scenarios and better targeted red flag indicators.

155. JAFIC closely monitors and gives feedback to FIs on the quality of STRs. LEAs' feedback on their use of STRs is that the reporting is in line with the guidance provided. JAFIC's monitoring did not find problems with defensive reporting or reports only based on monetary thresholds.

156. JAFIC receives reports of suspicious cross border cash declarations after Customs' careful analysis and based on criteria set together with JAFIC (see more in detail TC Annex R.32) and Customs. Cash declaration reports have been useful in JAFIC's work. The mechanism is in compliance with R.32 and focuses on disseminating information related to specific suspicion, rather than all data. The system to disseminate information from Customs to JAFIC has been put in place just recently (June 2019) and authorities agreed it needs further development to make the best use of cash declaration data to assist authorities in financial investigations. JAFIC receives only a very minor share of the overall number of reports received by Customs. The assessment team found that the criteria for sharing reports should be reconsidered to ensure that JAFIC receives a greater share of valuable reports from Customs, particularly taking into account the risks of cash smuggling.

Operational needs supported by FIU analysis and dissemination

157. JAFIC has approximately 100 personnel. JAFIC analysts utilise sound analytical systems to ensure that all STRs are processed and assessed both through database criteria and through manual intervention by JAFIC analysts. This is good practice, but is a very resource demanding style of processing the high volumes of incoming STRs. JAFIC is developing enhanced technological tool to process data more efficiently, which is essential, given the number of analysts and LEAs' demand for first line financial intelligence.

158. JAFIC's analysis is timely and supports the quality of data that will be directly available to LEAs. JAFIC has well operating processes and systems to identify missing information or errors in STRs and follow up with reporting entities to supplement and correct the data. All incoming data is checked to satisfy quality requirements. Automated cross-matching functionalities combine several data sets including earlier STRs, police data including membership of organized crime groups, ongoing criminal investigations, and wanted persons. In urgent cases indirect access to other agencies' data may be done on same day.

159. Teams of specialised experts in JAFIC conduct analysis to develop more detailed operational intelligence products. These teams concentrate on different case types, crime areas, TF cases and typologies. JAFIC operational analysis reports are of good quality and support the operation needs of LEAs. The operational analysis reports demonstrate financial flows, connections between natural and legal persons and include descriptions of possible typologies and emerging threats and trends.

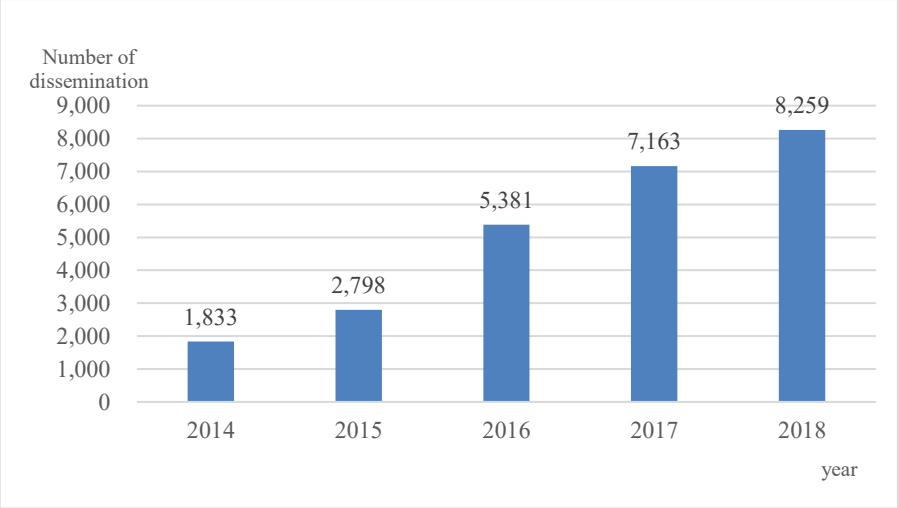
160. JAFIC's unit responsible for TF-related STR analysis appears to have adequate resources and expertise for the current volume of TF-related STRs. JAFIC and NPA Security Bureau demonstrated close coordination, including for follow-up or ad hoc analysis.

161. Prioritisation of STRs for operational intelligence development is based on enriched STRs and criteria in line with the main risks identified in the NRA and certain other priority factors (e.g. preventing private sector corruption). These include, for example, connections to organized crime groups, links to certain high risk jurisdictions and possible indications of corruption. The criteria to prioritize STRs and the mechanism to identify possible new targets was in place and new cases initiated based on JAFIC information are substantial (see Table 3.3 above).

162. JAFIC does not specifically use as a prioritisation criteria on the availability of assets that may become subject to restraint or confiscation, but adopts other prioritization criterion that are useful for LEAs in tracing assets. This may, to some extent, reflect the quality of asset tracing by LEAs in early stage when availability to freeze the assets arises already in STR reporting phase (see IO 8).

163. JAFIC disseminated 8,259 operational analysis cases (case reports based on STR reporting) in 2018 cases showing an increase over the last 5 years. Approximately 20% of analysis cases reflect more complex matters which often involve ongoing development in the course of intelligence gathering. JAFIC develops the analysis based on good communication between LEAs and JAFIC. Several rounds of dissemination may occur in the same case based on LEA feedback and JAFIC may repeatedly go through the case, collect more information and develop the analysis of the case.

Table 3.4. Operational Analysis Reports Disseminated to LEAs



Source: JAFIC

164. JAFIC determines which LEAs receive particular operational analysis reports, with police being the more regular recipient of operational intelligence disseminations. The second largest recipient is PPO and SESC. The same report may also be disseminated to several authorities if the case is relevant and is within their scope of competence. The numbers of dissemination show a significant rise from 2014 to 2018.

165. The use of JAFIC information to initiate new cases in the Prefectural Police has been stable for recent years (1 001 to 1 124 cases). This is despite greatly increased disseminations from JAFIC, including a significant rise in operational intelligence (from 1 982 cases to 8 848 cases). LEAs initiate cases based on STR information also from their own analysis and a number of these cases is increasing steadily (see above Number of completed cases where FIU Information was used). There are opportunities for JAFIC and NPA to further consider how the disseminations could be even better developed to meet LEAs' needs.

166. Fraud is the main crime type for cases initiated and completed based on JAFIC data or police agencies' own analysis. Most other predicate offences show low numbers, although the Prefectural Police's use of financial intelligence in completed drug cases is higher. The number of ML cases initiated by Prefectural Police based on JAFIC information is relatively low (17 ML cases out of a total of 511 ML cases in 2018). Most ML cases arise from other information, in particular parallel predicate investigations. There were 35 completed ML cases where JAFIC information was used. There is room for improvement to further utilize the financial investigations and use of data in ML cases and better cover all relevant crime areas.

Table 3.5. Cases initiated by Prefectural Police using FIU disseminations (by Types of Crime)

	2014	2015	2016	2017	2018
Fraud-related crimes	833	900	925	933	1 004
Illegal stays	74	68	42	60	26
Drugs crimes	27	38	41	42	42
ML	16	23	21	17	17
Counterfeiting	21	27	19	12	7
Loan sharks	9	6	14	11	8
Gambling offences	0	2	5	2	1
Entertainment business-related offences	0	4	4	4	3
Other offences	6	15	11	8	5
Other special criminal offences	15	13	9	8	11
Total	1 001	1 096	1 091	1 097	1 124

Source: JAFIC

Box 3.1. Underground banking by organized foreigners in Japan – use of JAFIC and foreign FIU data

Prefectural police analysis of STRs related to organized crime identified a foreigner who had received a number of large transactions to his account, with prompt withdrawals, which led to suspicion of Banking Act violations. Based on police requests, JAFIC exchanged information with foreign FIUs and identified that several hundred million yen was transferred to the suspect's overseas bank account

Following further investigation, police arrested multiple suspects for violations of the Banking Act related to a defrauded sum of JPY 7.80 billion (approx. USD 75.1 million). The arrested suspects were prosecuted and convicted with approx. USD 9 260 confiscated).

Box 3.2. ML from violation of Investment Deposit and Interest Rate Act – use of JAFIC analysis

JAFIC analysis of STRs of multiple accounts accessed from one particular computer terminal indicated a case of violation of the Investment Deposit and Interest Rate Act. JAFIC disseminated the case to prefectural police.

By further investigation, the police revealed that it was a fraud case and total defrauded money was JPY 790 million (approx. USD 7.61 million). The police arrested the suspects for ML. The suspects were convicted and JPY 60 million (approx. USD 577 844) was finally confiscated as equivalent value of criminal proceeds.

167. JAFIC has a team of analysts who are responsible for strategic analysis. JAFIC's strategic intelligence produces typologies and trends reports, which are shared through JAFIC News (in 2018 altogether 91 reports) and JAFIC Communications (in 2018 seven reports) to competent authorities and the published JAFIC Annual Reports.

168. JAFIC demonstrated that it conducts strategic analysis that leads to information reports on alerts, trends and patterns related to particularly typologies. These are in response to needs identified by various competent authorities and have, to some extent, reflect high risk areas and emerging risks. Some of the products produced by JAFIC's strategic analysis team are communicated to relevant LEAs. The dissemination of these products is generally to particular LEAs and the products were included in the NRA processes. JAFIC's strategic analysis function has not yet produced in-depth analytical products on current or emerging risks.

Box 3.3. Example of JAFIC strategic analysis; Characteristics of information on transactions that may fall under criminal proceeds in violation of the Banking Act

The number of cases of illegal foreign remittance (underground banking) by an organization of foreigners in Japan has been increasing. These cases include remittance of income gained by illegal residents through illegal work and remittance of criminal proceeds gained by international criminal organizations. Analysis by JAFIC has found that many cases have certain characteristics with regard to the method of transactions, type, amount, customers, such as a large amount without any fraction remitted under the name of foreigners. In consideration of this analysis result, JAFIC published the document (JAFIC Report) explaining the characteristics of transaction information in this type of crime in order to promote control by the LEAs and the submission of STRs by specified business operators.

169. JAFIC analysis reports concentrate on current or emerging modus operandi or typologies but there are opportunities to conduct big data analysis beyond these operational needs. It was not clear that even the current intelligence reports were used by policymakers or by regulators and supervisors to drive risk-based responses to emerging threats and risk-based responses by the private sector.

170. JAFIC disseminates information to relevant agencies when it finds STRs and the matters identified through information collected and analysed will contribute to the investigation into criminal cases or inquiry into irregularities conducted by LEAs. Such information cannot be disseminated solely for civil purposes. Based on an amendment to the law in 2017, JAFIC data can be disseminated to the NTA and tax bureaus in relation to criminal tax offences. JFSA and other supervisors receive all STRs directly from reporting entities. The statistics show no dissemination of JAFIC's value-added products to JFSA or to other supervisors to support their operational needs. Competence to disseminate the information to supervisory authorities is conducted on the basis of the requirement for cooperation (see also TC Annex c. 29.5). JFSA and JAFIC exchange information in NRA context and by JAFIC Communications analysis reports but there is no regular dissemination on strategic analysis products to supervisors or to policy levels main recipient being LEA use.

Co-operation and exchange of information/financial intelligence

171. JAFIC and other competent authorities have a high degree of cooperation to exchange of financial intelligence in a secure manner. JAFIC has a network of MOUs with other domestic agencies to further support the statutory provisions in the APTCP and other statutes which govern cooperation and information exchange.

172. The JAFIC Intelligence Centre includes officers on secondment from the Police, Customs and the NTA. The Centre operates to support cooperation and information exchange on operational intelligence matters. This assists LEAs to request follow-up operational analysis for more complex matters. The use of seconded officers from other authorities strengthens the cooperation and communication between authorities and supports their work in very positive ways and enhance the information exchange

173. LEAs have the same database for search, retrieval and analysis of nearly all JAFIC STRs, which helps greatly with a coordinated approach to development and use of financial intelligence. This also assists with coordinated LEA feedback on JAFIC data.

174. JAFIC, NPA and other LEAs have sufficient security measures to protect the data and implement good internal audit mechanisms to protect the confidentiality of JAFIC's data and to mitigate the risk of leaking such sensitive information. Logging information is routinely inspected. User entry to the system controlled with double recognition and based on biometric recognition of the users. Although the number of users of STR data is high and includes all LEAs, access in these authorities is granted only to persons engaged to operations related to AML/CFT in order to further protect confidentiality.

175. JAFIC cooperates with the JFSA on risk assessments, AML/CFT policy, and provides feedback to the JFSA on the quality of STR. However, the co-operation between JAFIC and supervisors has room for further development. Supervisors have a need for strategic analysis products on supervisory risk issues, including thematic approaches to identify emerging threats.

Overall Conclusion on IO.6

Financial intelligence and related information are widely developed, accessed and used regularly to investigate ML, associated predicate offences, potential TF cases. Information is used as first step source of financial intelligence in all LEAs and substantial amount of analysis and investigation cases are initiated and completed based on this data and JAFIC disseminations. There is tendency to use financial intelligence to support targeting the suspects and understanding the connections between them, rather than for tracing assets. LEAs make positive use of financial intelligence but identifying and tracing of assets need to be further developed, prioritized and use needs to be further broadened to cover all relevant crime types.

Japan is rated as having a substantial level of effectiveness for IO.6.

Immediate Outcome 7 (ML investigation and prosecution)

176. Japan's legal and institutional frameworks demonstrate to a certain extent compliance with the international standards with the exception of minor gaps in relation to the scope of coverage of environmental offences as predicate offences, shortcoming with LEA powers, and the dissuasiveness of sanctions (see TC Annex, R.3 and R.31). These gaps have some impact on effectiveness. In order to comply with international standards and considering the risk profile of Japan, these gaps should be addressed.

177. The PPO and all LEAs in Japan collect statistics on ML and associated predicate offence investigations. The MOJ maintains detailed statistics on prosecutions and convictions as well as representative case studies, although there is some reluctance to share details of cases due to confidentiality concerns. There are some gaps in available data on the outcomes of ML prosecutions. The assessment team based its conclusions on a variety of information including data and statistics on ML cases and predicate investigations and the team's review of numerous cases demonstrating the extent to ML offences and activities are investigated and offenders are prosecuted and subject to effective, proportionate and dissuasive sanctions.

ML identification and investigation

178. Most of LEAs in Japan and the PPO are empowered to investigate ML, however, in practice the NPA and Prefectural Police are the LEAs predominantly investigating ML, being responsible for approximately 98% of all ML cases. The PPO is in general a secondary investigation agency for all offences and has the authority to initiate investigations on its own initiative. PPO has carried out investigations of white-collar crime cases that require advanced legal expertise and sophisticated investigation techniques such as corruption or tax evasion, as well as other criminal offences. When ML is identified by any of the LEAs other than police, the case is most often transferred to NPA or provincial police, taking into account their investigative expertise and their presence across the country.

179. The key role taken by NPA and prefectural police in conducting ML investigations is a strength. All LEAs have direct access to FIU information including request to be made to JAFIC for the analysis of the STRs. LEAs are all able to access many rich sources of financial and other information to assist investigations (see IO 6). Sources for ML investigation include information from field agents, predicate offence investigations, the general public, JAFIC, various government databases and other authorities. Police conduct joint investigations (between various prefectural police) in a reasonable number of ML cases. Whilst NPA is able to request the tax records from NTA with a view to examining the suspects' reported income (see IO 6) for possible leads to support ML investigations, this is seldom done in practice.

Table 3.6. ML cases completed through joint investigations between prefectural police – 2014-2018

	2014	2015	2016	2017	2018	Total
Total ML cases completed	293	381	380	353	504	1,911
ML cases completed through joint investigation	33	23	28	20	31	135

Source: NPA

180. LEA have the adequate capacity and skills to investigate ML. Investigation officers receive training on financial investigation and they have good intelligence support from JAFIC and from within their own agencies. The NPA and prefectural police have specialist economic crime officers who assist various police units in complex financial investigation matters across Japan. Investigators receive training on ML investigations techniques and the pursuit of proceeds of crime.

181. With regard to the investigation techniques, LEAs demonstrated proactive application of various investigation methods, including interception of telecommunications. Controlled delivery is available in investigations on predicate offences.

182. Based on their training, direct experience and specialist officers, LEAs demonstrated capacity and skills to investigate ML cases. LEAs demonstrated extensive experience of investigating less complex ML cases and some experience of conducting complex investigations involving foreign predicate offences.

Table 3.7. ML matters referred from LEAs to Prosecutors

	2014	2015	2016	2017	2018	Totals
Referred to the PPO	93	407	310	329	440	1579
Prosecuted	134	134	144	102	126	640

Source: NPA and PPO

183. LEAs identify ML cases through two main sources: (i) financial intelligence and analysis, such as STRs, reports from intelligence agencies, open source intelligence, or foreign intelligence; and (ii) through an ongoing investigation into predicate activity. Police confirm that financial investigations are routinely included in their investigations into proceeds-generating offences.

184. LEAs demonstrated strong investigative focus on targets, in particular organised crime targets. However, there does not appear to be sufficient focus on the flow of money. As a result the authorities may not be in a position to be fully aware of the overall criminality and the extent of the related risk. Some investigative opportunities, particularly relating to complex criminal activity, may be missed as a result of a lack of comprehensive, cross-agency analysis of available financial intelligence. An example of this is the lack of progress with ML cases connected with large scale gold smuggling and related consumption tax fraud (see section *National policies to address identified ML/TF risks*.).

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

Investigations

185. ML investigations pursued by Japanese LEAs are in line with some of the key risk areas identified in NRA and other risk assessments as being particularly high risk, with the exception of domestic and transnational drug trafficking (see IO 1). Japan demonstrated that to some extent ML activities being investigated are consistent with Japan's threats and risk profile and national AML/CFT policies. The NRA identified three major ML threats including (i) Boryokudan; (ii) foreigners in japan; (iii) specialised fraud groups. While the Boryokudan category picks up some aspects of drug trafficking, without the relevant statistics showing the proportion of the amount laundered in relation to each of these categories to the total amount of money laundered, it is difficult to assess the materiality of these ML threats identified. However, it remains unclear as to whether sufficient focus is made on the high-end profit taking levels involving complex fraud, large-scale foreign predicate offences and proceeds from drug-related crimes and other predicate offences such as environmental offences.

186. Financial investigations are prioritised by the NPA and prefectural police and resources are allocated to those financial investigations in keeping with the three risk areas identified in the NRA. Other LEAs do not prioritise financial investigations to the same extent, although there are some notable examples from the Coast Guard using financial intelligence for predicate investigations that did not result in ML cases as they mainly investigate the predicate offences for which they are responsible without considering the need to flag any potential ML to the PPO or other relevant authorities for investigation.

187. Domestic Organised crime (Boryokudan) – LEAs demonstrated a good number of Boryokudan-related ML cases related to a range of profit driven activities including drug trafficking and distribution, fraud, extortion, standover, prostitution and gambling. NPA and prefectural police demonstrated their strong priority given to financial investigations of Boryokudan and a number of cases of ML relating to these domestic groups across the country. The biggest challenges appear to be in relation to completing ML investigations of the more senior profit taking levels of these organised crime groups. Authorities highlight that in the absence of an ability to identify proceeds of crime, the NTA is working increasingly closely with the NPA to ensure proper taxation of Boryokudan individuals and related businesses by utilizing information from NPA.

Box 3.4 - Concealment of criminal proceeds from loan shark by a head of Boryokudan

In the course of investigating a loan shark case where the chief culprit was the head of a Boryokudan group, cash worth JPY 14, 47 million (approx. USD 141 572) was discovered and seized after searching a house of an involved party. As the result of the investigation, it became evident that assets intermingled with criminal proceeds from loan shark was concealed inside the house and the head was arrested for violating the Act on Punishment of Organized Crimes, APOC (concealment of criminal proceeds). The seized cash was confiscated. (October 2018)

Box 3.5 Concealment of criminal proceeds from illicit sales of counterfeit residence cards

An illegally overstaying foreigner was found to have sold forged residence cards to foreigners and made them pay a total of JPY 60 000 (approx. USD 578) for the cards to a bank account owned by a third party. The perpetrator was arrested for violating the Immigration Control and Refugee Recognition Act (counterfeiting and provision of residence cards) and the APOC (concealment of criminal proceeds). This dismantled the infrastructure that had encouraged illegal overstays by foreigners. (June 2014)

Table 3.8 Boryokudan related ML investigations and the amount involved

Boryokudan – related ML cases completed by NPA		No. of persons involved in completed cases	Approx. value involved in ML (JPY)	Approx. value involved (USD equivalent)
2014	60	83	162,759,705	USD 156 million
2015	94	177	301,635,864	USD 290 million
2016	76	132	558,721,764	USD 538 million
2017	50	72	207,581,919	USD 200 million
2018	65	100	627,005,442	USD 603 million
2019 (1-6)	29	46	56,940,925	USD 54.8 million

Source: NPA

188. *Specialised fraud* – LEAs demonstrated a good number of ML cases related to more complex fraud matters – classed as 'specialised fraud'. ML cases related to specialised frauds often involve transnational crime groups or domestic organised crime. It is notable that in 2017 in particular these ML cases involved large sums in ML cases.

Table 3.9. ML investigations related to various types of fraud

Premise crime	2014	2015	2016	2017	2018
Fraud	79	102	103	102	162
Fraud by computer	13	9	9	24	26
Theft	85	127	156	136	191
Investment Act and Money Lending Business Act violations	23	31	31	21	28
Violation of the Anti-Prostitution Act	10	12	11	6	12
Amusement Business Act violations	16	19	9	7	4
Distribution, etc. of indecency	12	8	13	6	8
Habitual gambling and gambling space opening isometric interest	6	15	16	6	7
Other	60	68	40	55	73
Total	304	391	388	363	511

Source: NPA
Note: The total number is inconsistent with the number of completed cases for ML offenses as ML offences may involve a plurality of predicate offenses.

Table 3.10. ML cases related to specialised fraud

ML from specialised fraud – cases completed by NPA		No. of persons involved in completed cases	Approx. value involved in ML (JPY)	Approx. value involved (USD equivalent)
2014	19	23	128,525,960	USD 1.23 million
2015	34	68	107,069,670	USD 1.03 million
2016	37	88	376,312,097	USD 3.62 million
2017	36	61	9,897,507,449	USD 9.53 million
2018	75	124	496,509,122	USD 4.78 million
2019	51	60	210,461,512	USD 2.03 million

Source: NPA

189. *Offending by foreigners in Japan* – LEAs demonstrated a number of ML cases *associated* with this category of risk, particularly related to complex fraud, some drug matters and smuggling cases. A number of these cases are supported by information sharing with foreign counterparts (see IO 2).

Box 3.6 - Completed case of concealment of criminal proceeds as the result of the detection of a workplace of illegally overstaying foreigners

A foreigner hired a large number of illegally overstaying foreigners to engage in agriculture work and had the proceeds from sales of agricultural products produced by them paid into a bank account owned by a third party. She was convicted for violating the Immigration Control and Refugee Recognition Act (encouragement of illegal employment) and the APOC (concealment of criminal proceeds). Upon conviction, the defendant was sentenced to imprisonment to 4 years, but suspended to 2 years and a fine of JPY 2 million (19,260 USD), in addition to the collection of JPY 23,2 million (223,433 USD) as confiscation of property of corresponding value (January 2018).

Table 3.11. ML cases related to foreigners

ML involving foreigners - cases completed by NPA		No. of persons involved in completed cases	Approx. value involved in ML (JPY)	Approx. value involved (USD equivalent)
2014	37	51	55,227,888	USD 531,885
2015	35	52	118,868,544	USD 1.14 million
2016	35	76	392,567,898	USD 3.78 million
2017	28	38	15,850,827	USD 152,665
2018	48	61	97,892,034	USD 942,772
2019	38	41	82,571,424	USD 795,223

Source: NPA

190. *High-end ML (large amounts of proceeds often involving complex structures)* - Japanese LEAs *have* generally not been able to identify cases of high end ML involving complex structures, although there some cases involving large amounts of proceeds. Very few cases of complex, transnational cases have been investigated, either in relation to drugs, fraud or organised crime or other predicate crime types.

Box 3.7 - Concealment of criminal proceeds related to international business email fraud by Japanese men

Japanese men, who were board members of a company, received money JPY 78 million (approx. USD 751 000) in their domestic corporate account from a fraud victim, an agricultural company in the US, which was deceived by fraudulent business emails. The group of Japanese men gave the bank teller a false explanation and disguised the money as legal business proceeds in order to deposit the money into the account. They also withdrew cash from the account, disguised as ordinary deposit transactions. This case was cleared as violation of the APOC (concealment of criminal proceeds, etc.) (July 2018).

191. *Drug offending* - Drug offending appears to be amongst the most profitable of all predicate crime categories in Japan. LEAs demonstrated a good number of Boryokudan-related ML cases related to domestic drug trafficking and distribution, although relatively few *involving* profit taking level of related criminal enterprises. There have been very few cases of ML relating to large scale drug importations (involving foreign crime groups). The biggest challenges appear to be in investigating larger scale ML cases of cross-border drug trafficking, including a lack of intelligence available to target ML cases to investigate the flow of proceeds of crime from these large importations and the profit taking level of related criminal enterprises. As such, there are relatively few ML cases related to large scale drug importations.

192. *Smuggling* – despite the very significant threat from gold smuggling and related tax frauds (see section *National policies to address identified ML/TF risks*) over a particular period, there were no cases of ML associated with gold smuggling offences and related tax frauds. There were a number of cases of convictions for predicate offences. There are very few ML cases associated with other smuggling cases. Most notable is the absence of cases of ML associated with wildlife trafficking, which is attributable to gaps in the coverage of predicates for ML.

193. *Cash based ML* - a large number of Japan's ML investigations relate to cash-based ML. This reflects Japan's intensive cash economy, and the common use of cash by domestic organised crime groups. NPA and prefectural police demonstrated a good understanding of cash-based ML by a range of criminal actors and evidenced their capacity to investigate this type of offending supported by a range of investigation techniques (see case above).

Box 3.8 Concealment of criminal proceeds from 'loan shark' by a head of Boryokudan group

In the course of investigating a loan shark case where the chief culprit was the head of a Boryokudan group, cash worth JPY 14, 47 million (approx. USD 139 000) was discovered and seized after searching a house of an involved party. As the result of the investigation, it became evident that assets intermingled with criminal proceeds from loan shark was concealed inside the house and the head was arrested for violating the APOC (concealment of criminal proceeds). In addition to the confiscation of the seized cash (JPY 14, 47 million), the defendant was sentenced to imprisonment for 2 years suspended from 4 years, and a fine of JPY 3 million (approx USD 28,892(. (October 2018).

194. *Tax evasion* – there have been no cases of NTA or other authorities referring predicate tax offences to LEAs for ML investigations. This is despite a very significant problem with consumption tax fraud associated with gold smuggling in the recent past. Customs is in close co-ordination with the relevant government agencies to illuminate the full picture after it stopped gold smuggling at border and refers individual gold smuggling cases to the relevant LEAs. Japan does not have a high rate of criminal tax offending, however given the significance of the cash-based economy, the lack of ML prosecutions is not in line with the risk profile. Investigating third party ML and laundering foreign proceeds is not sufficiently targeted in relation to this priority crime type.

Table 3.12. Completed criminal cases and ML cases

	2014	2015	2016	2017	2018
Completed criminal cases	370 568	357 484	337 066	327 081	309 409
Completed ML cases	300	389	388	361	511
ML Prosecutions[38]	43	34	48	50	19
ML Convictions	43	34	48	50	19

Source: NPA

Prosecutions

195. Prosecution of ML cases is only in line with risk profile to some extent, despite a strong number and *reasonable* quality of ML investigations and the good skills and experience of prosecutors and the courts considering ML cases.

196. These major shortcomings with prosecution of ML arise from a systemic approach to 'suspend' prosecution of offences across the Japanese legal framework, including ML prosecutions. Approximately 50% of ML cases that are completed ('cleared') by LEAs and referred to the PPO are found to have sufficient evidence to prosecute, however PPO discretion is exercised to 'suspend prosecution'. According to the statistics, for the past 5 years, the prosecution rate for ML cases referred by LEAs to the PPO is around 30%. These figures are in line with other economic offences in Japan. Approximately 20-25% of finalised ML investigations were not taken forward to prosecution due to insufficient evidence.

197. PPO has a clear set of criteria to exercise the discretion to suspend prosecutions pursuant to Article 248 of the Code of Criminal Procedure and it is an expected approach across the vast majority of crime types. According to Article 248 of the Code of Criminal Procedure, "where prosecution is deemed unnecessary owing to the character, age and environment of the offender, the gravity of the offence, and the circumstances or situation after the offence, prosecution need not be instituted." Japanese authorities highlight that most of ML cases in Japan where ML prosecution is suspended involve very minor offences. Japan cited figures that indicate a majority of such cases lack a reason to punish or have no risk of inducing more crime and do not involve sophisticated concealment techniques. PPO considers a mixture of factors leading to a decision to suspend prosecution. MOJ indicate that in the case that a perpetrator commits another crime, the history of suspended prosecution would work negatively for subsequent prosecutions. MOJ confirmed that few suspended cases involve persons connected to organised crime groups.

198. It is important to understand the context of suspension of prosecution of ML cases when compared with other crime types. The situation of a sizeable majority of completed ML investigations not being prosecuted is in keeping with the approach pursued across nearly all areas of criminal offending in Japan. This challenge was identified in the previous MER.

[38] Data only includes those cases 'with confiscation', which does not cover all ML cases in any given year

199. PPO reported that approximately 20-25% of finalised ML investigations were not taken forward due to insufficient evidence. This is concerning when a majority of all ML investigations are for very minor cases, which may draw resources and expertise away from more complex ML cases. However PPO and LEAs did not demonstrate strategies or activities to address this gap in the quality of briefs of evidence or to undertake regular support to improve the amount of evidence collection in such cases before ML investigations are closed. Given the experience and skills of LEAs, addressing these gaps in the quality of briefs of evidence would appear to be able to be addressed with a systematic approach.

200. The practical effect of the PPO's approach to the application of the overall prosecution policy, particularly the systematic application of Article 248 of the Code of Criminal Procedure, to ML cases is that there is a consistently low proportion of ML cases where quality investigations are completed and prosecution goes ahead. This does not appear to predominantly be a function of the quality of the briefs of evidence.

201. The assessment team noted that the application of suspended prosecutions has some impact on the effectiveness of the system taking into account that ML is a crime type that facilitates 'profit taking' from criminal enterprises. However, there is some balance achieved here taking into account other social factors related to public perception of prosecution and sanctioning which reflects Japan's context.

202. It is notable that there is a much higher rate of prosecution for foreign exchange violations, in particular those related to sending funds to the DPRK. Foreign exchange violations (FEFTA offences) are not subject to the PPO discretion under Article 248 of the Code of Criminal Procedure.

203. There is good interagency co-operation and coordination amongst agencies on the investigation on specific relevant predicate offences and ML. In relation to decisions to prosecute, the PPO's consistent exercise of discretion under Article 248 of the Code of Criminal Procedure appears to reflect a lack of co-ordination and co-operation with the NPA with regard to the prosecution of ML offences.

204. The rate of obtaining a conviction is 100% of those ML matters that make it to trial. This reflects the good quality of briefs of evidence, as well as the strengths of prosecutors' skills and experience.

205. While exact figures are not available, it is apparent that there remain a large number of cases that include a confession and a trial will still be conducted in those circumstances, albeit with a much truncated process. The issue of over-reliance of confession in the prosecution of ML offence was highlighted in the 2008 mutual evaluation (see para.191 to 194). Since 2016 Japan has implemented institutional reforms to facilitate the collection of evidence through methods other than confessions. Three areas were cited as particularly important, including: a defence-prosecution agreement procedures; introduction of a criminal immunity system; and expanding the scope of crimes against which wiretapping may be allowed. The assessment team found that these reforms have to some degree reduced the over-reliance on confessions, although data could not be provided to demonstrate the extent to which these reforms have improved the conduct of ML cases. However, some continuing over-reliance of confession in the prosecution of ML offence may create some challenges in prosecuting organized crime as LEAs report that senior Boryokudan do not tend to confess their guilt.

Types of ML cases pursued

206. Japan LEAs demonstrated a good ability to pursue ML offences that are identified along with predicate offences through parallel investigations. The vast majority of ML cases pursued are for self-laundering, rather than 3rd party laundering. However, Japanese authorities indicate that a large portion of all ML cases that are completed are justified in having a suspended prosecution. This suggests that LEAs pursue a significant number of ML cases related to very minor offences and not crimes subject to stronger sanctions. The assessment remains concerned that this is at the expense of more serious ML offending taking place in Japan.

207. *ML based on a foreign predicate* - LEAs demonstrated some experience of conducting investigations on foreign predicate offences. This is supported by FIU to FIU and police to police cooperation with foreign partners and some use of MLA to obtain foreign evidence.

Box 3.9 Concealment of crime proceeds from fraud in a foreign country

The defendant with Nigerian nationality, in conspiracy with Japanese accomplices, made a tropical fish culturing company in Malaysia, an importer/seller of used motorcycles in Pakistan, and other entities transfer a total of JPY 13, 9 million (approx. USD 133 867) to a bank account in Japan. While knowing that the money was obtained by fraud, the defendant concealed the crime proceeds by telling the bank employee that the money had been received as "consulting fees" etc. The defendant was convicted and punished by imprisonment for three years with suspension for four years. (January 2016)

208. *Third party 'professional' ML or Standalone ML* - Investigation and prosecution on stand-alone ML offences are limited whether it be in relation to those involved with the predicate offending or so called third party professional launderers. Police highlighted a number of factors in the criminal context of Japan where for many crime types this may not be a major feature. However, for significant profit generating transnational crime types (particularly drug importations), this is a gap.

209. Japanese authorities demonstrated some experience in investigating the use of opaque company structures involved in ML. Authorities have some limited experience of charging and prosecuting legal persons involved in ML.

Box 3.10 Detecting receipt of proceeds from an illegal activity by an organized crime group

A member of a Boryokudan group was engaged in a business in which he made prostitutes live in a designated place, solicited unspecified male customers through a website and collected fees in exchange for prostitution. Over approximately six months, the defendant received proceeds totalling JPY 12.77 million (approx. USD 123 000) from the Boryokudan member. The defendant was punished by imprisonment for three years, a fine of JPY 1 million (approx. USD 9,630), and collection of approximately JPY 12, 77 million (approx. USD 122,985). (January 2014)

Effectiveness, proportionality and dissuasiveness of sanctions

210. Sanctions available for ML are not wholly proportionate and their application is not fully effective, or dissuasive, taking into account the profit-taking nature of ML offending. As outlined in R.3 (see TC Annex), sanctions can be applied to both natural and legal persons for ML, however for natural person, statutory penalties for ML offences are only up to 5 years' imprisonment; for legal person the penalties range from 500 000 yen to 3 million yen (approx. EUR 4 082 – EUR 24 495; US 4 563 - US 27 380). This is lower than many of the predicate offences that generate the most serious proceeds of crime in Japan. Custodial sentence available for natural person committing ML is at a lower level than available for the predicate offences such as fraud, theft, unfair transactions, market manipulations or misappropriation of business activities, all of which have a range of up to 10 years' imprisonment. As observed in the 2008 mutual evaluation (see para.200), the maximum fine of up to JPY 3 million (approx. USD 28 892) does not appear to be dissuasive and no steps have been taken in recent years to address such concerns.

211. Consolidated data for sentences applied for ML convictions was not available. Sentencing data was only available for cases in which confiscation and/or collection was sentenced for ML, which represent an average of 30% of the annual convictions for ML. Table 3.7 indicates an average of 128 ML prosecutions and convictions per year, but cases in which confiscation and/or collection was sentenced for ML (tables 3.13 and 3.14) shows an average of 39 ML prosecution and convictions per year.

212. Reviewing ML cases identified particular cases where suspended sentences were often imposed, even in some serious cases (see examples below) such as those involving organized crime syndicate or international elements. Concerns remain that effective sanctions are not being applied and the statutory maximum penalty for ML offences are not being used.

Box 3.11 - Detecting association dues received by an organized crime group as being crime proceeds

The head of a Boryokudan group received JPY 8 million (approx. USD 77 046) as the payment of association dues (Jonokin), which was part of the amount of approximately JPY 42.76 million (approx. USD 411 810) that had been acquired by two persons who had connection to a construction company by extorting a general construction contractor. Based on Article 11 of the APOC, defendant was sentenced to imprisonment for two years with suspension for three years, and collection of equivalent value of JPY 8 million (approx. USD 77 045). (January 2017)

Box 3.12 Receipt of crime proceeds by a person not involved in a predicate offence

An accounting officer at a public medical center misappropriated a total of approximately JPY 13.14 million (approx. USD 126 548) by withdrawing cash from the bank account of the said medical center. The defendant, who had a relationship with the accounting officer, received approximately JPY 1.88 million (approx. USD 18 105) from the accounting officer while knowing that the money was obtained through the misappropriation. The defendant was convicted of receiving crime proceeds and was punished by imprisonment for one year and six months with suspension for four years, and a fine of JPY 500 000 (approx. USD 4 815). (July 2012)

Box 3.13 Case Study 7.3-8: Concealment of crime proceeds acquired by promoting illegal labor

The defendant employed foreign nationals who were staying in Japan beyond the authorized period of stay as farmers while selling crops in the name of another individual in order to disguise his identity. To this case, the Immigration Control and Refugee Recognition Act (promotion of illegal labour) and the APOC (concealment of crime proceeds) were applied, and the defendant was punished by imprisonment for two years with suspension for three years, a fine of JPY 1 million (approx. USD 9 631), a confiscation of approximately JPY 3.2 million (approx. USD 30 818), and collection of approximately JPY 720 000 yen (approx. USD 6 934). (November 2017)

213. Within the relatively low available range, sanctions applied against natural persons convicted of ML are generally in the lower to middle aspects of the range for custodial sentences, but across the range for fines. Data available for sentencing ML cases is incomplete and there are some contradictions in records of sentencing.

214. Statistics provided by Japan indicate that there were 194 convictions for ML (when confiscation or collection was ordered) between 2014 and 2018. On average, only 34% of these received a custodial sentence that was not suspended. Suspended sentences were given in 66% of all of these ML convictions. Fines (without imprisonment) were applied, on average, in 70% of cases.

Table 3.13. Persons Sentencing upon convictions for ML (when confiscation or collection was ordered)

	2014	2015	2016	2017	2018		Total
Convicted	43	34	48	50	19		194
Custodial Sentence enforced (not suspended)	9 (21%)	9 (26%)	20 (42%)	19 (38%)	9 (47%)		66 (34%)
Suspended custodial Sentence	34 (79%)	25 (74%)	28 (58%)	31 (62%)	10 (53%)		128 (66%)
Fined (without imprisonment)	32 (74%)	26 (76%)	37 (77%)	28 (56%)	14 (74%)		137 (70%)

Source PPO - (Note) This Table is based on the cases in which confiscation and/or collection was sentenced for ML, and thus does not cover the total number of convictions for ML under the APOC from 2014 to 2018.

Table 3.14. Sentences applied upon convictions for ML (when confiscation or collection was ordered)

Imprisonment with or without suspension	Number of persons						
	2014	2015	2016	2017	2018		Averages %
Less than 1 year	5	0	1	0	0		3%
1 - 2 years	8	7	12	4	4		18%
2 - 3 years	19	17	20	18	10		44%
3 - 4 years	9	8	10	17	2		24%
4 - 5 years	0	1	2	8	2		7%
5 - years	1	1	2	3	1		4%
Total	42	34	47	50	19		

Source PPO

Table 3.15. Sentences applied upon convictions for ML (when confiscation or collection was ordered)

Fines	Number of persons						
	2014	2015	2016	2017	2018		Averages %
Less than JPY 500,000 (approx. USD 5 000)	2	1	4	2	0		6%
JPY 500,000- 1 million (approx. USD 5 000 – 10 000)	9	2	9	9	3		22%
JPY 1 - 1.5 million (approx. USD 10 000 – 15 000)	8	8	10	5	4		25%
JPY 1.5 - 2 million (approx. USD 15 000 – 20 000)	2	1	2	2	0		5%

Fines	Number of persons						
JPY 2 - 2.5 million (approx. USD 20 000 – 25 000)	2	4	6	2	6		14%
JPY 2.5 - 3 million (approx. USD 25 000 – 30 000)	4	2	0	2	0		6%
JPY 3 - 5 million (approx. USD 30 000 – 50 000)	4	4	3	4	1		11%
JPY 5 million or more (approx. USD 50 000 or more)	2	5	4	3	1		11%
Total	33	27	38	29	15		

Source PPO

215. Japanese authorities highlight a range of contextual issues which support the dissuasiveness of sanctions applied. These include intangible social effects of being convicted for a serious offence, which while intangible, must be given some positive weight. Some weight is given to these intangible effects in the Japanese context, however, the assessment team remain concerns that these may be less dissuasive with more senior criminal figures, organised crime or foreign offender.

216. Case studies indicate that for self-laundering, ML and predicate offences are tried together and sanctions are applied concurrently, taking into account the totality of the offending. Given that predicate offences carry higher ranges than the ML offences and, the practice of concurrent sentencing has seen small number of ML sentences to more than 5 years, reflecting both the conviction for the predicate and the ML offence.

Box 3.14. – Sentence involving confiscation and imprisonment

A defendant, in conspiracy with several accomplices, defrauded bank cards and stole bank cards and cash by presenting false policeman's identification, and withdrew cash from ATMs using those bank cards. Then, the defendant, at the airport, attempted to conceal the cash obtained in two baggages (JPY 20, 92 million/ USD 201 000) and JPY 16 million /USD 154 000), and checking those baggage in an airplane bound for Thailand. However, the defendant was detected by the police at the airport, and prosecuted for the crime of using counterfeited official marks, fraud (specialized fraud), theft, and violation of the APOC. Police obtained and executed pre-indictment preservation orders for confiscation of the total amount of cash (JPY 36, 92 million/USD 355,567). Also, PPO indicted this case by actively interpreting the attempt to conceal crime proceeds, deeming the act of trying to move the crime proceeds to another country as the attempt of concealment, and demanded the punishment by imprisonment for 9 years and confiscation of the seized cash to the court. As a result, the defendant was convicted of a number of offences by the court and sentenced to imprisonment for 6 years and 4 months and confiscation of the JPY 36, 92 million cash. (July 2019)

217. As a practical matter, it appears that no guidance on sentencing has been laid down by the court in Japan in relation to ML cases. Such guidance would help to balance a number of the contextual issues and the need to ensure proportionate, effective and dissuasive sentences being applied for serious ML cases.

Box 3.15 Exposing a legal person for receiving proceeds from sales of goods violating intellectual property rights

A legal person engaged in the business of sale, import, export of second hand goods, as well as the representative director of the said legal person, received crime proceeds in which the sales of false brand-name goods using similar trademarks in violation of trademark rights were commingled, by depositing the proceeds into a bank account in a borrowed name. In this case, the legal person was sentenced to a fine of JPY one million (approx. USD 9,630), and the representative was sentenced to imprisonment for two years with suspension for three years, a fine of JPY one million and a confiscation and collection of the crime proceeds of approximately JPY one million. (May 2014)

Use of alternative measures

218. Japan did not demonstrate the application of other criminal justice measures in cases where a ML investigation has been pursued but where it is not possible, for justifiable reasons, to secure a ML conviction.

Overall Conclusion on IO.7

Japanese LEAs have prioritised the pursuit of ML to a certain extent, with particular focus given to serious fraud and organised crime and some related drug cases. LEAs have well developed financial investigation and prosecution capacity. However, a majority of ML cases completed relate to very minor cases and prosecution is suspended. A sizeable portion of ML investigations do not collect sufficient evidence to proceed to prosecution and there are significant challenges with conducting ML investigations of complex cases. For those ML cases that do go to trial there is a perfect conviction rate, and prosecution of legal persons for ML was demonstrated. However generally low sentences are applied for ML, including suspended custodial sentences in a sizeable majority of cases. Japan has demonstrated that its level of prosecutions and convictions of ML is only in line with its threats, risk profile and AML/CFT policies to some extent.

Japan is rated as having a moderate level of effectiveness for IO.7.

Immediate Outcome 8 (Confiscation)

219. The PPO and all LEAs in Japan maintain statistics on many aspects of asset restraint and confiscation with the exception of instruments of crime. The assessment team based its conclusions on a variety of information including data and statistics on ML cases and predicate investigations and the team's review of numerous cases demonstrating the extent of restraint and confiscation of instruments of crime, proceeds of crime and property of corresponding value.

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

220. Japan has a generally comprehensive conviction-based confiscation system to recover assets through different measures including proceeds and instruments of crime and property of corresponding value (through a collection order). Generally sound provisional measures are available.

221. *Confiscation order, collection order and preservation order* - LEAs and prosecutors appear to place a reasonable priority on forfeiture of proceeds of crime. This policy priority extends to the pursuit of confiscation of property of corresponding value (through the imposition of "collection orders") when the specific proceeds of crime are not available or identified, which is a strength. The Public Prosecutor's Office (PPO) demonstrated that it consistently obtains such collection orders in predicate and ML cases. With a view of preserving the property/assets for confiscation, LEAs proactively claim preservation order before the institution of prosecution. According to the statistics provided, for the past 5 years, on average slightly over 80% of the amount of proceeds or value equivalent imposed under the confiscation order or collection order had been preserved under the preservation order.

222. Training is provided to LEA officers from relevant agencies in relation to giving priority to asset tracing, restraint and confiscation, including property of corresponding value.

223. Authorities demonstrated a regular and systematic confiscation of instruments of crime. Police guidelines focus on the appropriate confiscation of criminal objects and police report that when any items used for criminal acts are found during the investigation of cases, they are usually seized under warrants or voluntary submission and held by the PPO on a case-by-case basis. PPO provided a number of examples where instruments of crime were confiscated. Statistics or other data to track the application of provisions to confiscate instruments of crime, including conveyances, safe houses, etc., are not kept by LEAs or the PPO. As such authorities lack information on the value of instruments of crime seized and forfeited or the value realised at the point of forfeiture.

224. As outlined in IO 6, there are some strengths and challenges with asset tracing investigations to identify assets which may be restrained and ultimately subject to confiscation. LEAs usually use non-compulsory bases to support inquiries to freeze assets in combination with compulsory methods. Non-compulsory measures are less time-consuming and, in the Japanese context, work well. LEAs apply their well-developed investigation techniques (see IO 7) and use a variety of techniques including utilization of JAFIC information to find relevant accounts in a timely manner. While there are good financial investigation skills amongst LEAs, there are challenges in going bank by bank to seek related accounts and an emphasis on using financial intelligence to 'follow the person' rather than 'follow the money'.

Box 3.16 - Confiscation and collection of property of corresponding value for concealment of proceeds gained in reward for accounting fraud

The defendant, who was an adviser on the large-scale accounting fraud at a leading precision instrument manufacturer, was convicted for violating the Financial Instruments and Exchange Act (accounting fraud), and for concealing crime proceeds obtained by the accounting fraud by transferring it among multiple shell companies established in tax heavens, in the name of payment of debt in fictitious contracts. He was sentenced to imprisonment for four years, a fine of JPY ten million / USD 96,307, confiscation of approximately JPY 1.3 billion / USD 12.5 million, and collection of equivalent value of approximately JPY 880 million/USD 8.47 million. (July 2015).

Confiscation of proceeds from foreign and domestic predicates, and proceeds located abroad

225. *Proceeds of crime, instrumentalities and property of corresponding value* - Japanese authorities rely on conviction-based forfeiture to forfeit criminal assets located in Japan as well as proceeds transferred overseas. Significant challenges arise from the overall practice of PPO exercising its discretion to not prosecute a majority of all finalised criminal investigations, including a large majority of all completed predicate offence and ML investigations. As a result, this affects the confiscation of proceeds, instrumentalities and property of corresponding value.

Table 3.16. Amounts of restraint, confiscation of proceeds and collection order for property of corresponding value (Unit: millions of yen / USD)

	2014	2015	2016	2017	2018	Totals*
APOC	*1,088*	*8,903*	*3,033*	*5,468*	*1,045*	
Confiscation	117	1,581	189	361	184	
USD equiv.	1.08	14.64	1.75	3.34	1.70	
Collection	408	2,542	1,866	2,464	545	
USD equiv.	3.77	23.54	17.28	22.81	5.05	
Preservation Order	562	4,780	978	2,643	316	
USD equiv.	5.21	44.26	9.05	24.47	2.93	
APOC	*4.85*	*38.18*	*19.03*	*26.15*	*6.75*	94.96
Anti-Drug Special Provision Law	*401*	*232*	*355*	*482*	*302*	
Confiscation	9	11	15	39	5	
USD equiv.	.083	.1	.11	.36	.05	
Collection	325	194	290	317	270	
USD equiv.	3.01	1.80	2.68	2.93	2.5	
Preservation Order	66	27	51	126	27	
USD equiv.	*.61*	*.25*	*.47*	*1.17*	*.25*	
Anti-Drug law	*3.09*	*1.9*	*2.79*	*3.29*	*2.55*	13.62
Total confiscated *USD equiv.*	7.94	40.08	21.82	29.44	9.3	108.58

Source: PPO

226. PPO and the NPA provided data or statistics of instruments of crime seized or forfeited. While large amounts of gold have been seized, data provided by Customs only indicated confiscation in a single instance in 2018. Case studies of other types of instruments of crime indicate some experience of forfeiting conveyances involved in the crime.

Box 3.17 Confiscation of seized gold

Japan Customs detected a defendant attempting to illegally import 1 242 pieces of gold from Hong Kong, China. Confiscation of the seized gold was ordered upon the defendant's conviction for violation of the Customs Act the Consumption Tax Act and the Local Tax Act. (October 2018)

227. Japanese authorities did not demonstrate that confiscation orders/collection orders were realised with the funds forfeited to the state. The assessment team has not been provided with data and statistics on realisation of orders for collection and confiscation. The concern highlighted in the 2008 mutual evaluation with regard to the enforcement and the effectiveness of such orders (see para 264, 265 and 269) remains. In particular it is noted that the validity of both the confiscation and collection orders would respectively last for 1 year only albeit the one-year time limit can be extended to another year upon receipt of partial satisfaction of the order(s).

228. There is a gap in the current confiscation regime in relation to the confiscation of identified crime proceeds generated by crimes committed by criminals who have absconded, died or whose whereabouts is unknown. In those circumstances, prosecution/conviction cannot be achieved and therefore no confiscations can be made. As no statistics can be provided in this area, it is unclear as to the extent of the ramification of such deficiency.

229. Japan took the view when a person has been sentenced to confiscation, in the event that the said person dies after the decision becomes final and binding, it is possible to execute the confiscation from the said person's property. Concerns remain that this does not cover the case when the suspect has absconded or died before he has been prosecuted or convicted, in those circumstances, no confiscation can be made.)

230. *Provisional measures* - Authorities are empowered to restrain or seize property until such time that prosecution is completed by way of preservation order for the purpose of confiscation. Orders to restrain assets can be obtained by LEAs or the PPO.

231. LEAs demonstrated a reasonable use of restraint orders covering a good range of property, however restraint of proceeds of the higher risk offences was only demonstrated in relation to complex frauds. Large amounts of gold have been seized related to gold smuggling and tax fraud offences.

Table 3.17. Detections of smuggled gold - Seizures and Confiscation

	2013	2014	2015	2016	2017	2018	2019 (Jan/June)
Number of cases	12	119	465	811	1 347	1 086	9
Amount (kg)	133	449	2 032	2 802	6 277	2 036	146
Amounts forfeited (kg)	no data	no data	no data	137	352	138	no data
Approx value realised from forfeiture (million Yen)	no data	no data	no data	589	1,583	634	no data

Source: Ministry of Finance, Japan

232. Reflecting the significant risks of gold smuggling and related taxation fraud, there were very significant detections and seizures of smuggled gold between 2014 and 2018. Complete data is only available for confiscation of gold during the peak of the gold smuggling phenomenon (2016 - 2018), but this demonstrates that only a very small portion of smuggled gold that was seized went on to be confiscated.

233. It should be highlighted that there was a very sharp decline in detections of smuggled gold between 2018 and 2019 - the total number of detections of gold smuggling was 9 (down 99% year-on-year) and the detection amount was approximately 146 kg (down 92% year-on-year), both of which showed a sharp decrease. This reflects enhanced penalties and their application and successful rates of detection by Customs to disrupt the smuggling business model.

234. Restraint and confiscation of proceeds associated with drug trafficking (domestic and trans-national) or Boryokudan was not well demonstrated. This gap appears to be related to challenges with tracing assets associated with these crime types and groups.

235. Japanese authorities indicated that LEAs achieve many of the outcomes of depriving criminals of their proceeds by seizing criminal proceeds in the course of their investigations, and making criminals renounce the ownership of such proceeds, and refunding them to the victims. NPA indicated that this practice is supported by the Guidelines for Measures against Organized Crime and the Guidelines for Promoting Measures against Criminal Proceeds, etc. Japan demonstrated that this practice is regularly pursued to victims of crime. The exact legal basis or extent of this practice has not been demonstrated.

Box 3.18 Receipt of crime proceeds from illicit sales of stimulants leading to a collection order

In a case where the head of a Boryokudan group received crime proceeds from a person who was engaged in illicit sale of stimulant drugs, such payment being made in the name of "venue fees" for multiple times totalling JPY 1,9 million/ USD 18,300, the defendant was punished by imprisonment for two years and four months, a fine of JPY 1 million/ USD 9,630, and collection of approximately JPY 1,9 million/ USD 18,300. (May 2014).

236. *Domestic and foreign predicate offences and property moved overseas* - Japanese LEAs through case examples demonstrate how the crime proceeds could be confiscated related to predicate crime in and outside Japan and proceeds transferred from other countries through international cooperation.

Box 3.19. Property confiscated returned to Japan and used for the purpose of restoration of the loss of victims

In the case where high-ranked members of a designated organized crime group planned to conceal crime proceeds (in discount bank debentures at a face value of JPY 4.635 billion (approx. USD 42 million) acquired through so-called loan-shark businesses (which is in violation of the Money Lending Business Act (unregistered business operations) and the Capital Subscription Act (receipt of an illegally high interest rate payment)), and in February 2003, they transferred the redemption value of those discount bank debentures to their bank account in the Hong Kong, and then, after mixing it with the property in that account, they concealed approximately JPY 5.1 billion (approx. USD 49.1 million) by transferring it from the said account to a numbered bank account located in Switzerland.

Swiss authorities confiscated the property located in Switzerland of an organised crime group member, convicted for loan shark business, and sentenced in 2003 to seven years of prison, a fine of JPY 30 million (approx. USD 288,982), confiscation of JPY 1, 7 million (approx. USD 16 372) and a collection of equivalent value of approximately JPY 5.1 billion (approx. USD 49.1 million).

Japan made a request to Switzerland and in 2008 received a transfer of part of the money, approximately JPY 2,9 billion (approx. USD 27.9 million), and subsequently issued the allocated amounts to the victims of the loan shark based on the Act on Issuance of Remission Payments Using Stolen and Misappropriated Property.

237. *Asset management* - Management of seized assets is largely undertaken by prefectural police. Management of assets is reasonably well supported by internal police policies, and police have options to convert property that may be at risk of losing value or present particular management challenges. Police do not have specific guidance on asset management or an asset tracking system. The relevant procedures (auction and destruction processes of seized/confiscated) are not clear.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

238. Assessments of risk identify particular risks with smuggling of cash and goods, with possible outflows of proceeds of crime to neighbouring countries. Some steps including legislative measures have been taken to target cross-border movement of cash.

239. Japan has a legal framework in place for the declaration and identification of cross border movements of funds and bearer negotiable instruments (BNI) (see TC Annex, R. 32). However, it is not clear that Customs has full powers to restrain suspicious/undeclared cash. A written declaration system is in existence for all travellers, as well as cargo and mail streams. The requirement to make a declaration is included on arrival cards.

240. Customs has only very recently begun to periodically send suspicious declaration reports to JAFIC (see IO 6). While JAFIC makes use of these reports in operational intelligence, there are opportunities to make more comprehensive use of these reports.

241. Customs has greatly increased its screening at the border, initially in relation to the significant gold smuggling threat, but also given heightened security concerns around major events being hosted by Japan. Security risk profiling is conducted on travellers, with selected passengers undergoing thorough physical checks and x-rays. Intelligence received from domestic and international partners feeds into Customs targeted screening of high risk travellers.

242. Despite the cross border cash smuggling risks, Japan has yet to demonstrate that confiscation of falsely /not declared cross-border movements of currency and BNI is being effectively applied.

Table 3.18. Confiscation from false/no-declaration of cash and BNI

Year	2015	2016	2017	2018	2019
Number	0	0	1	0	0
Value	-	-	740 million yen (Approx. USD 6.85 million)		

Source: Customs

Consistency of confiscation results with ML/TF risks and national AML/CFT policies and priorities

243. Given that the system of confiscation in Japan is conviction-based, the very low prosecution rate for all crimes has a direct impact on the effectiveness of the confiscation regime.

244. The low number of confiscation cases, range of assets targeted and the amounts recovered demonstrate that Japan has only to some extent achieved confiscation results that reflect the assessment of ML/TF risks and national AML/CFT policies and priorities. Japan's focus on confiscating property of corresponding value is a strength, however consistent enforcement of collection order and/or confiscation orders was not demonstrated.

245. Confiscation is not well demonstrated in relation to some of the high risk domestic ML predicates, with the exception of fraud cases. Japan has been successful in forfeiting a number of low value of assets comparable to the size of economy and risk profile. Japan was not able to demonstrate a regular successful approach to confiscating instruments of crime.

Overall Conclusion on IO.8

Japan pursues confiscation as a policy objective to a certain extent, particularly in relation to property of corresponding value. Authorities have restrained and confiscated relatively minor amounts across a range of crime areas. LEAs have reasonably well developed asset tracing capacity and pursue financial investigations to identify some assets for the purpose of recovery. Cash is rarely seized at the border. Japan only confiscated a very small portion of the large amounts of smuggled gold seized.

Japan is rated as having a moderate level of effectiveness for IO.8.

Chapter 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

TF investigation and prosecution (Immediate Outcome 9)

a) Japan's assessment of 'low' TF risk appears accurate, notwithstanding Japan's role as an international financial hub. Authorities whose core responsibilities do not include counterterrorism appeared to underestimate TF risk as closer to zero based on the absence of international terrorist attacks in Japan, although TF risks are minor but present.

b) The NPA and JAFIC (the FIU) have conducted limited outreach to FIs and DNFBPs regarding TF, such as providing high-level explanations of potential threats from foreign jurisdictions and red-flag indicators.

c) Japanese LEAs effectively investigate and disrupt (through means other than prosecution for TF offences) potential TF using a wide variety of information, such as STRs, tips from the public, and intelligence shared by other countries. Although the Prefectural Police conduct these investigations directly, the NPA provides specialized CFT and counterterrorism expertise by closely coordinating such investigations with the PP.

d) Deficiencies in the TF Act—primarily, the lack of TF criminalization in the absence of a link to a specific terrorist act or acts—negatively impact not only potential prosecutions but also investigations into the financing of terrorist organizations. Effective, proportionate, and dissuasive sanctions are not available for all TF offences. In sum, multiple significant factors, including Japan's generally conservative approach to prosecution (see IO.7), constrain Japan's ability to prosecute TF cases and to punish such conduct dissuasively.

e) With respect to domestic TF threats, Aum Shinrikyo and related successor groups continue to pose security risks.[39] Japanese authorities conduct robust surveillance, use financial intelligence, and exercise other measures to understand and mitigate these risks effectively.

TF preventive measures and financial sanctions (Immediate Outcome 10)

a) Japan has implemented TF TFS with significant delays of one to three weeks until October 2019, when administrative improvements resulted in a shortening of

[39] Successor groups refers to 'Aleph', 'Hikari no Wa' and other groups that have links to the original Aum Shinrikyo group.

the delay to two to five days. Implementation occurs through the combination of the Foreign Exchange and Foreign Trade Act (FEFTA) with the Terrorist Asset-Freezing Act (TAFA), however the scope of this framework is unclear. The regime does not clearly extend to transactions indirectly involving designated parties, including entities acting at the direction or on behalf of designated parties. Some limited TF assets have been frozen in Japan, generally consistent with Japan's TF risk profile.

b) Japan has recently designated several terrorist organizations pursuant to UNSCR 1373. Japan relies primarily on FIs (as opposed to DNFBPs and other natural and legal persons) to prevent and report financial transactions involving designated parties.

c) Japan mitigates delays to some extent by notifying FIs directly the day after UN updates and imposing on-going screening obligations in the JFSA enforceable Guidelines for FIs and Virtual Exchange Service Providers (VCEPs). These measures, however, do not extend to other natural and legal persons, and the FEFTA and TAFA are the primary instruments for implementing TFS that are implemented with delays (as described above).

d) Japan has not demonstrated more than a limited understanding of TF risks within the NPO sector and has not applied proportionate measures to mitigate such risks. This lack of understanding is mitigated to some extent by robust supervision of NPOs for other purposes. Given the commendable work of Japanese NPOs in high-risk jurisdictions around the world, the risk of TF abuse warrants significantly greater support and guidance to NPOs by the authorities.

PF financial sanctions (Immediate Outcome 11)

a) Japan has implemented PF TFS with delays of five to ten days until October 2019, when administrative improvements resulted in a shortening of the delay to two to five days. Several factors, however, mitigate the effects of these delays with respect to UNSCR1718/2231. First, Japan has domestically designated a significant number of UN-designated persons and entities prior to their UN designation. Second, Japan prohibits any transfers of funds or goods involving DPRK, which enhances implementation of TFS with respect to the subset of UN-designated persons and entities located within DPRK. Third, Japan conducts significant, strategic outreach to FIs and DNFBPs regarding PF-related TFS implementation, which includes dissemination of non-legally-binding notification of UN updates shortly after such updates.

b) The scope of TFS implementation under the FEFTA is unclear: transactions within Japan involving designated parties are not clearly prohibited, and not all "funds or other assets" are clearly covered.[40] Japan has nonetheless frozen significant DPRK- and Iran-related financial assets under this system that are

[40] After the on-site visit, the Ministry of Finance published an 'Interpretive Note for Implementing FEFTA' on 20 October 2020 (Only in Japanese – www.mof.go.jp/international_policy/gaitame_kawase/gaitame/recent_revised/201020_1.pdf). This notice defines "payments" as used in Article 16 of the FEFTA in the same terms as "funds or other assets" in the FATF Standards.

generally consistent in volume with Japan's risk profile due to its role as an international financial centre, geographic proximity to DPRK, and historic trade ties to Iran. Although Japan successfully freezes financial assets associated with attempted international transactions, the abovementioned technical deficiencies of FEFTA create vulnerability to PF-related sanctions evasion: for example, schemes that do not require international financial transactions or that disguise the beneficial ownership of designated parties involved in such transactions.

c) Japanese authorities focus on TFS supervision of and outreach to FIs and DNFBPs at significant risk of PF-related, especially DPRK-related, sanctions evasion (in contrast to the basic, list-based outreach conducted for TF TFS). At-risk sectors that receive outreach include the trade finance, insurance, shipping, and fisheries sectors. Authorities generally consider DPRK-related counter-proliferation to be among Japan's highest national security priorities, as reflected by the above outreach, as well as by robust criminal and civil enforcement actions relating to the general restrictions on trade with DPRK.

d) Large FIs and some DNFBPs exhibit a fairly sophisticated understanding of PF-related, especially DPRK-related, sanctions evasion risks, due in part to targeted outreach by authorities. Smaller FIs and most DNFBPs exhibit basic understanding of screening obligations. The MOF has identified shortcomings relating to TFS compliance among FIs since 2016. VCEPs are in a preliminary stage of implementing TFS obligations.

Recommended Actions

TF investigation and prosecution (Immediate Outcome 9)

Japan should:

a) Develop a detailed plan among NPA, MOJ, PPO, and any other relevant agencies to coordinate any ongoing and future TF investigations more closely. The plan should be based on a review of past investigations (especially completed cases) to determine whether any could and/or should have been prosecuted with TF charges. The plan should also ensure that PPO affords due consideration to NPA's views on whether prosecution should occur in any given case (apart from issues of legal sufficiency).

b) Adopt binding and enforceable means or amend the TF Act to ensure that the financing of an individual terrorist or terrorist organization in the absence of a link to a terrorist act is criminalized, and that the other technical deficiencies with Japan's criminalisation of TF identified in the Recommendation 5 analysis are rectified.

c) Enhance understanding of TF risk outside counterterrorism-focused authorities, including but not limited to: PPO; MOJ; MOFA; and the JFSA.

d) Enhance outreach efforts to higher risk FIs, particularly: megabanks; higher risk DNFBPs; and VASPs. Japan should build on outreach efforts by JAFIC to include

more input from counterterrorism experts at the NPA, PSIA, and Cabinet Secretariat to develop a more nuanced and deeper understanding of the TF risks Japan faces across all relevant stakeholders.

e) Adopt a strategic approach to CFT (some or all of which need not be public), with a focus on enhancing understanding of TF risk across all relevant stakeholders (as recommended above), and on resolving any potential challenges to prosecuting TF and securing dissuasive criminal sanctions.

TF preventive measures and financial sanctions (Immediate Outcome 10)

Japan should:

a) Enact legislative reforms, or issue comprehensive guidance or take similar steps, to clarify all of the obligations in Japan's sanctions regime with respect to terrorism financing. This is to ensure that they are in line with the FATF Standards and clear to all natural and legal persons in Japan, especially FIs, DNFBPs and VCEPs, that need to implement TFS.

b) Ensure that the framework for implementing TFS is sufficient to implement TFS without delay. If the current legal framework could allow TFS implementation without delay, Japan should continue administrative improvements to eliminate the delay. If not, Japan should promulgate and implement laws that enable TFS implementation without delay.

c) Conduct another NPO TF risk assessment that draws on information regarding NPO operations, especially those in or around high-risk jurisdictions; use this risk assessment to inform criteria to identify NPOs at higher risk of TF abuse; and employ a risk-based approach to monitor or supervise such NPOs without unduly hampering legitimate NPO activities.

d) Conduct outreach to NPOs regarding TF risks and good practices for protecting the integrity of NPOs' work in high-risk jurisdictions.

PF financial sanctions (Immediate Outcome 11)

Japan should:

a) Improve TFS compliance among FIs, DNFBPs and VCEPs, especially by focusing on transactions involving third parties and ensuring that dissuasive penalties and remedial measures are applied whenever appropriate, and by increasing the comprehensiveness of inspections for TFS.

b) Enact legislative reforms to ensure that TFS could be implemented in relation to domestic transfers between two Japanese residents (where one party is designated).

c) Enact legislative reforms, or issue comprehensive guidance or take similar steps, to clarify all of the obligations in Japan's sanctions regime with respect to proliferation financing. This is to ensure that they are in line with the FATF Standards and clear to all natural and legal persons in Japan, especially FIs, DNFBPs and VCEPs, that need to implement TFS.

d) Ensure that the framework for implementing TFS is sufficient to implement TFS without delay. If the current legal framework could allow TFS implementation without delay, Japan should continue administrative improvements to eliminate the delay. If not, Japan should promulgate and implement laws that enable TFS implementation without delay.

246. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

247. The assessment team based its analysis and conclusions on information provided in writing and orally by Japanese officials from the NPA, MOJ, PPO, PSIA, MOF, JFSA, and other agencies. With respect to IO.9 in particular and, to a lesser extent, IO.10, Japanese authorities provided information that could not be published in this report but nonetheless factored into the assessment team's analysis and conclusions. With respect to IOs.10 and 11, the team also met with representatives from the non-profit sector and from the financial and non-financial sectors.

Immediate Outcome 9 (TF investigation and prosecution)

Prosecution/conviction of types of TF activity consistent with the country's risk-profile

248. Japan faces low risk of TF and of terrorism more broadly, compared to other jurisdictions.

249. Regarding risks of domestic terrorism and related TF, the most recent confirmed terrorist act in Japan occurred in 1995 with the Tokyo subway sarin gas attacks by the domestic cult Aum Shinrikyo. These attacks, which killed more than a dozen civilians and seriously injured dozens more, represent a significant terrorist act that used weapons of mass destruction.[41] The cult and its successor groups continue to congregate, maintain substantial financial and other assets, and raise funds, thus posing potential terrorism and TF threats. Responsive to these threats, a legal framework provides for robust surveillance and other measures by LEAs to mitigate risks flowing from such groups (and others found to pose potential threats, such as the Japanese Red Army), while balancing privacy and due process considerations through periodic renewal procedures. The PSIA continues to monitor these groups closely, including their financial records, under this tailored framework.[42]

250. In July 2018, Japanese authorities executed Aum Shinrikyo leader Shoko Asahara and twelve other cult members responsible for the 1995 sarin gas attack and other crimes. Following the July 2018 executions, at least one crime occurred that initially suggested a potential nexus to Aum Shinrikyo. In the early hours of New Year's Day in 2019, a Japanese man drove a car into a crowded Tokyo neighbourhood, injuring nine people. According to news reports, the perpetrator subsequently made

41 See, *e.g.*, *Global Proliferation of Weapons of Mass Destruction: A Case Study on the Aum Shinrikyo*, United States Senate Government Affairs Permanent Subcommittee on Investigations, 31 October 1995 (available at: https://fas.org/irp/congress/1995_rpt/aum/).

42 *Act on the Control of Organizations Which Have Committed Acts of Indiscriminate Mass Murder* (No. 147 of December 7, 1999) (English translation available at: www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=2&dn=1&co=01&ia=03&ja=04&x=0&y=0&ky=indiscriminate+mass+murder&page=2).

statements to the police that characterised his actions as a "terrorist attack" in retaliation for the execution of Asahara. At the time of the on-site, Japanese authorities determined that there was no evidence indicating the perpetrator had ties to Aum Shinrikyo or successor groups.

251. In terms of international terrorism and TF threats, Japan's vulnerabilities include the volume, frequency, and scope of cross-border trade and financial transactions due to Japan's role as a regional and global financial centre (see Chapter 1). Japan engages in significant transactions with jurisdictions in South East Asia and the Middle East that suffer from terrorism and terrorist financing threats. These are exacerbated by weakness in understanding of TF risk by FIs and DNFBPs (see IO.4).

252. Risk factors include the demand for Japanese goods, especially used automobiles, by terrorists and terrorist organizations in or around conflict regions. There have been limited cases of Japanese nationals travelling to and returning from conflict zones, including potential attempted travel in support of the Islamic State of Iraq and the Levant (ISIL), and the NRA notes the presence in Japan of suspected Islamic extremists, which include a small number of individuals suspected of sympathies with the ISIL.

253. Notwithstanding the above terrorism and TF risks that Japan faces, Japan has not prosecuted (nor convicted) any TF cases. Given the nature of the risks, this is not inconsistent with its current and recent risk profile. The MOJ has conducted training with prosecutors on the TF Act. While there are no specialist prosecutors, judges or courts for terrorism or TF cases, or special procedures for dealing with criminal cases involving classified intelligence, there is some analogous experience in prosecuting cases that require sensitivity to sources and witnesses, namely prosecutions of the Boryokudan.

254. Despite the training that has occurred and the experience of dealing with risks associated with Boryokudan, the underlying shortcomings in Japan's TF Act—in particular, the non-criminalisation of funding a terrorist or terrorist organization without a link to a specific terrorist act—threatens to stymie convictions for all but the most glaring TF violations involving funding of a specific terrorist act (see TC Annex, c. 5.2). As discussed in greater detail at IO.7, the very high degree of confidence in conviction that prosecutors appear to seek before pursuing a potential prosecution compounds the impact of these technical deficiencies.

TF identification and investigation

255. The NPA—specifically, the Security Bureau—has primary responsibility for addressing TF threats involving international terrorist groups or terrorists. Terrorist financing investigations (i.e., information collection, analysis, etc.) are directly conducted by the Prefectural Police according to the physical location of suspected conduct within Japan. In such investigations, NPA provides specialised expertise and coordinates closely with the Prefectural Police. JAFIC, the FIU, plays a largely preliminary but significant role in TF investigations: JAFIC analyses security-related STRs to determine whether such STRs and analysis should be provided to the NPA to allow the latter to investigate further. JAFIC also provides follow-up analysis when requested by the Prefectural Police and/or NPA. The NPA and the Prefectural Police demonstrated that they have timely access to relevant JAFIC financial intelligence.

256. In general, Japanese authorities seek to prevent terrorist acts by removing potential TF threats from Japan, but have not prosecuted (nor convicted) any TF cases. LEAs—specifically, the Prefectural Police and NPA (Security Bureau)—comprehensively investigate potential terrorism and TF, including through the regular use of financial intelligence. As detailed in below paragraphs and case examples, as well as via confidential additional information shared with the assessment team, LEAs demonstrated that they routinely identify and thoroughly investigate potential TF using a wide range of information and investigative techniques.

257. The technical deficiencies of the TF Act—specifically, its inapplicability to financing of a terrorist organization or individual terrorist in the absence of a link to a terrorist act—present obstacles not only to prosecution but also to investigation. As described at Box 4.1 and discussed in greater detail in Chapter 4 (Alternative Measures), the assessment team found that LEAs sought to work around this gap in at least one case by using criminal provisions of the Foreign Exchange and Foreign Trade Act (FEFTA). In this case, LEAs gathered evidence indicating potential support for ISIL in South East Asia and made arrests. Although criminal FEFTA charges were ultimately declined by the PPO, LEAs (in coordination with PPO) obtained key evidence in searches and seizures that were authorized on the basis of suspicions of violating FEFTA. After the PPO declined criminal FEFTA charges, all involved individuals departed from Japan.

258. Notwithstanding the NPA's (i.e., CT specialists at the Security Bureau of the NPA) effectiveness, the technical deficiencies of the TF Act limit the investigations that are pursued: Japanese authorities must demonstrate suspicion of a TF Act violation, requiring specific knowledge of an intended terrorist act, to obtain a search/seizure warrant (the threshold of suspicion is lower than that of probable cause, the latter of which is required to obtain an arrest warrant). In addition, the gaps in the TF Act do not incentivise LEAs to pursue certain activities without the possibility of prosecution. Finally, the overly narrow scope of the TF Act inhibits understanding by the public regarding what TF conduct should be prohibited (especially support to terrorist organizations in the absence of a link to a terrorist act).

259. Japanese authorities also use various types of information to identify potential TF by means of, inter alia, STRs filed by FIs, foreign intelligence (both collected by Japan and provided by foreign intelligence services), tips from the public, and public reports by the United Nations Security Council and other reputable non-governmental organizations to identify potential TF. The assessment team reviewed examples of security-related STRs and found that the quality of analysis was generally high, involving comprehensive asset-tracing and in-depth use of a wide variety of sources of information. See IO6 for analysis of use of financial intelligence in TF investigations.

260. JAFIC and NPA Security Bureau demonstrated close coordination, including for follow-up or ad hoc analysis. While JAFIC's analysis on the TF-related STRs that it receives sufficiently informs NPA's consequent investigations, deficiencies relating to FIs nonetheless hamper effective identification of TF by Japanese authorities. Specifically, due to CDD and ongoing monitoring deficiencies and the too-basic understanding among FIs regarding TF typologies and red flags (see IO.4), FIs are likely to miss transactions that should have triggered TF-related STRs. That the vast majority of TF-related STRs in 2018 were filed on the basis of links to individuals or entities designated by the UN or involving transactions with obvious nexuses to conflict regions supports this conclusion. JAFIC and NPA specialists' experience with TF investigations that do not involve obvious conflict regions further demonstrates that less-obvious TF

typologies involving Japan exist and that FIs, which are often a first line of defence for TF, should likely file more TF-related STRs based on enhanced TF understanding. This negatively impacts the frequency and scope of information provided to authorities in order to initiate investigations.

261. While JAFIC and JFSA have engaged to some extent with FIs and Virtual Currency Exchange Providers (VCEPs), respectively, on specific TF risks (in particular, those associated with FTFs) in recent years, authorities should communicate more systematically and to a greater extent with FIs and other reporting entities on the specific nature of the TF threats that could affect Japan. In addition, the NRA plays an important role in Japan in disseminating information on risks, but contains no specific information or analysis related to potential domestic or cross-border TF risks. DNFBPs and their supervisors appeared wholly unaware of TF apart from transactions that would overtly involve sanctioned entities (as discussed at IO.10).

262. The NPA and the Prefectural Police gather and analyse various types of information from the public regarding potential security threats, include TF-related threats, and the Prefectural Police conducts investigations as necessary in close cooperation with the Security Bureau of the NPA. As further evidence of effective cooperation, members of the Prefectural Police and NPA Security Bureau frequently transfer between the two organisations. The NPA and the Prefectural Police conduct risk-based, targeted outreach for counterterrorism purposes, including to hotels and sellers of dangerous tools and chemicals. The NPA Security Bureau is also engaged in various public-private partnerships with private sector entities strategic for counterterrorism efforts, including but not limited to telecommunications, railway, gas, and electricity sectors.

263. Regarding the below case studies, the assessment team considered a significant amount of information that could not be included in this report due to confidentiality. As a general matter, LEAs demonstrated that they appropriately share terrorism-related (including TF-related) information with foreign security services and law enforcement agencies, especially in cases of removal of TF threats from Japan.

Box 4.1. Investigation of ISIL Supporters from Southeast Asian (SEA) Country

In November 2015, the Prefectural Police arrested multiple SEA nationals residing in Japan for having exported firearm-related components to the SEA country: i.e., suspected violations of FEFTA for participating in such exports without permission from the Ministry of Economy, Trade, and Industry. Analysis of the suspects' computers revealed images indicating ideological support of ISIL and further revealed videos teaching how to produce explosives. The Prefectural Police transmitted cleared cases (i.e., completed investigations recommended for prosecution) to the PPO. The PPO suspended prosecution, after which all involved individuals departed from Japan to their country of origin. Japanese authorities discussed the matter with the South-East Asian country.

Box 4.2. TF Investigation of Potential ISIL Supporter

In 2016, during the height of ISIL's territorial success, the Prefectural Police and NPA investigated a potential supporter of ISIL, based on JAFIC's STR analysis. Soon after receiving an STR, JAFIC sent the STR to NPA and the Prefectural Police, which initiated an investigation led by the appropriate Prefectural Police bureau. In coordination with NPA and JAFIC, the Prefectural Police examined financial and various other types of information relating to the individual. LEAs provided additional information to the assessment team that demonstrated that they undertook robust, well-coordinated, and effective measures to identify any TF and terrorism threats in connection with this case. Ultimately, based on information collected and further analysis, the Prefectural Police and NPA determined that the individual was unlikely to pose a terrorism or TF threat in Japan or abroad.

Box 4.3. Investigation of Japanese nationals planning to join ISIL

In October 2014, in co-ordination with NPA, the Prefectural Police conducted interviews with several Japanese individuals, including university students, who were suspected of planning to travel to Syria for the purpose of engaging in violent activities on behalf of ISIL. Specifically, these interviews were conducted on the basis of suspicions that the individuals were "prepar[ing] or plot[ting] to wage war privately upon a foreign state" (Penal Code, Art. 93).[43] The Prefectural Police also carried out related searches and seizures in multiple locations, and took into account various information. This represents the first case in which LEAs identified Japanese nationals attempting to join ISIL. The LEAs submitted cleared cases to the PPO, which declined to prosecute the cases.

43 The full Article 93 of the Penal Code states: "A person who prepares or plots to wage war privately upon a foreign state shall be punished by imprisonment without work for not less than 3 months but not more than 5 years." The article further provides that: "[a] person who self-denounces shall be exculpated." (English translation available at www.japaneselawtranslation.go.jp/law/detail/?ft=1&re=2&dn=1&co=01&ia=03&ja=04&x=0&y=0&ky=preparation+or+plots+for+private+war&page=1).

264. With respect to threats involving domestic groups that committed terrorist acts in Japan in the 1990s—namely, Aum Shinrikyo—the PSIA operates under a comprehensive legal framework,[44] monitoring Aum Shinrikyo and successor groups and transmitting information to the NPA on a regular and ad hoc basis for potential law enforcement investigations. Pursuant to this legal framework, PSIA may conduct certain surveillance activities for a renewable period of three years on an organization that meets one of various criteria: e.g., "the ringleader of the Act of Indiscriminate Mass Murder exerts an influence over the Organization's activities"[45]. Aum Shinrikyo satisfies this requirement on the basis of, inter alia, an admiring display of portraits of Shoko Asahara, the founder of Aum Shrinrikyo who helped orchestrate the terrorist attacks in Japan in the 1990s, in its facilities.

265. As a result, Aum Shinrikyo must disclose certain categories of information to PSIA every three months, including the identities of members and the organization's financial assets. Members of PSIA conduct on-site inspections to gather and/or verify such information. In some cases, Aum Shinrikyo members have unlawfully refused entry for these purposes; the police enforced the Act on Control of Organizations that Have Committed Acts of Indiscriminate Mass Murder (ACO) based on information provided by the PSIA, including by arresting the resisting individuals. Under the ACO, the PSIA shares information with the NPA every three months and on an ad hoc basis, and the PSIA and NPA transmit annual reports to the Diet.[46]

TF investigation integrated with – and supportive of – national strategies

266. Since 2013, Japan has published annual updates to its policy framework: *Strategy to Make Japan the Safest Country in the World* (see IO 1). The annual update for 2018 listed various legislative measures relevant to AML/CFT, including revisions to the TF Act in 2015. Japan also published the Action Plan for Prevention of Terrorism in 2004, which notes, *inter alia*, the importance of terrorism-related intelligence gathering, sharing, and analysis by appropriate authorities. Japan has adopted Counter Terrorism Guidance for the Tokyo 2020 Olympic and Paralympic Games, which does not substantively include terrorist financing. Therefore, overall, Japan does not have a meaningful recent 'national strategy' to combat terrorism or TF *per se.* Nevertheless, based on the investigative practices described in Chapter 4, section *TF identification and investigation* and section *Alternative measures used where TF conviction is not possible* Japan's focus on counterterrorism investigations integrate TF elements. For example, investigations to disrupt potential terrorist activity, including that by potentially radicalised individuals, have involved significant financial investigative work. These investigations are appropriately a priority for Japan, notwithstanding the relatively low risk associated with FTFs compared to other jurisdictions. However, TF investigations tend to be considered more rare than they actually are and therefore of insufficient significance to most authorities, including MOF and JFSA, besides the NPA Security Bureau.

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44 Subversive Activities Prevention Act (SAPA) and the Act on Control of Organizations that Have Committed Acts of Indiscriminate Mass Murder (ACO)

45 Act on Control of Organizations that Have Committed Acts of Indiscriminate Mass Murder (ACO), Article 5(1)(i)

46 Act on Control of Organizations that Have Committed Acts of Indiscriminate Mass Murder (ACO), Article 5(6), et seq.

267. The legal framework, put in place to monitor and mitigate risks regarding Aum Shinrikyo and other groups that may pose a domestic threat, also integrates financial elements: for example, incorporating the regular analysis of financial statements and bank records by the group. The breadth of the legislation, covering all groups that may pose a domestic terrorism threat and requiring the authorities to undertake particular actions to monitor and detect terrorism activity, and the fact that it has been reviewed and amended over time, in some ways acts as a domestic strategy to counter terrorism.

Effectiveness, proportionality and dissuasiveness of sanctions

268. Japan has not prosecuted (nor convicted) any TF cases. The TF Act carries maximum statutory penalties that range from two years' imprisonment or JPY 2 million (approx. EUR 15,837/USD 19,261) fine to 10 years imprisonment or JPY 10 million (approx. EUR 79,185/USD 96,307) fine, depending on whether the conduct constitutes indirect or direct TF. The maximum penalties (2 years' imprisonment or a fine of JPY 2 million (EUR 15,837/USD 19,261)) for indirect TF (i.e., via a third person or entity separate from sender and receiver) are too low to be effective or dissuasive. In addition, custodial and monetary penalties cannot both be applied. The maximum penalties that may be applied for the most serious direct terrorist financing cases also do not appear to be sufficiently significant compared to other serious criminal offences in Japan. In comparison, penalties for other serious offences such as fraud or causing another to suffer an injury may result in prison sentences of 10 years or 15 years respectively according to the penal code.

269. Effective, proportionate and dissuasive sanctions are not available for legal persons, as the same sentences for natural persons apply to legal persons. Given prison sentences do not apply, the financial sanctions are not sufficient to be considered dissuasive.

270. Given the critical importance of sentences that provide for both individual and general deterrence against TF, and taking into account the initial obstacle to successful prosecution for various types of TF that are not linked directly to a terrorist act, this deficiency has significant adverse impact on Japan's CFT effectiveness. In addition, the absence of TF Act prosecutions in Japan underscores the importance of dissuasive available sanctions, as such sanctions should deter such activity even if they have not been applied yet.

Alternative measures used where TF conviction is not possible (e.g. disruption)

271. The Prefectural Police, in coordination with the NPA (Security Bureau) aggressively use alternative measures (*i.e.*, criminal justice, regulatory, administrative, or other measures) in cases where TF convictions are not possible due to prosecutorial practices, TF Act deficiencies, and/or successful disruption. Upon well-founded suspicion of potential extremist or terrorist activity, LEAs seek to remove potential threats from Japanese territory, including through administrative measures. In the case described at Box 4.1 regarding a Southeast Asian country, for example, the assessment team found that LEAs pursued lesser offences that resulted in departure of potential terrorists rather than criminal violations that might have resulted in significant custodial sentences in Japan. The Japanese authorities indicated that they liaised closely with the competent authorities of the country in question. In that case, however, it appears that more significant charges may have been viable in Japan.

272. Counterterrorism LEAs credibly opined that a case of completed TF would be considered a total failure of their duties to prevent TF from occurring. This demonstrates the priority that Japanese LEAs place on disrupting TF in Japan, but may also indicate the potential reticence of PPO in pursuing a TF prosecution should an investigation merit one.

273. When detected, potential perpetrators of TF are deprived of such opportunities within Japan through alternative measures, which contribute to creating a hostile environment for TF. Japanese authorities further note that Japan's role as an international financial centre increases the importance of physical removal, on the theory of that doing so may also cut off a potential terrorist's access to international banking and other resources. However, other vulnerabilities exist in other jurisdictions, and thus this does not justify failing to pursue charges for a crime if one has been committed. In addition, the assessment team concluded that transferring TF threats abroad, even when as much evidence and warning as possible is shared with the subsequent host country, is not necessarily conducive to eradicating TF globally. The potential resulting increase in terrorism and TF activity in other jurisdictions could also impact Japan negatively.

274. Japan's reliance on alternative measures also cuts against Japan's CFT effectiveness as part of a general reticence to recognise publically the low yet present TF threats and vulnerabilities that exist. The above case (box 4.3) appears to have presented potential prosecution opportunities that would also have resulted in deterrence: the members of Group-1 could have been punished and thus deterred themselves from future activities, and the general public could have been placed on notice of the potential imposition of such punishment for similar activities. While there should indeed be balance between prevention and *post facto* punishment, this apparent hesitation to acknowledge TF threats or vulnerabilities presents another obstacle to successful prosecution, as the authorities may be unwilling to acknowledge that TF may have occurred.

Overall Conclusion on IO.9

Japan faces low but not negligible TF risks. Counterterrorism-focused LEAs understand, comprehensively investigate, and aggressively disrupt potential TF and other security threats. The assessment team found that LEAs primarily rely, however, on arrests predicated on lesser offences and/or administrative measures to effect such disruption. These alternative measures contribute positively to Japan's CFT effectiveness as they disrupt potential TF. Japan's prosecutorial practices and the technical deficiencies in Japan's TF Act, however, pose significant obstacles to prosecution and consequent deterrence. Non-counterterrorism focused authorities, FIs, DNFBPs and VCEPs tend to lack adequately nuanced understanding of TF risk, relying instead on obvious transactional involvement with conflict regions. This lack of understanding likely inhibits identification of potential TF.

Overall, Japan is achieving the immediate outcome to some extent, as potential TF is routinely identified and thoroughly investigated. Multiple significant factors, however, weigh against Japan's ability to prosecute and secure effective, dissuasive and proportionate sanctions for TF.

Japan is rated as having a moderate level of effectiveness for IO.9.

Immediate Outcome 10 (TF preventive measures and financial sanctions)

Implementation of targeted financial sanctions for TF without delay

275. Japan implements TF TFS, albeit with delays, by prohibiting the transfer of funds or other assets to or from a designated person or entity without specific governmental approval. Such restrictions apply to natural and legal persons under FEFTA and TAFA. An application may be made to the government to allow transactions to take place (e.g. an application made by a designated person for basic or extraordinary expenses).

276. As described in greater detail at Recommendation 6, TF TFS are principally implemented by means of restrictions under the FEFTA and TAFA. Japan passed the TAFA specifically in response to deficiencies identified in the 3rd round MER findings regarding the scope of the FEFTA. The laws operate in tandem, with Japan issuing notices to trigger both FEFTA and TAFA restrictions upon UN updates.

277. As described in greater detail below, legal obligations pursuant to FEFTA and TAFA are triggered at the end of a gazettal process that occurs between two and three weeks after UN updates, i.e., after a significant delay (albeit with administrative amendments put in place in October 2019 that have substantially reduced the delays). In addition, it is not clear whether FEFTA and TAFA apply to "all funds or other assets" owned by a designated party, including those that are owned or controlled indirectly by or jointly with another party, and the regime lacks an explicit prohibition on transfers conducted "at the direction or on behalf of" a designated party. Generally, Japan targets international financial transactions via FIs involving designated parties, as opposed to transactions in furtherance of TFS evasion that may occur outside of this focus.

Implementation of TFS

278. When the UN Security Council makes changes to the relevant sanctions lists, Japanese authorities must take a number of steps before publishing the Official Gazette notices that trigger the restrictions described above. This includes, *inter alia*, MOFA translating the listing into Japanese, MOFA providing other ministries and agencies with the opportunity to review the draft and consult internally, preparation of the announcement for printing, and awaiting the date of the publication and printing of the following official gazette. As detailed in the following table (4.1), delays prior to when legal asset-freezing requirements take effect in Japan has typically lasted from two to three weeks after UN listing, update, or de-listing for the designations implemented over the period October 2018 to October 2019. This represents a substantial delay for the designations implemented, and means that there is a heightened risk of asset flight associated with the assets of designated persons and entities in the country.

279. Japanese authorities take various measures to mitigate the effects of this delay. The MOFA publishes TF TFS updates on its website usually within 48 hours of the UN update. The MOF has started sending UN updates directly to FIs on or about the day of UN update; this occurred for the first time on 15 August 2019 regarding changes to the UN 1267 list on the previous day.

280. In addition, Japan imposes ongoing screening obligations on FIs and VCEPs through the JFSA enforceable Guidelines. This requires FIs and VCEPs to "[c]omply with, and take other necessary measures against, applicable economic and trade sanction laws and regulations enforced by Japanese and other foreign authorities", and effectively obliges them to use "reliable databases and systems" to screen the names of their customers and their beneficial owners against sanctions lists published by each regulator (see R.6).

281. Although these measures place obligations on FIs and VCEPs to ensure that they screen new and existing customers against UN and other sanctions lists, they do not apply to all natural and legal persons and do not fully mitigate the delays in the legal requirement to freeze the assets of individuals and entities that are newly designated in accordance with the primary instruments for implementing TFS in Japan – the TAFA and FEFTA.

282. Japan also provides notices to some DNFBP supervisors, who transmit these notices to DNFBPs under their supervision, but these notices occur after the MOFA or NPSC notices that are issued with delays.

Table 4.1. Timeline of Japanese Implementation of UN 1267/1989 and 1988 Designations

UNSC Listing (GMT-5)	Japanese Official Gazette Listing & MOF Direct Email to FIs (GMT+9)	Total Delay
15 October 2018	2 November 2018	17 days
19 November 2018	14 December 2018	24 days
28 February 2019	15 March 2019	14 days
22 March 2019	12 April 2019	20 days
1 May 2019	24 May 2019	22 days
14 May 2019	7 June 2019	23 days
14 August 2019	30 August 2019	15 days

Source: MOFA, MOF

283. Beginning in October 2019, Japan has made administrative improvements that have shortened the period of delay to two to five days. While this is not 'without delay' (within 24 hours), these improvements have substantially shortened delays in implementing TFS.

284. Japan has frozen assets under UNSCR 1267 on two occasions. See Table 4.2 below. Japan has designated 20 individuals and 20 entities on behalf of requests from third countries under UNSCR 1373. Funds or other assets have not been frozen in relation to these individuals and entities.

Table 4.2. Assets frozen under UNSCR1267

Name of person or entity	Amount	Date frozen	Status
Lionel Dumont	JPY 321 / USD 3.09	25 June 2004	Funds remain frozen.
Central Bank of Afghanistan National Bank Agricultural Development Bank of Afghanistan Export Promotion Bank of Afghanistan	JPY 600 000 / USD 5,778	22 September 2001 (Central Bank of Afghanistan; Agricultural Development Bank); 27 October 2001 (Export Promotion Bank)	Funds were unfrozen in January 2002 following de-listing by the UN Security Council.

Source: MOF

Designation

285. Under UNSCR 1373, Japan has domestically designated 28 individual and 41 entities (including those since-delisted), beginning with eight individuals and one entity on or about 19 December 2001. This initial tranche included Khalid Sheikh Mohammed, the Holy Land Foundation, and others. On 12 November 2019, Japan domestically designated five entities pursuant to UNSCR 1373: ISIS-Philippines, New People's Army, Maute Group, ISIL Sinai Province, and al-Shabaab.[47] The MOFA published a notice via the Official Gazette and MOF issued a press release on 12 November 2019; a binding NPSC notice was published following a hearing in December 2019 after the onsite.

286. Although Japanese legislation requires a hearing with the person or entity to be designated, the authorities have the option of proceeding without a public hearing when necessary to prevent asset flight (see TC Annex, R. 6.3(b)).

287. While Japan has not proactively nominated persons or entities to the UNSCR 1267 and 1988 lists, Japan has co-sponsored other countries' nominations in six instances (regarding 23 persons and four entities total) between 2015 and 2018.

47 See www.mofa.go.jp/mofaj/files/100037860.pdf [Japanese only]

Targeted approach, outreach and oversight of at-risk non-profit organisations

288. Japan has a large and diverse NPO sector of at least 300 000 certified NPOs.[48] Several thousand of these NPOs operate outside Japan. A small proportion of the total number of certified NPOs, which still constitutes more than approximately 500 NPOs, provides vital humanitarian and other assistance in areas with violent conflict, terrorist organisations actively operating, weak rule of law, and/or severe political instability including in South, South East, and Central Asia (e.g., Afghanistan, Pakistan, Philippines, etc.); the Middle East (e.g., Syria, Iraq, Yemen, etc.); and Africa (e.g., South Sudan, Democratic Republic of Congo, Ethiopia, etc.).[49] The nature of this work, however, also exposes the NPOs that operate in or around such regions to potential risk of TF abuse. As evidence of this, JAFIC noted multiple TF-related STRs linked to transactions by NPOs in or around conflict or other high-risk regions.

289. NPOs that operate solely in Japan appear to be at relatively low risk of TF abuse. In addition, representatives from multiple NPOs with whom the assessment team met noted, independently, that private donors are significantly more likely to contribute to and engage with NPOs registered under one of the six laws that establish governance and reporting requirements as opposed to unregistered NPOs (see TC Annex, R. 8). The NPO representatives explained that this dynamic could be partly attributable to instances of fraud following the 2011 earthquake and tsunami (an assertion that, while appearing well founded, is disputed by Japanese authorities).

290. All of the activities that require registration under the six NPO laws align with the FATF definition of NPO.[50] The registration requirement requires the NPOs to keep and maintain key information at the head office of the particular NPO. The reporting requirements under these laws include regular interaction with the authorities: for example, submitting annual financial statements. This means that Japan can identify a large number of NPOs that fall within the FATF definition, although Japan has not specifically compiled or used this information to develop an understanding of the NPOs that may be at risk of misuse for TF.

291. Not all NPOs within the meaning of the FATF definition are required to register as such in Japan (e.g., those not incorporated that may conduct ad hoc or temporary charitable activities). Japan has not identified such organisations. However, given the above, the Japanese authorities expect these to be few in number and only have limited operations.

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48 This figure includes (1) Public Interest Corporations, (2) Corporations Engaging in Specified Non-Profit Activities, (3) Incorporated Educational Institutions, (4) Religious Corporations, (5) Medical Corporations, and (6) Social Welfare Corporations. Such entities comprise the vast majority, if not complete universe, of NPOs in Japan that fall within the FATF definition. See Chapter 1 for breakdown of numbers for each NPO.

49. *Data Book on Japanese NGO 2016*, issued by MOFA/JANIC, available at www.janic.org/wp-content/uploads/2017/07/ngodatabook2016.pdf (only in Japanese).

50. A legal person or arrangement or organisation that primarily engages in raising or distributing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of 'good works.'

292. Authorities have minimal understanding of TF risks associated with the NPO sector, despite a recent TF NPO risk assessment and significant Japanese NPO operations in or around regions with high TF risk. In April 2019, MOF finalised a non-public TF NPO risk assessment in coordination with three agencies involved in NPO oversight: the Cabinet Office; Ministry of Education, Culture, Sports, Science, and Technology; and Ministry of Health, Labour, and Welfare. The assessment relies primarily on: FATF typologies of NPO TF abuse; general NPO statistics that do not appear related to TF risk; and general (*i.e.*, not TF-specific) legal frameworks for NPOs (*e.g.*, financial disclosure obligations for tax purposes and related non-reporting consequences). The assessment does not consider key information, such as the specific regions in which Japanese NPOs operate and specific instances of potential TF abuse (as opposed to general FATF typologies). The risk assessment stated that authorities, including LEAs, have not identified any instances of NPO-related TF abuse.

293. A material number of Japanese NPOs provide funds for operations or themselves operate in or around conflict regions outside Japan, including those regions with high TF risk. NPOs appear to be aware in very general terms of due diligence measures conducted by non-Japanese branches or parent organizations of the Japanese NPOs. However, the Japanese NPO branches themselves, including those directly involved in humanitarian operations in conflict and other high-risk regions, appear unaware of TF risks, including those for such high-risk jurisdictions. There has been limited outreach by Japanese authorities specific to TF risk, apart from a recent instance of written correspondence that encouraged use of the formal financial system where possible to prevent TF.

294. More broadly, notwithstanding the lack of focus on potential TF abuse of NPOs, Japanese authorities supervise the NPO sector under a legal framework that establishes significant obligations regarding board membership, local registration, and financial disclosures in order to promote transparency and good governance. As described in greater detail at Recommendation 8 of the TC Annex, NPOs within the FATF definition must register and report financial and other information. Supervisory authorities may de-register and/or impose a range of financial penalties on NPOs for various compliance failures.

295. These general measures for the purposes of promoting good governance help mitigate the limited TF risks in Japan, and some of the measures taken to monitor religious corporations were taken in response to Aum Shinrikyo being registered as a religious corporation in the 1990s before committing several severe terrorist attacks. However, no targeted risk-based supervision or monitoring is undertaken in relation to TF. NPO supervisors do not give significant, if any, attention to potential TF risks as part of the framework that is in place.[51]

51. See, *e.g.*, *Global Proliferation of Weapons of Mass Destruction: A Case Study on the Aum Shinrikyo*, United States Senate Government Affairs Permanent Subcommittee on Investigations, 31 October 1995 (available at: https://fas.org/irp/congress/1995_rpt/aum/).

Deprivation of TF assets and instrumentalities

296. Japanese FIs have frozen relatively small amounts of assets associated with designated entities. This is not necessarily inconsistent with Japan's risk profile regarding TF relating to parties designated pursuant to UNSCR 1267, 1988, and successor resolutions. Specifically, a Japanese FI holds de minimis frozen funds associated with a 1267-designated individual, who was reported to have spent time in Japan prior to designation. In addition, a Japanese FI previously froze JPY 600 000 (EUR 4,751/USD 5 778) associated with Afghan banks until January 2002 when these entities were de-listed. See Table 4.2 above.

297. Regarding deprivation of TF assets and instrumentalities apart from those of UN-designated parties, Japan appears unlikely to confiscate such assets, given the obstacles to successful prosecution and conviction discussed at IO.9. In connection with the case of suspected terrorists from a jurisdiction in the South East Asia region [Box 4.1] at IO.9, for example, Japanese LEAs appear to have relocated the threat from within Japan's physical borders without any deprivation of assets or instrumentalities, notwithstanding a related export scheme.

Consistency of measures with overall TF risk profile

298. Japan's CFT measures are partially consistent with Japan's overall TF risk profile. Risk of UN-designated individuals with assets in Japan or flowing through Japanese FIs is relatively low, but not negligible. For example, the UN Monitoring Team for the 1267 Committee identified two UN 1267-designated Taliban financiers as "conduct[ing] money laundering and provid[ing] funding to the Taliban through the import and export of spare automobile parts from Japan."[52] The Monitoring Team further stated that the two terrorist financiers are "known to have businesses in Japan."

299. In addition, the risk profile of TF abuse for some NPOs – particularly those with operations in higher-risk regions – is not understood by Japan. While NPOs operating in Japan appear to face limited TF risks, some Japanese NPOs conducting operations in higher risk countries face some exposure to TF risk. Even though these NPOs operating in higher-risk regions represent a small number relative to the number of NPOs registered overall, targeted government outreach, including risk-based supervision or monitoring specifically to mitigate these risks, is lacking.

52. Letter dated 10 June 2019 from the Chair of the Security Council Committee established pursuant to resolution 1988 (2011) addressed to the President of the Security Council, at pg.12. Faizullah Khan Noorzai and Malik Noorzai were designated by the UN under UNSCR1267 on 4 October 2011.

Overall Conclusion on IO.10

Japan implements TF TFS with delays, and it is unclear whether Japan's sanctions regime extends to all "funds or other assets" owned by a designated party, including those that are owned or controlled indirectly by or jointly with another party, and the regime lacks an explicit prohibition on transfers conducted "at the direction or on behalf of" a designated party. Japan has frozen limited amounts of TF TFS-related assets in FIs, which is generally consistent with Japan's TF risk profile. With respect to NPOs, Japanese authorities have minimal understanding of TF risk abuse, despite a material number of NPOs operating in or around high-risk jurisdictions (albeit a small proportion of the total number of NPOs registered in Japan).

Japan is rated as having a moderate level of effectiveness for IO.10.

Immediate Outcome 11 (PF financial sanctions)

300. The proliferation of DPRK's weapons-of-mass-destruction (WMD) is an existential threat to Japan.[53] In addition, historic illicit activities by DPRK—particularly the abductions of at least 17 Japanese citizens in the late 1970s and early 1980s—continue to buoy public sensitivity toward DPRK-related threats. Consequently, Japan has taken legislative measures and dedicated significant resources to countering DPRK WMD proliferation, including through implementation of PF-related TFS. Japan is nonetheless exposed to significant vulnerabilities for PF that flow directly or indirectly from its geographic proximity to DPRK (such as maritime trade with other neighbouring jurisdictions) and Japan's role as a regional and global financial centre, with an important role in international trade.

301. In the past, Japan has engaged in significant trade with Iran, exposing Japan to vulnerabilities for PF-related trade-based sanctions evasion. Imports have principally consisted of oil, gas, and petrochemicals from Iranian state-owned enterprises; exports have included automobiles and electrical products. Such trade has been financed via Special Purpose Accounts in Japan involving the Central Bank of Iran under the Joint Comprehensive Plan of Action (JCPOA). In the past few years, Japan has reduced its energy imports from Iran; oil and gas imports are now minimal.[54]

53. Among other factors, as of November 2019, DPRK had launched multiple missiles that travelled directly over the Japanese archipelago or landed in Japan's exclusive economic zone. Japanese authorities noted DPRK's capabilities to strike Japan within minutes of missile launch.

54. Total imports were JYP billion 98.5 in 2017 (EUR 780 million/ USD 948 million), JPY 77 billion in 2018 (EUR 610 million/USD 741 million) and 7,2 billion in 2019 (EUR 57 billion/USD 69 million), with the most significant proportion for each year oil and gas imports. See also chapter 1 (paragraph 9).

Implementation of targeted financial sanctions related to proliferation financing without delay

302. As with TF-related TFS, Japan implements PF-related TFS by means of a system of prior licensing: transactions involving designated parties are prohibited absent specific, pre-authorization by the MOF. PF-related TFS updates published in the Official Gazette trigger these prohibitions under FEFTA. Specifically, the FEFTA prohibits "payments" (i.e., funds and undefined, other types of assets that settle claim/debt relationships) and "capital transactions" (i.e., contracts that settle or otherwise deal with financial claims, such as those for money deposits, loans, and financial derivatives) that involve Gazette-designated parties that are non-residents or located outside of Japan. Parties to such a transaction may apply to MOF to obtain approval prior to the transaction (e.g., for the addition to frozen accounts of earnings due under agreements that arose prior to the imposition of TFS, etc.).

303. As described in greater detail at Recommendation 7, PF-related TFS are principally implemented by means of restrictions under the FEFTA. In contrast the use of a supplemental statute—the TAFA—to implement TF-related TFS, Japan does not have another legal mechanism that clearly covers a broader range of funds and other assets, and covers domestic transfers between two Japanese "residents" (where one party is designated).[55] As a result, the assets to be frozen in furtherance of PF-related TFS implementation are limited to those associated with "payments" and "capital transactions" under the FEFTA. However, the terms "payments" and "capital transactions" are not clearly defined. This ambiguity around the restricted assets creates a significant sanctions evasion vulnerability. Furthermore, the limited focus on cross-border transactions or remittances from Japan results in a risk that designated parties and their facilitators can obfuscate beneficial ownership through domestic transactions, prior to undertaking international transactions via FIs. In addition, as Japan recognised in enacting TAFA in the TF-related TFS context, FEFTA restrictions would not apply to domestic transfers between two Japanese residents (where one party is designated). While no Japanese residents are currently designated, this could represent a vulnerability and would make it difficult for Japan to implement TFS swiftly if a Japanese resident were designated in future as new legislation would need to be enacted.

304. Japan does not implement TFS without delay, as the Official Gazette notifications that trigger legal asset-freezing restrictions occur between five and ten days after UN listings or updates for the most recent designations implemented by Japan (see Table 4.3). These delays are the result of administrative procedures, specifically: translation, internal approvals, and Official Gazette publication processes.

305. To mitigate the effects of these delays, the MOF sends non-legally-binding emails regarding such UN updates directly to FIs on or about the day of these updates. In addition, since October 2019, Japan has made administrative improvements that have shortened the period of delay to two to five days (see IO 10). In addition, the JFSA's AML/CFT enforceable Guidelines oblige FIs and VCEPs to use sanctions screening mechanisms, including an obligation to screen the names of their customers and their beneficial owners against the latest UN sanction lists provided by Japanese and foreign authorities (see IO.10 and TC Annex, R.7). The JFSA has conducted outreach regarding this requirement, including by means of a letter dated 26 June 2019.

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55. Japan enacted the TAFA in 2014 to address deficiencies identified in its 2008 FATF Mutual Evaluation. See Recommendation 6 and Immediate Outcome 10.

306. Although these measures encourage FIs and VCEPs to ensure that they screen new and existing customers against UN and other sanctions lists, they do not apply to all natural and legal persons and do not fully mitigate the delays in the legal requirement to freeze the assets of individuals and entities that are newly designated in accordance with the primary instruments for implementing TFS in Japan – the TAFA and FEFTA.

Table 4.3. DPRK-Related UN Designations and Japan's Corresponding Official Gazette Notices

DPRK-related UN Listing Date (GMT-5)	UNSCR	Japanese Official Gazette Listing (GMT+9)	Total Delay
30 November 2016	UNSCR 2321	9 December 2016	8 days
2 June 2017	UNSCR 2356	9 June 2017	6 days
5 August 2017	UNSCR 2371	16 August 2017	10 days
11 September 2017	UNSCR 2375	22 September 2017	10 days
22 December 2017	UNSCR 2397	28 December 2017	5 days
30 March 2018	UNSCR 1718	10 April 2018	10 days

Sources: MOFA, MOF

307. As demonstrated by the freezing of DPRK PF-related funds (Table 4.4), Japan faces risks of designated parties abusing the Japanese economy. The volume of DPRK-related frozen funds is not inconsistent with Japan's risk profile.

Table 4.4. Frozen Bank Accounts Due to DPRK PF-Related TFS
As of 8 November 2019

Designees, Incl. Domestic vs. UN Listing	FI & # of Accounts	Amount & Currency	Identification Method and Authority
Tanchon Commercial Bank Japan: 19 September 2006 UNSCR 1718: 24 April 2009	Bank A, 1 account	982 USD	Reported by bank (pursuant to Art. 55(8) of FEFTA)
Tanchon Commercial Bank Japan: 19 September 2006 UNSCR 1718: 24 April 2009	Bank A, 1 account	3 688 JPY (c.36 USD)	Not Disclosed
Korea International Chemical Joint Venture Company Japan: 19 September 2006 UNSCR 2321: 30 November 2016	Bank B, 1 account	830 942 JPY (c.8,002 USD)	Not reported by bank; identified in FEFTA inspection by MOF
Korea International Chemical Joint Venture Company Japan: 19 September 2006 UNSCR 2321: 30 November 2016	Bank B, 1 account	0.13 USD	Not reported by bank; identified in FEFTA inspection by MOF
Korea International Chemical Joint Venture Company Japan: 19 September 2006 UNSCR 2321: 30 November 2016	Bank B, 1 account	3.69 EUR (c. 4.50 USD)	Not reported by bank; identified in FEFTA inspection by MOF
Korea Daesong General Trading Corporation Japan: 30 August 2013 UN 2321: 30 November 2016	Bank B, 4 accounts	112 109 JPY (c.1,080 USD)	Reported by bank (pursuant to Art. 55(8) of FEFTA)
Korea Daesong General Trading Corporation Japan: 30 August 2013	Bank C, 4 accounts	142.81 USD	Reported by bank (pursuant to Art. 55(8) of FEFTA)

Designees, Incl. Domestic vs. UN Listing	FI & # of Accounts	Amount & Currency	Identification Method and Authority
UN 2321: 30 November 2016			
Korea Daesong General Trading Corporation Japan: 30 August 2013 UN 2321: 30 November 2016	Bank D, 2 accounts	26 566.73 EUR (c. 32 700 USD)	Reported by bank (pursuant to Art. 55(8) of FEFTA)
Korea Daesong General Trading Corporation Japan: 30 August 2013 UN 2321: 30 November 2016	Bank E, 4 accounts	1 228.65 GBP (c.1 700 USD)	Reported by bank (pursuant to Art. 55(8) of FEFTA)
Total:		4.6m JPY / 44 301 USD	

Source: MOF

308. With respect to Iran PF-related TFS, Japan initially froze 41 accounts for 12 legal entities, which were subsequently unfrozen in January 2016 under UNSCR 2231 and the JCPOA. No funds are currently frozen under UNSCR 2231, which is not inconsistent with Japan's current risk profile that involves minimal trade with Iran.[56] Upon Official Gazette designation, the MOF exercises its authorities under FEFTA to require FIs to report whether they hold funds associated with the designated party or parties. Under the same authorities, the MOF also requires FIs to report any asset-freezing actions thereafter. As shown at Table 4.4, FIs often but not always report these asset-freezing actions, which are also identified in the course of FEFTA inspections by the MOF.

309. Other aspects of Japan's approach to DPRK substantially mitigate the technical delay in implementing PF-related TFS, and somewhat mitigate the overly-narrow scope of FEFTA for implementing PF-related TFS.

310. Japan has domestically designated a material proportion of DPRK-related, UN-designated parties prior to UN designation (included the entities in Table 4.4 where funds have been frozen). Of the 80 individuals and 75 entities designated by the UN as of November 2019, Japan designated 32 individuals and 21 entities prior to UN designation. As a result, legal asset-freezing requirements under FEFTA applied prior to UN designation, as Official Gazette notifications for these designated parties had already triggered FEFTA restrictions. Thus, Japan implemented TFS without delay with respect to slightly more than one-third of DPRK-related, UN-designated persons and entities as they already domestically before they were designated by the UN.

311. In February 2016, Japan amended the MOF Notice of Payment under the FEFTA to instate a blanket prohibition on remittances and other transactions involving DPRK directly. The prohibition contains exemptions, such as exemptions for transactions for less than JPY 100 000 (approximately EUR 792/USD 963) used for humanitarian and other purposes (e.g., facilitation of contact with DPRK-based family members of ethnic Koreans in Japan). Such exemptions are subject to enhanced due diligence by the Japanese government: e.g., with respect to contact with DPRK-based family members, such diligence would require documentation confirming familial relationships and financial disclosures, in order to confirm that income and other employment activities are consistent with the intended transaction. Thus, for UN-designated individuals and entities located in DPRK—provided an FI would be able to identify their location—FEFTA restrictions apply notwithstanding the imposition of

56. See chapter 1 (paragraph 9)

DPRK-related PF TFS. As of November 2019, such individuals and entities seem to comprise a reasonable proportion of those on the 1718 list. However, it is difficult to make a final determination due to the lack of geographical identifiers associated with particular designations.

312. With respect to Iran-related counter-proliferation measures, under FEFTA and its associated implementing notices, Japan prohibits "payments" involving a non-resident or foreign state engaged in activities determined by relevant MOFA notices to be nuclear activities or the development of means of nuclear weapons delivery.[57] Accordingly, the MOF requires FIs to ensure that such "payments" do not contribute to Iran's proliferation activities and inspects FIs for compliance under FEFTA.

313. In terms of the penalties for breaches of the blanket prohibition, there are criminal penalties attached to various FEFTA violations, and pursuant to which Japan has taken an aggressive enforcement posture: the ratio of prosecutions to investigations is significantly greater than that for almost all other types of cases, and applied sentences appear punitive by comparison to those for other crimes. As described in greater detail at Section 4.4.2, violations of the blanket remittance prohibition carry up to three years' imprisonment and JPY three million (EUR 23,756/USD 28,892) in fines. Japan has successfully investigated and prosecuted several DPRK and Iran-related FEFTA violations in recent years. Where custodial sentences for such violations were imposed, these sentences averaged 22.4 months. This robust enforcement posture enhances the effectiveness of Japan's implementation of PF TFS.

Identification of assets and funds held by designated persons/entities and prohibitions

314. Consistent with Japan's context, Japan prioritizes DPRK-related counter-proliferation through law enforcement actions, intelligence collection, and targeted private sector outreach.

315. The primary coordinating body for DPRK-related counter-proliferation measures is the National Security Council (NSC), operating in line with the National Security Strategy. The NSC convenes DPRK-related meetings that can include MOFA, NPA, PSIA, MLIT, MOF (including METI), and others. With respect to UN PF-TFS specifically, in 2018, Japan established the UN Sanctions Division (UNSD) of MOFA to enhance implementation of UN sanctions, including TFS. The UNSD currently works on DPRK-related UN sanctions only; Japan intends to broaden the work of UNSD to other UN sanctions programs in the future.

316. Based on the interviews with experts from some of these authorities—principally, MOFA—there is detailed knowledge and understanding of DPRK-related sanctions evasion threats and typologies within the NSC, including the ways that targeted financial sanctions may be evaded. The authorities then take measures to educate the private sector, including but not limited to summarising and/or distributing Panel of Experts reports, DPRK-related sanctions advisories by the United States, and other reputable sources of information. For example, Japanese authorities and FIs alike expressed knowledge of 16 goods that should raise red flags for DPRK sanctions evasion (e.g., matsutake mushrooms and certain types of sea urchin, which are common DPRK exports). The Japanese authorities undertake outreach to at-risk

[57] See Public Notice of the Ministry of Foreign Affairs, No. 20 of February 2016. See, also, Public Notice of the Ministry of Finance, No. 97 of March 1998, as amended.

sectors, including 14 specific FIs and DNFBPs. This includes FIs and DNBFPs involved with trade finance (particularly when there are cross-border transactions involving natural and legal persons located in certain regions of China), insurance companies involved in protecting the shipping industry, funds transfer business operators, and gold dealers. Relevant agencies' understanding of and priority afforded to identifying and disseminating threats and typologies enhances Japan's counter-proliferation effectiveness.

317. Experts at MOFA and MOF (and, to a lesser extent, JFSA) also follow public reports for use in educating sectors at greater risk of facilitating DPRK-related sanctions evasion. For example, MOFA and MOF demonstrated keen awareness of the substance of recent 1718 Panel of Experts (PoE) reports, from which these authorities distil information relevant to particular sectors (e.g., shipping, insurance, coal, luxury goods, etc.) in an easily-digestible form. Authorities also compile and distribute to certain sectors the names of involved persons and entities, even if they are not designated.

318. Japanese LEAs have demonstrated effectiveness in identifying, disrupting, and deterring PF-related violations of FEFTA. Japan prosecutes a majority of investigations referred for prosecution (i.e., "cleared" or completed cases sent to the public prosecutor by LEAs) —a significant departure from overall prosecution statistics, including those for ML cases (see IO 7). Convictions include those for relatively complex sanctions evasion, involving schemes with more than two countries besides Japan and DPRK/Iran. Japan has prosecuted both natural and legal persons, sometimes within the same case. Japan often secures sentences that appropriately recognise criminality and are sufficiently dissuasive.

Box 4.4. Prosecution of Iran-Related PF Sanctions Evasion

In September 2010, Japan designated Hafize Darya Shipping Lines (HDSL) for acting on behalf of Islamic Republic of Iran Shipping Lines (IRISL), which the UN Security Council designated under UNSCR 1929 (both delisted in January 2016 in connection with JCPOA). LEAs investigated a sanctions evasion scheme that took place at least between 2011 and 2012, in which a Japanese maritime trade agent disguised financial transactions ultimately intended to benefit HDSL by means of a front company in Singapore. As part of that scheme, individuals working for a Japanese trade agent—Benline Agencies Japan (Benline)—effectively controlled a Japanese front company, Atlas Shipping Co., Ltd. (Atlas). Atlas received funds from various customers of HDSL. The Benline individuals caused Atlas to remit JPY 4 million (approx. USD 38,523) and JPY 10 million (approx. USD 96,307) through FIs in November 2011 and February 2012, respectively, to the Singaporean front company for the intended benefit of HDSL. In the course of the investigation, LEAs conducted physical searches, seizures, and witness interviews, and analysed STRs and seized financial information. In January 2013, the Prefectural Police arrested three individuals—a member of the Benline Board of Directors, an accounting manager, and an accounting staff member—for potential involvement in the scheme and referred the case for prosecution for criminal FEFTA violations. The PPO determined that prosecution of the Benline legal entity and accounting staff member, but not the board members and accounting manager, was appropriate. The legal entity and accounting staff member were convicted and fined JPY 1 million (approx. USD 9,630) and JPY 500 000 (approx. USD 4,815), respectively. The sentence for the accounting staff member did not include incarceration.

FIs and DNFBPs' understanding of and compliance with obligations

319. Further to the outreach conducted by Japanese authorities described at 4.4.2, megabanks and major banks employ both risk- and list-based approaches to compliance with their DPRK and Iran-related TFS obligations. With respect to DPRK and Iran-related TFS compliance, regional banks tend to use a list-based approach. Japanese authorities take the position that risk is heavily concentrated in the megabanks, due to the volume of their international transactions. Japanese authorities appropriately target FIs (including regional banks) in or around port cities for outreach due to their DPRK-related PF risks.

320. FIs filed more than 6,000 STRs relating to PF from 2015 through the first half of 2019 (between approximately 1,200 and 1,700 STRs per year). Examples include reports filed on the basis of shipping and trade finance transactions involving entities in the Middle East associated with designated Iranian entities, and DPRK-related reports involving suspicious responses to requests for EDD based on red flags. Although reporting entities are not required to submit STRs as part of the FATF Standards, this demonstrates that obliged entities have a certain level of understanding of combating PF. At the same time, this also raises concerns FIs and DNBPs are not

freezing the funds of individuals and entities, including those acting on behalf of designated individuals and entities, effectively.

321. With respect to DNFBPs' understanding of and compliance with TFS obligations, DNFBPs tend to approach their compliance through the lens of a general prohibition on business involving DPRK and enhanced due diligence for businesses involving Iran. For instance, METI (AML/CFT supervisor for dealers in precious metals and stones and for postal service business operators) hosts seminars regarding basic sanctions risks attaching to certain jurisdictions (including DPRK and Iran). The METI also conducts targeted and detailed outreach to gold bullion dealers regarding Iran- and DPRK-related TFS evasion risks. The Japanese Federation of Bar Associations (AML/CFT supervisor for lawyers) noted that most law firms that deal with international clients are located in major cities, such as Tokyo, and accordingly outreach focuses on taking a list-based approach to sanctions risk.

322. VCEPs screen their customers against sanctions lists as part of their basic CDD process, taking the list-based approach. They generally identify customers or transactions associated with DPRK and Iran as higher risk. While some VCEPs have taken manual approaches aimed at addressing this issue (for example, by holding their customers' virtual assets until screening has occurred), other VCEPs are considering developing other measures, potentially in connection with implementation of the 'travel rule' (R. 15.7(b)).

323. Additional to private sector notifications of new designations for other sanctions programs, the MOF sends notifications of designations not only to FIs, but also to a number of business associations that include non-obliged entities that are appropriately considered 'at-risk' and therefore worthy recipients of TFS updates and evasion typologies. Specifically, in addition to FIs and several bankers' associations, the MOF distributes informal (non-legally binding) updates in a timely manner to entities such as the General Insurance Association of Japan, Japan Foreign Trade Council, Japan Machinery Centre for Trade and Investment, Institute of Foreign Exchange and Trade Research, Overseas Construction of Japan, National Federation of Fisheries Cooperative Associations, Japan Payment Service Association, and Japan Virtual and Crypto Assets Exchange Association.

324. TFS implementation is impeded, however, by CDD/EDD and ongoing monitoring issues among FIs and DNFBPs described in IO.3 and IO.4. Frequent findings of poor compliance among FIs from MOF inspections for TFS compliance (including other asset freezing measures under the FEFTA and where Japan has unilaterally designated an individual before UN designation) indicate a significant vulnerability for sanctions evasion (see Table 4.5 below).

Competent authorities ensuring and monitoring compliance

325. The MOF is responsible for monitoring compliance with FEFTA obligations, while JFSA is responsible for evaluating compliance with APTCP. Given the overlap, MOF and JFSA began conducting joint inspections in 2018, which is a positive step as it usefully leverages the greater sophistication of MOF regarding DPRK-related evasion typologies.

326. However, collaboration on this issue is limited to only these agencies. Despite the beneficial ownership risks in this context, in relation to Japanese incorporated legal persons and those incorporated offshore, there is limited engagement between these agencies and the Ministry of Justice, which is responsible for the Commercial and Corporation Registration System ('Commercial Registry'). Basic and beneficial ownership information obtained from the Commercial Registry could assist the MOF and JFSA in carrying out their inspections, including identifying legal persons that are obfuscation vehicles for designated persons, and further highlight to FIs the complexity of the sanction evasion risks that they face.

327. Nevertheless, these joint inspections between the MOF and JFSA have uncovered deficiencies in relation to TFS implementation.

328. As shown by the below table, the MOF (and JFSA in six joint inspections) found deficiencies in nearly half of FIs inspected in 2018 in relation to their obligations under the FEFTA, primarily relating to breaches of Japan's 'blanket' prohibition on cross-border trade of funds and goods involving DPRK and domestic designations of DPRK-affiliated individuals and entities. Although there are only a small number of breaches that specifically relate to UN designations for PF TFS, it appears that MOF supervision of the FEFTA is proving insufficient at ensuring compliance among FIs with their obligations.

329. This may also relate to the limited enforcement action that has been taken in relation to the most serious cases of TFS violations. For example, an FI in Japan was found to have paid interest to accounts of DPRK residents without the permission of the MOF on three separate occasions, and in response the MOF imposed remedial action plans.

330. Overall, in relation to Japan's PF-TFS implementation, there are concerns that the MOF and JFSA are not effectively using the range of sanctions available to them under agency-specific guidance and the FEFTA, and that competent authorities are not sufficiently supervising and engaging with FIs on their obligations with respect to the implementation of TFS.

331. Japan does not systematically supervise DNFBPs for TFS compliance. Some instances of ad hoc and ex post facto enforcement of FEFTA restrictions have occurred, which help to improve TFS compliance. Although MOF does not have supervisory authority with respect to VCEPs, these providers are nonetheless subject to TAFA restrictions and, in practice, the "payments" restrictions under FEFTA.

Table 4.5. FEFTA Inspections of FIs by MOF

	2016	2017	2018
# of Inspections	121	105	87
# of Inspections that Uncovered FEFTA (*i.e.*, Asset-Freezing) Deficiencies[58]	48	44	41
# of Inspections that Uncovered FEFTA Deficiencies Relating to UN Designations	2	1	0

Source: Ministry of Finance

58 These deficiencies relate to undertaking CDD obligations and verifying remittance information.

Overall Conclusion on IO.11

Japan's implementation of TFS occurs with delay, does not clearly capture all funds or other assets, and does not apply to domestic transactions involving two Japanese residents. Other counter-proliferation measures, however, bolster the effectiveness of Japan's PF-related TFS implementation, including: Japan's domestic designations for DPRK-related PF TFS prior to those of the UN; a blanket prohibition on any cross-border transactions involving DPRK; and robust, sophisticated, and targeted outreach to the private sector (including FIs, DNFBPs, and non-obliged entities). Some of these measures accurately reflect Japan's prioritisation of DPRK counter-proliferation. In addition, FIs, especially megabanks, have benefitted from DPRK-specific red flags relating to types of exported goods and geographic locations, which has improved FIs identification and prevention of sanctions evasion. Supervision has nonetheless identified procedural deficiencies among FIs for TFS compliance, and there are major deficiencies in Japan's application of TFS by FIs, VCEPs and DNFBPs. Japan's ongoing implementation of effective risk-based supervision of FIs, DNFBPs and VCEPs generally compounds these vulnerabilities (see, also, IO3 and 4).

Japan is rated as having a moderate level of effectiveness for IO.11.

Chapter 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

For financial institutions

a) Some FIs have a reasonable understanding of their ML/TF risks, including bigger banks (such as global systemically important banks, which are identified as higher risk institutions) and some MVTS. Other FIs still have a limited understanding of their ML/TF risks. They generally refer to standard categories of risks pointed out by the supervisor, mainly based on the conclusions of the NRA, even if those risks are not relevant to their own business. FIs do not have a deep understanding of the relationship between predicate offences and ML and how the proceeds of crimes enter the banking system, other than via cash transactions.

b) Where FIs have a limited understanding of ML/TF risks, this has a direct impact on the application of the risk-based approach (RBA). Although some FIs have started conducting their own risk assessment and applying mitigation measures in line with the identified risks, other FIs apply mitigation measures uniformly, and do not go beyond the application of customer's identity verification and confirmation of transactions and STR.

c) FIs appear to understand TF risk based on proximity to conflict regions, indicating that other types of TF in the financial sector might be neither reported nor investigated. FIs approach transactions with connections to higher risk countries such as Iran and DPRK with extra care.

d) The adoption of the 2018 JFSA AML/CFT supervisory and enforceable Guidelines was a milestone to help FIs understand and implement their AML/CFT obligations. However, the level of this standard should be increased to ensure effective AML/CFT systems for all FIs, commensurate with their risks.

e) A relevant part of FIs still do not have a clear and uniform understanding of basic AML/CFT concepts, especially the obligations which have recently been introduced/modified, such as beneficial ownership (BO) identification/verification and the ongoing CDD. Basic transaction monitoring systems are already in place to some extent within some FIs, while transaction screening systems are implemented by most FIs, both with limited effectiveness. FIs have a general awareness of the need to enhance their AML/CFT frameworks and practices to meet the new legislative/regulatory/supervisory obligations. However, deadlines are imposed by the supervisors only to FIs subject to direct supervisory action. Other FIs set up their

own deadlines for complying with their AML/CFT obligations which tend to have extended duration. Consequently, there are serious concerns regarding FIs' timely improvement of their customer knowledge and application of adequate AML/CFT mitigation measures.

f) FIs collect basic customer's information, which limits their knowledge and this information is usually not updated. FIs do not usually perform customer risk rating based on the characteristics of their customers nor make connections between the customer's profile and transactions records. Some FIs recently started conducting full CDD when on-boarding customers. The widespread practice of accounts being sold or stolen is a severe issue FIs face. All these elements raise further concerns on the quality and effectiveness of CDD.

g) FIs, with few exceptions, do not apply proper EDD measures to higher risk customers, as they usually limit their enhanced measures to the customer's identity verification method and to list screening.

h) The overall number of STRs filed per year is increasing. Most come from the financial sector, with one third from the bigger banks and refer to basic typologies and indicators, based on the FIU (JAFIC) guidance.

i) Almost all banks have established AML/CFT internal controls, policies and procedures. Other FIs apply more basic internal controls but most of them have a compliance function that includes AML/CFT measures.

j) Industry associations, working together with JFSA, play a role in educating FIs on AML/CFT obligations, as well as in communicating supervisory expectations. Despite their efforts, the average level of awareness of AML/CFT measures remains insufficient.

For Virtual Asset Service Providers

a) Virtual Currency Exchange Service Providers (VCEPs) have been under an obligation to register and have been appropriately regulated and supervised for AML/CFT purposes since 2017. 19 VCEPs have registered so far.

b) VCEPs have general knowledge about the crime risks associated with VC activities. Their understanding of TF risks is generally limited.

c) VCEPs tend to apply basic AML/CFT requirements. Some VCEPs apply enhanced measures to assist them in verifying the customer's identity. In general, they do not have specific policies to tailor mitigation measures to their risks or to apply EDD or specific CDD measures.

d) VCEPs' STR reporting increased by more than 900% (more than 7 000 reports in 2018) since the obligation was introduced in 2017. This was mainly the result of a series of awareness-raising events and guidance provided jointly by the FIU and JVCEA.

e) VCEPs have improved their internal control systems following supervisory actions.

For Designated Non-Financial Businesses and Professions

a) DNFBPs have a low level of understanding of the ML/TF risks they are exposed to. They appear wholly unaware of any potential TF risk. In general, they are aware of the risks connected to business relationships involving connections with DPRK. Dealers in precious metals and stones have a good understanding of the gold bullions smuggling risks due to the recent cases.

b) DNFBPs have a basic understanding of their AML/CFT obligations. Some national associations have provided guidance to their members to help them understand and implement their obligations.

c) DNFBPs apply basic AML/CFT preventive measures, mainly identifying their customers and verifying that they are not members/associates of a Boryokudan group, and for some of them, the purpose of the transaction. There is not a full understanding of the BO concept by all DNFBPs. Screening against TFS lists or checking the list of higher risk countries would mainly happen if customers depart from the usual profiles.

f) Not all DNFBPs are under an obligation to file STRs, which significantly undermines effectiveness. When they are reporting entities, the level of reporting is low, including for sectors identified as facing specific ML/TF risks.

Recommended Actions

Japan should:

For financial institutions

a) Continue taking appropriate raising-awareness and training initiatives to promote a change in FIs' compliance culture based on ML/TF risks, support a better understanding of ML/TF risks and AML/CFT obligations, with the involvement of supervisory authorities.

b) Require that all FIs develop adequate risk assessments, tailored to their own business, products, services and customers.

c) Upgrade the 2018 JFSA AML/CFT Guidelines by integrating the standards set in the Benchmarks for the Three Mega Banks, on a proportionate basis. The need for an appropriate transaction monitoring system should be strengthened and links with an appropriate ongoing CDD clarified.

d) Define prescriptive and appropriate timetables for all FIs to implement the new legislative / regulatory / supervisory obligations.

e) Ensure that FIs improve their customers' information verification methods and fully implement ongoing CDD requirements, based on comprehensive and dynamic customers' risk profiles, which take into account transactions records.

f) Ensure that FIs implement appropriate and comprehensive information systems - taking into account proportionality criteria regarding the complexity of FIs -

that integrate CDD data and transaction monitoring, with transaction monitoring parameters attuned to FIs' business, to the identified risks and to customers' behaviour and risk profiles and based on appropriate detection scenarios.

For Virtual Asset Service Providers

a) Ensure the timely implementation of the newly adopted AML/CFT requirements to custodial wallet services.

b) Ensure that VCEPs and custodial wallet service providers are subject to wire transfer obligations once the 'travel rule' solution has been developed.

c) Continue improving VASPs' understanding of ML/TF risks, and ensure that all new technological developments (such as new business models, proposed VC listings and other innovations associated to VC) are analysed taking into account ML/TF risks.

d) Continue strengthening the culture of compliance of VASPs through provision of the necessary guidance and support for the understanding and implementation of AML/CFT requirements, with specific emphasis on their own risk assessment and the implementation of the full set of AML/CFT requirements on that basis.

e) Refine and adjust the guidance provided for reporting suspicious transactions with a view to provide more elaborated scenarios tailored to the specificities of VASPs activities.

For DNFBPs

a) Conduct targeted outreach and education programmes for DNFBPs on ML/TF risks.

b) Develop practical ML/TF risk guidance to all sectors, with information on both ML and TF risk typologies, vulnerable sectors and red flag indicators.

c) Enhance DNFBPs' understanding of their AML/CFT obligations, including through the provision of sector specific guidance on the implementation of appropriate and proportionate AML/CFT measures to address identified risks and with a specific focus on (i) ongoing CDD requirements; (ii) EDD measures.

d) Raise awareness and ensure quality STR reporting by DNFBPs, supported by a supervisory focus and oversight of compliance with STR filing obligations.

332. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29. Japan approaches virtual asset service providers (VASPs) as FIs.[59] They are nevertheless reviewed separately from FIs in IO 4 given their specific characteristics and their recent introduction in the AML/CFT framework (see Chapter 1, section *Preventive Meaures*).

[59] Reference is made to Virtual Currency Exchange Providers (VCEPs) in the MER, given the scope issue with regard to Japan's definition of VASPs, see TC Annex c. 15.3.

333. The assessors ranked obliged sectors on the basis of their relative importance in the Japanese context given their respective materiality and level of ML/TF risks (as explained in Chapter 1, 1.4.3). Overall they concluded that implementation issues should be weighted as follows:

a) **Most significant**: the banking sector;

b) **Significant**: virtual currency exchange sector, funds transfer service providers, trust companies, money lenders, insurance companies, financial instruments business operators, currency exchange operators, specified joint real estate enterprises, credit card companies, real estate brokers, dealers in precious metals and stones, legal/accounting professionals;

c) **Moderately significant**: financial leasing companies, postal receiving service providers, telephone receiving service providers and telephone forwarding service providers;

d) **Less significant:** low cost/short term insurers, money market brokers/dealers for call loans, securities finance companies, persons engaged in specially permitted services for qualified institutional investors, commodity derivatives business operators, account management institutions, electronic monetary claim recording institutions, book-entry transfer institutions and account management institutions which deal with national government bonds and Organization for Postal Savings, Postal Life Insurance and Post Office Network.

334. The conclusions under IO.4 are based on written documentation (including process and procedures, statistics, case examples) provided by the JFSA and other supervisors (MOF, METI etc.), meetings with JFSA, other supervisors and relevant authorities (e.g. JAFIC), and interviews with a range of private sector representatives from the financial, VCEPs and non-financial sectors. For the financial sector, this included big and smaller banks and other FIs which in total represent a significant share of the market in terms of assets.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/TF risks and AML/CFT obligations

Financial institutions

335. Some FIs have a reasonable understanding of their ML/TF risks, including bigger banks (such as global systemically important banks, which are identified as higher risk institutions) and some MVTS. Other FIs still have a limited understanding of their ML/TF risks and AML/CFT obligations. They tend to use the information they receive from the JFSA and other authorities, in particular the NRA, as their main reference for ML/TF risks and the implementation of AML/CFT obligations.

336. FIs generally refer to Boryokudan members, DPRK and foreign customers as higher risks, together with international wire transfers and cash transactions. One of the main common examples of misuse of bank accounts referred to is fraud related to stolen accounts (through phishing and scams) or purchased accounts (from people leaving Japan after a temporary stay). Transactions related to gold, because of the risk of smuggling, are also an area of concern. This is mostly consistent with the conclusions of the NRA (see IO 1). However, the majority of FIs do not have a deeper understanding

of the relationship between predicate offences and ML and how the proceeds of crimes get into the financial system, other than via cash transactions. Moreover, some FIs assume that their customer base is lower risk, because it is limited to some specific sectors (e.g. bank which mainly serves customers who belong to a closed group, identified through this group membership) and therefore do not perform any individual customer risk assessment.

337. FIs appear only to understand TF risk based on proximity to conflict regions, indicating that other types of TF in the financial sector might be neither reported nor investigated.

338. Some FIs, including bigger banks (such as global systemically important banks, which are identified as higher risk institutions) and some MVTS appear to have a better understanding of their risks and have added some specific factors or indicators to their risk assessment (e.g. foreign customers' international remittances' practices in terms of frequency, amounts, etc.).

339. FIs' understanding of their AML/CFT obligations appears to be limited. There are challenges with establishing a clear and uniform understanding of the concept of ongoing CDD in combination with the use of transaction monitoring systems. Those obligations have recently been modified in the Japanese legal framework through the revisions of the Act on the Prevention of Transfer of Criminal Proceeds (APTCP) and the adoption of the February 2018 JFSA AML/CFT enforceable Guidelines (see Chapter 1). Basic transaction monitoring systems are already in place to some extent within some FIs, while transaction screening systems are implemented by most FIs, both with limited effectiveness, as showed by the very high ratio of false positives detected. The majority of FIs having already a transaction monitoring system, developed their own in-house tool, with uneven level of complexity and efficacy among the different tools, while some others perform controls manually.

340. FIs have a general awareness of the need to enhance their AML/CFT frameworks and practices to meet the new obligations. However, they have no clear deadlines imposed by the supervisor to address these gaps and it is unclear to what extent FIs that are not directly engaged in a tight dialogue with the JFSA understand and assess the gaps promptly on their own initiative (see IO 3), given also the financial sector's slow approach to change.

341. The 2018 JFSA AML/CFT Guidelines (see Chapter 1) were a major step to help FIs under JFSA supervision implement their AML/CFT obligations, although some improvements are needed. The JFSA Guidelines set a common minimum standard for all FIs and require the implementation of an adequate AML/CFT framework by supervised FIs. However, the level of the standard should be increased to ensure effective AML/CFT systems for all FIs, commensurate with their risks. In May 2018, the JFSA AML/CFT Policy Office also published the "AML/CFT Benchmarks for the Three Megabanks", a set of AML/CFT obligations that integrates the principle based indications of the Guidelines, requiring the mega banks to meet international AML/CFT standards of overseas global systematically important financial institutions (G-SIFIs). Those benchmarks should be integrated into the AML/CFT Guidelines, taking into account proportionality criteria regarding the complexity of FIs and avoiding the creation of two different standards.

342. Industry associations, together with JFSA, play a role in educating FIs on AML/CFT obligations, as well as communicating supervisory expectations through conferences, seminars and training activities (see IO 3). However, despite their efforts the level of awareness of AML/CFT measures remains insufficient (with the exception of certain FIs—see para. 336 and 339 above).

Virtual Asset Service Providers (VASPs)

343. VCEPs have general knowledge about the risks associated to VC activities (lack of traceability, immediate transferability, ease of cross-border transfer, speed of technological innovation including anonymization techniques, etc.). The major VC abuse cases that affected Japan over the last years (e.g. Mt Gox, Coincheck, Zaif) were key awareness-raising events on the vulnerabilities of the market, but more from a consumer protection perspective than from AML/CFT. As such, the assessment team found that VCEPs were more focused on the consumer protection risks associated with VC activity, rather than the ML/TF risks inherent in the sector.

344. In general, VCEPs add a number of key risk factors to the ones listed in the NRA such as the type of VC (anonymous/non-anonymous) which they deal in, which is a positive sign of the sector taking the initiative to determine their unique risk profile.

345. AML/CFT requirements for VC exchange service providers were introduced in 2017 (see Chapter 1). JVCEA (see Chapter 5), acknowledged that the culture of compliance still needs to develop. The association organises monthly study sessions on AML/CFT for its members (see Chapter 6), in partnership with the JFSA. Following the business improvement orders imposed to several VCEPs in 2018, VCEPs now address AML/CFT issues at management level and have hired AML/CFT Officers from FI sectors in most cases.

346. At this stage, VCEPs have a basic understanding of their AML/CFT obligations, such as the need to identify customers/users, screen them against sanctions and Boryokudan lists, identify higher risk factors based on the NRA and report suspicious transactions.

347. Due to the scope of the virtual asset service provider definition in the Payment Services Act (PSA), AML/CFT requirements do not apply to custodial wallet services that are provided by VCEPs. However, the PSA was amended in May 2019 to address this gap and the requirements entered into force on 1 May 2020 after the onsite visit.

Designated Non-Financial Businesses and Professions (DNFBPs)

348. DNFBPs have a low level of understanding of the ML/TF risks they are exposed to. Their main reference regarding ML/TF risks is the NRA. Most DNFBPs associate some NRA risk factors or sectors to their activities, without a clear picture on how they could be abused for ML/TF. Real estate transactions, for example, are perceived as transactions at risk for legal professionals but how this could materialise is unclear to them. In general, DNFBPs are aware of some of the risks associated to business relationships with indirect connections to DPRK, as a result of targeted outreach by the authorities and sensitivity to DPRK-related threats generally.

349. Dealers in precious metals and stones appear to have a good understanding of the gold bullions smuggling risks due to the recent cases (see IO 1). Only few DNFBPs have identified high risk factors that would lead them to decline the establishment of business relationships. For example, a legal professional firm would refuse to develop activities involving tax havens which is a positive step.

350. DNFBPs appear to have a basic understanding of their AML/CFT obligations and mainly refer to customers' identification/verification. In a large number of cases, the driver to apply AML/CFT measures is to avoid being associated with Boryokudan members, which could have damaging consequences on the company's reputation.

351. Some supervisors and national associations have provided guidance to DNFBPs (e.g. lawyers, judicial scriveners, administrative scriveners, certified public tax accountants, certified public accountants) to help them understand and implement their obligations, which is a useful first step.

5

Application of risk mitigating measures

Financial institutions

352. Where FIs have a limited understanding of ML/TF risks, this has a direct impact on the application of the RBA. Although some FIs have started conducting their own risk assessment, others still apply mitigation measures uniformly, without adequate tailoring in accordance with risks. In general, they are driven by a mere compliance approach and refer to standard categories of risks pointed out by the supervisor (mainly based on the conclusions of the NRA), even if those risks are not relevant to their own business. Indeed, as also assessed in the 2018 JFSA AML/CFT Report, the RBA has not always permeated all FIs as of August 2018, and the implementation of effective risk mitigation measures that go beyond identity verification and confirmation of transactions and STR became an issue.[60]

353. Most FIs have in place CDD mechanisms to assign risk ratings to on-boarding customers, based on a comprehensive assessment of their attributes, but are implementing remediation processes on existing customers. Some FIs started implementing CDD tools, but the process is ongoing (see Chapter 5, section *Application of CDD and record-keeping requirements*). The higher risk categories are mainly established based on the risk factors of the NRA (see IO 1). Customer risk profiles mainly focus on screening against lists. The knowledge of the customer is limited to basic information gathered when establishing the business relation, and the information is usually not updated. There is no mechanism to identify customers who are business/corporate associates or partners and assess their risks and monitor their transactions as a group. Few financial groups share a unique customer risk profile among different entities within the group.

354. Given the limited understanding by some FIs of the risks associated with their own businesses, there are concerns regarding the extent to which these FIs understand the basics of the RBA, which the JFSA Guidelines (see Chapter 1, section *Legal persons and arrangements*) refer to, and implement commensurate mitigation measures on that basis.

60 JFSA 2018 AML/CFT report, August 2018, issued by Japanese FSA, Japanese version is available on JFSA website home page.

VASPs

355. In order to mitigate ML/TF risks and control the virtual assets that are listed for exchange in Japan, VCEPs must pre-notify the JFSA and JVCEA of their plans to change their listing of virtual assets. The proposed new listing is examined based on the assessment conducted by the VCEPs and, if needed, through a third party that looks at the VC legality and the technical aspects. A listing was recently rejected as the VC was used for gambling purposes. In the event that a service provider directly contravenes the JFSA and/or the JVCEA, the JFSA has ultimate authority to enforce sanctions against the service provider.

356. In addition, the self-regulatory rules applied by all registered VCEPs in Japan (see Chapter 6, section *VASPs*) prohibit them from listing anonymity-enhancing virtual assets. These virtual assets are considered to be high-risk due to their lack of traceability and predominance as a medium of exchange on Darknet marketplaces.

357. Regarding AML/CFT preventive measures, VCEPs tend to apply basic requirements uniformly and not tailored to their risks, similar to what has been noted for FIs (see above).

DNFBPs

358. DNFBPs apply standard mitigation measures to most of their customers, which are not commensurate with their risks. They do not classify their customers in risk categories, but identify high-risk customers or transactions based on the NRA results. They apply additional or enhanced measures to these customers.

359. Gold bullion dealers recently adjusted their AML/CFT preventive measures in order to address weaknesses identified as part of the gold bullion smuggling cases, and to take into account the risks associated to these transactions. Gold dealers could not detect that some ill-intentioned customers were repeatedly transacting for amounts less than JPY 2 million (approx. EUR 15,837/USD 19,261) which is the threshold above which customers have to be identified (see TC Annex c. 10.2). Following the gold bullion smuggling cases, rules have changed and all gold dealer customers must now be identified for all their transactions, whatever the amount, and identification records must be kept. In addition, some gold dealers now also refuse cash for the payment of transactions, even of small amounts, and instead request customers to make payments through a bank account.

Application of CDD and record-keeping requirements

Financial institutions

360. FIs appear to have major gaps in the implementation of CDD measures, such as BO identification/verification and ongoing CDD in combination with transaction monitoring system. There is a large number of legacy accounts which still need to be subject to the updated set of CDD measures.

361. When establishing the business relation, if the potential customer is found to be on a sanctions or on a Boryokudan list or certain information required is missing, the relationship will be declined by the FI. FIs, as any other businesses in Japan, are required to exclude any relationship with Boryokudan or anti-social forces members or associates (see IO 1). There is no unique official list that can be accessed by FIs. Basically, any FI has its own list that is developed on the basis of their own information and other sources including NPA or Prefectural Police and data purchased from service providers. The lists need to be constantly updated by FIs, which face challenges in ensuring their correctness and accuracy.

362. If an existing customer is found on a Boryokudan list, or if they are suspected to be part of or associated with a Boryokudan group, in some cases the account's activities could be restricted under tight scrutiny and control by FIs. The procedure for closing of an account related to organized crimes seems to take a long time.

363. FIs appear to only seek to collect and verify basic customer information when establishing the relationship, such as the customer address. An identification document with a photograph for an account opening is not compulsory for standard risk customer. FIs have not updated basic customer information collected until the obligation to do so was introduced in 2016. Still, the new obligation tend not to be applied in a systematic and timely manner to existing and new customers.

364. The BO information is mostly collected on the basis of customer declaration, which is an insufficient verification method. Japan has recently set up a notary-led BO registry system, which could be a useful verification tool, although some limitations have been identified (see IO 5).

365. FIs are facing issues regarding the widespread practice of accounts being sold or stolen (see Chapter 5). The ease of the account misuse mechanism and the spread of the phenomenon, perceived by the FIs as one of the major risk they face, raise further concerns on the quality and effectiveness of CDD measures applied.

366. Regarding ongoing CDD, FIs are starting to build up systems to maintain accurate and relevant customer information, according to the requirements of the JFSA Guidelines. However, the ongoing CDD measures seem limited to updating information collected on the customer and to screening lists. Conducting ongoing CDD following this approach does not allow FIs to make connections between the customer's profile and his/her operations, and to detect potential deviation from the expected customer's behaviour. Supervisory interpretation or guidance would be needed to address this weakness and improve the effectiveness of the implementation of ongoing CDD requirements (see IO 3). As reported in the 2019 JFSA AML/CFT report, some FIs are currently considering the utilization, designing or implementing IT systems for CDD and transaction monitoring and transaction filtering/screening[61] (see below). However, these IT systems are mostly not in place yet, while their effectiveness, where already in place, is still limited (mega banks and some regional banks, which have already implemented transaction monitoring systems with thresholds adjusted to customer risk profiles, are still facing many challenges, such as a very high ratio of false positives).

[61] JFSA 2019 AML/CFT Report, October 2019 issued by JFSA. Japanese version is available on JFSA website home page.

367. Regarding transaction monitoring, a very limited number of FIs appear to have proper transaction monitoring systems in place that look at the characteristics and behaviour of a customer in order to highlight suspicious activities. Those are in general FIs who have a good understanding of their risks (e.g. MVTS and some banks, see above).

368. In general, the controls in place are limited to sanctions and Boryokudan lists screening. In some cases, they only apply to international wire transfers. However, following the indications of the JFSA Guidelines, some FIs have put in place basic transaction monitoring systems. The effectiveness of the IT tools in place is inadequate, based on the large amount of alerts, with an average ratio of false positives up to 99%. This reveals the incorrect setting of the red flag indicators, which are mainly related to basic trigger criteria and thresholds. They should involve checking transactions' patterns, and ML/TF schemes. These factors limit FIs' ability to detect other suspicious behaviours than the basic ones (which in turn has an impact on the understanding of risks by FIs and by the country in general, see IO 1). Furthermore, the highly time-consuming activity of manually checking the large amount of false positives limits the capability of FIs to utilize their resources in order to improve their AML/CFT framework.

369. Some FIs are in the process of implementing transaction monitoring systems, while many others have not yet implemented such systems. 11% of small deposit taking institutions, such as small credit unions, decided not to have any IT tool, estimating that transactions could be manually monitored, due to the small amount of operations and a customer base assumed to be at lower risk. Some national banking associations are developing a centralized transaction monitoring system in order to achieve economies of scale for their members. Since these projects are ongoing, their effectiveness cannot be assessed at this point, but they could prove useful tools to improve the implementation of AML/CFT requirements by the relevant, smaller banks.

370. Finally, FIs do not have general deadlines from the supervisors to address the identified gaps on ongoing CDD and transaction monitoring (see IO 3). FIs generally set their own timelines, usually with extended duration. Banks are starting setting priorities to conduct CDD on existing accounts, but applying a RBA proves challenging when banks have limited information on customers. Consequently, there are serious concerns that FIs will struggle to improve their customer knowledge and apply adequate AML/CFT mitigation measures in a timely manner.

371. FIs appear to keep records of operations above the threshold of JPY 10 000 (EUR 79.19/USD 96.3), in accordance with legal requirements, and are usually able to provide the requested information to the investigative authorities in about 3 to 5 working days (for requests which refer to the last 12 months of operation). Unusual or more complex requests for a remote period could take more time, depending on the archiving methods of the relevant FI. In fact, there is not a standard format for record keeping imposed by the supervisor and the different information (e.g. customers' dossier, current account transactions, etc.), usually collected for 7 years as prescribed by the APTCP, could be stored in different ways and location, making the production of relevant records more difficult.

VASPs

372. VCEPs tend to apply basic CDD requirements, mainly identification/verification of customers/users and screening against sanctions and Boryokudan lists. Identification/verification of customers/users usually includes looking at the IP address to know where the customer/user is operating from and confirming if this is consistent with other information provided by the customer/user (such as information on place of residence or occupation). The geographic location attached to IP addresses can be located using distributed ledger technology analytical tools. As is the case for FIs (see above), ongoing CDD and transaction monitoring are not yet fully implemented by VCEPs. VCEPs appear to keep records of customers/users information and of transactions, and are able to provide information in response to requests from law enforcement authorities.

DNFBPs

373. DNFBPs apply basic AML/CFT preventive measures, mainly identifying their customers and verifying their identity through formal identification documentation. DNFBPs check as a priority that customers are not members/associates of a Boryokudan group. Some of them have their own internal lists, but most of them refer to an external party –for example the National Center for the Elimination of Boruyokudan, which with their national association has partnered (for ex. judicial scrivener). Unlike FIs (see above), it seems that DNFBPs do not refer to the NPA or to the prefectural police to conduct the final checks if there is still some suspicion that a customer could be associated to Boryokudan.

374. Some DNFBPs also check the purpose of the transaction and seek to understand the rationale behind it. Legal professionals for example would refuse a transaction if they do not understand a legal entity's interest in conducting transactions in countries where it does not have business or different from where its headquarters or subsidiaries are set up.

375. There is not a full understanding of the beneficial ownership concept by all DNFBPs, who mainly rely on the declaration of customers and check the shareholders list, the articles of association or consult a private database.

376. Some DNFBPs acknowledge that they rely on the due diligence conducted by FIs when relevant, for example when the payment of a transaction has involved remittances transfers.

377. Ongoing due diligence is a requirement which has been introduced recently in the Japanese AML/CFT regime and similarly to FIs (see above), DNFBPs still need to put in place the relevant process to maintain updated information on customers.

378. DNFBPs keep record of information on customers and on transactions.

Application of EDD measures

Financial institutions

379. Most FIs do not appear to apply proper EDD measures to higher risk customers, such as foreigners, and usually limit their enhanced measures to the verification of the identity (e.g. FIs would accept only ID with photograph for the opening of an account with higher risk customers) and to list screening (see Chapter 5). There are no stringent operational rules regarding higher risk customers, nor escalation procedures to ensure that additional or enhanced controls are conducted.

380. Regarding PEPs, there are technical limitations to the implementation of EDD, mainly due to the absence of recognition of the notion of domestic PEPs and of international PEPs at national level (See TC Annex, R. 12).

381. Regarding correspondent banking, FIs appear to carefully evaluate the establishment of a new relationship and properly assess the reliability of the respondent banks. In any case, correspondent banking activity is limited to the major banks and medium size banks, while smaller banks rely on the major market players to offer this service.

382. FIs regularly perform transaction screening against targeted financial sanctions lists related to TF, through a list-based approach. This approach involves third-party, automated screening software. In general, Japanese authorities rely on larger FIs' compliance with international group practices. The MOF sends UN updates directly to FIs on or about the day of UN update (see IO 10).

383. FIs approach transactions with connections to higher risk countries such as Iran and DPRK with extra care, in particular, since Japanese authorities prohibit payments to DPRK and to persons or entities related to it (see IO 11). In addition, FIs pose further attention to wire transfers and operations related to neighbouring regions of these two high-risk countries, such as the ports on the Western coast of Japan facing DPRK (Kyushu area). Some FIs that have customers in business with foreign countries take into consideration the ship-to-ship schemes, which are mostly used to export goods to high risk countries, mainly to DPRK.

VASPs

384. VCEPs do not seem to apply enhanced or specific measures for higher risk customers. In particular, they do not have the mechanisms needed to identify if customers/users are PEPs, partly due to the technical limitations highlighted for FIs.

385. On wire transfers, VCEPs are aware of the need to find a technical solution to address the "travel rule" issue. The JVCEA is coordinating work in this field and working with like-minded associations globally.

386. VCEPs screen their customers/users against TF TFS lists. Some VCEPs are aware that due to the speed and irreversibility of VC-related transactions, they may not be able to prevent transactions from happening even though a customer/user would be a positive hit against those lists. While some VCEPs have adopted approaches to address this issue, others are considering developing a solution, potentially in connection with implementation of the travel rule (R.15.7(b)).

387. VCEPs are generally aware of the higher-risk countries but measures taken to mitigate the risks are unclear. Some providers could consider prohibiting transactions involving higher risk countries at the account opening stage and depending on the profile of the customer/user.

DNFBPs

388. In general, DNFBPs apply additional CDD measures if customers depart from the usual profile, for example when they are foreigners. In that case, screening against TF TFS lists or checking the list of higher risk countries will be implemented. DNFBPs receive TFS lists from their national associations or directly from the Ministry of Foreign Affairs (MOFA) or their supervisors. Some DNFBPs conducting business with international parties use automated screening systems. Some bigger DNFBPs which are part of international networks, have manuals and process on the screening obligations. Some DNFBPs still appear unaware of any TF TFS obligations.

389. A limited part of DNFBPs spontaneously refer to the identification of foreign PEPs, but not to domestic PEPs, which is not a legal requirement (see TC Annex, c. 12.2).

Reporting obligations and tipping off

Financial institutions

390. FIs generally file STRs when detecting suspicious or potentially suspicious activities. JFSA monitors FIs' STR submission, as STRs are filed with the JFSA, who forwards them to the JAFIC for analysis (see IO 6). The timeframe for filing an STR by a FI once an alert is detected is reasonable (17 days on average).

391. The overall number of STRs filed per year has been increasing and was around 400 000 annually in the last five years (2014-2018). FIs account for 96% of all STRs. One third of the STRs are from the bigger banks and, according to the 2018 AML/CFT survey conducted by JFSA, 22% of banks, such as Shinkin banks and credit cooperatives, which are exposed to lower risks, did not submit any report in the year. Most of the STRs are filed on basic typologies and indicators, mainly those provided by the FIU (JAFIC) to the banking sector (see IO 6, "Reference cases"). Data available (see table 3.3, IO 6) confirms that most of the reporting is based on basic typologies referred to in the guidance provided by the FIU. The reporting could be improved - both in terms of the range of suspicions detected and content of information included in reports - if adequate transaction monitoring tools were already in place and if they took into consideration more elaborated scenarios with the help of more sophisticated red flag indicators. Combined with a better understanding of the risks by FIs, this would result in a better identification and analysis of suspicious activities, on an ongoing basis. This would also lead to a better understanding of risks overall, at country level (see IO 1).

392. FIs have reported TF-related STRs, including cases involving transactions connected to conflict zones and higher TF risk areas. JAFIC has identified situations potentially involving TF amongst those STRs (see IO 6). However, while the quality of investigation by JAFIC and NPA for TF-related STRs was generally high (see IO.9), the STRs themselves tended to involve relatively basic red flags. There is therefore a need to better educate FIs on their potential exposure to TF and provide them with additional red flag indicators and scenarios to help them detect transactions at potential risk of TF abuse, and contribute to disrupt complex TF schemes.

393. JAFIC provides direct feedback to the main banks regarding their STR policy.

Table 5.1. Table of STRs reported by financial institutions

	2014	2015	2016	2017	2018
Depository institutions	349,204	366,965	369,936	363,347	363,380
Bank, etc.	332,443	351,009	354,346	346,595	346,014
Shinkin Bank and Credit Cooperative	15,018	13,188	13,070	13,259	14,375
Labor Bank	298	371	453	476	467
Norinchukin Bank, etc.	1,445	2,397	2,067	3,017	2,524
Insurance company	3,817	2,918	2,310	2,382	2,671
Financial instruments business operator	7,732	8,951	8,528	8,436	13,345
Money Lender	3,349	4,427	5,263	7,512	12,396
Funds transfer service provider	807	585	539	1,282	1,391
Virtual currency exchange service provider	-	-	-	669	7,096
Commodity Derivatives Business Operator	16	9	16	17	50
Currency exchange operator	1,574	1,633	627	490	649
Electronic monetary claim recording institution	0	0	3	4	10
Others	280	151	177	192	167
Finance leasing company	86	160	214	109	222
Credit Card Company	10,608	13,666	13,436	15,448	15,114
Total	377,473	399,465	401,049	399,888	416,491

Source: JAFIC

394. There is no standard measure to prevent tipping-off, but, according to JFSA 2018 AML/CFT survey, 73% of banks have internal rules to prevent tipping-off (usually described within STRs manuals). Other FIs mainly rely on training activities to instruct their personnel not to tip off about the filing of an STR.

VASPs

395. VCEPs have been subject to STR obligations since 2017. They reported 669 suspicious transactions in 2017 and 7,096 in 2018. This increase is mainly the result of a series of awareness-raising events organised by the FIU (JAFIC) in response to a request from law enforcement authorities to improve the content of STRs related to virtual assets. Guidance was also published to clarify the expectations. In April 2019, JFSA together with JAFIC prepared and promoted red flag indicators of suspicious transactions, which covered several types of ML schemes where anonymization techniques (such as mixers/tumblers) were used.

396. The majority of STRs filed by VCEPs were prompted by issues related to customer information, including transactions using fictitious names or spoofing. This raises further concerns regarding the identity verification mechanisms applied in Japan, as highlighted for FIs (see Chapter 5, *Financial Institutions*). Similar to what was noted for FIs (see above), it seems that the indicators used to detect and report potentially suspicious transactions are quite basic and generic. The transaction monitoring system still needs to be developed by VCEPs; it will also be a critical step to improving reporting.

DNFBPs

397. Amongst DNFBPs, only real estate agents, dealers in precious metals and stones, postal receiving service providers, telephone receiving service providers and telephone forwarding service providers are under an obligation to file STRs. Lawyers, judicial scriveners, certified administrative procedures legal specialists, certified public accountants, certified public tax accountants are not under an obligation to file STRs (see TC Annex, c. 23.1). This significantly undermines effectiveness. When they are under an STR reporting obligation, the level of reporting is low, including for sectors identified as facing specific ML/TF risks.

Table 5.2. STRs reported by DNFBPs

	2014	2015	2016	2017	2018
Real Estate Broker	1	9	8	7	8
Dealers in Precious Metals and Stones	5	10	27	146	952
Postal Receiving Service Providers	34	24	6	2	6
Telephone Receiving Service Providers	0	0	1	0	0
Telephone Forwarding Service Providers	0	0	0	0	8
Others	0	0	0	0	0
Total	40	43	42	155	974

Source: JAFIC

398. The huge increase in STR reporting by dealers in precious metals and stones between 2017 and 2018 was due to the gold smuggling cases (see above). METI together with the NPA informed gold dealers of the unusual increase in tax consumption returns associated to gold, presumably bought in Japan, and of the strong suspicions of smuggling cases. They provided guidance for more stringent assessment of those transactions and on the importance to file reports, and took sanctions against some dealers who failed to report (see below *Remedial Actions*).

Internal controls and legal/regulatory requirements impending implementation

399. There is no legal or regulatory requirement in Japan impeding the implementation of AML/CFT requirements.

Financial institutions

400. Almost all banks have established AML/CFT internal controls, policies and procedures in line with JFSA Guidelines. Other financial institutions apply more basic internal controls but most of them have a compliance function that includes AML/CFT measures.

401. According to the results of the 2018 AML/CFT survey conducted by JFSA, 99% of banks have a department in charge of AML/CFT in the second line, while 93% have established an independent internal audit division including AML/CFT audit and conduct training at least once a year.

402. Regarding banking groups, there are cases where group-wide policies and internal controls are put in place, but usually not in case the group has branches or subsidiaries overseas.

403. In case of financial group's, policy and procedures generally differs from an entity to another of the group, not assuring the same AML/CFT requirements within all the group's entity.

VASPs

404. VCEPs are under an obligation to set up AML/CFT internal controls and have AML/CFT governance arrangements in place similar to those requested from FIs (see TC Annex, c. 18.1). This was JFSA's main area of focus during the onsite inspections conducted in 2018 based on the circumstances of the Coincheck hacking case (see IO 3,). Those inspections revealed that the main weakness related to internal control ystems which had not adjusted to VCEPs' fast business expansion. For example, the results of the assessment were not reported to the Board of Directors or the management did not increase personnel or review the system capacity in line with the nature and growth of the business.

DNFBPs

405. Bigger DNFBPs (such as big law firms) have structures whose main purposes are to prevent conflicts of interest within the firm, or to ensure compliance with the responsible business policy of the company. The information collected for those purposes also plays a role in the due diligence conducted on customers.

Overall Conclusion on IO.4

Some FIs have a reasonable understanding of their ML/TF risks (including bigger banks and some MVTS), while other obliged entities (FIs, VCEPs and DNFBPs) have a limited understanding of their ML/TF risks. Although FIs have a better awareness of their AML/CFT obligations, the implementation of these obligations is uneven among different FIs. Although some FIs have started conducting their own risk assessment and applying mitigation measures in line with the identified risks, other FIs apply mitigation measures uniformly, and do not go beyond customer's identity verification and the application of basic transaction screening. In addition, FIs generally do not adequately implement the recently introduced or modified obligations, such as ongoing CDD and BO identification/verification, due to limited understanding of these concepts and the lack of deadlines to meet the new obligations. Transactions monitoring systems, even where already in place, need to be substantially enhanced and integrated with the new CDD tools. The obligations required by the 2018 JFSA AML/CFT enforceable Guidelines also need to be upgraded to ensure effective AML/CFT systems for all FIs, commensurate with their risks.

Other obliged entities –VCEPs and DNFBPs- are at an early stage in compliance with AML/CFT requirements. Suspicious transaction reporting is increasing especially regarding VCEPs, but involves only basic typologies and indicators. Not all DNFBPs are under reporting obligations.

Considering Japan's role as one of the most important financial hubs in the region, the importance of financial sectors in the Japanese context, and banks being exposed to significant ML/TF risks, as well as the emergence of the VCEP sector with its unique ML/TF risks, major improvements are still needed for IO 4.

Japan is rated as having a moderate level of effectiveness for IO.4.

Chapter 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

For financial institutions

a) In general, supervisory authorities conduct standard "fit and proper" reviews for major shareholders and managers of financial institutions (FIs). The checks on beneficial owners (BO) are limited by the challenges linked to the identification of BO (see IO5).

b) The detection of unregistered/unlicensed FIs is based on information gathered by competent authorities and third parties. Competent authorities force detected unlicensed entities to shut down their business and publicize the measures in case detected entities do not comply, bringing reputational consequences to the managers.

c) Risk knowledge and understanding differ among the various financial supervisors, but are for the most part adequate. Financial supervisors, in order to identify and understand the ML/TF risks to which FIs are exposed, mainly rely on supervisory information, which provides an appropriate source of information.

d) The Japanese Financial Services Agency (JFSA) plays a leading role in AML/CFT supervision, given its large supervisory scope. Until 2017, AML/CFT supervision was a component of the prudential supervisory approach conducted by the JFSA and the other supervisory authorities. In 2018, JFSA established a dedicated AML/CFT Policy Office and adopted AML/CFT enforceable Guidelines. These were important steps to upgrade AML/CFT supervision and the implementation of mitigation measures by FIs.

e) The 2018 JFSA AML/CFT Guidelines help FIs understand their gaps and implement their AML/CFT obligations. Supervisory guidance on how to implement the Guidelines in practice still needs to be developed and clear and prescriptive deadlines need to be imposed to FIs to promptly reach full compliance with the Guidelines. The lack of these deadlines for the whole financial sector weakens the effectiveness of the Guidelines and the gap analysis carried by the FIs. Similar Guidelines are being adopted by other supervisors.

f) JFSA's AML/CFT supervision on a risk-basis is still at an early stage but is gradually improving. An initial risk classification of FIs is in place, even though at this stage, the RBA is still mostly driven by inherent risks. Weaknesses in

AML/CFT safeguards in place are also considered and assessed to target FIs subject to closer monitoring. The other supervisory authorities are at an earlier stage than JFSA in their implementation of a RBA and understanding of risks.

g) AML/CFT supervisory focus is on bigger banks and VCEPs, which is appropriate from a RBA perspective. The number of AML/CFT targeted on-site inspections of FIs is limited. The supervisory focus on the three mega banks is based on a "through-the-year supervision" that encompasses permanent off-site monitoring and frequent meetings with FIs. For other FIs the supervisory approach is based on periodical submission of information and specific on-site/off-site activities when necessary, which is adequate.

h) The Ministry of Finance (MOF) concentrates its TFS supervision on FIs that conduct international business, which is appropriate, but inadequately supervises smaller FIs.

i) The effectiveness of the supervision seems to be mostly limited to the FIs which are subject to direct dialogue with supervisors conducted primarily by the JFSA. Similar efforts should extend to the whole financial sector as the engagement by FIs in fulfilling the new AML/CFT standard is uneven and the effectiveness is questionable. Supervisors can only impose administrative orders for non-compliance and publicize the severe ones (business improvement and business suspension orders), with a dissuasive effect on the system given by the potential reputational damage. While reporting orders are frequently issued to FIs, accompanied by a tight monitoring by the JFSA, public sanctions are rarely imposed, despite the general deterrent effect of improving compliance across the sector. The extended duration for completion of remediation plans weakens their effectiveness.

For Virtual Asset Service Providers

a) VCEPs' registration system with JFSA was introduced in 2017. JFSA, the VCEP supervisor, has implemented a registration process which includes the conduct of fit and proper checks on directors and officers. Japan has managed to identify unregistered service providers, and prevent them from offering their services to Japanese customers.

b) The JFSA's dedicated team for the supervision of VCEPs has a sophisticated understanding of the risks associated with the VC ecosystem and the range of VC services and products, including ML/TF risks to some extent.

c) JFSA's periodic collection of information on inherent risks and mitigating controls (see IO 4) is used for JFSA's supervision of the registered providers.

d) JFSA has conducted inspections on VCEPs in 2018 in response to a major hacking incident. Those inspections revealed weaknesses in internal control/governance systems which in general were not commensurate with the rapid increase of VC transactions (see IO 4).

e) Given the recent regulation and supervision of VCEPs, there is a substantial body of cases where sanctions have been imposed, including business suspension

orders which shows a more forceful approach to the one applied to FIs. However, the main failures involved consumer protection failings (i.e. the safeguard of customers' funds) that justify the severity of the sanctions applied.

f) Through its dedicated team, JFSA has provided a targeted and timely policy and supervisory response to the VCEP sector.

For Designated Non-Financial Businesses and Professions

a) DNFBP supervisors have a basic understanding of the ML/TF risks of the sectors under their supervision, which is primarily based on the conclusions of the NRA. Given the recent ML cases involving gold bullion, the Ministry of Economy, Trade and Industry (METI) has an understanding of some ML schemes that can affect gold dealers, mainly gold smuggling.

b) DNFBP supervisors conduct basic fit and proper checks when licensing/registering supervised entities, primarily to verify that applicants are not member/associate of Boryokudan groups.

c) Only some DNFBP supervisors, which tend to be those responsible for DNFBPs with international business, are aware of UN TF TFS obligations.

d) In general, DNFBP supervisors do not conduct AML/CFT supervision on a ML/TF risk-basis. Some of them perform general compliance controls, which include an AML/CFT part. Some require supervised entities to provide an annual report on the application of AML/CFT controls. A very limited number of sanctions have been taken, mainly for failure to provide the annual report.

e) Some DNFBP supervisors have conducted outreach activities, directly or through the prefectural authorities or national associations, or developed support documents to raise supervised entities' awareness on their AML/CFT obligations.

Recommended Actions

Japan should:

For financial institutions

a) Review the appropriate resources allocation to full time AML/CFT supervision and consider their enhancement to strengthen the supervision.

b) Require financial supervisors to enhance the supervision on a risk-basis, through the development/completion of adequate risk analysis for all supervised FIs.

c) Conduct risk-based, TF-prevention outreach among FIs, modelled after that of PF TFS and drawing on the expertise of counterterrorism experts in NPA Security Bureau and JAFIC and require more joint supervisory inspections between JFSA and the MOF.

d) Strengthen and expand AML/CFT dedicated supervisory activities, following a RBA, based on a combination of off-site reviews and onsite inspections, and extend and deepen the scope of assessment.

e) Encourage better coordination between the JFSA and other financial supervisors, especially for the supervision of TFS which is the MOF's responsibility. Promote FIs' understanding of AML/CFT obligations and ML/TF risks by publishing supervisory guidance and good practices for the implementation of the JFSA Guidelines, with clear supervisory expectations on the preventive measures to be put in place by any FIs.

f) Require clear and prescriptive deadlines for the whole financial sector to comply with the applicable AML/CFT framework and address the identified gaps, ensuring that higher risk FIs accelerate their compliance process.

g) Review the appropriateness of the range of available sanctions, to ensure that the non-compliance with AML/CFT requirements is effectively and proportionately sanctioned and assure that sanctions are applied in practice.

h) Enhance trainings on AML/CFT and associated ML/TF risks for all supervisors.

i) Reinforce the coordination between national and local supervision, namely Local Finance Bureaus (LFBs).

For VASPs

a) Require the enhancement of existing ML/TF risk mapping tools of all registered VASPs leading to the risk classification of VASPs. This could include the types of virtual assets offered, the extent to which customers' virtual assets are held in hot wallets (online) as opposed to cold storage (offline) and whether the VASPs use analytical tools to track the flow of virtual assets.

b) Design an AML/CFT supervisory programme on the basis of the VASPs' risk classification that involves proactive onsite inspections on a regular basis, the identification of the controls most exposed to risks and their regular review.

c) Provide comprehensive, practical guidance for VASPs on ML/TF risks, the risk assessment process, AML/CFT requirements and supervisory expectations regarding their implementation.

d) Ensure that resources allocated to VASP supervision remains adequate, in terms of number and expertise, and is strengthened in line with the growth of the market and the registration of new entities.

For DNFBPs

a) Allocate adequate resources for DNFBP supervision, especially for the higher risk sectors such as real estate and dealers in precious metals and stones.

b) Provide DNFBP supervisors with the means and support to improve their understanding of the ML/TF risks (in addition to the NRA) of the sectors under their remit.

c) Request that DNFBP supervisors issue practical guidance for their supervised entities on ML/TF risks, the risk assessment process, the interpretation of, and compliance with, the AML/CFT requirements.

d) Require DNFBP supervisors to develop a supervisory approach based on risks, with the development of appropriate tools and processes.

e) Set-up dedicated AML/CFT supervisory programmes with clear priority and objectives for supervisory oversight and engagement.

f) Ensure that DNFBP supervisors take sanctions where appropriate against DNFBPs that do not comply with their AML/CFT requirements.

406. The relevant Immediate Outcome considered and assessed in this chapter is IO3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

407. The weighting given to the different financial and DNFBP sectors, as well as to VCEPs regarding supervision is the same as the one applied for preventive measures (see IO 4 and further details in Chapter 1).

408. The conclusions in IO.3 are based on: statistics and examples of supervisory activities and actions provided by Japan; guidelines and guidance issued by the supervisors, as well as working documents used to monitor the different reporting sectors; and discussions with the MOF, the JFSA and other financial and DNFBP supervisors, the JAFIC, as well as representatives of a large sample of FIs, VCEPs and DNFBPs.

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

Financial institutions

409. In general, supervisory authorities conduct standard "fit and proper" reviews for major shareholders (20% or more of shares) and managers of financial institutions (FIs), including checking criminal records and screening lists, in order to ensure that applicants are not listed as members or associates of Boryokudan/anti-social forces, and have not been sentenced to severe criminal punishment. There are some concerns regarding the accuracy of the available Boryokudan lists (see IO 4). The checks on beneficial owners (BO) follow the same approach but are limited by the challenges linked to the identification of BO (see IO5).

410. Currency exchange operators and financial leasing companies are not subject to licensing/registration requirements (see TC Annex, c. 26.2), and consequently no fit and proper checks are conducted.

411. In order to prevent customers from using unlicensed/unregistered business operators, the JFSA or the relevant supervisor publishes the lists of registered/licensed FIs on its website, as well as detected unregistered/unlicensed FIs which are unwilling to regularise their situation. In a majority of cases, the issuance of these public warnings leads illegal operators to stop their business. Supervisory authorities can file a petition to court to suspend the business in urgent cases and when there is a malicious intention that could damage customers. In addition, JFSA and other supervisors, including Local Finance Bureaus (LFBs) cooperate with the police as appropriate, providing information on unregistered/unlicensed business operators and supporting effective investigations and arrests.

412. Regarding unregistered financial instruments business operators for example, among the 262 cases detected in the past 5 years, the Securities and Exchange Surveillance Commission (SESC) needed to file only 15 petitions with courts in order to prohibit or suspend the unregistered/unlicensed FIs. In other cases, the illegal FIs voluntarily stopped their business. The investigative authorities conducted necessary investigations and, as a result, some cases led to arrests for the violation of the Financial Instruments and Exchange Act. Another example is the illegal money lenders sector, where in all 62 cases identified in the past 5 years, all operators voluntarily shut down their business.

413. The detection of unregistered/unlicensed FIs is based on the information gathered proactively by competent authorities and third parties, or from customers' complaints, including trade bodies such as the Japan Payment Service Association.

Virtual Asset Service Providers (VASPs)

414. A registration system for VCEPs was introduced by the JFSA in 2017. As part of this system, JFSA has implemented a comprehensive registration process which includes on-site interviews with management and officers, and the conduct of fit and proper checks on directors and officers with a focus on any terms of imprisonment in the preceding 5 years.

415. Japan has conducted work on identifying and managing unregistered service providers, based on information provided by the Japanese Virtual Currency Exchange Association (JVCEA) and registered service providers, as well as from members of the public and open source information. Similar to FIs, if a suspected business ignores requests for engagement with the JFSA, then warnings are sent to the business and information is posted on the JFSA website. The matter is also referred to the National Police Agency and Consumer Affairs Agency for further action. This work has also involved close cooperation with foreign authorities as needed, in order to address the inherent cross-border risks associated with virtual assets. In the instance that a service provider decides to terminate its business or its service offering to Japanese customers, verification will be conducted by the JFSA to ensure that services are no longer available. JFSA reported an example in which a foreign service provider ceased offering its services in the Japanese language in response to a warning issued by the JFSA. In March 2018, JFSA also issued Binance with a warning to cease providing its services in Japan without registering as a VCEP.

Box 6.1. Warning issued by JFSA regarding an unregistered VCEP

March 23, 2018
Japanese Financial Services Agency

For those who engage in virtual currency exchange service with unregistered VCEP (Binance)

JFSA have issued warnings to those who engage in virtual currency exchange service with an unregistered provider today in accordance with Section 3 of the Operational Guideline: Financial Affiliates 16. Virtual currency exchange service provider Affiliates III-1-4(2). The publications are as follows.

- Business operator name: Binance
- Representative's name: XXX
- Head Office : XXX
- Content, etc. : A virtual currency exchange service conducted via the Internet with Japanese residents as the counterparty.

※ The above information is based on information available on the internet. Business operator names, locations and addresses may not be current.

Designated Non-Financial Businesses and Professions (DNFBPs)

416. DNFBP supervisors conduct basic fit and proper checks when licensing/registering supervised entities, primarily to verify that applicants are not member/associate of Boryokudan groups, and in some cases to also check criminal records.

417. Some supervisors provided cases where registration and renewal of registration were refused due to criminal convictions: Japan Federation of Bar Associations (JFBA) for lawyers and Ministry of Finance/National Tax Agency (MOF/NTA) for Certified Public Tax Accountants.

418. Regarding suspicions of unlicensed/unregistered DNFBPs, most supervisors themselves do not take proactive action. Some cases are investigated by the Police, in a restricted number of sectors and usually based on claims by abused customers.

Supervisors' understanding and identification of ML/TF risks

Financial institutions

419. Risk knowledge and understanding differ among the various financial supervisors, but are for the most part adequate. Financial supervisors, in order to identify and understand the ML/TF risks to which FIs are exposed, mainly rely on supervisory information, which provides an appropriate source of information. JFSA generally plays a leading role in AML/CFT supervisory issues and risk understanding, given its large supervisory scope which includes the most significant parts of the financial sector (see Chapter 1, *Supervisory Arrangements*). Until recently, its vision of risks was mainly driven by the NRA which present some weaknesses (see IO 1). Lately, important steps have been taken in the enhancement of the supervisory activity and tools, which improved its approach and understanding of risks (see below).

420. In February 2018, JFSA established a dedicated AML/CFT Policy Office (under the Strategy Development and Management Bureau) and adopted AML/CFT enforceable Guidelines, a principle based policy document that requires the implementation of an adequate AML/CFT framework by supervised FIs (see Chapter 1 and IO 4). The Guidelines require the implementation of AML/CFT measures on a risk-basis and constitute a milestone for the improvement of the understanding of ML/TF risks by FIs and by JFSA.

421. In 2018, JFSA AML/CFT Policy Office started collecting AML/CFT information ("AML/CFT Survey") on around 1 400 supervised FIs considered to be relevant in terms of sector and size (out of a total of around 4 600 FIs, 2 350 of which are under JFSA's supervision, see Chapter 1). This is a comprehensive tool that JFSA AML/CFT Policy Office started using to assess both inherent risks and controls in place, to explore the nature of business and related risks, the organization, safeguards and vulnerabilities.

422. The other supervisory authorities are at an earlier stage than JFSA regarding AML/CFT supervision and the application of a risk-based approach. Similar AML/CFT enforceable Guidelines to the JFSA ones were adopted in August and September 2019 for other financial sectors (see Chapter 1). The impact of those Guidelines cannot yet be measured, but they represent a good step to support a better understanding of risks by supervised entities and their supervisors.

423. In addition, the MOF introduced in 2018 a risk scoring system for currency exchange operators, which is a first step for a financial sector at significant ML/TF risks. The Ministry of Economy, Trade and Industry (METI) recently conducted a survey in writing and interviews targeting credit card companies and commodity derivatives business operators, in order to have a preliminary understanding of their risk. Regarding financial leasing companies, METI relies on the risk assessment performed by the Japan Leasing companies Association (JLA) as there is no direct supervision on these entities from METI.

VASPs

424. In 2017, the JFSA established a VCEPs monitoring team composed of AML/CFT and technology specialists who have a sophisticated understanding of the risk associated with the VC ecosystem and of the range of VC services and products, and of their characteristics and technical specificities. This involves an understanding of ML/TF risks to some extent. The JFSA imposes periodical reporting to registered VCEPs to collect quantitative and qualitative information on inherent risks (e.g. VC exchanged, provision of wallet service, and number of foreign users and their deposits), and utilises this information for its own risk assessment (see Chapter 6). In addition, JFSA's dedicated team maintains close relationships and an ongoing dialogue with the JVCEA and the VC market players to enable them to maintain a better understanding of ML/TF risks.

DNFBPs

425. DNFBP supervisors have a basic understanding of the ML/TF risks of the sectors under their supervision, which is primarily based on the conclusions of the NRA. They generally identify some transactions or risk factors that could affect DNFBPs under their supervision, without a clear picture regarding the details of potential abuse or misuse.

426. One supervisor has developed a sectoral risk assessment and identified high-risk areas. However this risk assessment was not publicly shared, which limits its benefits. The circulation of this document could be a positive incentive for other supervisors to develop a similar product.

427. Given the recent ML cases involving gold bullions, METI has a fair understanding of some ML schemes that can affect gold dealers, mainly gold smuggling.

Risk-based supervision of compliance with AML/CFT requirements

Financial institutions

428. Although AML/CFT supervision on a risk- basis for the whole financial sector is still at an early stage, JFSA has taken steps to supervise AML/CFT regimes following a risk-based approach and it is constantly improving. AML/CFT supervisory focus is on bigger banks and VCEPs, which is in line with the financial sector's materiality and risks identified in Japan (see IO 4 and further details in Chapter 1).

429. Until 2017, AML/CFT supervision was a component of the prudential supervisory approach conducted by JFSA. There were limited resources dedicated to AML/CFT supervision, both for on-site and off-site activities. The approach started changing in 2018 when JFSA set up its AML/CFT Policy Office and adopted the AML/CFT enforceable Guidelines (see above). From then on, JFSA's AML/CFT Policy Office has conducted "dialogues" with supervised FIs in order to identify and address the gaps between their AML/CFT practices and the actions required by the Guidelines. These dialogues involve official communications with FIs' senior management to foster the level of compliance and quality of safeguards in place. JFSA asks targeted FIs to prepare remedial action plans for gaps identified and monitors progress made on a regular basis, within a specific timeframe. However, it does not impose prescriptive deadlines to other supervised FIs for a prompt and full implementation of the Guidelines. This raises concerns given the size of the Japanese financial sector and the huge number of accounts which still present major CDD deficiencies (ongoing CDD and

transactions monitoring, see IO 4) and are therefore at high ML/TF risks. In addition, the number of AML/CFT targeted on-site inspections of FIs is limited and there is room for enhancing the coordination and collaboration between national and local supervision, namely LFBs.

430. JFSA built an in-house tool for supervision and performed a first pilot risk assessment in 2018, starting to determine the residual risk of around 800 FIs; in 2019, the risk assessment was extended to around 1.400 supervised FIs. The JFSA's tool processes periodical AML/CFT information provided by FIs on inherent risks and safeguards in place. It provides valuable help to the supervisors in assessing the residual risk level of the supervised entities, on an individual basis. The individual FI assessment, on a four-rate scale, is part of a residual sectoral risk matrix, used by the JFSA to prioritize the follow-up supervisory actions.

431. JFSA's supervisory focus is on the three Japanese mega banks; which is appropriate from a RBA, as they represent a relevant part of the Japanese financial sector (see Table 1.1). The approach is based on a "through-the-year supervision" that encompasses permanent off-site monitoring and frequent meetings with FIs. During the 2018 business year, the 3 mega banks were involved in 31 "dialogues" with the JFSA, with an average of more than 10 "dialogues" in that year for each bank, while the other banks were involved to an average of 3.4 dialogues in that year.

432. The other financial supervisory authorities are at an earlier stage than JFSA in their implementation of a RBA to AML/CFT supervision. They are in the process of developing relevant tools to enhance the supervision of the FIs on a risk-basis (see Chapter 6). Anyway, the supervision of smaller credit institutions (like labour banks, agricultural and fisheries cooperatives) is jointly conducted with the JFSA.

433. The MOF conducts onsite inspections for the supervision of the implementation of TF TFS obligations in line with the Foreign Exchange Inspection Manual (latterly the Foreign Exchange Inspection Guidelines) since 2003. This provides guidelines on the steps supervisors should take when conducting inspections of FIs to check their compliance with their obligations under the Foreign Trade and Foreign Exchange Act (FEFTA) (see IO 10). Since 2018, FIs are requested to produce reports, which MOF uses to determine the frequency and length of inspections, and conduct its inspections on a risk-basis, to some extent. The MOF coordinates with the JFSA on an ad hoc basis. The MOF and JFSA have begun conducting joint inspections (three out of 87) in 2018.

434. Given the great efforts needed to foster the AML/CFT culture within FIs and to supervise their vast number, there is room for enhancing supervisory resources both at local and national level, at JFSA and other financial supervisors.

VASPs

435. JFSA's registration system and supervision of VCEPs takes risks into account to some extent. It starts at the pre-registration stage, when JFSA reviews applicants' AML/CFT programmes, taking into account their risk profile, with a focus on consistency between the applicants' risk assessment and their business plan. Compliance on-site inspections, including AML/CFT aspects, are organised at an early stage after registration, taking into account the rapid changes in the VC ecosystem and VC business models, and the impact these can have on ML/TF risks.

436. Information collected periodically by JFSA on inherent risks and controls implemented by VCEPs (see Chapter 6) is used for monitoring them. JFSA started inspecting VCEPs in February 2018, mainly in response to the January 2018 Coincheck hacking incident, in which almost JPY 60 billion (approx. 475 million EUR/ USD 577.8 million) of VC were hacked. The inspections followed the same approach for all providers and were not conducted on a risk-basis, with a focus on governance and controls /suspected to be the main cause of the risk management failure (see IO 4).

437. MOF has not started conducting supervision of VCEPs for TFS for TF.

DNFBPs

438. In general, DNFBP supervisors do not conduct AML/CFT supervision on a risk-basis. Some of them (e.g. METI, Ministry of Land, Infrastructure and Transport/MLIT, JFBA) perform general compliance controls, which include an AML/CFT part. Those controls focus on checking that the relevant AML/CFT processes and procedures are in place (ex. customers identification/verification measures, records of information collected, existence of an AML/CFT compliance officer, process to report a suspicious transaction) but do not go into the details of any individual transactions.

439. Some supervisors require supervised entities to provide an annual report or answer a questionnaire on the application of AML/CFT controls (e.g. MOJ, MOF/NTA, JFBA, MLIT).

440. No supervision of DNFBPs for implementing TFS is taking place.

Remedial actions and effective, proportionate, and dissuasive sanctions

Financial institutions

441. JFSA and the other financial supervisors can impose administrative orders i.e. reporting orders, improvement orders, rectification orders and business suspension orders when they identify gaps and deficiencies in a FI's AML/CFT framework which amount to a breach of an AML/CFT requirement. Improvement orders and orders for submission of reports, which are most often imposed by JFSA, are requests for a remediation plan in order to address the gaps and deficiencies highlighted by the supervisor, with the duty of reporting the progress achieved by the FIs.

442. The orders can contain prescriptive deadline for completion of the remedial actions, which can have an (excessively) extensive duration. The supervisors closely follow-up the progress achieved by the targeted FIs through off-site monitoring, in order to ensure that the issues are addressed in a timely manner and could impose additional administrative orders if the FIs are not complying.

443. JFSA seems efficient in tightly monitoring FIs who have breached their AML/CFT obligations. The publication of orders on the supervisors' website is considered a serious reputational damage within the Japanese society and accordingly dissuasive, although those orders do not strictly amount to sanctions since, in the majority of cases, they require FIs to take actions in order to comply with their obligations. Besides, with the publication of these orders, JFSA gives a warning signal to the sector, which should drive FIs to enhance their level of compliance.

Box 6.2. Example of a JFSA improvement order taken for AML/CFT breach

Business Improvement Order imposed on A company (excerpt)

Based on Article XX of the XX Act, an order shall be imposed as shown in the appendix.

In the event where there is any objection to this order, a request for review under the Administrative Complaint Review Act (Act No. 68 of 2014) may be filed with the Commissioner of JFSA within three months from the day following the day on which you come to be aware of this order.

If you seek the revocation of this order in a court proceeding, you may file an action against the State for revocation under the Administrative Case Litigation Act (Act No. 139 of 1962) within six months from the day on which you come to be aware of this order.

Appendix

1(1)(ii) Establishment of ML/TF risk management

A company shall establish effective ML/TF risk management including appropriate verification at the time of transaction and other measures to prevent ML/TF based on the Act on Prevention of Transfer of Criminal Proceeds (Act No.22 of 2007. Hereinafter referred to as "APTCP.")

When establishing ML/TF risk management, A company shall appropriately identify and assess ML/TF risks that it faces and implement mitigation measures commensurate with ML/TF risks based on JFSA's AML/CFT Guidelines. In particular, a company shall conduct ML/TF risk identification/assessment of products and services, based on AML/CFT Guidelines, which have not been subject to verification at the time of transaction. In addition, taking into account the identified and assessed ML/TF risks, A company shall conduct verification at the time of transaction on existing users to whom it decides that re-verification at the time of transaction shall be conducted and users who opened accounts without complying with requirements of verification at the time of transaction stipulated by the APTCP. Further, in relation to the users mentioned above and to whom A company conducts verification at the time of transaction, A company shall make necessary decisions on whether or not suspicious transaction reporting under the APTCP are necessary. Besides, A company shall appropriately prepare and store verification records in accordance with relevant laws and regulations and utilize them for ML/TF risk management.

444. Except the orders, supervisors do not dispose of other kind of sanctions, proportionate to the gravity of failures for AML/CFT non-compliance (see R. 35). In addition, according to the AML/CFT legal framework (APTCP), further measures for non-compliance with the supervisors' issued order (e.g. criminal or pecuniary sanctions), can only be imposed by a court upon request if the supervisors litigate, but it never happened in practice. Furthermore, the moderate level of effectiveness of preventive measure through the FIs (see IO 4) suggests that sanctions could be applied in a more effective and dissuasive manner.

445. The MOF (and JFSA in three joint inspections) found deficiencies in nearly half of FIs inspected for compliance with TFS obligations in 2018, which is a substantial increase as compared to past years (see IO 11). This is partly due to increasingly robust requirements and inspections by MOF. JFSA imposes remedial action plans for identified deficiencies. The consistently-significant percentages of FIs with identified deficiencies suggest that those remedial action plans are not effective, proportionate, and dissuasive. (see IO 11, Chapter 4 for a full review of MOF's inspections on TFS which are equally applicable and relevant for TFS for TF).

VASPs

446. As in the case of FIs, JFSA can impose administrative sanctions to VCEPs for AML/CFT failures. Given the recent regulation and supervision of VC exchange service providers (see Chapter 1), there is a substantial body of cases where such administrative sanctions have been imposed. Sanctions applied are more severe than those imposed on FIs, and a number of business suspension orders have been taken. A notable example was the Coincheck hacking case that occurred in early 2018 (see Chapter 6), which demonstrated the JFSA's ability to act promptly and forcefully. Although the incident involved the large-scale theft of customers' funds and primarily became an issue to do with the safe storage of VC, JFSA acted expeditiously to discover the cause of the breach and determine whether insufficient AML/CFT controls had left the VCEP vulnerable. This involved the issuance of an administrative order on the same day of the hacking requesting further information on the incident, and was immediately followed by an on-site inspection that led to a second administrative order. This administrative order was issued because of JFSA's concerns about the AML/CFT internal controls at the VCEPs as it required Coincheck to assess various risks associated with the different types of VCs they handle and improve its AML/CFT defences (e.g. CDD processes). This action ultimately resulted in Coincheck delisting all anonymity-enhancing VCs.

447. With respect to anonymity-enhancing VCs, VCEPs play a vital role in the fight against ML/TF as they provide the gateway for customers/users. This is particularly important given the difficulties that law enforcement can encounter in tracing transactions using anonymity-enhancing VC. In these circumstances, this makes the information obtained and retained by VCEPs essential to law enforcement investigations.

448. JFSA also asked other VCEPs to conduct a self-assessment to identify any risks of VCs they handle and to provide the results of the assessment to the JFSA.

DNFBPs

449. A very limited number of sanctions have been taken, mainly by JFBA for failure to provide the annual AML/CFT report.

450. METI took administrative sanctions against some dealers in precious metals and stones for failure to file STRs in relation to gold bullion smuggling, and communicated through a press statement on those sanctions. METI also has issued 6 rectification orders to postal receiving service providers due to failure to comply.

Impact of supervisory actions on compliance

Financial institutions

451. Following the establishment of the JFSA's AML/CFT Policy Office and the publication of the Guidelines, a new supervisory approach begun based on dialogue and interaction between the JFSA and targeted supervised entities, as well as through seminars and conferences, in order to promote the implementation of the new AML/CFT obligations.

452. The JFSA has illustrated in case studies that once it engages with a FI regarding AML/CFT deficiencies, there is a tight follow-up process with clear steps taken to address deficiencies. An example is a regional bank's improvement after JFSA's onsite visit. However, the lack of prescriptive deadlines for the whole financial sector to promptly address the deficiencies identified slows down efficient improvement.

Box 6.3. A regional bank addressed its deficiencies after JFSA's onsite visit

JFSA conducted an on-site inspection of a regional bank in April 2018. The Bank's AML/CFT approach was limited to rule-based compliance with domestic laws. The Bank neither regarded ML/TF risk as their own business risks nor took actions based on RBA, establishing management measures commensurate with its ML/TF risk. Therefore, JFSA pointed out the bank to improve their ML/TF risk management.

Subsequently, JFSA issued an order to the Bank to submit reports on problems pointed out at the on-site inspection, and conducted regular follow-ups. As a result, the Bank began to appropriately identify and assess their ML/TF risk by: comprehensively and concretely evaluate their products/services, and customer attributes; and analysing STR submitted and frozen accounts by business area. The Bank also began customer risk assessment. In this way, the Bank is advancing a risk-based management, triggered by JFSA's on-site inspection and subsequent follow-up.

453. Given Japanese FIs' slow approach to change, the effectiveness of supervision seems to be mostly limited to the FIs which are subject to direct dialogue with JFSA, while supervisory efforts are not reaching yet the whole financial sector, despite the outreach activities put in place. Therefore, the engagement by FIs in fulfilling the new AML/CFT standard is uneven.

VASPs

454. As the epicentre for virtual asset activity, Japanese authorities have been required to respond to major events in the history of virtual assets from the Mt Gox hacking to the increasing prevalence of anonymity-enhancing virtual assets. The JFSA are meeting this constantly evolving challenge through team of experts dedicated to the sector, who conduct targeted, robust supervisory actions (both off-site and on-site) on the regulated population (see Chapter 6, *Key Findings* and section *Remedial Actions*). Based on the example of the Coincheck hacking and similar issues that have arisen at other VCEPs, the supervisory actions of the JFSA are having a positive effect on addressing AML/CFT shortcomings in the sector. Although the certification of the JVCEA as a self-regulatory organisation only occurred in late 2018, and therefore the assessment team was unable to gain an in-depth insight into the role that the body plays in relation to the regulated population, it seems that the JVCEA acting in unison with JFSA will develop to become an additional safeguard against ML/TF abuse in the VCEP sector.

455. The allocation of supervisory resources to the VCEP sector needs to be looked at in the broader context of JFSA supervisory scope and responsibilities. In this respect, it seems that there is a disproportionate focus by Japanese authorities on VCEPs, by comparison to the banking sector.

DNFBPs

456. Some DNFBP supervisors (e.g. METI, JFBA, MLIT, Ministry of Internal Affairs and Communication/MIAC) have conducted outreach activities, directly or through the prefectural authorities or national associations, or developed support documents to raise supervised entities' awareness on their AML/CFT obligations. However, the impact of such activities on compliance still need to be confirmed.

457. METI shared cases and typologies with gold dealers regarding smuggling cases. It also provided guidance on STR reporting, and took sanctions against those who failed to report suspicious cases. Combined with other actions in the field by Customs and Coast Guard, positive effects on compliance were demonstrated.

Promoting a clear understanding of AML/CFT obligations and ML/TF risks

Financial institutions

458. Since the 2018 adoption of the JFSA AML/CFT Guidelines, as mentioned, supervisory activities have been mainly based on the promotion of this new standard. Awareness-raising and information about this new AML/CFT framework has been conducted by JFSA and fostered by the contribution from bank associations. They developed knowledge of AML/CFT obligations for the benefit of their membership, mainly through seminars, conferences and other training activities. An example of such positive initiative is the "Public-Private Partnership Conference for AML/CFT" set up in April 2018 by competent authorities, including JFSA, MOF, JAFIC and MOJ together with Japanese Bankers Association and all FI national associations.

459. The JFSA AML/CFT Guidelines are a good initial step in order to achieve a common and minimum standard for the understanding and mitigating of ML/TF risks by the financial sector. They include prescriptive requirements and provide useful recommendations to help FIs improve their AML/CFT culture and level of compliance. However, the Guidelines remain a principle-based policy document, which needs interpretive note, good practices and clarification, in order to support FIs set up an appropriate AML/CFT framework based on a rigorous standard. The part of the Guidelines on transaction monitoring needs to be strengthened and a clear link established with the ongoing CDD requirements and the importance of developing customers' risk profile and transactions behaviour.

460. The level of the standard set in the Guidelines should be increased to ensure effective AML/CFT systems for all FIs, commensurate with their risks and it is necessary to integrate an appropriate part of the standards set in the "Benchmarks for the Three Mega Banks" into the AML/CFT Guidelines, taking into account proportionality criteria regarding the complexity of FIs and avoiding the creation of two different standards (see IO 4).

VASPs

461. JFSA is working closely with the JVCEA, that, as a self-regulatory body, in August 2018 adopted rules that contain detailed requirements to comply with the AML/CFT legal provisions (please refer to Box 2.1).

462. JFSA, with the support of JVCEA, has conducted outreach to the VC industry and fostered exchanges of best practices regarding AML/CFT among VCEPs. JVCEA also organises monthly study sessions on AML/CFT for its members.

463. In April 2019, JFSA together with the FIU (JAFIC) prepared and promoted red flag indicators of suspicious transaction, which are specific to VCEPs (see Chapter 5, *VASPs*).

DNFBPs

464. As stated above, a number of DNFBP supervisors and other authorities have reached out to supervised entities' activities, or provided adequate documentation or training to inform on ML/TF risks and AML/CFT obligations.

465. JFBA publishes a monthly bulletin which includes articles about ML typology and illustrates high-risk situations. The MLIT created a website to promote understanding of obligation related to AML/CFT for real estate brokers.

Overall Conclusion on IO.3

Financial supervisors have taken positive steps to conduct AML/CFT supervision on a risk-basis; the process is at an early stage, it is ongoing and is gradually improving. The JFSA has developed relevant tools, has a sufficient risk knowledge and understanding and demonstrated a proactive approach to supervision. Nevertheless there is large room for enhancement, while the effectiveness of supervisory actions on FIs compliance is affected by Japanese FIs slow approach to change. Supervisory authorities, to take actions in order to promote FIs' compliance, should reconsider the use, effectiveness and dissuasiveness of the range of sanctions.

The JFSA has taken prompt and adequate actions to address VC exchange service providers' AML/CFT issues, including imposing dissuasive sanctions, and the JFSA is on the path to expand these efforts to other FIs on a risk-basis.

The major gaps in AML/CFT supervision of DNFBP sectors are an important area of concern but the weight of these weaknesses is more limited in the Japanese context given the less significant weight of these sectors.

Given the most significant weight and materiality of the Japanese banking sector and also the significant weight of the VC exchange service sector and the major supervisory role of the JFSA, the effectiveness of supervision in Japan still requires major improvements.

Japan is rated as having a moderate level of effectiveness for IO.3.

Chapter 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

a) Japan has taken a series of important steps over the last few years towards implementing a system that allows competent authorities to access information on beneficial ownership. All FIs and VCEPs and almost all DNFBPs are obliged to obtain, verify and maintain beneficial ownership information in the course of CDD, and since late 2018 notaries conduct beneficial ownership checks on new companies.

b) Nevertheless, adequate, accurate and current beneficial ownership information is not yet consistently available on legal persons in a timely manner.

   i. FIs and DNFBPs are still in the process of updating their existing CDD on legal persons to meet the 2016 obligations as part of ongoing monitoring. Challenges remain with BO information on customers on-boarded before 2016, before which FIs were only under an obligation to identify the BO and verification was not required. These relate to the extent to which information is required to be updated and kept up-to-date, and in the mechanisms for supervising compliance with these CDD obligations (see IO3 & IO4).

   ii. The collection of BO information by notaries at the point of incorporation has only been in place since November 2018 and therefore only covers a small sub-set of all companies. Additionally, the information is not directly available to relevant competent authorities. It is also unclear how notaries verify the beneficial ownership information received.

c) Japan has an understanding of the risks associated with legal persons to some extent, however this understanding lacks depth. The NRA identifies legal persons without transparency of BO as high-risk, but vulnerabilities associated with the different types of company structures in Japan are not sufficiently understood. Risks associated with legal arrangements (domestic and foreign trusts) operating in Japan are not well understood.

d) Successful investigations by LEAs into legal persons are usually initiated following an investigation into a predicate offence often involving 'front companies' or 'shell companies'. These investigations only align with the vulnerabilities to some extent, with no evidence of investigations involving more complex ownership structures. LEAs do not appear to have the necessary tools to establish the BO in these circumstances. There are concerns about LEAs understanding of the intelligence value of BO information, such as the utility that can be made of this information as part of investigations.

e) Some basic information is available directly and instantaneously to the public from the Commercial Registry (e.g. name, location, representative director), but other

basic information including up-to-date shareholder information is only available from the company, potentially creating delays for LEAs.

Recommended Actions

Japan should :

a) Conduct a more comprehensive assessments for all types of legal persons and legal arrangements operating in Japan to better understand the characteristics of legal persons and arrangements that make them vulnerable for misuse for ML or TF in the Japanese context.

b) Strengthen further the sources of information on BO and facilitate the verification of information, including through enhancing the supervision of FIs, VCEPs and DNFBPs with the beneficial ownership obligations (particularly the requirement to conduct ongoing CDD, which should be used to determine changes in beneficial ownership), and implementing a specific deadline for all FIs and DNFBPs to ensure that they have verified BO information on their customers on-boarded before the current requirements were put in place. See also IO3.

c) Take further action in line with Recommendation 25 to ensure that beneficial ownership and control information in relation to domestic and foreign trusts, in particular trusts that are not created by or administered by trust companies and businesses within the meaning of the Trust Business Act, is available and accurate.

d) Provide LEAs with direct access to public notaries' databases on beneficial ownership information, when the system is centralised. If FIs, VCEPs and DNFBPs are able to rely on beneficial ownership certification notaries, Japan should prioritise enhancing the verification of BO information held by notaries.

e) Prepare guidance to support LEAs, NTA and other competent authorities to ensure understanding on the mechanisms to obtain access to basic and beneficial ownership information from legal persons and legal arrangements in a timely manner.

f) Ensure that all DNFBPs are subject to CDD obligations and support more comprehensive implementation of AML/CFT requirements on customers who are legal persons to ensure that information on BO is available promptly and underlying suspicious activity associated with legal persons is detected (see IO4).

466. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.[62]

62 The availability of accurate and up-to-date basic and beneficial ownership information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

467. The assessment team based its conclusions on a variety of information provided by the Japanese authorities, including discussions held with relevant authorities during the onsite, and qualitative and quantitative information maintained by a range of agencies including the NPA, JAFIC, NTA, MOJ and JFSA. The team also reviewed cases involving the misuse of legal persons provided by Japan, not only those included as case studies within this chapter. Open source information was also used, including guidance provided by International Accounting firms and national associations (such as the Trust Companies Association of Japan).

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

468. Information on the creation and types of legal persons is available from the Legal Affairs Bureau website.[63] This includes the process for establishing all types of companies, General Incorporated Associations, General Incorporated Foundations and NPO corporations (see Chapter 1, section *Legal persons and arrangements*). The procedures for the incorporation of a company in Japan by a foreign national, or when an officer of a company or corporation lives abroad, is available from the Ministry of Justice website.[64] This information is available in Japanese and English languages. Information on the creation and types of legal person is also available publically in the relevant legislation that governs their establishment.[65]

469. Information on the creation and types of trusts is available publically in the relevant legislation.[66] The Trust Companies Association of Japan website also provides information on the creation and types of trusts by trust companies in Japan.[67]

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

470. The vulnerabilities and associated ML/TF risks of legal persons have most recently been assessed in the December 2018 NRA. The NRA plays an important role in Japan's AML/CFT framework, as it is often the primary source of information used by competent authorities, FIs, VCEPs and DNFBPs, when formulating an understanding of ML/TF risk (see IO 4). Previous iterations of the NRA included similar assessments of the risks associated with legal persons.

471. The NRA concludes that transactions with legal persons 'without transparency' represent a heightened risk factor for ML/TF. This conclusion is based on an assessment of certain characteristics of legal persons that make them vulnerable (e.g. use of informal nominees and complex arrangements to conceal the beneficial owner), without being specific to Japan. The methods and techniques used by criminals in a number of specific ML cases in Japan are also considered. Common methods and techniques include the use of shell companies, illegally obtaining a legal person owned by a third party, obscuring the source of legal proceeds by mixing legitimate and illegitimate proceeds, and using companies to transfer large amounts of assets.

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63 http://houmukyoku.moj.go.jp/homu/touki2.html

64 www.moj.go.jp/ENGLISH/m_minji06_00004.html; www.moj.go.jp/ENGLISH/m_minji06_00004.html

65 Legislation can be accessed from the website of the Ministry of Justice: www.moj.go.jp/hisho/shomu/syokan-horei_horitsu.html

66 Ibid.

67 www.shintaku-kyokai.or.jp/en/trusts/

472. LEAs' experience of investigating ML and financial crime involving legal persons contributes to competent authorities' identification and understanding of risks of legal persons. During the period 2015 to 2017, there were 21 completed cases (i.e. those submitted to the public prosecutor for potential prosecution) for ML involving a legal person 'without transparency of BO'. The majority involved the misuse of stock companies, with several cases of the misuse of limited liability companies and special limited liability companies. The increased frequency of the misuse of stock companies is attributed to their social recognition and high credibility, and therefore they are considered more likely to be exploited by organised crime groups.

473. There are material shortcomings in Japan's understanding of the vulnerabilities associated with legal persons in Japan. Whilst the NRA canvasses the general aspects that make stock companies more likely to be misused, there is no analysis of the specific features that expose them to vulnerability in the Japanese context. This also extends to other forms of legal persons, which do not feature in cases with convictions for ML, but may nevertheless have particular vulnerabilities. Vulnerabilities from bearer share warrants have also not been assessed.

474. Three cases of legal persons being misused are referenced in the NRA. These cases, along with the cases presented during the onsite, support the NRA's conclusion that legal persons in Japan are being misused by mixing legal and illegal proceeds. A similar technique appears to be frequently used in the cases provided where the proceeds of a predicate offence are recorded as legitimate income using a 'shell company' or 'shelf company', and the legal person is used to launder illegitimate proceeds [see box 7.1]. JAFIC has completed analysis of these cases and circulated risk indicators with references to these cases to LEAs and to obliged entities.

Box 7.1 - Case study 2: Use of shell company to launder proceeds

Alleged loan-shark operators and related persons lent to small-business owner/operators at illegally high interest rates and were paid back a total of JPY 370 million (EUR 2.92 million/USD 3.56 million) from multiple borrowers. The bank account used to collect the repayments was opened under a company's name. This drew the attention of the authorities and prompted an investigation. It was found that this account belonged to a shell company that had been conducting no actual business activities and that Boryokudan members and related persons had asked an administrative scrivener to set up the said company. Several suspects who were involved in the loan-sharking operations, the establishment of the corporation, and the opening of the account and were arrested on charges of money laundering, account fraud and other offences.

The primary suspect who masterminded the crime was sentenced to three years in prison, a criminal fine of JPY 10 million (EUR 79,185/USD 96,307), and a tax penalty of JPY 25 million (EUR 197,964/USD 240,768); corporate criminal liability was not invoked.

475. The analysis and understanding of the methods and techniques used to misuse legal persons, while identifying broad themes, lack depth. For example, the sectors that are more vulnerable do not appear to have been considered in detail. Cases where legal persons are owned or controlled by informal nominees are referenced as a risk in the NRA. However, more detailed analysis and deeper understanding of the risks associated with informal nominees specific to Japan has not been explored in the NRA or displayed by the competent authorities. Links to the Boryokudan were referenced in the NRA, and by the authorities during the onsite, however, Japan did not demonstrate an understanding of the specific methods and techniques that the Boryokudan may be using to launder proceeds using legal persons more generally in Japan.

476. While there is an understanding of the ways that legal persons are being misused by mixing illegitimate proceeds with legitimate funds generated by a company, or using a 'shell' or 'front' company to make illegal proceeds appear legitimate, the risks associated with more complex schemes involving legal persons in Japan are not well understood. A material number of foreign legal persons are active in Japan, with the authorities estimating approximately 10% of all new companies created in Tokyo having more complicated ownership structures, involving foreign legal persons and/or chains of ownership (although the proportion is likely to be lower for other districts).

477. There does not appear to be an understanding amongst the authorities (including tax authorities) of the vulnerabilities associated with more complicated structures, nor how they may be being misused. Nevertheless, the overall assessment by Japanese authorities that legal persons 'without transparency' represent a 'high risk factor' for ML/TF appears accurate. This is evidenced by the specific cases demonstrating misuse (cited above). The 21 completed cases over a three-year period appear to represent a small number to substantiate that ML threats are being realised through the misuse of legal persons in Japan. However, there may be a number of other reasons that few cases are ultimately considered by prosecutors, including a lack of detection by FIs/VCEPs/DNFBPs or prefectural police, inability to detect the beneficial owner, or lack of evidence to prosecute ML. See also IO7.

478. Regarding legal arrangements, there has not been an assessment of the ways that legal arrangements could be misused in Japan. Authorities have what appears to be a well-founded view that Japanese 'civil trusts' are a very small sector (both in terms of the numbers of trusts and the significance of the assets held in trust), therefore concluding that they pose a minimal risk based on materiality. The Authorities have drawn the same conclusion in relation to the operation of foreign trusts in Japan, however this finding is not as well substantiated, as there is not a similar understanding of the materiality of the sector. Japan requires trustees operating on a commercial basis to register under the Trust Business Act, and places requirements similar to FIs under the APTCP. This is likely to significantly mitigate the risk of misuse. However, the underlying vulnerabilities have not been identified. For example, the types of trusts that are used and whether there are any specific characteristics that may make them vulnerable, or whether the STRs filed relating to trusts (37 between 2015 and 2017) may indicate any underlying vulnerability.

Mitigating measures to prevent the misuse of legal persons and arrangements

Legal persons

479. Nominee directors and shareholders are not provided for in Japan.

480. Bearer shares have been prohibited since 1990. While it is unlikely that any bearer shares remain in circulation, although effectiveness of the measures taken to identify and mitigate the risk of their misuse are unclear. Bearer share warrants may be issued and the mitigating measures to prevent their misuse are also unclear (see TC Annex C 24.11).

481. The mechanism used by competent authorities in Japan to access beneficial ownership information on legal persons and arrangements is through the information collected by FIs, VCEPs and DNFBPs as part of their CDD processes. The requirement to identify and take reasonable measures to verify the identity of the beneficial owner was established in the APTCP in October 2016. Before October 2016, there was only a need to identify the owner, which could be a legal person, based on self-declaration by the customer. For the customers that are legal persons or trustees that were on-boarded by FIs before October 2016, their beneficial ownership information is expected to be collected by FIs through the ongoing monitoring processes. However, there are weaknesses in the ongoing monitoring process, such that a change in beneficial ownership information of customers may not be a trigger for conducting ongoing CDD. This has a direct bearing on the information obtained as part of customer relationships established before October 2016.

482. All DNFBPs, apart from lawyers and legal professional corporations, are required to undertake similar measures to FIs to establish and maintain information on the beneficial owner (see R.22). However, given the early stage of implementing AML/CFT requirements, limited information on beneficial ownership is available from DNFBPs. Regarding FIs, due to the lack of clear timelines given to ensure that accurate BO is held on all legal persons and legal arrangements following the change in October 2016 (as above), beneficial ownership information is not expected to be available from all FIs. It is not clear how VCEPs are implementing the requirements to identify and verify the beneficial owner (See IO4).

483. Although legal persons can be formed by natural persons in Japan, certain DNFBPs (lawyers and judicial scriveners) help facilitate the administration of the company formation process. This may include drafting the articles of association, engaging with the public notary and registering basic information with the Ministry of Justice.

484. In November 2018, Japan enhanced the role of public notaries, appointed by the Minister of Justice, requiring persons seeking to register a company (under the Companies Act and Act on General Incorporated Associations and General Incorporated Foundations) to identify the beneficial owner (known as the 'substantial controller') and determine any links to organised crime as well as whether the person is subject to targeted financial sanctions (Ordinance for Enforcement of the Notary Act).

485. In order to undertake this process, the notary must collect the name, residence, and date of birth of the beneficial owner, and check whether the beneficial owner is recognised as a member of an organised crime group, or subject to TFS under UNSCR1267 or 1373. Should the notary find that the beneficial owner falls into any of these categories, the notary must request the client or beneficial owner to provide a satisfactory explanation. As a notary cannot create an instrument in violation of the laws and regulations of Japan in accordance with the Notary Act, this effectively means that the notary cannot proceed in certifying the formation of the legal person should the beneficial owner be suspected of being associated to criminality (as a recognised member of the Boryokudan) or to terrorism (as a designated individual) (although membership of an organised crime group is not a specific offence in Japan), or if the notary believes that the legal person will be misused for ML or TF more generally. The notary must be 'acquainted' with the client.

486. There is no form of verification required, and the notary may rely on self-declaration provided by the client to verify the beneficial owner, as this is left to the discretion of the notary to fulfil his or her duty to ensure they have not created an instrument in violation of a law in Japan. In practice, the notary may undertake checks of publically available information such as media reporting particularly if the notary suspects that there is a link to any sort of criminality. In addition, a person who makes a false statement to a notary may be punished by a imprisonment of up to 5 years or a fine of up to JPY 500 000 (EUR 3,959 / USD 4,815),[68] incentivising clients to provide accurate information to notaries regarding beneficial ownership information.

487. There are some limitations on the new system of notaries collecting beneficial ownership information which reduce the reliability of this data set. There are no expectations provided to notaries on the steps they should take and there are insufficient sources of information available to allow notaries to verify the beneficial ownership information in all cases. In addition, the information is only collected at the point of registration and therefore is not updated as beneficial ownership may change in the future.

488. The enhanced role for notaries in the company formation process was introduced in order to provide a secondary source of beneficial owner information to law enforcement and other competent authorities. A 'multi-pronged approach' is generally considered more effective as competent authorities can gain access to information from different sources, and ensure the accuracy of the information by cross-checking.[69]

489. This new mechanism could provide an important source of information for LEAs in the future. Notaries must keep the declaration forms submitted by their clients, and in the majority of cases (around 80%), this is stored electronically. The beneficial ownership information kept in paper form will be stored in a centralised electronic database from April 2020, although there are no plans to make it available directly to LEAs.

490. In order to ensure the credibility of the company register and to prevent the misuse of dormant companies, Japan takes action to dissolve a large number of long-dormant stock companies, striking off those that have been inactive for a period of 12 years. Japan has also been striking off General Incorporated Associations and General Incorporated Foundations that have been inactive for a period of 5 years (see table 7.1 below). This first occurred in 1974, when media attention indicated that criminal enterprises were exploiting dormant companies on the Commercial Registry, sporadically until 2014, and every year since then. While it is not clear that there is frequent or widespread misuse of dormant companies, the reason for initiating the process and the impact of the measures may be limited to some extent (only capturing particular types of companies, and companies that are dormant for a long time), the misuse of dormant or shelf companies represents a vulnerability that Japan has helped prevent by routinely striking off dormant companies.

68 Article 157, Japanese Penal Code.

69 See FATF Best Practices on Beneficial Ownership for Legal Persons.

Table . 7.1. Number of enforced dissolutions

	2014	2015	2016	2017	2018
Stock companies	78 979	15 982	16 223	18 146	24 720
Foundations and associations	478	645	734	992	1 208
Total	79 457	16 627	16 957	19 138	25 928

Source: Ministry of Justice

Legal arrangements

491. The mechanism used by competent authorities in Japan to access beneficial ownership information on legal arrangements is through the information collected by FIs, VCEPs and DNFBPs as part of their CDD processes on customers and transactions. However, there is no explicit obligation on customers of FIs, VCEPs or DNFBPs to declare their status as a trustee as part of the CDD process. Nevertheless, FIs and VCEPs are required to check their customer's transaction purpose, occupation (for natural persons) and contents of business (for legal persons).

492. The ways that trusts in Japan can be formed and may operate is enshrined in the Trust Act and Trust Business Act. There are no other legal arrangements that can be formed under Japanese law. Traditionally, trusts have been created in Japan for commercial purposes, and for this reason major financial institutions are also licensed to provide trust company services for retail and institutional customers.

493. The system requires beneficial ownership information to be retained by trust companies, and/or other FIs, VCEPs and DNFBPs that provide services to the trust as part of CDD and arrangements for ongoing monitoring under the APTCP. However, weaknesses in supervision and implementation of AML/CFT requirements by FIs and DNFBPs (see IO 3 and 4) mean that complete BO information may not always be available to competent authorities on the beneficial ownership and control of a trust.

494. AML/CFT measures have been implemented to prevent the misuse of commercial trusts formed under Japanese law. Persons or entities forming or managing trusts in Japan that are engaging in business activity or providing trust services in a professional capacity must be licensed as a trust business or a trust company, that are included as FIs and are subject to the full AML/CFT requirements under the APTCP. In light of the strong connection between trusts and financial activity in the Japanese economy, this framework establishes a comprehensive deterrence against the misuse of legal arrangements. However, noting that there are only 25 licensed trust companies, it is possible that unlicensed trust businesses are operating in the country.

495. The above legal obligations also apply to 'Foreign Trust Business Operator' 'Foreign Trust Company' or 'Foreign Custodial Trust Company' engaged in Trust Business in a foreign country in accordance with that country's laws and regulations that enter the Japanese market for the purposes of conducting a 'trust business'. Currently there are no foreign trust businesses or companies registered in Japan.

496. There are very few mitigating measures applied directly on civil trusts established under the Trust Act that are not formed by professional intermediaries or do not rely on professional trustees (trust businesses or companies) to exercise their obligations as trustee. This is also the case for foreign trusts operating in Japan that do not register as trust businesses or companies. Despite these gaps, trustees of domestic civil trusts and foreign trusts would be subject to CDD when they undertake business with FIs, VCEPs and most DNFBPs. Despite the general CDD requirements in place, trustees are not required to declare that they are a trustee when forming a business relationship with an FI or DNBFP (see TC Annex, c. 25.3).

497. Japanese authorities have indicated that civil trusts and foreign trusts operating in Japan are uncommon, and have concluded that they do not pose significant ML/TF risks. As outlined above, while this appears well founded for civil trusts, there are concerns that foreign trusts represent a wider range of risks and the mitigating measures may not be adequate.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

498. LEAs and other competent authorities can access some basic information on legal persons directly from the Commercial and Corporation Registration System, which is also available to the public. This is available from the website instantaneously upon request, and covers the information that is in the articles of incorporation, although this is not updated after the company has been incorporated and registered with the Company Registry. The notary interviewed during the onsite confirmed that in the majority of cases the beneficial owner can be determined from the information in the articles of incorporation, as it includes information on the share allocation when the company is incorporated.

499. More up-to-date and detailed basic information must be requested from the head office of the specific legal person. There are no specific requirements that require the company to respond, beyond more general requirements for the production of documents on request by LEAs (see TC Annex, c31.1). Basic information including information on the directors and shareholders should be held by stock companies (the most common type of legal person in Japan) and kept up-to-date, however this is not the case for other forms of legal person, and it is not clear how quickly legal persons could – or would - respond.

500. BO information on legal persons may be obtained from FIs, VCEPs and DNFBPs, to the extent that it may be available. JAFIC confirmed that BO information collected in the course of CDD is commonly submitted as part of an STR by obliged entities when there is suspicion of ML or TF involving a legal person. This initial information is made available to all LEAs through the FIU's dissemination of nearly all STRs ahead of any investigation triggered in response to an STR (see IO6).

501. In the cases where an STR has not been filed with beneficial ownership information attached, there are concerns that LEAs cannot obtain beneficial ownership information in a timely manner. This is due to the time necessary to obtain some basic information from companies directly, particularly when they are not compelled to respond, and the need to consult multiple FIs, VCEPs and DNFBPs to obtain beneficial ownership information when it may not be clear which institution or professional intermediary may hold a customer account. Although the MOJ and LEAs have advised that this information can be obtained from FIs, VCEPs and DNFBPs within one day, and no delays have ever been experienced, it is unclear how this is the achieved particularly in relation to more complex cases.

502. Examples provided by Japanese authorities only illustrate cases where information on basic ownership was needed for the investigation, with the exception of two cases (one of which is an ongoing investigation, and the other, provided below, was uncovered as part of a high-profile investigation). In addition, almost all of the cases involved investigations into the predicate offence where information on the legal person involved was discovered as part of the investigation (e.g. through a confession, surveillance etc.).

503. It is possible that the limited number of enquiries for BO information is partly due to the risk profile of the country, where more complex structures of legal persons (i.e. structures with chains of ownership) are rarely used to launder the proceeds of crime. However, it may also be due to the fact that information is not available on these structures, STRs are not filed by FIs, VCEPs or DNFBPs, and they are not detected by competent authorities. Given the Japanese economy is sophisticated, with well-developed international links and complex company structures frequently employed for the purposes of conducting legitimate business,[70] and a material number of more complex structures formed every year, it is possible that these structures are also misused by criminals.

504. Cases of informal nominees being used to conceal links to money laundering through legal persons have also been detected. Given weaknesses in the verification of BO information (see IO4), laundering by informal nominees may represent a significant vulnerability. FIs, VCEPs and DNFBPs can get access to different sources of information on the names of Boryokudan (although the accuracy of those lists remains an issue – see IO4). Nevertheless, it is unlikely that FIs, VCEPs and DNFBPs would be able to detect other associates acting on behalf of Boryokudan members, particularly when more complex arrangements are used.

[70] See www.imf.org/en/Publications/CR/Issues/2017/07/31/Japan-Financial-System-Stability-Assessment-45151) on the global reach of Japanese financial institutions and businesses. See also www.ey.com/Publication/vwLUAssets/EY-top-five-thoughts-to-consider-when-investing-in-japanese-real-estate/$FILE/EY-top-five-thoughts-to-consider-when-investing-in-japanese-real-estate.pdf on the more complex arrangements that may be recommended by professional services firms.

Box 7.2 Case study 3: Case involving Boryokudan and use of informal nominees

Boryokudan members and related persons wanted to secure an account transfer from a firm which had been deceived through fake business deal offer made via email. Through an acquaintance, the said Boryokudan members contacted a person, who held a corporate account at a financial institution in Japan. They conspired with that corporate entity in question and others and tricked the Taiwanese firm, which believed the fake email was real, into crediting E's account with some JPY 19 million (EUR 150 452/USD 183 000). The fraudsters were arrested on the grounds that, among other reasons, they had lied to the financial institution's staff that they were conducting a legitimate business deal and cashed-in the remittance, which was in fact money obtained from the victim through fraud.

Box 7.3 Case study 4: Case involving informal nominee

Detailed examination was conducted on evidence seized from suspect A related to violations of the Pharmaceutical Affairs Act, which involved proceeds of crime amounting to JPY 10 million (EUR 79,185 / USD 96 307). The involvement of corporation B was suspected and the police asked a financial institution and the Legal Affairs Bureau (registry office) to submit the CDD information of the corporation B and the documents submitted by the corporation B at the time of incorporation respectively, as well as conducting searches and inspections of the corporation.

It was identified that suspect A was the beneficial owner of corporation B and they were arrested for ML (violating Article 9 of the APOC). As a result, suspect A passed on the control and management of corporation B to accomplice C who became a director. Ultimately, both suspect A and accomplice C were convicted of violations of the Pharmaceutical Affairs Act. Suspect A received a sentence of imprisonment for 3 years with suspension for 5 years, fine of JPY 6 million (EUR 47,511 / USD 57,784) and forfeiture of JPY 10 million (EUR 79,185 / USD 96,307). Accomplice C received Imprisonment for 2 years and 6 months with suspension for 5 years and fine of JPY 3 million (EUR 23,756 / USD 28,892).

505. Explanations from LEAs during the onsite indicated that there may be an inconsistent understanding of what beneficial ownership information constitutes, and how this is different to basic information. Given the mechanism for collecting beneficial ownership information is relatively new, more needs to be done to support investigation agencies understand the mechanisms available to obtain beneficial ownership information.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

506. FIs, VCEPs and DNFBPs are obliged to obtain and hold BO information on the beneficial ownership and control of a customer, including when the customer is a trustee transacting on behalf of a trust. Competent authorities are able to request such information from FIs and DNFBPs, to the extent that it may be available. As relevant, this information would be submitted as part of an STR by obliged entities when there is suspicion of ML or TF involving a trustee. This initial STR information is made available to LEAs from the FIU ahead of any investigation triggered in response to an STR.

507. In the absence of an STR, it is not clear how LEAs first determine which FI, VCEPs or DNFBP hold accounts or assets of a trustee (i.e. which banks hold the assets of the trust) or which trust business or company or private trustee is acting as a trustee for the trust when conducting an investigation in a timely manner. This problem may be alleviated to some extent for trust companies and businesses operating under the Trust Business Act, whose registration is published on the JFSA website, which enables LEAs to approach them directly. However, in the case of a 'civil trust' under the Trust Act and a trust formed under another country's law, LEAs will be solely reliant on FIs and DNFBPs.

508. Although authorities advised that this information can be obtained from FIs and DNFBPs within one day, and no delays have ever been experienced, it is unclear as to how law enforcement agencies can achieve this.

Effectiveness, proportionality and dissuasiveness of sanctions

509. Japan has available proportionate and dissuasive sanctions for natural persons that fail to comply with the obligations on legal persons to fulfil their obligations to register, submit basic information, and maintain it. Directors may be subject to a non-penal fine of up to JPY 1 million (approx. EUR 7,918/USD 9,630), and persons making a false statement may be imprisoned for not more than 5 years or receive a fine of not more than JPY 500 000 (approx. EUR 3,959/USD4,815). Proportionate and dissuasive sanctions are not available for legal persons themselves.

510. Japan has been consistently applying penalties to persons for failures to submit accurate basic information to the company registry – directors in the information provided to the assessment team. The numbers of penalties have been falling each year (see table below). It is not clear why this is the case. . It is also not clear whether penalties have been issued for the failure for companies to maintain basic information at their head office.

Table 7.2. Number of Penalties for Natural Persons Failing to submit information to the Commercial Registry

	2014	2015	2016	2017	2018
Offense of False Entries in the original of Notarized Deeds	142	112	93	81	70

Source: Supreme Court of Japan

511. There are proportionate and dissuasive sanctions available for trustees that fail to comply with their obligations. No information is available on any sanctions that have been applied to trustees for failing to uphold their obligations.

Overall Conclusion on IO.5

There is a low level of understanding of ML and TF risks relating to legal persons and arrangements in Japan across the public and private sectors, despite the identification of legal persons as presenting high risks for ML in the NRA.

Since October 2016, FIs and most DNFBPs are required to collect and take reasonable measures to verify beneficial ownership information on legal persons and arrangements, and since November 2018 public notaries are involved in verifying beneficial owners of new companies as part of the incorporation of legal persons. However, weaknesses in the implementation of ongoing CDD requirements in relation to these relatively recent obligations means that there are gaps in the availability of beneficial ownership information. Limited information on the utility that LEAs make of BO information also raise concerns about the effectiveness of these mechanisms. Nevertheless, the checks by notaries, FIs and DNFBPs that are now required should help prevent the misuse of newly formed legal persons. In context of Japan's importance as regional and global financial centre and role in international trade, and the methods that criminals are employing to exploit legal persons and arrangements in Japan, major improvements are needed in order to ensure legal persons and arrangements are prevented from misuse, and information on their beneficial ownership is available to competent authorities in a timely manner.

Japan is rated as having a moderate level of effectiveness for IO.5.

Chapter 8. INTERNATIONAL CO-OPERATION

Key Findings and Recommended Actions

Key Findings

a) Providing constructive and timely international cooperation is a stated priority for all relevant authorities. Domestic processes for responding to MLA requests operate well and relevant authorities have specified units to handle the MLA requests and information exchange to ensure the quality of assistance provided.

b) Dual criminality is not an obstacle to providing assistance.

c) The main counterparts for cooperation are in line with the Japan´s context and risks covering the relevant geographical locations (Asia, Europe) and major financial centres/hubs (US; Hong Kong, China; Singapore; and the UK).

d) Japan has limited experience of assets being repatriated from other jurisdictions. Japan has provided assistance to other countries in confiscating property of equivalent value located in Japan.

e) In general, Japan does not extradite its own nationals but has extradition treaties with two countries that overcome this bar. Japan has demonstrated its ability to execute extradition requests from other jurisdictions but the judicial framework for cooperation could/should be reinforced.

f) Outgoing MLA requests are relatively low across all crime types. However, the number is increasing, which is a positive sign. It remains questionable whether Japan uses MLA to a full extent to investigate ML cases and to trace assets. The low number of requests for foreign assistance may contribute non-prosecution due to insufficient evidence (see IO 7).

g) Japan routinely uses other forms of international cooperation in a timely manner, for exchanges of information (JAFIC, NPA, JFSA) as well as for investigations (LEAs). Japan maintains a network of LEA representatives overseas (NPA) who seek and coordinate international cooperation. This assists with overcoming challenges and support timely and good quality outgoing and incoming assistance.

h) There is room for improvement especially on voluntary dissemination, considering the risk and context of international transactions as outlined in the NRA.

i) Relevant authorities can provide basic and beneficial ownership (BO) information on legal persons and arrangements to foreign partners, but they face the limitations identified in IO 5 regarding the verification of the BO information.

Recommended Actions

Japan should:

a) Continue to enhance the active requests for AML/CFT international cooperation from foreign partners in keeping with Japan's risk profile.

b) Further improve MOJ and NPA's training, guidance and awareness raising on international cooperation and MLA to PPO and prefectural police personnel to enhance and promote seeking MLA, extradition and asset recovery routinely in all relevant cases.

c) Ensure that supervisors, particularly JFSA, continues to maintain current cooperation and further develop international cooperation especially for AML/CFT supervisory cooperation and information exchange. In addition, supervisors should maintain comprehensive statistics on their AML/CFT supervisory information exchange with foreign counterparts to demonstrate the effectiveness of international cooperation.

d) Further enhance and prioritize JAFIC and the NPA's spontaneous disseminations of financial intelligence and information to foreign partners, including further developing mechanisms to recognise and select the potential international cases in keeping with the risk profile.

e) To avoid varying interpretations and reinforce the current slackened dual criminality requirement, Japan should consider introducing dual criminality as discretionary requirement (in addition to MLAT/MLAAs) to the law.

f) Seek to negotiate more treaties on extradition to further cover its main counterparts with shared risks in international cooperation and provide a basis to extradite nationals in those cases.

512. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.15.

Immediate Outcome 2 (International Co-operation)

513. The assessment team based its conclusions on a variety of information provided by Japanese authorities, including: discussions held with relevant authorities during the onsite, data and statistics maintained by the MOJ, as well as qualitative and quantitative information maintained by a range of agencies on 'informal' cooperation. The team considered feedback provided from FATF and the global network as part of the ME process on their international cooperation experience with Japan. The team also reviewed numerous cases demonstrating the practice of international cooperation taking into account Japan's risk and context.

Providing constructive and timely MLA and extradition

Mutual Legal Assistance (MLA)

514. Japan generally provides timely and constructive MLA and extradition and responses are of high-quality. MOJ is the central authority in the majority of the bilateral MLAT/MLAAs and multilateral treaties, and accordingly communicates and coordinates with other countries as well as with domestic authorities. Relevant authorities (MOFA, MOJ, PPO, NPA and the Prefectural Police) have sufficient mechanisms and resources to handle incoming MLA requests, which are relatively low in number (see tables 8.1. and 8.2). There are specified units in these authorities to handle the MLA requests and ensure the quality of assistance provided and judicial considerations needed. The specified units offer their judicial, practical and country specific experience to ensure that good quality assistance is provided in a timely manner. Co-ordination and prioritisation of MLA requests were shown to work well.

Table 8.1. Human resources to handle MLA requests and international information exchanges in specified units

MOFA	8 persons for operational MLAs 13 persons for multi-national operation (for example preparation and negotiation of treaties) (This number is personnel working in full time on MLA related matters in MOFA Headquarters)
MOJ	16 persons MOJ attaches dispatched abroad in Japanese embassies in major cities
NPA	12 persons Police attaches stationed in requesting countries
PPO	Nominated prosecutors in central and regional level
JAFIC	10 persons

Source: Japanese authorities

Table 8.2. Number of MLA requests received

	2014	2015	2016	2017	2018
Requests received (total number)	62	70	79	54	94
Money Laundering related	6	12	6	2	9
Terrorist Financing related	0	0	0	0	0

Source: MOJ

515. Japan takes a constructive and proactive approach to providing MLA. The MOJ website provides relevant guidance on requesting MLA which is available in English[71].

[71] www.moj.go.jp/ENGLISH/information/liai0002.html

516. International cooperation is treated as a priority in all relevant authorities. The timeliness of handling MLA requests was shown to be reasonable in agencies handling such requests, varying in case examples provided from 0.5 months to 10 months. The exact time to respond varied reasonably, depending on the quality of the request, nature of the case and the extent of measures needed. For the ML-related MLA requests that Japan received in recent years, the requested evidences were sent as early as 0.5 month after the request was received from the foreign authority in the fastest case. The feedback from FATF global network members on the provision of MLA by Japanese authorities on ML/TF related cases was generally positive.

Box 8.1. Timeliness of providing information - MLA request received concerning immigration and arrest records

A foreign partner requested MLA to obtain immigration and arrest records of a suspect in a potential case of illegal drug sales and ML which was under investigation in the foreign country. Japanese authority provided the requested evidence three months after the acceptance of the inquiry.

Box 8.2. MLA provided by Japan in relation to a fraud and ML case

Japan responded to an MLA for a potential case of fraud and concealment of crime proceeds in a foreign country. Information was obtained concerning a bank account (the name of the account holder, documents submitted when the account was opened, transaction records, etc.) suspected to have been used to commit the fraud and concealment of the proceeds. The MLA extended to an interview of the identified holder of the bank account. Although the account holder had been relocated and thus was missing at first, Japanese authorities managed to identify the location of the person promptly and provided the requested evidence 10 months after the acceptance of the request, which reasonably reflected the investigation work required to meet the MLA request.

517. In the MLA requests for investigations of ML-related cases, information on bank accounts used for ML, information on customs documents, records on cases investigated in Japan as well as interviewing of persons suspected of being involved are usually requested.

518. When processing the MLA requests, the prosecution ratio of cases (see IO 7) or issues of dual criminality do not have an effect on the practical work or the volume of assistance provided. As outlined in R.37 (see TC Annex), dual criminality requirements are discretionary under the various MLAT/MLAAs. When dual criminality is required, authorities recognize it as long as the series of tangible facts actually performed by the offender contain any act that would constitute an offence, should it be committed in Japan.

519. Technical legal differences that may exist between Japan and the requesting country, such as differences in the classification or definitions of offences, do not prevent Japan from providing MLA, as requirements are interpreted in a flexible manner. Overall, it has been rare that Japan rejected MLA requests on that basis. Both in considering dual criminality element and requirement to proof of essence, any fact, information or evidence in request is taken into consideration in this respect. The case examples presented during the onsite visit support this conclusion.

520. Japan is able to use diplomatic channels and cooperation with treaty partners (bilateral and multilateral) to support MLA. Of the incoming requests, 85% are handled based on treaties and agreements. The existing set of treaties and agreements provides fill the need of assistance between Japan and its counterparts. Of the incoming requests, 15% are processed via diplomatic channels by MOFA.

521. Japan has ratified the Merida convention and Palermo convention in 2017 and it has bilateral MLAT/MLAA with 32 countries and regions, which further expands the number of countries and regions with which Japan can execute MLA requests without going through diplomatic channels. Japan is also able to execute the MLA request based on principle of reciprocity when there is no treaty with the requesting country.

Table 8.3 Bilateral MLAT/MLAAs

U.S. MLAT	June 2006
Japan-Republic of Korea MLAT	December 2006
Japan-People's Republic of China MLAT	October 2008
Japan-Hong Kong MLAA	August 2009
Japan-European Union MLAA	December 2010
Japan-Russian Federation MLAT	November 2010

Source: MOJ

522. Because of confidentiality concerns, Japan did not disclose the jurisdictions from which the MLA requests have been received, but only referred to the regions. The incoming requests are mainly from: Europe (12 countries), North and South America and Asia.

523. Japan indicated that it has an extensive network of police liaison officers located in Japanese foreign missions. Japan did not to provide any details on the numbers of these NPA attachés or the jurisdictions where they are located as this is confidential information. Japan indicated that officials are strategically posted to jurisdictions deemed high priority for Japan based on risk. These posted personnel are available to assist their host countries in making MLA and asset recovery requests that are complete and compliant with the Japanese legal requirements in the first instance and actively assist in providing guidance to requesting countries where possible.

Asset Recovery

524. Japan received a limited number of requests related to provisional measures or confiscation: 11 requests in the period 2014-2018. Japan demonstrated that it was able to take suitable action to respond to these incoming requests. In some cases, additional information had been provided to Japan for its execution of the requests.

Extradition

525. Japan has extradition treaties with the United States (concluded in 1980) and South Korea (concluded in 2002) and is in negotiation with China.

526. In the period 2014-18 Japan has received over 20 requests for extradition of which Japan has successfully executed 5 requests. For the rest of the requests some had been withdrawn by the requesting countries, and some requests remained pending at the time of the onsite visit, subject to an ongoing process. It is meaningful to only look at overall figures instead of figures by year, as the requests are not necessarily executed within the same year they are received. Despite the number of pending cases, Japan has demonstrated its ability to execute the requests successfully.

527. In some cases extradition has not been possible for a number of practical underlying reasons behind the cases (fugitive not being in Japan, or the requests being withdrawn. There are also cases where not all judicial elements were fulfilled (period of statute of limitations, no probable cause, no dual criminality). The time to execute the requests varied from 3 months to 13 months. Japan has rarely rejected extradition request. While the extradition law excludes the extradition of Japanese nationals, bilateral extradition treaties with the United States and with South Korea allow the extradition of nationals at the discretion of the requested party.

Box 8.3 A case in which Japanese nationals were extradited

Two Japanese fugitives, who were former executives of a US investment managing company, were accused of fraudulently soliciting investments from Japan-based investors by giving an untruthful explanation on the use of the invested funds in relation to investment in the company's business of purchasing medical accounts receivable. The two Japanese fugitives were extradited to the United States in April 2019.

Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

MLA

528. Relevant authorities (MOFA, MOJ, PPO, and NPA) have specified units to handle the outgoing requests to ensure the quality of the requests and adequate consideration of judicial issues as needed. The centralized units offer their judicial, practical and country specific experience to ensure that good quality requests are sent in a timely manner. Ultimately, the Prefectural Police or PPO decides, after consultation with the central units of NPA and MOJ, the necessity of the request. There is a network of liaison officers and attaches dispatched to overseas diplomatic missions in major overseas cities to further support and facilitate the work and to coordinate and cooperate with local authorities. If it is necessary, Japanese authorities engage in practical discussions with foreign authorities to prove the importance of the request and to provide further information to the requested authorities in other countries.

529. Japan makes many more MLA requests than it receives. In 2018, the total number of outgoing requests was 180. Statistics show an increase of outgoing requests in general in recent years (2014 – 2018). However, considering that ML cases are usually cross-border in nature, the numbers of ML related outgoing MLA requests seem to be low.

Table 8.4 Number of MLA requests sent

	2014	2015	2016	2017	2018
All Requests Sent by the NPA	77	53	83	109	156
ML-related Request Sent by the NPA	5	5	5	1	4
Requests Sent by the MOJ	18	13	14	9	24
ML-related Request Sent by the MOJ	0	2	1	2	3

Source: MOJ and NPA

530. Considering the population, size of economy, amount of the potential predicate crimes annually and the fact that the NRA found transactions with foreign nationals to be higher risk, the MLA figures are relatively low. Japan should effectively seek information and assistance from abroad to investigate the cases and to trace the assets to full extent. In investigation of trans-national ML cases, police make only some MLA requests. The ratio of non-prosecution due to insufficient evidence in international ML cases (see IO 7) could be tackled partly by engaging actively in international cooperation to seek relevant information and evidence and to trace assets. Based on the figures, it seems that the threshold to request information and evidence from abroad is high. MOJ and NPA provide training and share good practices for PPOs and Prefectural Police. However, it still remains questionable whether NPA and Prefectural Police uses capacities available to seek information to full extent.

531. Because of confidentiality concern, Japan did not disclose the jurisdictions to which the MLA requests have been sent, but only referred to the regions. The outgoing requests are mainly sent to: Europe, Asia and North America. 77 % of outgoing requests are handled based on treaties and agreements, there seems sufficient coverage to fulfil the need between Japan and its counterparts. Of the outgoing requests, 23% are processed via diplomatic channels by MOFA.

532. Jurisdictions of the FATF global network who provided feedback on Japan´s outgoing MLA requests highlighted the general good quality of the requests, which usually contained sufficient elements for foreign authorities to execute the requests.

Asset Recovery

533. Japan has requested confiscation or collection of value in multiple cases, of which only one case has been completed. This is not consistent with Japan's risk profile, or its overall use of MLA. In this particular case, assets have been repatriated to Japan from another country (European country). Japan´s experiences in this respect are therefore limited. Japan should seek more effectively information and assistance from abroad to trace the assets and confiscate the proceeds to a full extent.

Extradition

534. Japan has made very few requests for extradition. Only 4 fugitives have been extradited from foreign countries to Japan in the period 2014 – 2018. None of these fugitives were related to ML or associated predicate offences. In the event that the country where the fugitive fled to is unlikely to extradite for reasons such as a lack of an extradition treaty, Japan is able to requests the country to punish the offender in accordance with the local criminal provisions. Japan has, in such cases, provided evidence spontaneously and upon request for assistance in investigation. There has been cases where the request for extradition was considered, but it was found that the offender was subject to the compulsory deportation from that country. As result, offenders were deported to Japan. It is not known whether the offenders were subsequently prosecuted in those instances.

Seeking other forms of international cooperation for AML/CFT purposes

JAFIC

535. JAFIC proactively uses agency-to-agency international co-operation for AML/CFT purposes. JAFIC has sufficient mechanisms in place to facilitate the information exchange and has signed a large number of MOUs (in total 107 MOUs by the end of onsite visit) with foreign FIUs and is able to rely upon the Egmont framework for FIU to FIU exchanges (see IO 6). Operationally high-priority countries are covered by the MOU framework. JAFIC's MOUs provide mechanisms and increase the efficiency for information exchange. The main counterparts in JAFIC's operational information exchange are FIUs of Hong Kong, China; United States; China; South Korea; Philippines and Thailand. These counterparts reflect Japan's risk profile to a large degree. In JAFIC, 10 officers are engaged in international cooperation work, which adds to effectiveness.

536. The overall number of the outgoing information requests to foreign FIUs has steadily increased during the period under review. Case example below illustrates that authorities use all possible channels of information exchange to obtain the necessary intelligence to facilitate the investigation. However, despite of the increasing number of requests sent by JAFIC in recent years, there is room for improvement, taking into account of Japan's high volume of STRs (see IO 6) and risks in NRA related to international transactions. JAFIC could even more actively engage in international cooperation to trace the criminal proceeds from abroad.

Table 8.5 Number of information requests to foreign FIUs

	2014	2015	2016	2017	2018
Number of requests	166	183	149	201	255

Source: FIU

Box 8.4 Use of information provided by an overseas FIU

In July 2017, JAFIC requested FIU of Country A to provide information to help uncover how scammed money had been used in a fraud case where a total of about 7.4 billion yen was swindled (damages: about 0.96 billion yen) from about 50 victims. Country A provided relevant information in September of the same year. One piece of information about a large cash transaction by the accused and 102 pieces of information about reported currency exchanges by him led to the revelation that he had spent several tens of millions of yen at casinos.

Investigative cooperation was also requested via the ICPO-INTERPOL channel to turn the information into evidence. Consequently, the accused was arrested in August 2018 and given a sentence of imprisonment with work (5 years and 6months) in March 2019.

NPA

537. The NPA has a special unit with sufficient resources to carry out international cooperation between police authorities. The NPA is capable of exchanging information with more than 190 countries and regions via the ICPO-INTERPOL. NPA serves as a contact point for inquiry assistance from domestic investigation authorities to foreign investigation authorities. In NPA, 12 staff members are engaged in the exchange of information.

538. As of 2018, NPA has specific arrangements with police authorities in six different countries regarding exchange of criminal information, cooperation and exchange of information and experiences concerning police operations. These include China, South Korea, Australia, Brazil, Serbia and Turkey. Together with ICPO-INTERPOL mechanism, the operational needs are covered by these arrangements.

539. The number of ICPO-INTERPOL requests related to ML are limited, but there seems a steady increase in recent years (2016 – 2018). The low number of ML cases in statistics leave room for consideration whether the evidence and proceeds of crime are effectively sought from abroad. Especially for ML cases, which often involve cross-border elements, usually there is a need to seek information and evidence from other countries. As set out in IO7, in 2018, Japan has completed 511 ML cases and so the request for information seems comparatively low, noting though that ICPO-INTERPOL and Egmont Secure Web (see IO 6) are both available and used in cases.

Table 8.6. Number of requests for provision of information via ICPO-INTERPOL to overseas investigative authorities

	2014	2015	2016	2017	2018
Number of requests	371	318	294	327	445
ML related requests	3	4	7	6	16

Source: NPA

JFSA

540. JFSA participates in strategic and policy level mechanisms and forums for international cooperation, which aim to formulate and implement international AML/CFT standards. JFSA also bilaterally engages foreign counterparts to exchange opinions and information on AML/CFT. The major counterparts for cooperation are from jurisdictions in which Japanese financial institutions have regional headquarters, namely: United States; United Kingdom; Singapore; and Hong Kong, China.

541. JFSA has also signed IOSCO MMOU, IAIS MMOU and bilateral EOLs to further facilitate supervisory co-operation, including the exchange of supervisory information. In addition to 27 officials responsible for supervisory colleges and supervision of banking, securities and insurance sectors in International Affairs Office, 5 other officials from International Affairs Office and AML/CFT Policy Office are responsible for AML/CFT related international cooperation. The JFSA is a home supervisor of global financial groups, including G-SIFISs (see Table 1.1), and hosts annual supervisory colleges, which are platforms for Home-Host supervisory authorities to interact and share information, for four financial groups. Prudential supervision is the main focus of supervisory colleges, although AML/CFT can also be the subject of discussion as needed. Japan did not demonstrate that risk-based AML/CFT supervision has been a regular focus of these supervisory colleges, but JFSA clarified that AML/CFT has been one of the major issues in the supervisory colleges especially in recent few years. These colleges should be better utilised for AML/CFT supervisory cooperation and information exchange, in parallel to prudential aspects.

542. JFSA cooperates internationally through interactive information exchanges with foreign counterparts in a variety of ways, going from emails and document exchanges to face-to-face meetings (including supervisory colleges). The number of JFSA's operational requests sent to foreign countries is not systemically collected or recorded. JFSA calculated from the minutes of supervisory colleges or bilateral teleconferences/meetings and came to the annual number of information requests to the foreign counterparts, which are "at least 34 in 2018 and 33 in 2019 respectively". However, it remained unclear how well those requests are focused on AML/CFT matters. Compared to incoming requests (see table 8.11), there is room for improvement and JFSA should keep up with this cooperation and more proactively seek AML/CFT supervisory cooperation on its own initiative.

543. Based on the discussion during the onsite and information provided on information exchanges in supervisory operation, it appears that the JFSA strategic and policy level cooperation is active and in good progress. To a large extent, international cooperation conducted by the JFSA is mainly concentrating on prudential aspects and policy level discussions. Japan´s role as one of the most important financial hubs in the region requires more efforts from JFSA to seek the operational cooperation and information exchange on AML/CFT supervision of specific FI. This is to ensure the communication between AML/CFT supervisors and to avoid gaps in AML/CFT supervision, when the FI is operating in several jurisdictions.

Securities and Exchange Surveillance Commission (SESC)

544. SESC is active in seeking international cooperation for criminal investigations under its remit (see Chapter 1, section Criminal justice and operational agencies), although the main focus is not AML/CFT cases but other crime types such as insider trading. There were 118 requests processed by SESC between 2014 and 2018 including cases where the SESC requested foreign authorities to provide information based on the IOSCO MMOU. The requests led to a number of follow-up actions, including to 10 criminal charges being filed.

Customs

545. Japan Customs demonstrated a strong focus and capability for international cooperation which is largely in keeping with the risks. Japan Customs have robust framework of agreements for mutual support with foreign customs authorities. Information can be exchanged with 35 countries and regions in a prompt, constructive and effective manner.

National Tax Agency (NTA)

546. NTA exchanges information with tax authorities in 135 countries and regions to prevent tax evasions and avoidance. NTA requests information from foreign tax authorities and appropriately communicates tax related issues.

Providing other forms international cooperation for AML/CFT purposes

JAFIC

547. JAFIC proactively provides financial intelligence to foreign FIUs. There has been an increase in numbers, especially of voluntary provisions of information by JAFIC.

Table 8.7. Number information provisions by JAFIC

	2014	2015	2016	2017	2018
Requests received	34	67	60	66	72
Refused	0	0	0	0	0
Number of times information has been voluntarily provided	17	30	46	48	101

Source: FIU

548. Timeliness for information exchange slightly varies from year to year and is now in good level. In 2018, JAFIC responded to requests on average in 12.6 days and the improvement in recent years indicates good tendency towards more efficient international cooperation.

Table 8.8 Average number of days for JAFIC's provision of financial intelligence to foreign FIU

	2014	2015	2016	2017	2018
Average number of days	19.0	13.3	27.9	16.0	12.6

Source: FIU

549. There is still potential for improvement of JAFIC's provision of international cooperation, based on increasing numbers. JAFIC should actively engage in international cooperation to trace criminal proceeds from abroad. JAFIC has functioning mechanisms, channels and dedicated expertise on this, but should make full use of them.

NPA

550. The NPA receives a relatively small number of requests through ICPO-INTERPOL channels, but the figures are much larger than outgoing requests. The numbers of incoming requests have remained steady over the period under review.

551. NPA and other LEAs actively respond to the requests. As needed the NPA instructs the prefectural police and/or request other LEAs, such as the Japan Coast Guard, to conduct necessary investigations.

552. NPA's voluntary information exchanges (i.e. spontaneous outgoing information sharing) are very low and have decreased in recent years (2015 – 2018. This may give an indication of increasing complexity of cases and/or resource challenges to maintain efficient information exchange.

Table 8.9 Number of Information Provided by the National Police Agency

	2014	2015	2016	2017	2018
Number of entrusted requests for information provision	3,021	1,993	1,698	1,815	1,693
Number of implementations	3,020	1,991	1,696	1,812	1,686
Number of refusals	0	0	0	0	0
Number of outstanding cases	1	2	2	3	7
Voluntary information provision	97	98	54	44	31

Source: NPA

553. The timeliness of processing requests is reasonable. In 2017 and 2018, the average response time were 70.90 and 74.99 days respectively, which show some extension compared to previous years. The processing time is also depending of the complexity of the case and quality of the request. Number of refusals and outstanding cases is very low, which indicates diligent handling of the requests.

Table 8.10 Average number of days required by the National Police Agency to respond to requests for information

	2014	2015	2016	2017	2018
Average number of days	29.97	43.39	43.57	70.90	74.99

Source: NPA

JFSA

554. The JFSA receives a large number of vetting requests from foreign counterparts on the appointments of Japanese nationals or applicants with Japanese connections as directors or other senior positions, for the purpose of fit and proper screening. These requests cover bank, insurance and securities firms. Requests from Asian authorities, such as Hong Kong, China and Singapore, account for the majority of the requests. JFSA's contact points forwards requests to the supervisory departments within the JFSA for verification with the internal records and the result is sent back by the JFSA's contact point to the requesting authority without delay. The numbers of the requests and positive feedback from other jurisdictions demonstrate JFSA's active cooperation in providing the requested information.

Table 8.11 Number of vetting requests received for Fit and Proper screening

Sector	2016	2017	2018
Banks	48 requests 11 jurisdictions	61 requests 14 jurisdictions	70 requests 14 jurisdictions
Securities	84 requests 14 jurisdictions	49 requests 13 jurisdictions	89 requests 24 jurisdictions
Insurances	10 requests 4 jurisdictions	6 requests 3 jurisdictions	8 requests 5 jurisdictions

Source: JFSA

555. The mechanisms for policy cooperation and the supervisory colleges outlined above, while chiefly prudential in focus, would provide a basis for JFSA to receive requests for cooperation from foreign supervisory partners.

NTA

556. The NTA responds to information requests, voluntarily provides information and has mechanism in place to automatically exchange of information on non-residents financial account information based on CRS (Common Reporting Standard). There seems to be variation in volumes, but statistics together with cooperation framework (see above in 8.1.3) demonstrate NTA's ability to provide information on request.

Table 8.12 Number of provision of information by the NTA

	2014	2015	2016	2017	2018
Number of entrusted requests for information provision	125	158	415	137	191
Voluntary information provision	317	186	272	157	126

Source: NTA

Customs

557. Japan Customs demonstrated that the volumes of requests for information exchange are high due the nature of customs activities at the border. Requests for information from overseas are centrally managed by the International Intelligence Centre Office. Customs disseminates information also actively spontaneously on a voluntary basis. Customs disseminates a report to foreign customs counterparts each year summarizing the trends of detection. Japan Customs demonstrated cooperation with foreign partners on risk areas, including gold smuggling.

Table 8.13 Number of Customs Information Provisions

	2014	2015	2016	2017	2018
Number of entrusted requests for information provision	13 265	6 496	7 873	14 611	15 342
Number of implementations	13 265	6 496	7 873	14 611	15 342
Number of refusals	0	0	0	0	0
Number of outstanding cases	0	0	0	0	0
Voluntary information provision	4 665	3 220	3 423	4 442	5 113

Source: Customs

International exchange of basic and beneficial ownership (BO) information of legal persons and arrangements

558. JAFIC, NPA and MOJ provided statistics on exchanging basic and BO information of legal persons and arrangements. The processing of the requests depends on the nature of the case, complexity and measures included in the request. Japanese authorities noted that most of the requests were for basic information. To execute the requests, Japanese authorities' usual approach is to collect information from their own databases or by making enquiries to relevant authorities (such as the Commercial Registry) or private sector entities. Information included in STRs and their attachments are also used. Further inquiries to FIs and DNFBPs can also be made, although this seems to be a more rarely used mechanism to collect this information.

Information on legal persons

559. Japan has provided information on beneficial ownership of Japanese legal persons (see table below). Investigative authorities can now obtain information on beneficial ownership by requesting information from the notaries about matters relevant to their investigations, with the limitations outlined in IO.5. A range of data is available directly to foreign counterparts on legal ownership through public registries.

Table 8.14 Number of cases where information of legal persons and arrangements was provided through MLA, JAFIC information exchange, via ICPO-INTERPOL or NTA information exchange

	2016	2017	2018
Basic Information of Legal Persons	33	28	55
Beneficial Ownership Information of Legal Persons	35	14	8
Beneficial Ownership Information of Trusts	0	0	0

Source: Japanese authorities

Information on legal arrangements

560. As outlined in IO.5, the civil trust sector in Japan appears to be very small (see IO.5), however the trust companies sector (FIs) is very large and involved in a range of investment vehicles. Japanese trust companies and other FIs/DNFBPs engaged in trust businesses, where they act as trustees for their customers, are obliged to collect information on the settlor and the beneficiaries to the trust. Otherwise, FIs/DNFBPs that provide services to trusts are required to collect beneficial ownership information. No information was provided on sharing information relating to civil trusts. Information obtained from FIs/DNFBPs on customers can be shared with foreign counterparts as needed.

Overall Conclusion on IO.2

International cooperation in Japan is timely and of good quality, both through formal and informal channels, and is seen as a priority in all relevant authorities. The legal mechanisms and arrangements for all types of MLA are in place, which enable AML/CFT related authorities to seek and provide cooperation with relevant foreign partners. In addition, other forms of international cooperation, including information exchange between FIUs, LEAs and financial supervisors, are routinely used in Japan.

Some improvements are still needed, for example regarding the extent to which formal MLA is used to investigate ML cases and to trace assets and regarding JFSA's international cooperation in AML/CFT supervisory matters (including maintaining comprehensive statistics), but this needs to be looked at in the broader context and challenges identified for IO 7 and 8. Equally further efforts should be developed to enhance non-MLA forms of cooperation with international partners. In the Japanese context, these are moderate improvements.

Japan is rated as having a substantial level of effectiveness for IO.2.

TECHNICAL COMPLIANCE

This section provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2008. This report is available from www.fatf-gafi.org/countries/j-m/japan/documents/mutualevaluationofjapan.html.

Recommendation 1 – Assessing risks and applying a risk-based approach

These requirements were added to the FATF Recommendations when they were revised in 2012 and therefore were not assessed under the 2008 3rd Round mutual evaluation of Japan.

Criterion 1.1

The National Public Safety Commission (NPSC), through the JAFIC, is required to develop a report identifying and assessing the money laundering and terrorist financing (ML/TF) risks in the country (Act on Prevention of Transfer of Criminal Proceeds (APTCP), article 3 (3)).

The 1st national risk assessment (NRA) was adopted in 2014 ("2014 NRA-Baseline Analysis"), and follow-up reports were adopted from 2015 to 2018 ("NRA-Follow-up reports, NRA-FURs"). Those reports benefited from input from all key AML/CFT government authorities in the country (see c. 1.2), as well as from private sector's representatives.

The report, required to be published annually, focuses on the extent of risk in each category of transactions carried out by obliged entities ("specified business operators") or any other person or entity (APTCP, article 3(3)). As a result, the NRA and its yearly updates review the threats and vulnerabilities affecting products and services offered by obliged entities, and identifies the nature and level of risks of these products and services.

Some of the national authorities have conducted thematic and stand-alone reports and assessments of relevance for ML/TF risks, for example on trends in illicit drugs and firearms smuggling in Japan (Customs and Tariff Bureau of the Ministry of Finance (MOF), 2016), or on emergency countermeasures to "Stop Gold Smuggling" (Japan Customs, 2017) or on the status of organised crime (National Police Agency (NPA), 2018). However, it is not clear how the NRAs have integrated those findings into the analysis of ML/TF risks.

There are some methodological limitations to the NRA (impact of structural and cross-cutting factors, use of STRs and of confirmed ML cases, see IO 1), which question the comprehensive identification and assessment of the risks by Japanese authorities.

Criterion 1.2

The NPSC, which supervises the NPA, is responsible for the development of the NRA and updates (APTCP, art. 3, para 3). In 2005, Japan set up through a Memorandum of Understanding between the relevant ministries, the FATF Inter-Ministerial meeting composed of representatives from key AML/CFT public authorities (MOF, NPA, Japanese Financial Service Agency (JFSA), Ministry of Justice (MOJ) and Ministry of Foreign Affairs (MOFA), as the main coordination mechanism for AML/CFT (see c. 2.1). In 2013, the FATF Inter-Ministerial meeting tasked a working group chaired by the NPA to conduct the NRA. The working group is composed of public bodies involved in AML/CFT, including supervisors.

Criterion 1.3

The NRA has to be updated yearly (APTCP, art. 3, para 3). The 1st NRA was adopted in 2014, and follow-up reports were adopted from 2015 to 2018.

Criterion 1.4

The results of the yearly NRA-FUR have to be made public (APTCP, art. 3, para 3), which involves the publication of the updated reports on the FIU (JAFIC) website and notification to competent authorities and obliged entities, both financial institutions (FI) and Designated Non-Financial Businesses and Professions (DNFBPs).

Criterion 1.5

The NRA-FURs should primarily be used by the various obliged sectors to identify and assess the risks associated to their transactions (APTCP, art. 3, para 3; art 8, para 2; art 11 item (iv)). The 2014 NRA-Baseline analysis and NRA-FURs also state that the main objective of the NRA is to help obliged entities to conduct their risk assessment (2014 NRA-Baseline analysis and 2018 NRA-FUR, Section 2 Purpose). There are examples of ad hoc actions taken to mitigate some identified risks. For example, in response to the 'High Risk' rating assigned to virtual currency exchange service providers, there has been a Virtual Currency Monitoring Team established in the JFSA. This team's role is to provide guidance, supervision and assess the effectiveness of the internal controls of virtual currency exchange service providers. However, it is unclear from the applicable AML/CFT framework if and to what extent, as a rule, the results of the NRA-FURs should be used as a basis for the RBA at the national level and by competent authorities independently, including for the relevant allocation of resources.

Criterion 1.6

(a) and (b) There are no low-risk situations in Japan which are exempted from some AML/CFT obligations.

Criterion 1.7

Obliged entities have to take enhanced due diligence measures, where a transaction is identified as higher risk in the NRA (APTCP article 8; APTCP Ordinance, art. 27, item (iii)).

Criterion 1.8

Simplified due diligence can be applied where a transaction falls within the set categories of lower risk transactions, identified as such in the NRA (APTCP Order, art. 7; APTCP Ordinance, art. 4 para 1).

Criterion 1.9

AML/CFT supervisors have the general task of ensuring that obliged entities comply with their AML/CFT obligations (see c. 26.1). JFSA includes a review of the conduct of risk assessments, understanding of risks, management and mitigation by entities under its remit, but other FI supervisors and DNFBP supervisors do not seem to follow a similar approach (see R. 26 and 28).

Criterion 1.10

FIs supervised by the JFSA are under a requirement to define firm-wide risk assessments. Other obliged entities are only required under the APTCP to assess the risks per categories of transactions and on a transaction-by-transaction basis.

(a) Obliged entities are required to keep record of the analysis and assessment of transaction risk in the form of a written document or electromagnetic record (APTCP, article 11 item (iv); APTCP Ordinance, article 32 item (i)).

(b) FIs supervised by the JFSA are under a requirement to define firm-wide risk assessments, taking into account products and services offered, transactions types, the countries and geographic areas of transactions, customer attributes, and other relevant factors, while considering the results of the NRA (JFSA Guidelines II-2 (1) items (i) to (iii) and (2) items (ii) and (iii)). Other FIs and DNFBPs are required to assess the risks per categories of transactions and on a transaction-by-transaction basis based on the results of the NRA (APTCP, article 11 item (iv); APTCP Ordinance, article 32 item (i)). The reference to the NRA in the APTCP Ordinance implies that the risk factors identified in the NRA, which include transaction type, customer attributes, countries/regions, should be reviewed by obliged entities as part of their assessment of transactions.

(c) FIs supervised by the JFSA are required to conduct the review of the risk assessment regularly, at least once a year and whenever a relevant event would occur (JFSA Guidelines II-2 (2) item (iv)). There is no similar obligation for FI or DNFBP to keep assessment up to date. Obliged entities are required to conduct ongoing scrutiny of their records and keep them up-to-date (APTCP Ordinance, art. 32 (i)), which would be insufficient to ensure that the risk assessments as described above remain up-to-date.

(d) There is no specific mechanism to provide risk assessment information to competent authorities, although competent authorities can use their general power to get access to all relevant information from supervised entities (APTCP, articles 15 and 16, paragraph 1).

Criterion 1.11

(a) Obliged entities are required to have a compliance programme in place (APTCP, article 11, item (ii)) which has to be approved by a senior compliance official and not senior management as such. FIs supervised by the JFSA must have their policies,

controls and procedures approved by senior management as part of their internal control measures. (JFSA Guidelines III-1(i) and 2 (ii).

(b) FIs supervised by the JFSA, METI and METI/MAAF are required to have in place systems to monitor the AML/CFT controls and enhance them if necessary (JFSA Guidelines III-1 (ii) and (iii); METI Guidelines III-1 (ii) and (iii); METI/MAAF Guidelines III-1 (ii) and (iii)).

(c) Only FIs supervised by JFSA are required to apply enhanced due diligence in any situation assessed as higher risk (JFSA Guidelines II-2 (3) items (i) and (ii)). Other entities have to take EDD measures, in situations identified as higher risks in the NRA (see c. 1.7 - APTCP, art. 4, para. 2; APTCP Order, art. 12 and APTCP, art. 4 ; APTCP Ordinance, art. 27 (iii)), and not in other situations that they would assess as higher risk based on their own assessment and profile.

Criterion 1.12

Simplified due diligence (SDD) can be applied where a transaction falls within the set categories of lower risk transactions, identified as such in the NRA, except when there is a suspicion of ML/TF (APTCP Order, art. 7; APTCP Ordinance, art. 4 para 1).

Weighting and Conclusion

Japan's NRA is regularly published and updated and its development involves the relevant stakeholders in the countries. JAFIC and the NPA also produce various assessments of risk. There are some deficiencies in the NRA methodology which does not enable a comprehensive overview of Japan's ML/TF risks. It is not clear that the results of the NRA have been used as a basis for a risk-based approach at the national level and for the allocation of resources of relevant authorities. The other technical deficiencies are overall relatively minor deficiencies since most of them do not affect the banking sector, which is the most important obliged sector in the country.

Recommendation 1 is rated largely compliant.

Recommendation 2 – National co-operation and co-ordination

In its 3rd Round mutual evaluation report (MER), Japan was rated largely compliant with these requirements (para. 922-941). The main technical deficiency was that cross-border agencies were not sufficiently involved in the AML/CFT system and their reports on cross-border movements should be made available to the FIU. The other deficiency related to effectiveness issues which are not assessed as part of technical compliance under the 2013 Methodology.

Criterion 2.1

In December 2013, Japan adopted a Strategy to make Japan "*the safest country in the world*", in view of the 2020 Olympic and Paralympic Games. The Strategy included a set of coordinated actions to improve safety and security, including actions to counter terrorism and to strengthen AML measures, mainly based on the results of the 2008 FATF mutual evaluation. The content and actions listed in the Strategy updates do not seem to be informed by the NRA. National AML/CFT policies have not been regularly reviewed to take into account updating findings on risk. In addition, there is little explicit CFT policy beyond the implementation of targeted financial sanctions, but relatively few other preventive measures. Nevertheless, a number of legislative/regulatory and operational initiatives taken by Japan are based on the NRA results (see ex. in c. 1. 5).

Criterion 2.2

A ministerial decision of 2005, revised in 2015, set up the FATF Inter-Ministerial meeting, composed of representatives from the MOF, the NPA, the JFSA, the MOJ and the MOFA, as a cooperation platform for public authorities involved in AML/CFT. Its tasks also include promoting comprehensive measures concerning the implementation of FATF Recommendations. It is also involved in the definition and development of national AML/CFT policies, although this is not an explicit part of its mission.

The FATF Inter-Ministerial meeting provides an annual report on its activities to the Ministerial Meeting Concerning Measures Against Crimes ('Ministerial Meeting'), which is chaired by the Prime Minister, attended by all Cabinet Ministers and was established to oversee the Strategy to make Japan "*the safest country in the world*". The Ministerial Meeting is convened to promote effective and appropriate measures against criminal activities that are considered threats to Japan's security, which may include money laundering and terrorist financing. However, there is no specific focus on ML/TF in the official mandate of the Ministerial Meeting.

Criterion 2.3

The FATF Inter-Ministerial meeting is responsible for the cooperation between the relevant ministries and agencies, including policymakers, the FIU, supervisors and other relevant competent authorities, including observers such as the Public Prosecutors Office (PPO), Customs and the Coast Guard. There is, however, no general policy of coordination of actions between relevant ministries and agencies as part of the FATF Inter-Ministerial meeting's mandate. In the APTCP though, there is a general principle that invites relevant competent authorities to cooperate for AML/CFT purposes (art. 3, para 5). Bilateral cooperation between the FIU and law enforcement agencies is also part of APTCP (art. 13, para 1). The FIU can also request any relevant public authority to provide the necessary assistance to carry out its tasks (APTCP, art. 3, para 4).

Criterion 2.4

The FATF Inter-Ministerial meeting is responsible for the cooperation of authorities involved in the implementation of FATF Standards, which include counter proliferation financing activities. However, there is no general policy of coordination of actions between relevant ministries and agencies as part of the FATF Inter-Ministerial Meeting's mandate.

Criterion 2.5

Coordination and collaboration among administrative bodies, including between AML/CFT authorities and data protection and privacy bodies, is warranted by a regular liaison meeting of officers in charge of personal information in administrative bodies. The liaison meeting, chaired by the Chairman of the Personal Information Protection Commission (PIPC), is held once or twice a year in order to promote the protection of personal information in a comprehensive and consolidated manner. These meetings are attended by relevant AML/CFT authorities, such as the MOF, JFSA, the Ministry of Economy, Trade and Industry (METI) and the Ministry of Land, Infrastructure, Transport and Tourism (MLIT). However, the assessment team has not received information to indicate whether AML/CFT is a focus of this meeting.

Weighting and Conclusion

While Japan does not have a signature national AML/CTF policy or set of policies, the country has the Ministerial Meeting Concerning Measures Against Crimes, which is chaired by the Prime Minister and attended by all Cabinet Ministers, and the FATF Inter-Ministerial Meeting, which is a co-operation mechanism for the authorities involved. The mandate of these groupings does not include responsibility for AML/CFT national policies and does not contain a general policy of co-ordination of actions for AML/CFT purposes.

Recommendation 2 is rated partially compliant.

Recommendation 3 – Money laundering offence

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 157 to 210). The main technical deficiencies were that conspiracy to launder money and payment of legitimate debts with illicit funds were not covered, sanctions were not proportionate and criminal sanctions against some legal persons were not dissuasive. Since the last evaluation, Japan has made a number of amendments to the offence.

Criterion 3.1

Japan has a broad definition of the ML offence. Any person who disguises the facts relating to the acquisition or disposal of criminal proceeds, or who conceals the criminal proceeds, shall be subject to imprisonment or a fine or both (APOC, Art. 10). Judicial interpretation confirms that this is interpreted broadly and would cover disguising the true nature, source, location, disposition, movement, rights with respect to, or ownership of the property. A similar offence is applied to the proceeds of drug offences (Anti-Drug Special Act, Art. 6).

Criminal proceeds in the APOC and the Anti-Drug Special Act) includes the acquisition, possession or use of the proceeds of crime. Property derived from criminal proceeds is defined as (APOC, Art. 2-3; Anti-Drug Special Act, Art. 2):

- Any property obtained as, or exchanged for, criminal proceeds.
- Any property obtained through the possession or disposition of criminal proceeds. Conversion and use of proceeds of crime is covered through the concept of disposition.

As to the mental element of the offence, it is necessary to prove that the natural person shall have knowingly engaged in such an offence.

Criterion 3.2

Criminal proceeds is defined as any property derived from a set of criminal acts set out in the APOC, committed for the purposes of obtaining an illegal advantage (APOC, Art. 2-2). In addition, crimes subject to a sentence of imprisonment of at least 4 years are covered (APOC, Art. 2-2 b).

The predicate offences for ML includes all categories of serious offences. There is a minor gap in the range of offences in the category of environmental offences, which is notable considering the risk and context of Japan. Some doubts remain regarding the possible need to prove an additional intentional element.

Participation in an organized criminal group and racketeering	APOC – Art. 10 (referring back to the predicate offence in Art. 3-1 (i-xv).
Terrorism, including terrorist financing	APOC – Table 2 (item 32) / Art. 2 part iv. Links to Act on Financing of Public Intimidation Art. 5 (on 3rd party TF). Acts by a terrorist group - Act on Financing of Public Intimidation Art. 6-2 / Table 1 part 1
Trafficking in human beings and migrant smuggling	APOC (table 1, item 8)
Sexual exploitation, including sexual exploitation of children	Acts of sexual exploitation - APOC Art. 6-2 / Table 3 (n) / Penal Code Art. 176 to 178) on individuals above 13 years old. Prostitution appears to be covered (APOC, Art. 2-2 b)
Illicit trafficking in narcotic drugs & psychotropic substances	Anti-Drug Special Act – Art. 2(4)
Illicit arm trafficking	APOC Table 2 (read with Art. 2), item 22
Illicit trafficking in stolen and other goods	Penal Code Art. 256, para. 2 – a predicate offence based on APOC Art. 2, paragraph 2, item (i)-(a)
Corruption and bribery	Bribery – APOC (table 1, item 2, 5; Art. 7-2 read with Art. 2-3 a, b) Corruption offences include breach of trust (Penal Code Art 247) and embezzlement in the pursuit of social activities (Penal Code Art 253)
Fraud	APOC Art. 3 xiv of APOC
Counterfeiting currency	Penal Code Art. 148, 149, 153
Counterfeiting and piracy of products	Patent Act Art.s 196 and 196-2; Trademark Act Art.s 78 & 78-2; and Copyright Act Art. 119
Environmental crime	Certain environmental crimes are criminalized by Waste Management and Public Cleansing Act Art. 25; Mining Act Art. 147; Act on Conservation of Endangered Species of Wild Fauna and Flora Art. 57-2; and Forest Act Art. 198. Japan did not demonstrate that a sufficiently wide range of other environmental offences were covered as predicates for illegal logging, illegal fishing and wildlife smuggling.).
Murder, grievous bodily injury	Penal Code Art. 199 & 204
Kidnapping, illegal restraint and hostage-taking	Kidnapping – APOC (table 1, item 6)
Robbery or theft	Penal Code Art.s 235 & 236
Smuggling (incl. in relation to Customs / excise duties and taxes)	Customs Act Art. 108-4, Art. 109 & 110
Tax crimes (related to direct taxes and indirect taxes)	Income Tax Act Art. 238; Corporation Tax Act Art. 159; Consumption Tax Act Art. 64
Extortion	Penal Code Art. 12
Forgery	Penal Code Art. 155, para 1 & 2, Art. 156 (limited to those dealt with in Art. 155, para 1 or 2), and Art. 159, paras 1 & 2
Piracy	Law on Punishment of and Measures against Acts of Piracy Art. 3, paragraphs 1-3, and Art. 4
Insider trading and market manipulation	Art. 159, Art. 166 and Art. 197-2, item (xiii) of the Financial Instruments and Exchange Act - – predicate offences based on the available sanctions.

Criterion 3.3

Japan applies a combined approach that includes a threshold approach, which covers all offences that are punishable by a maximum penalty of more than 4 years.

Criterion 3.4

Japan ML offence covers crime proceeds not only those directly obtained through criminal acts but also those indirectly obtained from those acts. Property that is indirectly the proceeds of crime is criminalised within the APOC, as criminal proceeds is defined as any property which is derived from criminal proceeds.

Criterion 3.5

In proving the property is the proceeds of crime, it is not necessary that a person be indicated for or convicted of the predicate offence. In order to acknowledge crime proceeds as the subject to ML offences, it is sufficient if the predicate offence was recognized to have been committed and the proceeds is recognized to be pertaining to the predicate offence. Japan reports that there have been many judicial precedents, including ones mentioned in the 3rd MER.

Criterion 3.6

Predicate offences for ML extend to conduct that occurred in another country, which constitutes an offence in that country, and which would have constituted a predicate offence had it occurred domestically (APOC, Art. 2i). It is not clear whether this extends to the predicate offence of illegal drug trafficking in narcotic drugs and psychotropic substances. Predicate offences under the Anti-Drug Special Provisions Law apply to all persons who committed such offences outside Japan with the exception of the importation of goods as controlled substance (Anti-Drug Special Provisions Law, Art. 10; Penal Code, Art. 2).

Criterion 3.7

Case law demonstrates that the ML offence can be applied to persons who commit the predicate offence. Self-laundering is covered in Japan.

Criterion 3.8

Judicial precedents confirm a basis for the necessary elements of intent and knowledge required to provide the ML offence are able to be inferred from objective factual circumstances.

Criterion 3.9

A range of sentences may be applied depending on the nature of the money laundering offence.

Serious offences including white-collar crime include: imprisonment for not more than 10 years (Penal Code, Art. 246, paragraph 1 (Fraud)); imprisonment for not more than 7 years prescribed (Penal Code, Art. 197, paragraph 1 (Acceptance of Bribes)).

For concealing or disguising the proceeds of crime, punished by imprisonment for not more than five years or a fine of not more than JPY[72] 3 million (c. EUR 23,756/USD 28,892), or both (APOC, Art. 10).

For the preparation of a ML offence, imprisonment with work for not more than two years or a fine of not more than JPY 500 000 (c. EUR 3,959/USD 4,815) (APOC, Art. 10-3).

The receipt of criminal proceeds with knowledge of the circumstances shall be imprisoned with work for not more than three years or fined not more than JPY 1 million (c. EUR 7,919/USD 9,631), or both (APOC, Art. 11).

Intent to commit an offense that represents the laundering of the illicit trafficking in narcotics and psychotropic substances will be subject to imprisonment with hard labor not exceeding two years or a fine of no more than JPY 500 000 (c. EUR 3,959/USD 4,815).

Compared with the criminal sanctions of most predicate offences in Japan, the criminal sanctions of ML offence available to be imposed on a natural person are not proportionate and dissuasive.

Criterion 3.10

When a natural person is conducting a ML offence on behalf of a legal person, the legal person will be subject to the same sentence as the natural person that committed the crime (APOC, Art. 17; Anti-Drug Special Act, Art. 15). The range of sanctions when applied to legal persons (a fine ranging from JPY 500 000 to JPY 3 million (EUR 3,959 – EUR 23,756; US 4,815 - US 28,892) are not dissuasive.

No confirmed civil case has been pursued against a legal person for ML.

Regarding a legal person, when any representative of the legal person, or any agent, employee or other person engaging in the business of the legal person commits an ML offence in connection with the business of such legal person, punishment by a fine shall be imposed on such legal person in addition to punishing the actor.

Criterion 3.11

Participation in - when two or more persons commit a crime together they are both considered as co-principles and are both subject to the penalties in the particular law or regulation (Penal Code, Art. 60 read with Art. 8). Other elements of complicity covered in the Penal code include the being an accessory to an offence, including a ML offence in the APOC and Anti-Drug Special Act. The provision for accomplice is stipulated under the "Part I: General Provisions" of the Penal Code, which shall also apply to crimes for which punishments are provided by other laws and regulations (Art. 8 of the Penal Code). For an accomplice to ML, the provision of accomplice under the Penal Code is applied in principle in addition to the provisions of penalties under the APOC or Anti-Drug Special Act, and there is no discretion of a judge on which provision is to be applied.

Association with or conspiracy to commit – A person who, together with one or more persons, plans to commit an act that constitutes a crime, including the business control using crime proceeds, the disguise of facts with respect to acquisition or

[72] The exchange rate used throughout this document is the rate on 14th January 2021 (1 JPY=0.00963074 USD=0.00791857 EUR)

disposition of crime proceeds, the concealment of crime proceeds, and the disguise of facts with respect to the source of crime proceeds, shall be subject to a sentence as if any of the persons has committed the act. Should the person surrender themselves before the act has been committed, the sentence may be reduced or they may be exculpated (APOC, Art. 6-2, Table 4). Conspiracy to commit other elements of the money laundering offence (concealment or disguise with respect to the acquisition of disposition of criminal proceeds) are also covered (APOC, Art. 6, Art. 10-3, Anti-Drug Special Act Art. 6-3).

Attempt – Attempt to conceal the proceeds of crime is criminalised (APOC, Art. 10-2, Anti-Drug Special Act Art. 6-2), however attempt to commit the other elements of the ML offence (e.g. the acceptance of crime proceeds or business control using crime proceeds) are not covered.

Aiding and abetting – Aiding and abetting a criminal act is criminalised via the Penal Code, where a person who induces another to commit a crime shall be dealt with in sentencing as a principle, including a person who induces another to induce, as is acting as an accessory. (Penal Code, Art. 61 and 62 read with Art. 8).

Facilitating – Facilitating appears to be partly covered through the criminalisation of the preparation of an offence, i.e. preparing to commit a crime but not yet commencing the commitment of the crime. The preparation for committing the acceptance of crime proceeds or business control using crime proceeds is not provided.

*Counselling the commission – Counselling the commission a*ppears to be partly covered by the offence of inducement, which is defined as instigating another and making the person decide to commit a crime and, consequently, making the person commit the crime. The act of instigating another would appear to cover elements of counselling.

Weighting and Conclusion

Japan meets most of the criteria; however, technical deficiencies remain in the coverage of the ML offence relating to certain environmental offences and the available criminal sanctions are not proportionate and dissuasive.

Recommendation 3 is rated largely compliant

Recommendation 4 – Confiscation and provisional measures

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 237 to 271). The main technical deficiencies were that the "collection order", alternative to confiscation, should be subject to mandatory execution obligations and there should be limited authority to revoke such orders.

Criterion 4.1

Confiscation of proceeds of crime in Japan is available under two special laws, the first for drug-related crimes (Anti-Drug Special Act) and the second that creates a more general regime, applicable to all serious crimes (APOC), with the exception of certain environmental offences (proceeds and instruments of those offences) see R. 3.

Confiscation measures apply to both criminal defendants and third parties who acquire the property subject to the confiscation while knowing the circumstances of the crime (Anti-Drug Special Act, Art. 12; APOC, Art. 15; Penal Code, Art. 19 (2)).

Under these provisions, confiscation can take place for:

(a) Property laundered (Anti-Drug Special Act, Art. 2 (4) and (5) and 11; APOC, Art. 2 (2) and (4), and 13);

(b) Proceeds of drug offences or the like and other crime proceeds, which would include income or other benefits derived from such proceeds (Anti-Drug Special Act, Art. 2 (4) and (5) and 11, para 1; APOC, Art. 2 (2) and (4) and 13).

Instrumentalities used or intended for use would also be included in assets that can be confiscated (Penal Code, Art. 19 (1) (i) and (ii)).

(c) Property provided or intended to be provided for TF offences or for an attempt of these offences (APOC, Art. 2 (2) iv) and Appended table 2 (32)).

(d) Forfeiture of an amount of money equivalent to the value of the property applies when the confiscation cannot take place because it is inappropriate in light of the nature of the property, the conditions of its use, the existence of third party rights to such property (Anti-Drug Special Act, Art. 13; APOC, Art. 16) or for any other reasons (Anti-Drug Special Act, Art. 13; APOC, Art. 16; Penal Code, Art. 19-2). The judgement of collection of the equivalent value is compulsorily upon the order of a public prosecutor in accordance with the Civil Execution Act (Code of Criminal Procedure, Art. 490).

Criterion 4.2

(a) Public prosecutors, their assistants and judicial police officers have general investigation powers that enable them to investigate, trace and evaluate property subject to confiscation (Criminal Procedure Code, Art. 197 and 218). They also have powers to evaluate the property, as part of the process to decide the confiscation procedure that can or should be applied (APOC, Art. 14 and 16).

(b) Courts or judges can prohibit the disposition of any property, or its equivalent value, involved in a criminal proceeding by issuing a temporary preservation order, subject to reasonable conditions, for confiscation, either upon request of a public prosecutor or *ex officio* (i.e. following a request from a prosecutor or a judicial police officer before the prosecution is formally initiated). This requires that there are reasonable grounds for the confiscation of the property and such measure is necessary for the confiscation (Anti-Drug Special Act, Art. 19; APOC, Art. 22 to 41).

Law enforcement agencies can also seize property deemed to be confiscated, upon a warrant issued by a judge (Criminal Procedure Code, Art. 99, 218, 220 and 222).

Art. 24, paragraph 2, and Art. 44, paragraph 2 of the APOC provide a basis for authorities to issue preservation orders without prior notice.

(c) Powers that allow competent authorities to take steps that will prevent or void actions that prejudice authorities' ability to freeze or seize or recover property that is subject to confiscation.

(d) Law enforcement authorities' powers to search or investigate property subject to confiscation and take compulsory statements from witnesses enable them to take any appropriate investigative measures.

Criterion 4.3

Property cannot be confiscated from a third party who has acquired this property without knowing the circumstances of the crime. If there is any right on the property

(such as a mortgage) and a third party has acquired the property before or after the crime, the rights are kept in existence (Anti-Drug Special Act, Art. 12; APOC, Art. 15).

Criterion 4.4

Measures for the management, and when necessary the disposition, of seized and confiscated property are in place (Administrative Rules of Evidence, Art. 1 to 3 and 26 to 43; Criminal Procedure Code, Art. 121 to 123). They cover the whole preservation, management and disposal process and consider different solutions for the various types of goods that can be seized and as such do amount to a mechanism.

Weighting and Conclusion

Japan meets most of the requirements of R.4. However, technical deficiencies exists regarding the confiscation of the proceeds generated from certain environmental crimes and those committed by criminals who have absconded, died or whose whereabouts is unknown.

Recommendation 4 is rated largely compliant.

Recommendation 5 - Terrorist financing offence

In its 3rd-round MER, Japan was rated partially compliant with related requirements (paragraphs 211-36). Deficiencies included: overly-narrow definition of funds; failure to criminalise funds collected for terrorists by non-terrorists; ambiguity regarding criminalisation of indirect provision and collection of funds; and ambiguity regarding criminalisation of financing of terrorist organisations and individual terrorists in the absence of a link to a specific terrorist act. Japan's progress to address these deficiencies was monitored in the follow-up process, and the FATF concluded in 2015 that Japan had addressed all of the deficiencies identified with respect to terrorist financing offences.

Terrorist financing is criminalised primarily on the basis of the Act on Punishment of Financing of Offences of Public Intimidation (2002) ('TF Act').[73] Japan passed legislative amendments to the TF Act that went into effect in December 2014.

Criterion 5.1

The TF Act criminalises the financing of various criminal acts conducted "with the aim of intimidating the public, national or local governments, or foreign governments and other entities (foreign national or local governments, or international organizations established pursuant to treaties or other international agreements)" (Art. 1). These acts include those identified in the treaties listed in the annex to the International Convention for the Suppression of the Financing of Terrorism ('UN TF Convention'), as well as those that cause death or "serious bodily injury" or that "destroy[] or caus[e] serious damage" to any "building," other physical infrastructure facilities, public transportation, *etc*. by means of "explosive[s], arson, or any other means likely to cause serious harm" (Arts. 1(i) and (iii)(a)-(e)).

The TF Act is consistent with Article 2(1)(b) of the UN TF Convention (regarding specific intent TF offences), but inconsistent with Article 2(1)(a) in that the TF Act also requires the element of intent to "intimidate[e] the public," *etc*. for the offences identified in the treaties listed in the UN TF Convention annex. The UN TF Convention establishes that these treaty offences should be criminalised as *per se* terrorist acts

[73]. English translation available at: www.japaneselawtranslation.go.jp/law/detail/?id=2977&vm=04&re=2&new=1.

and their financing criminalised as *per se* terrorist financing (*i.e.*, general intent terrorism and TF offences). Although Japan's Penal Code and other statutes criminalise conspiracy, attempt, and substantive violations that would include those contemplated by the annexed treaties—*e.g.*, financing in connection with the murder of a diplomat could be prosecuted as conspiracy and/or attempt to commit homicide—these general statutes do not constitute criminalisation consistent with the UN TF Convention.

Criterion 5.2

The TF Act criminalises the wilful provision or collection of "funds or other benefits" with the intention or knowledge that they are to be used to carry out any terrorist act (*i.e.*, "act of public intimidation") contemplated by the TF Act. Criminal liability extends to both direct and indirect provision and collection, with less sentencing exposure for indirect provision or collection (Arts. 3(1)-3(3) and 5(1)-(2)).

The TF Act does not, however, criminalise the financing of a terrorist organization or individual terrorist in the absence of a link to a specific "act of public intimidation" as defined by the TF Act.

The TF Act also does not apply to self-funding (although, as a general matter, Japan's Penal Code and other statutes criminalise "preparations," including financial "preparations," for acts identified in the annexed treaties of the UN TF Convention with the additional necessary element of terrorist intent).[74]

Criterion 5.2bis

The financing of the travel of individuals who travel to a State other than their States of residence or nationality for the purpose of the perpetration, planning, or preparation of, or participation in, a terrorist act is contemplated by the TF Act (Article 3, *etc.*). However, as discussed at criterion 5.2, the TF Act does not appear to criminalise the financing of travel for the purpose of providing or receiving of terrorist training without a link to a specific terrorist act (*i.e.*, "act of public intimidation").

Criterion 5.3

TF offences under the TF Act extend to financing that involves "funds or other benefits… including, but not limited to, land, building, goods and service[s]" (Art. 2(1)). While the TF Act does not otherwise define "funds or other benefits," these terms appear to cover all "funds or other assets," including virtual assets, within the FATF definition. Non-binding statements by Ministry of Justice officials during Diet deliberations (for the 2014 amendments of the TF Act) as to the intended scope of "funds" and "benefits" support this conclusion.[75]

74 See, *e.g.*, Penal Code at Articles 78 ("preparation for insurrection"), 88 ("preparation for instigation of foreign aggression or assistance to an enemy"), 93 ("preparation for private war"), 113 ("preparation for arson"), 201 ("preparation for arson"), 228(3) ("preparation for kidnapping for ransom"), and 237 ("preparation for robbery"). See, also, Act on Punishment of Unlawful Seizure of Aircraft at Article 3; Act on the Prohibition of Chemical Weapons and the Regulation of Specific Chemicals at Article 40; Act on Prevention of Bodily Harm by Sarin and Similar Substances at Article 5(3); Criminal Regulations to Control Explosives at Articles 3 and 4.

75 See Statements by Makoto Hayashi, MOJ, Diet Deliberations on 11 June 2014.

TF offences appear to extend to "funds or other benefits" regardless of whether they are derived from legitimate or illegitimate sources (see, *e.g.*, Penal Code at Article 236, which, unlike the TF Act, affirmatively specifies "illegal property benefits").

Criterion 5.4

(a) The TF Act does not require that funds or other assets were actually used to carry out or attempt a terrorist act (*i.e.*, act of public intimidation). Rather, the TF Act requires that "a person who intends to commit an act of public intimidation" attempted to provide or collect "funds or other benefits" "with the aim of utilizing them for [] commission [of the act of public intimidation]" (Art. 2(4), *etc.*).

(b) TF offences under the TF Act require that funds or other assets are linked to a specific terrorist act; the TF Act does not establish criminal offenses for financing a terrorist organisation or individual terrorist in the absence of a link to a specific terrorist act. See, also, Criterion 5.2.

Criterion 5.5

Intent and knowledge required to prove a given TF offence may be inferred from objective factual circumstances (see, *e.g.*, Tokyo District Court (July 1, 2015) and Tokyo District Court (March 25, 1999)).[76]

Criterion 5.6

Proportionate and dissuasive criminal sanctions do not apply to natural persons convicted of TF for all types of TF offences.

The TF Act provides for a range of penalties depending on the directness of TF: for direct provision or collection for an "act of public intimidation," for example, a sentence of up to 10 years of imprisonment or a JPY 10 million fine (c. EUR 79,186 / USD 96,307) may be imposed (Articles 2(1) and 3(1)). At each tier of available penalties, the TF Act provides that a sentence may include either a custodial or monetary penalty, but not both.

For wilful but indirect provision or collection, the maximum sentences are 7 years of imprisonment or a JPY 7 million fine (c. EUR 55,430 / USD 67,415) if there is one intermediary between the provider/collector and the perpetrator of an "act of public intimidation," and 5 years of imprisonment or a JPY 5 million fine (cf. EUR 39,593 / USD 48,154) if there are two intermediaries (TF Act, Art.3(2) and (3)). If a person indirectly provides or collects funds or other assets with more than two intermediate steps in transmission, the maximum sentences are either 2 years of imprisonment or a JPY 2 million fine (c. EUR 15,837 / USD 19,261) (TF Act, Art. 5(1)).

In comparison, Japan's Penal Code provides for sentences up to 10 years' imprisonment or a JPY 500 000 fine (cf. EUR 3,959 / USD 4,815) for theft (Art.235); 10 years' imprisonment for fraud, including computer fraud (Articles 246(1) and (2)); and 15 years' imprisonment or a JPY 500 000 (cf. EUR 3,959 / USD 4,815) fine for causing another to suffer injury (Art.204).

Due to the lower end of maximum penalties available for indirect TF (2 years imprisonment or a fine of JPY 2 million / EUR 15,837 / USD 19,261), coupled with

[76] Japan provided translations of these documents to the assessment team. Online sources or English translations are not available.

mutual exclusivity of these custodial and monetary penalties, and in comparison with statutory penalties for other crimes, available criminal sanctions for natural persons convicted of indirect TF are neither proportionate nor dissuasive. The more severe penalties available for the more direct forms of TF also do not allow for dissuasive or proportionate sanctions to be applied, given they also do not consistent with other serious offences in Japan as above.

Criterion 5.7

The TF Act establishes criminal liability for legal persons, with fines equivalent in value and additional to those available against convicted natural persons [JPY 2 – 10 million (c. EUR 15,837– 79,186 / USD 19,621 – 96,307)] (Art.8). Such fines are without prejudice to criminal liability of natural persons (*id*.). These sanctions for legal persons, however, are insufficient to be considered proportionate and dissuasive, and especially so for indirect provision or collection (TF Act, Art.5(1), *etc*.).

Criterion 5.8

(a) The TF Act establishes criminal offenses for attempts to commit financing of acts of public intimidation (*i.e.*, terrorist acts) (Articles 2(2), 3(4), 4(2), and 5(3)).

(b) As applicable to the TF Act (pursuant to Art.8 of the Penal Code), the Penal Code provides that participation as an accomplice in a TF offence or attempted offence is itself an offence. Specifically, as applicable to criminal offences under the TF Act: "*two or more persons who commit a crime in joint action are all principals*"; "*a person who induces another to commit a crime shall be dealt with in sentencing as a principal*"; and "*a person who aids a principal is an accessory*" (Penal Code, Articles 60, 61(1), and 62(1); see, also, TF Act, Art.8).

(c) As applicable to the TF Act, the Penal Code provides establishes criminal liability for "*induc[ing] another to commit a crime*" and that such a person "*shall be dealt with in sentencing as a principal*" (Art.61(1)). In addition, the Penal Code establishes criminal liability for indirectly "*induc[ing] another to induce*" another person to commit a crime (Art.61). This is considered equivalent to organising or directing others to commit a TF offence or attempted offence.

(d) The TF Act, taken with relevant articles of the Penal Code, provides that contribution or attempted contribution to a TF offence or attempted offence is also an offence (TF Act Articles 2(1), 3(1), 3(2), 3(3), 4(1), 5(1), and 5(2)) (Penal Code, Articles 60, 61(1), and 62(1)). This includes attempted facilitation or contribution towards an offence (TF Act Art.2(2), 3(4), 4(2), and 5(3)).

Criterion 5.9

The Act on the Punishment of Organised Crime and Control of Criminal Proceeds (APOC) establishes various predicate offences for ML, which include all substantive and attempted TF offences established pursuant to the TF Act (APOC, Art.2(2)(i)(a)). Specifically, APOC covers these TF offences by establishing as ML predicate offences all crimes for which custodial sentences of four or more years are available by statute, with exceptions that do not include offenses under the TF Act (APOC, Art.2(2)(i)(a), *etc*.). For the single provision of the TF Act that only authorizes custodial sentences below this threshold (Art.5), APOC incorporates these offences as ML predicate offences by explicit reference to Art.5 of the TF Act (APOC, Art.2(2)(iv)).

Criterion 5.10

TF offences apply regardless of whether the person who committed the offence(s) is in the same or different country from the country in which the terrorist/terrorist organization/terrorist act would occur. The TF Act provides that the financing aspect, as opposed to the "act of public intimidation" itself, may occur within or outside Japan if the defendant is a Japanese national, but requires that the financing aspect must occur in Japan if the defendant is not a Japanese national (TF Act, Art.7; Penal Code, Articles 3 and 4(2)). For fact patterns in which a non-Japanese national provides or collects funds or other benefits outside of Japan in furtherance of an act of public intimidation in Japan, the TF Act would nonetheless apply, pursuant to Art.4(2) of the Penal Code (establishing jurisdiction where necessary to comply with binding obligations of international organizations, *e.g.*, UN TF Convention at 7(4)).

Weighting and Conclusion

Japan has criminalized certain terrorist financing conduct but moderate deficiencies remain: in particular, (1) lack of criminalization for providing or collecting assets for a terrorist organisation or individual terrorist in the absence of a link to a terrorist act or acts, and (2) non-dissuasiveness of sanctions for natural persons convicted of certain TF violations. In addition, but weighted less heavily, Japan requires an additional element of "intent to intimidate" for TF Act violations beyond mere attempt or the fact of certain UN TF Convention acts.

Recommendation 5 is rated partially compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In its 3rd MER, Japan was rated partially compliant with related requirements under SR.III (paragraphs 272 – 324). The identified deficiencies included: delay in asset-freezing requirements; inapplicability of freezing requirements to domestic assets (*i.e.*, non-cross-border and other types of transactions); limited duration of orders to secure funds; and insufficient applicability of freezing requirements to "other assets."

Progress made by Japan to address these deficiencies was monitored in the follow-up process. In November 2014, Japan passed the Terrorist Assets Freezing Act (TAFA), which went into effect in October 2015. In view of the new legislation, FATF determined that Japan had addressed the deficiencies identified in its 3rd MER for targeted financial sanctions (TFS) related to terrorism and terrorist financing.

In overview, Japan implements TF TFS primarily by means of two laws: the Foreign Exchange and Foreign Trade Act (FEFTA) and the abovementioned TAFA. FEFTA generally restricts "payments" and "capital transactions" involving a designated party—in which the receiver or originator is outside Japan or a non-Japanese resident. In effect, FEFTA freezes assets by prohibiting "payments" and "capital transactions" unless specifically approved by the MOF. Supplementing the FEFTA, the TAFA, generally restricts financial transactions (including transactions involving only Japanese residents or only taking place within Japan) involving a designated party that relate to the receipt, borrowing, or sale of certain financial and other assets. Similar to FEFTA, TAFA freezes such assets by prohibiting such transactions unless specifically approved by the Prefectural Public Safety Commission (PPSC). The above *de facto* asset-freezing measures under FEFTA and TAFA apply immediately upon publication of notices in Japan's Official Gazette by, respectively, the MOFA and the NPSC.

Criterion 6.1

a. The MOFA is the competent authority for proposing persons or entities to the 1267/1989 and 1988 Committees (Committees) for designation. Although Japan has not specifically identified MOFA as such, as a general matter, the MOFA is responsible for UN participation and implementation of UN obligations under the Act on the Establishment of MOFA. This includes responsibility for foreign policy regarding Japan's security and for implementation of international treaties and international law (Articles 3, 4(1)(a), 4(3), and 4(5)). As a matter of practice, although Japan has not proposed nominations itself, Japan—via MOFA—has co-sponsored other countries' nominations to the 1267/1989 and 1988 Committees.

b. The Interagency Meeting on Terrorist Asset-Freezing (IAM) is the mechanism by which Japan identifies targets for designation based on designation criteria in relevant UNSCRs (Memorandum of Agreement: Establishment of Interagency Meeting on Terrorist Asset-Freezing, May 2002). The IAM, which was established in May 2002, is co-chaired by MOF and METI, and includes MOFA, MOJ, NPA, PSIA, JFSA, and the Cabinet Secretariat.

c. Japan did not demonstrate that an evidentiary standard of proof of "reasonable grounds" or "reasonable basis" is applied in deciding whether to propose designations. Japan's co-sponsorship of multiple 1267 and 1988 listings without the existence of criminal proceedings strongly suggests that proposals for designation would not require the existence of criminal proceedings (although relevant laws are silent as to whether the existence of a criminal proceeding is required).

d. Japan did not demonstrate that relevant authorities follow the procedures and standard forms for nominations to the Committees ("UN Procedures"), as Japan has not submitted any nominations of its own (vice co-sponsoring other countries' nominations). Japan also did not provide formal domestic procedures regarding adherence to the UN Procedures.

e. Japan did not demonstrate that relevant authorities provide as much relevant information as possible in support of nominations to the Committees, as Japan has not submitted any nominations of its own (vice co-sponsoring other countries' nominations). Japan also did not provide formal domestic procedures regarding the provision of such information.

Criterion 6.2

a. The IAM has responsibility for designating persons or entities under UNSCR 1373, either responsive to requests from other countries or on Japan's own motion. Japan also seeks unanimous approval by the Cabinet of such designations as a matter of practice, although not required as a matter of law. Thereafter, the MOFA and NPSC publish notices in the Official Gazette that trigger the legal asset-freezing requirements under the FEFTA and TAFA, respectively.

b. The IAM is the mechanism for identifying targets for designation under UNSCR 1373. As described at 6.1(b), the IAM includes the NPA, PSIA, MOFA, MOF, and METI, among other ministries.

c. Since July 2014, the MOFA has received 50 requests from other jurisdictions pursuant to UNSCR 1373. The MOFA has promptly informed the IAM of the requests, including providing supporting information to the IAM, taking one to

two days on average. It is unclear whether the IAM makes a prompt determination on the basis of the information provided to it by the MOFA.

d. Japan did not demonstrate that the IAM and other relevant authorities apply an evidentiary standard of proof of "reasonable grounds" or "reasonable basis" in deciding whether to designate individuals or entities. Rather, the TAFA requires "sufficient reason to believe" that a potential designee "committed, attempted to commit, or facilitated the commissions of criminal activities for the purpose of intimidation of the general public" (Art. 4(ii)(a)). The FEFTA is silent on whether an evidentiary standard of proof for designation applies.

   On the basis of completed designations under UNSCR 1373, Japan demonstrated that UNSCR 1373 designations (and presumably proposals thereof) do not require the existence of criminal proceedings.

e. Japan did not demonstrate that relevant authorities provide as much identifying and other specific information as possible to support a designation request to another country, as Japan has not made any such requests. Japan also did not provide formal domestic procedures regarding the provision of such information.

Criterion 6.3

a. The NPA and PSIA, which are members of the IAM, have legal authorities and mechanisms to collect information to identify persons and entities for designation under relevant UNSCRs, such as information relating to terrorism and TF.

b. The TAFA requires the NPSC to conduct a hearing with individuals or entities prior to designation, except in cases where the NPSC finds that this requirement would hinder the implementation of the restrictions resulting from designation (*e.g.*, due to asset flight) (Arts. 4(4) and 8(1)-(9)). Under this exception, the NPSC may make a 15-day, "interim" designation that carries the same asset-freezing and other restrictions, provided that the NPSC conducts a hearing prior to the end of the 15-day period. The FEFTA does not provide for similar hearings, however the TAFA enacts restrictions whether or not a transaction involving the designee is a Japanese resident or takes place in Japan. Therefore, competent authorities can operate ex parte against individuals or entities whose designations are being considered by using the provisions in the TAFA.

Criterion 6.4

The FEFTA and TAFA jointly provide for implementation of TF-related UN TFS, but not without delay. As described above, asset-freezing restrictions under FEFTA and TAFA only apply once the MOFA and NPSC, respectively, identify individuals and entities via Official Gazette notices. Several administrative steps are required to issue such notices. From October 2018 through August 2019, the notices necessary to implement TF-related UN TFS were published 14-24 days after the corresponding changes occurred at the UN level. As of October 2019, Japan put in place changes to its administrative processes meaning that designations take between two to five days to implement. However, implementation remains with delay (i.e. longer than 24 hours) despite these improvements.

Japan also imposes ongoing screening obligations on FIs and VCEPs through the JFSA guidelines. This requires FIs and VCEPs to "[c]omply with, and take other necessary measures against, applicable economic and trade sanction laws and regulations enforced by Japanese and other foreign authorities", obliging them to utilise "reliable

databases and systems" to screen the names of their customers and their beneficial owners against sanctions lists published by each regulator (JFSA Guidelines, II-2(3)). Although these measures require FIs and VCEPs to screen new and existing customers against UN and other sanctions lists, they do not apply to all natural and legal persons. In addition, they do not fully mitigate the delays for FIs and VCEPs, as the primary legal requirement to freeze the assets of individuals and entities that are newly designated comes into effect in accordance with the FEFTA and TAFA i.e. upon publication of the Official Gazette.

Criterion 6.5 –

a. The FEFTA, following Official Gazette notice of a given designation of persons and/or entities, prohibits (in the absence of specific pre-authorisation from the MOF) all natural and legal persons from engaging in "payments" and "capital transactions" involving those persons and/or entities, provided those persons and/or entities are either non-residents of Japan or located outside Japan (Arts. 16 and 21, etc.). The TAFA, following Gazette notice of a given designation prohibits (in the absence of pre-authorisation from the PPSC) the receipt or borrowing of a "regulated asset" involving a designated person, including if the designated person or entity is a resident of Japan (Arts. 3 and 4).

b. It is unclear whether FEFTA covers the full range of "funds or other assets" within the FATF definition (see c.7.2b). However, the TAFA appears to cover all "funds or other assets" within the FATF definition. As each designation is made jointly under the TAFA and FEFTA, Japan's TF TFS regime applies to the full range of "funds or other assets" in line with the FATF definition.

   The—TAFA prohibits (in the absence of specific pre-authorisation from the PPSC) the solely-domestic receipt or borrowing of "regulated assets" by an individual designated via Official Gazette notice by the NPSC. "Regulated assets" explicitly include but are not limited to: money, securities, precious metals, land, buildings, vehicles, and "any other similar assets specified in a Cabinet Order" (Art. 9(1), (i), and (ii)). "Regulated assets" also explicitly include "virtual currency (as defined by Article 2(5) of the Payment Services Act No. 59 of 2009), prepaid payment instruments, bills, checks (including traveller's checks), money orders, vessels, and aircrafts" (Order for Enforcement of TAFA, No. 356 of 2015). In addition, designated individuals are similarly prohibited from receiving "a consideration for disposition, including sale, lending, and others of Regulated Assets" or a "monetary claim" in connection with a claim/debt relationship (Art. 9(iii)-(v)).

   Japan has not demonstrated that the asset-freezing obligations extend to (i) all funds or other assets that are owned or controlled by the designated person or entity; (ii) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; (iii) funds or other assets derived from or generated from or other assets owned or controlled directly or indirectly by designated persons or entities; and (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

c. As discussed at 6.5(a) and (b), Japan prohibits all natural and legal persons from making funds and certain other assets directly available to designated parties. It is unclear whether the prohibitions under FEFTA and TAFA extend to

transactions indirectly involving designated parties, including entities acting on behalf or at the direction of designated parties.

d. On the day that designations are announced via Official Gazette, the MOF informs domestic FIs via email and posts changes on its website, as required by the NPSC. The NPSC also sends a written announcement to all DNFBP supervisors and self-regulatory bodies/relevant industry associations, e.g. the Japan Federation of Bar Associations (JFBA) or Japan Virtual and Crypto Assets Exchange Association (JVCEA), asking them to share the relevant information with their supervised/member entities. It is unclear, however, when other supervisors distribute corresponding notices to DNFBPs, and whether these notices reach all DNFBPs.

   The MOF provides some *ad hoc* guidance to FIs regarding asset-freezing obligations. Japan did not provide information to demonstrate that any such guidance is provided to DNFBPs.

e. FIs are required to report to the MOF any assets frozen pursuant to FEFTA restrictions (Art. 55(8), etc.). Japan does not require DNFBPs to report frozen assets or other actions taken. The TAFA does not require FIs or DNFBPs to report frozen assets. In circumstances where a transfer of funds is attempted to or from a designated individual or entity, the FI or DNFBP would need to seek permission to conduct the transaction from the relevant minister (art. 16). Therefore, attempted transactions after a designation has taken place are required to be reported to the relevant minister.

f. The licensing framework for asset-freezing established by the FEFTA allows the Minister of Finance to permit otherwise-prohibited transactions, such as those necessary to protect the rights of bona fide third parties acting in good faith (art. 16). In addition, the TAFA provides that the Japanese government shall compensate third parties for losses incurred as a result of restrictions under TAFA (Art. 24). Japanese authorities thus take measures sufficient to protect the rights of bona fide third parties.

Criterion 6.6

a. Japan does not have publicly-known procedures to submit de-listing requests to the relevant UN sanctions Committee in cases of designated persons and entities that do not continue to meet the criteria for designation. Japan represents that the MOFA would facilitate such a request by nature of its delegated UN responsibilities (see 6.1a).

b. The NPSC is obligated to revoke designation under UNSCR 1373 when the person is no longer designated (TAFA, Art.7(ii)). With respect to designations pursuant to the FEFTA, the MOFA initiates an informal process to publish de-listing updates via Official Gazette.

c. The Administrative Case Litigation Act provides for review of designations pursuant to UNSCR 1373 before a court. In addition, except in cases where authorities determine there is risk of asset flight, a public hearing occurs prior to finalization of designations under UNSCR 1373.

d. Japan does not have formal procedures to facilitate review of designations pursuant to UNSCR 1988 by the *1988 Committee*, in accordance with applicable

Committee guidelines and procedures. Japan does, however, identify on the MOFA website the UN focal point mechanism for UNSCR 1988 designations.

e. On Japan's public MOFA website, Japan provides a description of and links to the United Nations Office of the Ombudsperson, regarding designations on the *Al-Qaida Sanctions List*.

f. The requirements under FEFTA and TAFA to seek governmental approval before making certain transactions involving a designated party constitutes publicly-known procedures to unfreeze funds or other assets of persons or entities with the same or similar name as designated persons or entities who are inadvertently affected by a freezing mechanism.

g. Following modifications to designations, including de-listings, the MOFA and NPSC make public announcements via the Official Gazette. These updates are further published on the websites of the MOF, METI, MOFA, and NPSC. In addition, the MOF provides the same information via email to FIs. The MOF and NPA also transmit notification to DNFBP supervisors for subsequent distribution, but it unclear whether there is a mechanism in place to relay notification to all DNFBPs immediately upon de-listing and unfreezing action(s).

   Japan did not provide information demonstrating that authorities provide guidance to FIs and DNFBPs regarding obligations to respect de-listing and unfreezing actions.

Criterion 6.7

Japan can authorize access to frozen funds or other assets determined necessary for basic expenses, for payment of certain types of fees, expenses, and service charges, and for extraordinary expenses in accordance with UNSCR 1452. The licensing framework for asset-freezing established by the FEFTA affords the Minister of Finance broad discretion to permit otherwise-prohibited transactions. Under TAFA, designated persons or entities (including those designated pursuant to UNSCR 1373) must obtain permission to access frozen funds or other assets from the Prefectural Public Safety Commission (PPSC) that meets certain jurisdictional criteria (Art. 9-11). The PPSC may grant such permission upon fulfilment of criteria that generally track with UNSCR 1452 and of the additional criterion that "there is no possibility [that the funds or other assets are] used for criminal activities [in furtherance of] intimidation of the general public and of governments" (TAFA, Art. 11(1)(iv)). Japan represents that the PPSC would apply these provisions to allow for UN exemptions, as appropriate, but this mechanism has not been tested in practice.

Weighting and Conclusion

Although Japan has a system that implements TFS with delay, the country has made recent administrative improvements to substantially reduce the delay to a period of two to five days. These delays are mitigated to some extent by the JFSA guidelines, which impose ongoing screening requirements in relation to UN sanctions lists, however they are only applicable to FIs and VCEPs. Some other aspects of the TFS regime are unclear, including whether TFS applies to funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

Recommendation 6 is rated partially compliant.

Recommendation 7 – Targeted financial sanctions related to proliferation

This is a new Recommendation that was not assessed in its 3rd round mutual evaluation report (MER).

Criterion 7.1

Japan implements proliferation financing-related (PF-related) TFS primarily by means of the Foreign Exchange and Foreign Trade Act (FEFTA).FEFTA generally restricts "payments" and "capital transactions" involving a designated party. In effect, FEFTA freezes such assets by prohibiting such transactions unless specifically approved by the Ministry of Finance (MOF). These *de facto* asset-freezing measures apply immediately upon publication of notices in Japan's Official Gazette by the Ministry of Foreign Affairs (MOFA) and MOF, which find that such restrictions are necessary to ensure that Japan complies with obligations under a treaty or international agreement (e.g., WMD PF-related UNSCRs). However, this process is subject to delays (see 7.2(a)), and is impeded by a gap in the system relating to domestic transfers between two Japanese residents (where one party is designated) and ambiguity associated with the terms "payments" and "capital transactions" in the FEFTA (see c. 7.2(b)).

Criterion 7.2

a. Implementation occurs with delay. Prior to October 2019, delays of five to ten days occurred between UN listings and Official Gazette notices for approximately two-thirds of designated individuals and entities. Japan designated the remaining approximately one-third of UN-listed entities, however, prior to UN listing and therefore implemented corresponding TFS without delay. In addition, the FEFTA generally prohibits any transactions to or from DPRK physically, which results in *de facto* asset-freezing restrictions "without delay" for UN-listed parties that are located within DPRK (estimated to comprise a reasonable proportion of UN-listed parties) (see IO.11).

   Concerning the speed of implementing designations, since October 2019, Japan has implemented administrative improvements to shorten the Official Gazette process to two to five days. These delays are mitigated to some extent for FIs and VCEPs that are subject to ongoing screening obligations through the JFSA guidelines (see c. 6.4).

b. Following Official Gazette notice of a given designation of persons and/or entities, FEFTA prohibits (in the absence of specific pre-authorization from the MOF) all natural and legal persons from engaging in "payments" and "capital transactions" involving those persons and/or entities, provided those persons and/or entities are either non-residents or located outside Japan (Arts. 16 and 21, etc.).

   With respect to the "payments" restriction, "payments" is not explicitly defined in FEFTA or relevant jurisprudence. No applicable definition of "payments" exists in any Japanese law, regulation, or other official guidance, and no examples exist where Japan has used the FEFTA to freeze assets other than funds. Japanese legal academic literature suggests that the restriction can be applied broadly, with its applicability turning on the purpose of the "payment" (as opposed to the form of

"payment").[77] However, this interpretation would be narrower than the prohibition of transfer, conversion, disposition or movement of funds or other assets required under the FATF Standards, and it remains unclear whether or not all funds or other assets would in practice be covered given there is no definition of "payment" in Japanese law nor any example of the interpretation of "payments" in practice.

With respect to the "capital transactions" restriction, "capital transactions" are defined as transactions that "give rise to, alter, or extinguish" a financial claim under various types of contracts, such as those for money deposits, loans, and financial derivatives, between a Japanese resident and a non-resident (FEFTA, Art. 20). These restrictions include the act of entering into such contracts, even prior to fulfilment thereof (for example, by means of "payments").

Japan has not demonstrated that the asset-freezing obligations extend to (i) all funds or other assets that are owned or controlled by the designated person or entity; (ii) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; (iii) funds or other assets derived from or generated from or other assets owned or controlled directly or indirectly by designated persons or entities; or (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

c. As described at 7.1, residents or non-residents in Japan must seek permission to conduct a "payment" or "capital transaction" involving a designated party that is either a non-resident of or located outside Japan (FEFTA, Arts. 16 and 21). The Minister of Finance would then decide whether to grant such permission. Japan represents that the Minister of Finance has not and would not do so (absent appropriate circumstances, such as UN-authorized exemptions) (Art. 21(5)).

d. MOF sends email notifications to FIs regarding new or updated PF-related UN designations at some point after such UN updates; however, these notifications do not carry legal asset-freezing requirements until Official Gazette publication, as described at 7.1. The MOF also sends email notifications to DNFBP supervisors, but Japan did not provide information indicating whether and on what timeline the DNFBP supervisors notify the DNFBPs themselves. Japan does not appear to provide specific guidance to FIs and DNFBPs as to their asset-freezing obligations under the FEFTA.

[77] See, e.g., *Commentary to Special Criminal Laws*, Shigeki Ito (Japan's former Public Prosecutor General), et al., 1 February 1986, pp. 437-39 ("As 'making payments, etc.' does not have any definitions in FEFTA, there is no other way but to understand its meaning from the [intended] purpose of the related regulations… 'Making payments, etc.' in Article 16 applies (i) where there is a preceding transaction or action that produces the cause, (ii) where there is a claim/debt relationship between the parties, (iii) realizing the benefit arising from a claim/debt relationship by transferring the means of payment, or (iv) making or receiving a payment for settling a claim/debt relationship. Judging from the above interpretation of [FEFTA], anything that can be equated with the actual transferring means of payment to settle claim/debt relationships can be interpreted as "making payments, etc."). See, also, *Detailed Commentary on the Foreign Exchange Control Act*, Hiroo Fukui (former Japanese MOF official responsible for 1980 revision of FEFTA), 7 September 1981, p.170 ("'Making or receiving a payment' means making or receiving a cash payment… [and] also refers to transfer[] of property value that settles [a] claim/debt relationship in the broad sense… 'Making or receiving a payment' should be considered [] an abstract concept with a particular focus on legal effects, not solely a cash settlement…").

e. Japan requires FIs to report any assets frozen or other actions taken in compliance with relevant UNSCRs (FEFTA, Art. 55(8), etc.). Japan does not require DNFBPs to report such frozen assets or related actions.

f. The licensing framework for asset-freezing established by the FEFTA allows the Minister of Finance to permit otherwise-prohibited transactions, such as those necessary to protect the rights of bona fide third parties acting in good faith (art. 16). Japanese authorities thus take measures sufficient to protect the rights of bona fide third parties.

Criterion 7.3

The FEFTA provides for criminal, civil, and administrative penalties for non-compliance with the prohibitions on "payments" and "capital transactions" involving designated parties who are non-residents of or located outside Japan. With respect to criminal penalties, natural and legal persons convicted of violating the "payments" or "capital transactions" restriction(s) under FEFTA face imprisonment up to three years and/or a fine up to 1MM JPY (approximately EUR 7,919 or USD 9,631) (Art. 70). The FEFTA also empowers the MOF, upon finding that an FI has violated FEFTA, to order the implementation of remedial measures and to impose restrictions on the FI's operations, such as the suspension of foreign exchange business, until such measures are completed (Art. 17(1) and (2)).

The MOF monitors FIs for compliance with obligations under FEFTA. In addition, the JFSA Guidelines that impose TFS screening measures on FIs and corresponding corrective measures would apply (see 7.1). Although DNFBPs are subject to the above FEFTA restrictions, Japan does not systematically monitor DNFBPs for compliance with FEFTA.

Criterion 7.4

a. Via the MOFA website, Japan informs listed parties of the option to petition directly the Focal Point for de-listing established pursuant to UNSCR 1730.

b. The requirement under FEFTA to seek MOF approval before making "payments" or "capital transactions" involving a designated party constitutes publicly-known procedures to unfreeze funds of parties inadvertently affected by a freezing mechanism.

c. The licensing framework for asset-freezing established by the FEFTA allows the Minister of Finance to permit otherwise-prohibited transactions. Japanese authorities are thus empowered to authorize access to certain assets that meet the exemption conditions set forth in UNSCRs 1718 and 2231. Japan has not received any such request(s).

d. The MOF communicates de-listings and un-freezing decisions to FIs and DNFBPs via email, and to the general public via the MOF website, but not necessarily immediately upon such actions. Japan has not provided guidance to FIs and other persons and entities, including DNFBPs, that may be holding funds or other assets on their obligations to respect a de-listing or unfreezing action. The MOF represents that authorities would respond to any *ad hoc* inquiries regarding de-listing and unfreezing processes.

Criterion 7.5 –

a. The FEFTA does not automatically permit the addition of interests or other earnings due to prior contracts, *etc*. to accounts frozen pursuant to UNSCRs 1718 or 2231, but does provide that these accounts shall remain frozen. The FEFTA does, however, authorise the Minister of Finance to approve of the addition of interest or other earning due to prior contracts, *etc*. upon request and subsequent determination by the Minister that the criteria under relevant UNSCRs are sufficiently satisfied (Art.16).

b. Under the FEFTA, the MOF may grant permission to make a payment from otherwise-frozen funds provided that (1) the contract involving at least one non-designated third party was entered into prior to designation and (2) the MOF determines that the requested payment does not otherwise violate relevant UNSCRs. However, it is not clear that Japan must submit prior notification to the Security Council of the intention to make or receive such payment or to authorise, where appropriate, the unfreezing of funds or other assets ten days prior to such notification.

Weighting and Conclusion

Notwithstanding the mitigating factors of (1) domestic DPRK designations prior to UN designations, (2) blanket prohibition on trade of funds and goods to DPRK, and (3) the ongoing screening obligations in the JFSA guidelines that apply to FIs and VCEPs, moderate deficiencies with Japan's implementation of targeted financial sanctions related to PF-TFS remain. These include delays in implementation of asset-freezing requirements; inapplicability of asset-freezing requirements to domestic transactions among Japanese residents (where one party is designated); the lack of clarity as to whether the obligations to freeze all "funds or other assets" are line with the FATF definition; and lack of clarity as to whether TFS applies to funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

Recommendation 7 is rated partially compliant.

Recommendation 8 – Non-profit organisations

In its 3rd MER, Japan was rated partially compliant with the requirements on NPOs (para 886 – 921). Japan has not previously been assessed according to the most recent requirements of R.8, as the 3rd-round MER pre-dates the 2012 and 2016 adoption of changes to Recommendation 8 and its Interpretive Note.

Criterion 8.1 –

(a) Six laws (collectively, the "NPO legal framework") impose certain obligations on legal-person NPOs (see Chapter 1) and classify these legal persons into six sub-categories within the FATF definition of NPO, based on type of activity. NPOs within these categories are required to maintain articles of registration on premises and file annual financial reports with their corresponding supervisory authority (Order for Registration of Unions, *etc*.).

NPOs that are not legally incorporated or that fall outside of the above six categories (e.g., *ad hoc* collection of donations in response to a specific natural disaster) are not required to register. As a result, Japan has not identified these limited types of NPOs, which nonetheless may fall within the FATF definition.

In April 2019, the MOF led a non-public assessment of risk of TF abuse in the legal person NPO sector ("NPO TF Risk Assessment"). The assessment drew from law enforcement and FATF typology information, and included participation by the Cabinet Office, MEXT, and MHLW. The assessment did not, however use "all relevant sources of information" (*e.g.*, information from MOFA and NPOs relevant for TF risk) to identify the NPOs at risk of TF abuse, per Recommendation 8. In addition, the NPO TF Risk Assessment did not identify NPOs likely to be at risk of TF abuse (only a general reference that NPOs' activities could be carried out in and around areas exposed to terrorism). In sum, the assessment did not take into account significant necessary information (including basic necessary information, such as geographic areas of operation) and reached only general conclusions without significant bearing of TF risk.

(b) Japan did not identify the nature of threats posed by terrorist entities to Japanese at-risk NPOs or how terrorist actors abuse those NPOs.

(c) Japan has not recently and substantially reviewed the adequacy of measures to respond appropriately to TF risk in the NPO sector. A limited, historic exception is Japan's 1996 amendment of and related administrative measures regarding the Religious Corporations Act, in response to the terrorist attack by Aum Shinrikyo.

(d) Japan formally assessed TF risk in its NPO sector for the first time in April 2019 (resulting in the NPO TF Risk Assessment). In addition, the overarching ML/TF NRA for 2018 briefly and generally describes TF-related abuse of NPOs by reference to FATF's Recommendation 8 and its Interpretive Note. Japan has not provided information that demonstrates Japan intends to reassess the NPO sector for potential vulnerabilities, including those relating to terrorist activities.

Criterion 8.2

(a) Japan's NPO legal framework provides clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs. These policies include obligations regarding organisational integrity, partner relations, financial accountability and transparency, and program planning and monitoring for each of the six sub-categories of NPO. It is unclear whether there are similar policies in place for NPOs within the FATF definition not captured within Japan's NPO legal framework, although Japan has confirmed that 'good works' carried out by these organisations would be ad hoc and small in scale.

(b) Japanese authorities have conducted basic outreach regarding TF risks and preventive measures to some incorporated educational institutions in four meetings since November 2018; to some specified non-profit activity corporations in multiple meetings since 2011; and to some Public Interest Corporations through email communication since 2018. Japan does not appear to have undertaken outreach or educational programmes on TF risks with other types of NPOs or those outside of Japan's NPO framework.

(c) Japan does not appear to work with NPOs to develop and refine best practices to address TF risk and vulnerabilities.

(d) In April 2019, the MOF instructed the NPO supervisors (Cabinet Office, MEXT, and MHLW) to advise NPOs of general TF vulnerabilities (*e.g.*, "activities carried out in and around areas exposed to terrorism" and "foreign remittance(s)") and encourage NPOs to use regulated financial channels to the greatest extent possible.

Criterion 8.3

Japan does not supervise or monitor NPOs based on risk of TF abuse. Generally and apart from TF risk mitigation, the Cabinet Office, MEXT, MHLW, and prefectural and local governments supervise NPOs by, inter alia, collecting annual and *ad hoc* required reports from NPOs, conducting on-site inspections, and, when necessary, taking administrative actions in response to non-compliance. However, this relates to monitoring and supervision of the general governance requirements for NPOs that fall within the NPO legal framework (see 8.2(a)).

Criterion 8.4

(a) Japan's NPO legal framework establishes registration and record-keeping obligations for NPOs. Generally, the NPO legal framework also empowers the relevant authority or authorities to demand records, conduct on-site inspections, recommend and subsequently order remedial actions, and order suspension of unapproved activities. With respect to on-site inspections, remediation orders, and suspension orders, authorities must make certain showings, such as "reasonable grounds for suspicion" and that "objectives of supervision cannot be achieved by any other means" (*e.g.*, Act on Corporations Engaging in Specified Non-Profit Activities, Articles 41 and 43). For supervisory authorities per NPO category, see: PIAF, Art. 4; PNPA, Art. 10; PSA, Art. 31; RCA, Art. 12; MCA, Art. 44; and SWA, Art. 32. However, these supervisory measures relate to the governance procedures in place (see 8.2a), as there are no risk-based measures applied to NPOs at risk of TF abuse.

(b) Japanese authorities can impose certain sanctions on NPOs and persons acting on behalf of NPOs within the NPO legal framework for violations for the governance requirements in the NPO legal framework, including rescission of NPO approval, fines up to JPY 500 000 (cf. EUR 3,959 / USD 4,815), and imprisonment for up to six months. However, the process required before sanctions may be issued inhibits their potential effectiveness (after authorities showing reasonable grounds for suspicion to inspect, then making recommendations that are unheeded, and finally issuing orders that are violated). In addition, despite the availability of imprisonment penalties in limited cases, the maximum fines are too low to be considered dissuasive. Other criminal penalties under the Penal Code, however, such as embezzlement, breach of trust, and fraud, could apply in certain circumstances. Thus, NPO-specific penalties combined with those provided for in the Penal Code allow Japanese authorities to apply effective, proportionate, and dissuasive sanctions for NPO-related violations.

Criterion 8.5

(a) All of the ministries that supervise NPOs (the Cabinet Office, MEXT, MHLW, and prefectural and local governments) participate in the FATF Liaison Committee and would thus be able to share relevant NPO information through that mechanism. However, notwithstanding this mechanism, Japan does not appear to ensure that effective coordination and info sharing exists among agencies that hold relevant information on NPOs: for example, it is unclear whether prefectural and local governments effectively cooperate and share information with relevant agencies regarding NPOs.

(b) Japan does not have specific investigative expertise to examine NPOs suspected of TF. Japan relies on the more general provisions for LEAs to enable the investigation of NPOs suspected of TF abuse (see R.31).

(c) Japan has supervisory mechanisms that enable access to NPO information but require non-law enforcement authorities to meet relatively high thresholds of suspicion (see 8.4(a)). Based on non-NPO-related TF investigations (see IO.9), however, LEAs appear to have sufficient investigative expertise, capability, and authorities to examine NPOs suspected of TF abuse.

(d) Information gathered by supervisory authorities upon reasonable grounds to suspect TF abuse relating to an NPO may share such information with competent authorities (especially LEAs) for investigative action. However, this is reliant on the Code of Criminal Procedures, and prosecutors and judicial police officers' ability to seizure documents and records (Criminal Procedures Act, Article 197) – see also R.31.

Criterion 8.6

Japan has not identified specific points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support. Japan relies upon existing mechanisms for international cooperation (whether via the MOFA, NPA or MOF).

Weighting and Conclusion

Japan supervises its NPO sector for general transparency and good governance purposes, but does not do so based on risk of TF abuse. As an initial matter, Japan has neither identified which Japanese NPOs or types of Japanese NPOs are at risk of TF abuse nor adequately assessed overall TF risk in the sector. In addition, guidance to NPOs and coordination among relevant agencies specifically regarding TF is minimal. In view of the presence of some Japanese NPO operations in high threat areas, the above deficiencies are major.

Recommendation 8 is rated non-compliant.

Recommendation 9 – Financial Institution Secrecy Laws

In its 3rd MER, Japan was rated compliant with these requirements (para.556-559).

Criterion 9.1

While there is no financial institution secrecy law in Japan, the Act on the Protection of Personal Information (APPI) prohibits business operators, including FIs, from providing personal data to third parties without prior consent of the customer. However, APPI does not inhibit the implementation of any of the FATF requirements imposed to competent authorities, given the broad waivers it contains. In particular, the third-party restrictions do not apply to competent authorities or FIs performing their functions under applicable laws and regulations (APPI, art. 23, paragraph 1(1)-(4)). This would be relevant, for example, to the APTCP requirements for FIs to share information with government agencies (art. 8 on suspicious transaction reporting, art. 13 and 14 on disseminating information to investigative agencies and foreign agencies, as well as art. 16 on allowing competent authorities to carry out on-site inspections and access to any documents concerned) and also sharing of information between FIs where this is required by R.13 and R.16 (R.17 is not applicable).

Regarding the sharing of information between competent authorities, domestically and internationally, the Act on the Protection of Personal Information Held by Administrative Organs (APPIAO) permits that personal data are provided to third parties in specific cases, including when this is required by laws and regulations, and

when there are reasonable grounds for the use of that information (Article 8). This would include the requirements of the APTCP.

Weighting and Conclusion

Recommendation 9 is rated compliant.

Recommendation 10 – Customer Due Diligence (CDD)

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 487-541). The main deficiencies were: CDD was not required when there was a suspicion of ML or TF; the quality of the customer identification documents upon which FIs were permitted to rely was unclear and, in the case of natural person, did not include photographic identification; FIs were neither required to verify whether the natural person acting for legal person was authorized, nor to identify and verify the identity of the beneficial owner (BO). Progress made by Japan to address those deficiencies was monitored as part of the follow-up process and the FATF concluded in 2016 that Japan had addressed all its deficiencies regarding CDD. Since then, the FATF Recommendations have been strengthened to impose more detailed requirements, particularly regarding the identification of legal persons and legal arrangements.

Criterion 10.1

There is no explicit prohibition for FIs to keep anonymous accounts or accounts in obviously fictitious names, but the applicable provisions for the verification of customer identification data (APTCP, article 4, paragraph 1; APTCP Order, article 7) and applicable imprisonment or fine sanctions for failure to comply (APTCP, article 4, paragraph 6; article 27) prevent the opening of anonymous accounts or accounts in fictitious names.

Criterion 10.2

FIs are required to undertake CDD measures ("verification" according to APTCP, art. 4) when:

(a) Establishing business relationships (APTCP, art. 4, paragraph 1 and appended table; APTCP Order, art. 7, paragraph 1).

(b) Carrying out occasional transactions exceeding the relevant thresholds where the transaction is carried out in a single operation or in several operations that appear to be linked (APTCP, art. 7, paragraph 1; APTCP Order, art. 7, paragraph 3; art. 9, paragraph 2). The basic threshold is JPY 2 million (approx. EUR 15,837/USD 19,261) (APTCP Order, art. 7, paragraph 3) in line with the FATF requirement (USD/EUR 15 000) as the slight difference is only due to the exchange rate used.

(c) occasional wire transfers under JPY 100 000 yen (approx. USD 963 /EUR 792) are exempted from CDD requirements (ATPCP Order, art. 7, paragraph 1, item 1, (s) and (t)) which is in line with R. 16.

(d) – **(e)** the customer is suspected to hide ML or TF or to have given other false information concerning CDD, including customer identification data (APTCP, art. 4, paragraph 2(i)(b)).

Criterion 10.3

When customers are natural or legal persons, FIs are required to identify them and verify their identity (APTCP, article 4, paragraph 1; APTCP Order, article 7; APTCP

Ordinance, articles 6 and 7). The identification/verification documents listed in the APTCP Ordinance, article 7 would ensure independence and reliability.

Criterion 10.4

When FIs conduct transactions with a person that claims to be acting on behalf of the customer, they are required to verify the identity of the person concerned at the time of the transactions (APTCP, art. 4, paragraph 4). FIs are also required to verify that the person concerned is acting on behalf of the customer (APTCP Ordinance, art. 12, paragraph 4).

However, in a number of scenario of APTCP Ordinance, art. 12, paragraph 4, the verification method seems not to be reliable (ex. giving a call to the customer him/herself or its head office - items (i) (c) and (ii) (c)), and the exemption from verification based on the financial institution's own knowledge should be substantiated by the production of documented evidence of this knowledge (item (ii) (d)).

Criterion 10.5

FIs are required to verify the identity of the BO of the customer, which supposes that identification is conducted first, by taking reasonable measures to obtain sufficient identification data and other information concerned (APTCP, art. 4, paragraph 1, item (iv); APTCP Ordinance, art. 11).

Criterion 10.6

When FIs conduct transaction with a customer, they are required to verify the purpose and intended nature of the business relationship (APTCP, art. 4, paragraph 1, item (ii)).

Criterion 10.7

FIs are required to conduct ongoing due diligence, based on the result of CDD at the time of transaction and in consideration of the nature of the transaction and other conditions (APTCP, art. 8, paragraph 2), including:

(a) Scrutinizing transaction records and relevant information collected throughout the course of the relationship, verifying that the transactions being conducted are consistent with the institution's knowledge and determining whether there is any suspicion of ML/TF on the transaction (APTCP Ordinance, art. 27, item (ii));

(b) Ensuring that the documents, data or information collected under CDD process is kept up-to-date and relevant, by undertaking reviews of existing records (APTCP Ordinance, art. 27, item (iii)). FIs are required to conduct ongoing scrutiny of the information collected under the CDD process in accordance with the result of the assessment records (APTCP Ordinance, art. 32, paragraph 1, item (iii)).

Criterion 10.8

For customers that are legal persons or legal arrangements, FIs are required to obtain information on the customer's ownership and its control structure. (APTCP Ordinance art. 32, paragraph 1, item (ii)). FIs are also required to understand the contents of the customer's business (APTCP, art. 4, paragraph 1, item (iii)).

Criterion 10.9

For customers that are legal persons, FIs are required to identify the customer and verify its identity through the following information:

(a) name; which in the case of some legal persons such as stock companies, associations and foundations include an indication on the legal form (Company Act, art. 6 and 7; Act on General incorporated associations and general incorporated foundations, art.5 and 6) and proof of existence as indicated by the certificate of registered information (APTCP Ordinance, art. 7, item (ii));

(b) the power that regulates and binds the legal person, as well as names of directors, executive officers (when the legal person is a Company with Nominating Committee, etc.) and members (when the company is a Membership Company) (Companies Act, art. 348, 362, 363, 418, 590 and 911~914; Act on General Incorporated Associations and General Incorporated Foundations, art. 76, 90, 91, 197, 301 and 302).

(c) location of the head office or main office (APTCP, art. 4, paragraph 1; APTCP Ordinance, art. 6, paragraph 1, item (iii) and 7, item (ii)).

The required information to identify legal arrangements is not specified. However, trust businesses and companies are subject to the APTCP and must register (with the information published on the JFSA website), meaning information on the trustee to be easily available to FIs during their course of CDD. Trust business and companies themselves, as trustees, in turn must check and keep updated information on the settlors and beneficiaries. However, there are no similar requirements for civil trusts that are not considered trust businesses or companies. There are also no requirement for trustees to declare their status to FIs. See R.25.

Criterion 10.10

For customers that are legal persons, FIs are required to verify the identity of BOs, which supposes that identification is conducted first, through the following information (APTCP, art. 4, paragraph 1, item (iv); APTCP Ordinance, art. 11, paragraph 1-3):

(a) the identity of the natural person(s) who ultimately has a controlling ownership interest in the legal person, either based on holding more than 25% of the total voting rights, when relevant, or on receiving dividends or allotments exceeding 25% of the total profits or asset of the legal person (APTCP Ordinance, art. 11, paragraph 2 items (i) and (iii));

(b) when no one can be identified under (a), the identity of the natural person(s) exercising control on the legal person through other means, namely policy-making for the legal person's finance and management or operation (APTCP Ordinance, art. 11, paragraph 2 item (ii));

(c) when no one can be identified under (a) and (b), the person who holds the position of senior managing official (APTCP Ordinance, art. 11, paragraph 2 item (iv)).

Criterion 10.11

When FIs' customers are legal arrangements, FIs are required to verify the identity of the BO (APTCP art. 4, paragraph 1, item (iv); APTCP Order art. 5 and 7, paragraph 1, item (i), (c) and (d); APTCP Ordinance, art. 11, paragraph 1-2), which supposes

that identification is conducted first. However, the APTCP Order and Ordinance are not explicit that the settlor, the trustee(s) and the beneficiaries or class of beneficiaries should be identified as such.

Criterion 10.12

(a) and **(b)** FIs are required to identify the beneficiary of life insurance policies or to collect information necessary to identify the beneficiary in due time (Insurance Act, art. 40, (1) item (iv)).

(c) The verification of the identity of the beneficiary should occur at the time of the payout (APTCP Order, art. 7, paragraph 1, item 1(g)). Similar requirements apply to "other investment related insurance policies" (Insurance Act, art. 2; Insurance Business Act, art. 2; Regulation for the Enforcement of the Insurance Business Act, art. 234-2).

Criterion 10.13

FIs are required to take the customer risk's profile into account when conducting CDD (see c. 10. 17) and collect the name of the beneficiary or other matters necessary to identify the beneficiary at the time of issuing the life insurance policy (Insurance Act, art. 40, para.1, item 4). However, there is no clear requirement for FIs either to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, or to take enhanced measures including identifying and verifying any change in the identity of the BO of the beneficiary at the time of payout.

Criterion 10.14

There is a general requirement that FIs conduct the verification of customer identification data and of the beneficial owner of legal persons and arrangements "at the time of transaction" (APTCP, art. 4, paragraph 1; APTCP appended table; APTCP Order, art. 7). The completion of the identity verification process after the establishment of the business relationship is therefore not applicable in Japan.

Criterion 10.15

See above.

Criterion 10.16

FIs are required to conduct ongoing due diligence on transactions and relationships with existing customers (see c. 10.7) (APTCP, art. 8, paragraph 2;, art. 11, item (iv), APTCP Ordinance art. 27, item (ii) and (iii) and art. 32, paragraph 1, item (ii)). In addition, the JFSA Guidelines stipulate the CDD requirements to existing customers on the basis of materiality and risk (JFSA Guidelines, II-2(3)(ii)ix.d.)

Criterion 10.17

FIs have to take enhanced due diligence measures where a transaction is identified as higher risk in the NRA (APTCP art. 4, paragraph 2; APTCP Order art. 12) (APTCP art. 8, paragraph 2; APTCP Ordinance, art. 27, item (iii)).

FIs under the supervision of the JFSA are required to apply EDD in any situation assessed as higher risk (JFSA Guidelines II-2 (3) items (i) and (ii). There is no equivalent provisions for other FIs.

Criterion 10.18

SDD is permitted in the transactions which are assessed to be at lower risk of ML/TF according to the national risk assessment report (APTCP Order, art. 7, paragraph 1; APTCP Ordinance, art. 4, paragraph 1).

SDD can no longer be applied to transactions which are seemingly suspicious and/or significantly different from normal transactions (APTCP Order, art. 7, paragraph 1; APTCP Ordinance, art. 5).

Criterion 10.19

(a) When a customer does not respond to the request for verification (CDD measures) at the time of transaction, FIs may refuse to perform their contractual obligations until the customer complies with the request (APTCP, art. 5). This leaves some flexibility to the financial institution not to engage into the relationship or conduct the transaction. In addition, FIs are not required to terminate the business relationship under this scenario.

(b) When there is any suspicion of ML/TF, FIs shall promptly file suspicious transaction reports (APTCP, art. 8, paragraph 1). Unsatisfactory completion of CDD and at the time of transaction and verification results constitute one of the grounds for FIs to file STRs (APTCP, art. 8, paragraph 2; APTCP Ordinance, art. 26, item (iii)).

Criterion 10.20

Financial institutions are required to file suspicious transaction reports when there is any suspicion of ML or TF (APTCP, art. 8, paragraph 1). However, there is no legal provision that permit FIs not to pursue the CDD process in cases where they form a suspicion of ML/TF and reasonably believe that performing the CDD process will tip-off the customer.

Weighting and Conclusion

Japan meets a number of important criteria, but some deficiencies remain (including a lack of clarity and gaps in the provisions regarding trusts, in the verification of any person purporting to act on behalf of the customer, in the approach of beneficiaries of life insurance policies, in the application of CDD requirements to existing customers) which together amount to minor shortcomings.

Recommendation 10 is rated largely compliant.

Recommendation 11 – Record Keeping

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 560-569). The main deficiencies related to the exemption of small transactions from the record-keeping requirements, and the fact that financial institutions were neither

obligated to keep business correspondence and account files, nor required to ensure that recorded information was made available to the competent authorities on a timely basis.

Criterion 11.1

FIs are required to maintain necessary records on all transactions, both domestic and international, for 7 years following completion of the transaction (APTCP, article 6, paragraph 1 and 2, article 7, paragraph 1 and 3; APTCP Ordinance, article 19, 20, 21 and 24). However, small transactions (transactions for transfer of property not more than JPY 10 000/ USD 96/ EUR 79) and other transactions (exchange of Japanese currency which amounts to not more than JPY two million/ USD 19,261/ EUR 15,837, exchange of Japanese currency and foreign currencies which amount to not more than JPY two million/ USD 19,261/ EUR 15,837 or sale or purchase of traveller's check which amount to not more than JPY two million/ USD 19,261/ EUR 15,837)are exempt from the record-keeping requirements (APTCP, article 7, paragraph 1; APTCP Order, article 15, paragraph 1).

Criterion 11.2

Financial institutions are required to keep records obtained through CDD measures ("verification records" as prescribed by APTCP and APTCP Ordinance) for 7 years after termination of the business relationship or completion of the occasional transaction (APTCP, article 6, paragraph 1 and 2; APTCP Ordinance, article 19, 20 and 21).

FIs are also required to keep the records of results of the analysis and assessment conducted on the CDD information collected (APTCP Ordinance, article 32, paragraph 1, items (ii) and (v).

FIs are required to keep account number and other matters for the purpose of searching verification records (APTCP, Article 7; APTCP Ordinance, article 24, paragraph 1).

Criterion 11.3

Transaction records include a number of important information to permit reconstruction of individual transactions which can be used as evidence for prosecution of criminal activity, as FIs are required to keep verification records, including identification information of person(s) who conducted the verification and prepared the verification records, date and time of identification document, type of transaction, method of verification, date, type and purpose of transaction, account number, value of property (APTCP Ordinance, articles 20 and 24).

Criterion 11.4

A competent authority can request a financial institution to submit reports or materials concerning its business affairs, and can also have its officials enter a business office or other facility and inspect the books, documents and any other objects of the said facility (APTCP, article 15-16). JAFIC can also request FIs to provide materials and other assistance for the purpose of collecting, arranging and analysing the information on criminal proceeds (APTCP, article 3, paragraph 4).

Public prosecutors, their assistant officers, and judicial police officials have the authority to carry out examinations and make inquiries which are necessary for

criminal investigations, which enables them to access to the information held by FIs (Code of Criminal Procedure, article 197, paragraph 1, 2).

However, there is no explicit provision stipulating that this CDD information and transaction records are available swiftly.

Weighting and Conclusion

Japan meets a number of important criteria, but some deficiencies remain (exemption of small transactions from the record-keeping requirements and lack of explicit provision that CDD information and transaction records should be available swiftly to competent authorities) which are minor shortcomings.

Recommendation 11 is rated largely compliant.

Recommendation 12 – Politically Exposed Persons (PEPs)

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 542-545). The main deficiencies were: FIs were neither required to identify whether a customer was a politically exposed person, nor 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. The follow-up process did not monitor progress made by Japan in this area. In 2012, the FATF introduced new requirements for domestic PEPs and PEPs from international organisations.

Criterion 12.1

FIs are required to perform EDD on foreign PEPs (APTCP, article 4, paragraph 2, item (iii); APTCP Ordinance, article 27, item (iii)). The definition of foreign PEPs is aligned on the FATF definition (APTCP Order, article 12, paragraph 3; APTCP Ordinance, article 15).

(a) FIs under the supervision of the JFSA are required to formulate a customer acceptance policy, based on the risk identification and assessment of the institution, to systematically and specifically identify and determine high-risk customers, including but not limited to foreign PEPs, and required actions for them (JFSA Guidelines, II-2, (3)(ii), required actions(i)). Those FIs are also required to establish a framework to properly detect high-risk customers by utilizing reliable databases and systems or other rational measures (JFSA Guidelines, II-2, (3)(ii), required actions(v)). There is no equivalent provision applicable to other FIs.

(b) In the case where a customer is a foreign PEP, FIs are required to obtain approval of a "senior compliance officer" who is not required to be part of the FIs' senior management to commence or continue the business relationship (APTCP Ordinance, article 32, paragraph 1, item(iv)). For FIs under the supervision of the JFSA, senior management has to approve transactions with high risk customers including foreign PEPs (JFSA Guidelines, II-2(3)(ii)vii.b).

(c) FIs are required to conduct verification of the source of wealth and source of funds, but only when the transaction involves transfer of property exceeding JPY two million / USD 19,261/ EUR 15,837 (APTCP, article 4, paragraph 2, item (iii); APTCP Order, article 11; APTCP Ordinance, article 15). In addition, FIs under the supervision of the JFSA are required to apply EDD measures for customers determined high ML/TF risk including foreign PEPs by obtaining information on customer's source of wealth and source of funds (JFSA Guidelines, II-2(3)(ii)vii.a).

(d) FIs are required to conduct enhanced ongoing monitoring on relationship with foreign PEPs (APTCP article 8 paragraph 2, article 11, item (ii)(iii), APTCP Ordinance, article 27, item (ii)(iii), article 32, article 1 item (ii)(iii)(iv)). FIs under the supervision of JFSA are required to conduct enhanced ongoing monitoring on relationship with foreign PEPs (JFSA AML/CFT Guidelines, II-2, (3)(ii)-required actions(vii)(ix)). There is no equivalent provision applicable to other FIs.

Criterion 12.2

Domestic PEPs or persons who have been entrusted with a prominent function by an international organisation are not recognised as a specific category of customers. There is no requirement on FIs to determine whether a customer or the BO is such a person, or to adopt measures applicable to foreign PEPs as above, applicable when there is a higher risk business relationship with such a person.

Criterion 12.3

FIs are required to apply requirements of criteria 12.1 (a)-(d) to family members or close associates of foreign PEPs (APTCP Order, article 12, paragraph 3, item (ii)), with the deficiencies noted in c. 12.1. In addition, those requirements do not apply to family members or close associates of domestic PEPs or persons who have been entrusted with a prominent function by an international organisation.

Criterion 12.4

There is no special provision that requires FIs to take reasonable measures to determine whether the beneficiaries and/or, where required, the BO of the beneficiary of life insurance policies are PEPs. Accordingly, provisions regarding enhanced measures on higher risk beneficiaries are not in place.

Weighting and Conclusion

There are important deficiencies especially since some of them (the absence of specific measures applicable to foreign PEPs) affect FIs under the supervision of the JFSA, which are the most important FIs in Japan. In addition, domestic PEPs, persons who have been entrusted with a prominent function by an international organisation and their family members/close associates are not recognised as a specific category of customers. There is no clear provision requiring FIs to determine if the beneficiaries and/or the BO of beneficiary of life insurance policies are PEPs. Those shortcomings are moderate shortcomings.

Recommendation 12 is rated partially compliant.

Recommendation 13 – Correspondent Banking

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 546-547). The main deficiency was the lack of obligation for FIs to determine whether a respondent institution had been subject to ML or TF enforcement action; assess the adequacy of the respondent's AML/CFT controls; require senior management approval before establishing the relationship; and document the respective AML/CFT responsibilities of each institution. The follow-up process did not monitor progress made by Japan in this area. The new FATF Recommendation adds a specific requirement concerning the prohibition of correspondent relationships with shell banks.

Criterion 13.1

FIs are required to take specific measures when they enter cross-border correspondent banking relationships, which are broadly consistent with (a)-(d) of criterion 13.1 respectively (APTCP, article 9(1) (i) and (ii) ; APTCP Ordinance, article 32, paragraph 4, item (i)-(iv)). FIs under the supervision of JFSA are required to appoint an executive responsible for AML/CFT measures of the institution, granting the authority necessary to fulfil the responsibilities (JFSA Guidelines, III-2(ii)). However on (a) the requirement is not specific enough regarding the need to determine if the respondent has been subject to a ML/TF investigation or regulatory action (APTCP, article 9 (1) item (ii) and APTCP Ordinance, article 32 (4) item (i)).

Criterion 13.2

There is no provision to control services for "payable-through accounts (PTA)" under Japanese legislation. Although Japanese FIs have not provided any PTA services to respondent banks for the time being, in case one would decide to enter the business, there will be no provision in place to regulate it.

Criterion 13.3

FIs are required not to enter into or maintain a correspondent banking arrangement, if the respondent institution is a shell bank or the respondent institution permits its accounts to be used by a shell bank (APTCP, article 9 (1), (2)).

Weighting and Conclusion

FIs are required to take specific measures when they enter cross-border correspondent banking relationships, but minor shortcomings remain as there is no provision to control services for "payable-through accounts" under Japanese legislation, and FIs are not specifically required to determine if the respondent institution has been subject to a ML/TF investigation or regulatory action.

Recommendation 13 is rated largely compliant.

Recommendation 14 – Money or value transfer services (MVTS)

In its 3rd MER, Japan was rated partially compliant with these requirements (para. 756-764). The main deficiencies related to concerns of effective implementation of the FATF Recommendations (which is not assessed as part of technical compliance under the 2013 Methodology) and monetary penalties for underground banking. The follow-up process did not monitor progress made by Japan in this area. The FATF introduced new requirements concerning the identification of MVTS providers who are not authorised or registered.

Criterion 14.1

A bank can perform MVTS activities under the Banking Act ("*Kawase*" transactions), which requests any person to obtain a banking license when he/she is engaged in those services (Banking Act, article 4 and article 10, paragraph 1, item (iii)). Similar licensing requirements apply to bank-like institutions which provide money or value transfer services (Shinkin Bank Act, article 53, paragraph 1 (iv), and article 4; Labor Bank Act article 58, paragraph 2 (i) and article 58-2, paragraph 2 (iii); Small and Medium-Sized Enterprise (SME) Cooperatives Act, article 9- 8, paragraph 2 (i) and 9-9, paragraph 6 (i); Agricultural Cooperatives Act, article 10, paragraph 6 (ii); Fishery Cooperative Law, article 11, paragraph 3 (ii), article 87, paragraph 4 (ii), article 93,

paragraph 2 (ii), article 97, paragraph 3 (ii); Norinchukin Bank Act, article 54, paragraph 1 (iii); Shoko Chukin Bank Limited Act, article 21, paragraph 1 (iii)).

In addition, Fund Transfer Service Provider (FTSP) also can perform MVTS activities under the Payment Services Act, which provides that FTSP should register before engaging in MVTS (Payment Service Act, article 2, paragraph 2 and article 37).

Criterion 14.2

Japanese authorities take action against potential unlicensed/unregistered MVTS providers, on the basis of information provided by competent authorities and third parties, such as the Financial Services User Counseling Office or the Japan Payment Service Association. Suspect cases are reported to the National Police Agency as necessary. JFSA, Local Finance Bureaus (LFBs) or the relevant supervisor issue warnings to unlicensed/unregistered MVTS providers, cooperating with JFSA and police agencies. If unlicensed/unregistered MVTS providers do not regularise their situation the JFSA publishes their name on its website, as well as the names of detected unregistered/unlicensed MVTS providers which continue business operations ignoring LFBs' warnings. They could also be subject to criminal penalties stipulated in the Banking Act (Banking Act, article 61). In a majority of cases, the issuance of public warnings leads illegal operators to stop their business. The prefectural police also investigates cases of potential unauthorised banking business, including unauthorised MVTS, based on information collected in the course of other criminal investigations and shared by financial supervisors such as JFSA (Code of Criminal Procedure, article 189, paragraph (2)).

Criterion 14.3

Japanese MVTS providers (i.e. banks and other bank-like institutions, and FTSPs) are subject to AML/CFT supervision (APTCP, article 2, paragraph 2 and article 22).

Criterion 14.4

Bank agency services include acting as an agent or intermediary for a principal bank or bank-like institution to provide banking services including MVTS. Agents offering such services are required to be authorised by the JFSA (Banking Act, article 2, paragraph 14, 15 and article 52-36, paragraph 1; Shinkin Bank Act, article 85-2, paragraph (1); Labor Bank Act, article 89-3, paragraph (1); Act on Financial Businesses by Cooperative, article 6-3, paragraph (1); Agricultural Cooperatives Act, article 92 -2, paragraph (1); Fishery Cooperative Act, article 121- 2, paragraph (1); Norinchukin Bank Act, article 95- 2, paragraph 1).

A principal FTSP's written application, which the FTSP needs to submit when it seeks registration from the JFSA (see c. 9.1), needs to have information about the agents (such as the agents name and outsourced business). Such information is made publicly available along with other information on the principal FTSP, which enable competent authorities to access the current list of FTSPs' agents offering MVTS.

Criterion 14.5

Banks are required to take measures in connection with the bank agency services that their bank agents provide, in order to ensure sound and appropriate management (Banking Act, art. 52-58; Ordinance for Enforcement of the Banking Act, art. 34-63, paragraph 1 (vii)). Similar requirements apply to other bank-like institutions, and

FTSPs (Shinkin Bank Act Art. 89, paragraph 5, 6; Ordinance for Enforcement of the Shinkin Bank Act, art. 169; Labor Bank Act, art. 94, paragraph 3,4; Ordinance for Enforcement of the Shinkin Bank Act, art. 151; Act on Financial Businesses by Cooperative, art. 6-5; Ordinance for Enforcement of the Act on Financial Businesses by Cooperative, art. 109; Agricultural Cooperatives Act, art. 92-4, paragraph (1); Fishery Cooperative Act, art. 121-4, paragraph (1); Norinchukin Bank Act, art. 95- 4, paragraph (1); Shoko Chukin Bank Limited Act, art. 28- 2, paragraph (1); Payment Services Act, art. 66, paragraph (2)). Japanese MVTS providers are required to include their agents in their AML/CFT programmes and monitor them for compliance with these programmes.

Weighting and Conclusion

Japan meets most of the requirements regarding MVTS, but there are some minor deficiencies in relation to the monitoring for compliance of MVTS agents.

Recommendation 14 is rated largely compliant.

Recommendation 15 – New technologies

In its 3rd MER, Japan was rated partially compliant with these requirements (para. 548-554). The main deficiencies were that there was no explicit requirement for FIs to develop policies and procedures to mitigate the use of technological developments for the purposes of ML and TF; the identification and verification requirements for non face-to-face customers were insufficient. The follow-up process did not monitor progress made by Japan in this area. The new R.15 focuses on assessing risks related to the use of new technologies, in general, and imposes a comprehensive set of requirements in relation to virtual asset service providers (VASPs).[78]

Criterion 15.1

The National Public Safety Commission (NPSC) is required to make a ML/TF risk assessment report (NRA) that indicates the extent of risk in each category of transactions and make it public every year (APTCP, art. 3, para 3; see c. 1.1). This report may include assessment of ML/TF risks of the transactions involving new products, new types, patterns and nature of transactions or other transactions using new or emerging technologies.

FIs are required to examine and analyse transactions being conducted, according to the level of ML/TF risks prescribed in the national risk assessment report, which includes examination of the transaction involving new products, new types, patterns and nature of transactions or other transactions using new or developing technologies (APTCP Ordinance, art. 32, paragraph 1 item (i)).

Criterion 15.2

(a) Only FIs supervised by JFSA are required to analyse and evaluate ML/TF risks before offering new products and services, or to conduct transactions using new technologies or those with new characteristics (JFSA Guidelines, II-2 (1) item (iv), (2) item (i) and (3) item (i)).

78 The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual assets and virtual asset service providers. In October 2019 (just before the onsite visit), FATF agreed corresponding revisions to its assessment Methodology and immediately began assessing countries (including Japan) for compliance with these requirements.

(b) The general obligation that FIs have to undertake a risk assessment for all products, practices or technologies (see c. 15.1) involves taking appropriate measures to manage and mitigate these risks.

Criterion 15.3

(a) The May 2016 amendments to the APTCP and Payment Services Act (PSA) added virtual currency exchange service providers (VCEPs) to obliged entities that are subject to AML/CFT regulation and supervision in Japan (APTCP, art. 2, para. 2, item (xxxi)). Therefore, the NPSC is required to develop a report identifying and assessing the ML/TF risks, including the risks associated with VCs, in Japan (APTCP, art. 3(3), see c. 1.1).

Japanese authorities started to assess the specific ML/TF risks associated with virtual assets in 2014 (NRA-Baseline Analysis), and followed-up in the 2015 NRA-Follow-Up Report (FUR), as well as in other annual NRA-FUR since then. However, the deficiencies with respect to the NRA and NRA-FURs also carry through to this sub-criterion. (see c.1.1).

There are also deficiencies in regards to the scope of the FATF definition of virtual asset service providers (VASP), as Japan's system only regulates the following activities (i) buying or selling of virtual currency or exchanging it with other virtual currency; (ii) acting as intermediary and broker or proxy on behalf of the preceding item; and (iii) managing the money or virtual currency of the user with respect to the acts listed in the preceding two items (Payment Services Act, art. 2 (7)). This definition therefore only explicitly covers the activities targeted by (i) and (ii) of the FATF definition. The assessment team is satisfied that "managing" (within the meaning of the Payment Services Act, art. 2(7)(iii)) includes activities listed in (iii) and (iv) of the FATF definition, to the extent that those activities are provided by VCEPs that perform transfers for their customers and safekeep their virtual assets. Furthermore, the assessment team is satisfied that Article 2(7) of the Payment Services Act can be flexibly applied to activities listed in (v) of the FATF definition, which is designed to capture 'Initial Coin Offerings'.[79] However, as custodial wallet services are not regulated at the time of the on-site visit in November 2019, Japan's system does not regulate the range of service providers that can perform transfers for their customers (within the meaning of clause (iii) of the FATF definition of VASP) and safekeep their virtual assets (within the meaning of clause (iv) of the FATF definition). As a result, Japan only partly meets (iii) and (iv) of the FATF definition. This impacts most of the sub-criteria in this Recommendation.[80]

(b) VCEPs are FIs subject to AML/CFT regulation and supervision in Japan (APTCP, art. 3, para. 2, item (xxxi)). The analysis of c. 1.5 therefore applies, and the deficiencies identified are also relevant. VCEPs are considered as higher risk as per the NRA and therefore the higher risk mitigation measures apply (see c. 1. 7). VCEPs are supervised as high-risk FIs by JFSA.

(c) The analysis of c. 1.10 and 1.11 also applies to VCEPs as FIs, and the deficiencies identified are relevant.

79 See Financial Action Task Force (FATF), 2019, Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers, page 16.

80 The PSA was further amended in May 2019 to include custodial wallet services and the relevant requirements entered into force on 1 May 2020 after the onsite visit.

Criterion 15.4

(a) VCEPs must register with the Prime Minister (PSA, art. 63-2), including foreign service providers that offer products/services to customers in Japan. In the case of foreign service providers, they must have a representative in Japan (PSA, art. 2 (7) and art. 63-3 (1) item (vi)). Only legal persons can offer VCEPs (PSA, art. 63-3).

(b) A VC exchange service provider whose directors have been sentenced to imprisonment or heavier punishment and for whom five years have not passed since the sentence cannot be registered in Japan (PSA, art. 63-5, (1), item (x)). However, this requirement does not apply to associates of such criminals. In addition, there are no legal or regulatory measures to prevent criminals or their associates from holding, or being the beneficial owner (BO) of, a significant or controlling interest of a VCEP.

Criterion 15.5

A person who provides VC exchange services without obtaining registration is subject to sanctions (PSA, art. 107 (v)), which is appropriate regarding potential imprisonment (max. 3 years) but not regarding the potential pecuniary sanction (a fine of max. JPY 3 million (approx. EUR 23,756/USD 28,892).

Japanese authorities actively identify unregistered VCEPs, by accepting complaints from users, inquiries from investigating authorities, information from the VC industry and the Japan Virtual and Crypto assets Exchange Association (JVCEA), and from media news and web advertisements.

Criterion 15.6

(a) JFSA is the AML/CFT supervisor for VCEPs (APTCP, art. 22 (1) item (i)). The JFSA VCEP monitoring team has systems in place for ensuring VCEPs' compliance with national AML/CFT requirements. However, the deficiencies highlighted in the risk-based approach to JFSA supervision are also relevant for VCEPs (see c. 26. 4 to 6).

(b) The JFSA is empowered to take the same range of measures to supervise and ensure VCEPs' compliance with AML/CFT requirements as with FIs, including the authority to conducting on-site inspections and compel production of information (see R. 27, and also PSA art 63-13 to 15). In addition, JFSA is empowered to issue orders to improve business operations or revoke the registration of a VCEP for its violation of the PSA (article 63-16 and 17).

Criterion 15.7

In 2018, the JFSA adopted AML/CFT Guidelines in order to set a common minimum standard for the understanding of ML/TF risks by the financial sectors under its supervision, including VCEPs (see c. 34.1). The JFSA, and in particular its VCEP monitoring team (see MER, see 6.2.2) works in close partnership with the JVCEA, in order to promote a better understanding of ML/TF risks, and AML/CFT obligations, including STR requirements (see MER, 5.2.1 and 6.2.6).

Criterion 15.8

(a) The analysis of c. 35.1 applies to VCEPs, and the minor deficiencies identified are relevant. As mentioned in c. 27.4, JFSA is empowered to issue orders to improve business operations or revoke the registration of a VCEP for a breach of AML/CFT

requirements which would amount to a violation of the Payment Service Act (Payment Service Act, article 63-16 to 63-17).

(b) The analysis of criterion 35.2 applies to VC exchange service providers.

Criterion 15.9

The analysis of R.9 to 21, including the deficiencies identified, applies to VC exchange service providers.

(a) The analysis of R.10, including the deficiencies identified, applies to VCEPs. Occasional transactions of transferring VA above JPY 100 000 (USD 963/EUR 792) are subject to CDD requirements (APTCP Order, Article 7(1)(q)). The occasional transaction designated threshold for exchanging VAs is JPY 2 million (EUR 15,837/USD 19,261) (APTCP Order, article 7(1)(p)) (see c. 10.2), which is significantly higher than the required threshold of USD/EUR 1 000.[81]

(b) (i) to (iv) Existing provisions on wire transfers do not apply to VA transfers, but only to transactions conducted by banks, deposit-taking institutions and fund transfer service providers (see R. 16).

Criterion 15.10

Transactions involving VCEPs appear to be mostly captured by the FEFTA and the TAFA, the laws that govern TFS in Japan. As discussed at R.6, FEFTA and TAFA jointly establish legal restrictions and requirements to implement TFS for TF and the TAFA explicitly covers virtual assets (Cabinet Order Concerning the Freezing etc. of Property of International Terrorists No.356, Article 4). As discussed at R.7, for TFS concerning PF, only the FEFTA applies. While, the FEFTA does not define the type of assets captured under the FEFTA (only "payments" and "capital transactions"), notices published by the MOF indicate that payments involving virtual currencies would be defined as a "payment" and therefore would be captured.[82] While a payment would only involve a settlor/debtor type transaction, the requirement to freeze "payments" under FEFTA would likely capture most transactions that can be carried out by a VCEP. As per R.7, residents of Japan cannot be designated under the FEFTA.

In terms of communication mechanisms for communicating designations to VCEPs, on the day that designations are announced via Official Gazette, the MOF informs VCEPs (at the same time as FIs) via email of additions to the list of persons and entities. This email was being distributed to 3 or 4 VCEPs, although the majority of VCEPs (19) had begun to receive the email during the time of the onsite. Some general guidance has been provided to VCEPs on their obligations in taking freezing action. The emails sent also cover delisting notifications although there is no specific guidance in relation to de-listing and unfreezing.

In addition, the JFSA AML/CFT Guidelines, which applies to VCEPs, requires regulated entities to "comply with the necessary measures [of] applicable economic and trade sanction laws and regulations enforced by other foreign authorities, such as by screening the names of a customer and beneficial owners against the sanctions list

81 As part of the amendment of the Payment Services Act (enacted on May 31, 2019), APTCP Order, article 7(1)(p) was amended to lower the threshold for the occasional transactions of exchanging VAs from JPY 2 million (EUR 15,837/ USD 19,261) to JPY 100 000 (EUR 792/USD 963). However, this amendment only came into force on 1 May 2020 after the on-site visit.

82. www.mof.go.jp/international_policy/gaitame_kawase/gaitame/recent_revised/gaitamehou_20180518_1.pdf

published by each regulator" (JFSA Guidelines, Section II-2). In effect, this requires VCEPs to have regard to third-party software providers that update sanctions lists.

Funds services providers (including VCEPs according to the Payment Services Act) are required to report to the MOF any assets frozen pursuant to FEFTA restrictions (Art. 55-8) – see 6.5(e) and 7.2(e). TAFA does not require VCEPs to report frozen assets. In circumstances where a payment of funds (including fiat currency and virtual assets) is attempted to or from a designated individual or entity, the VCEP would need to seek permission to conduct the transaction from the relevant minister (FEFTA art. 16). Therefore, attempted transactions after a designation has taken place are required to be reported to the relevant minister.

With respect to UNSCR 1718 and 2231, the measures for monitoring or ensuring compliance by VCEPs with the relevant laws or enforceable means governing obligations under R.7 would fall either to the JFSA (due to the reference in the Guidelines for VCEPs to take measures to comply with trade sanctions and laws – as above), or to the MOF (the ministry responsible for compliance with restrictions under the FEFTA).

Criterion 15.11

The analysis of R. 37 to 40 apply when VC and VCEPs are involved, and the identified deficiencies are relevant. However, it is not clear if the JFSA has a legal basis for exchanging information with foreign counterparts regardless of the supervisors' nature or status and differences in the nomenclature or status of foreign VASPs.

Weighting and Conclusion

There are general provisions for the identification and assessment by FIs of ML/TF risks in relation to new technologies. VCEPs are registered, regulated and supervised for AML/CFT purposes, although there is a gap in the scope of activities covered. The shortcomings identified in applicable sanctions to FIs, as well as preventive measures and TFS for TF and PF are also relevant for VCEPs. They amount to minor deficiencies given the weight of the VCEP sector in Japan.

Recommendation 15 is rated largely compliant.

Recommendation 16 – Wire transfers

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 570-587). The main deficiencies related to the absence of requirement for FIs to transmit originator account number or unique transaction reference numbers in domestic wire transfers, and to provide originator information to supervisory authorities within three business days, and to immediately provide this information to domestic law enforcement authorities. In addition, beneficiary FIs were not required to verify that incoming wire transfers contained complete originator information nor were they required to consider filing an STR or consider terminating the business relationship if appropriate. Significant changes were made to the requirements in this area during the revision of the FATF Standards.

Criterion 16.1

FIs that can provide wire transfer services are limited to the business operators that are qualified to conduct "Kawase transactions", i.e. MVTS. Therefore, as described in Recommendation 14, FIs providing wire transfer services are: banks, bank-like (deposit-taking) institutions and Fund Transfer Service Providers (FTSPs) (APTCP, article 2, paragraph 2, item (i), (ii)-(xv) and (xxx) respectively).

When a financial institution processes a cross-border wire transfer, whatever its amount, it is required to include customer (originator) identification data when consigning the payment to another financial institution or a foreign exchange trader (APTCP, article 10, paragraph 1). Specifically, the (i) customer (originator) name; (ii) his/her account number or transaction reference number; and (iii) the customer's address or identification number (for natural person) or location of the head office or principal office or the customer identification number (for legal person) (APTCP Ordinance, article 31, paragraph 1). The requirement to conduct CDD on the wire transfers above the JPY 100 000 threshold (approx. USD 963/EUR 792) (see c. 16.3) ensures the accuracy of the originator's information.

However, there is no such requirement on beneficiary information. Although there is a general requirement that FIs supervised by JFSA inform the intermediary or beneficiary FIs of the beneficiary information "in accordance with international standards", which would implicitly refer to FATF Standards (JFSA Guidelines, II-2(4), (ii)), beneficiary information required is not specified.

Criterion 16.2

Requirements concerning batch transfers are covered by the requirements described in c. 16.1, with identical deficiencies.

Criterion 16.3

This criterion is relevant only for countries that apply a de minimis threshold. c. 16.1 indicates that originator's information are required whatever the amount of the transfer. So this criteria is "Not applicable".

Criterion 16.4

Full CDD is conducted for wire transfers if the amount to be transferred exceeds JPY 100 000 (USD 963/EUR 792) or there is a suspicion of ML/TF. Therefore the information on the originator is checked for accuracy. APTCP Ordinance, article 24 (v) requires beneficiary institutions to prepare records of matters sufficient for identifying the original possessor or destination (requires beneficiary institutions to prepare records of matters sufficient for identifying the original possessor or destination. In addition, there is a general requirement that FIs supervised by JFSA inform the intermediary or beneficiary FIs of the beneficiary information "in accordance with international standards", which would implicitly refer to FATF Standards (JFSA Guidelines, II-2(4), (ii)).

Criterion 16.5

For domestic wire transfers, ordering FIs are required to prepare records of originator's transaction information and make them available upon the request of beneficiary FIs (APTCP Ordinance, article 24(vi)).

Criterion 16.6

Ordering FIs are required to prepare records of originator's transaction information and make them available within three business days upon the request of beneficiary FIs (APTCP Ordinance, article 24(vi)). However, the ordering financial institution is not required to include the account number or a unique transaction reference number, which will permit the transaction to be traced back to the originator or the beneficiary. In addition, prosecutors and judicial police officials, if necessary for investigation of an offence, have the authority to conduct the examinations that are necessary for the purpose of this investigation, including compelling production of information on the domestic transfer (Code of Criminal procedure, article 197, paragraph 1-2, and article 218), but there is no explicit provision stipulating the immediate sharing of such information.

Criterion 16.7

When a financial institution processing a wire transfer has conducted a transaction, except for some small transactions below the threshold of 10.000 Yen ((approximately USD/EUR 100) and other transactions as specified in c. 11.1, it is required to immediately make a record and keep this record for 7 years after the transaction was carried out (APTCP, article 7, paragraph 3; APTCP Ordinance, article 24, paragraph 1, item (vi)).

Criterion 16.8

There is no clear provision that prohibits the ordering financial institution to execute the wire transfer if it does not comply with the requirements specified at c.16.1-c.16.7. In addition, the deficiencies in c. 16.1, 16.2, 16.6 and -16.7 also have cascading effect on c.16.8.

Criterion 16.9

When relaying cross-border wire transfers from Japan to a foreign country, from a foreign country to Japan or from a foreign country to another foreign country, a financial institution processing wire transfers is obliged to ensure that the information notified from the originator financial institution is retained with it (APTCP, article 10, paragraph 2-4)).

In addition, there is a general requirement that FIs supervised by JFSA inform the intermediary or beneficiary FIs of the beneficiary information "in accordance with international standards", which would implicitly refer to FATF Standards (JFSA Guidelines, II-2(4), (ii)), although beneficiary information required is not specified. FIs that are not subject to the supervision of JFSA are not subject to such requirement.

Criterion 16.10

There is no specific requirement under current Japanese legislation for intermediary FIs to keep a record of all the information received from the ordering FI or another intermediary when technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with a related domestic wire transfer. Japan relies on general record keeping provisions in such cases, see c. 16.7.

Criterion 16.11

Intermediary FIs supervised by JFSA are required to take adequate measures commensurate with the risk when the originator information or beneficiary information is missing, and ensure that they inform the originator and beneficiary institutions (JFSA Guidelines, II-2(4)(ii)).

Criterion 16.12

There is a general requirement that financial institutions formulate AML/CFT policies, procedures and programs (APTCP, article 11; Ordinance of APTCP, article 32, item (ii) and (iii)). There is also a requirement in JFSA Guidelines that the risks the financial institution faces should be considered in these compliance programmes by FIs (JFSA Guidelines, III-1(i)). However, there is no special requirement on intermediary financial institutions as specified under the FATF Methodology c.16.12.

Criterion 16.13

In wire transfers' scenarios, beneficiary FIs under the supervision of the JFSA are required to take adequate measures commensurate with the risk, where the information on the wire transfer is missing (JFSA Guidelines, II-2(4)(ii)). However, they are not obliged to take reasonable measures to specifically identify cross-border wire transfers that lack required originator information or required beneficiary information.

Criterion 16.14

There is no specific requirement for beneficiary institution of a wire transfer to verify the identity of the beneficiary, but the beneficiary must have deposit account in order to receive a wire transfer and the identity of the beneficiary must have been verified when opening the deposit account.

Criterion 16.15

There is a general requirement that FIs formulate AML/CFT policies, procedures and programs (APTCP, article 11), and for FIs supervised by the JFSA, that these compliance programmes consider the risks the financial institution faces; (JFSA Guidelines, III-1(i)). In wire transfers' scenarios, beneficiary FIs under the supervision of the JFSA are also required to take adequate measures commensurate with the risk where the information on the transfer is missing (JFSA Guidelines, II-2(4)). However, this does not amount to taking actions specified under the FATF Methodology c. 16.15.

Criterion 16.16

Since MVTS providers in Japan are financial institutions subject to the APTCP (see R. 14), all APTCP obligations regarding wire transfers are also applicable to MVTS providers. APTCP does not distinguish MVTSs or their agents and the violation of the APTCP requirements by the agents will be imposed to MVTSs which outsourced their businesses to the agents.

Criterion 16.17

MVTS providers are required to conduct CDD at the time of transaction when conducting business, including identifying and verifying customer identity (see R. 10). There is no specific requirement applicable in cases where they control both the ordering and the beneficiary side of a wire transfer.

(a) General provisions would apply regarding determining when an STR has to be filed (R. 20); but **(b)** they would not be required to file an STR in any country affected by the suspicious wire transfer and make relevant transaction information available to the FIU, even though a financial group operating through overseas offices is required to implement risk mitigation measures in compliance with each AML/CFT regulation applicable to its corresponding overseas operations (JFSA Guidelines, III-4(iii)).

Criterion 16.18

FIs are required not to carry out "*Kawase* Transactions" (MVTS, see R. 14) pertaining to payment unless they confirm that the customer's payment does not fall under any of the payments targeted by the Foreign Exchange and Foreign Trade Act (FEFTA article 17, item (i)). The FEFTA payments include intended payments from Japan to a foreign state "*that would affect the sincere fulfilment of obligations under treaties or other international agreements which Japan has signed*." However, this article does not specify relevant UNSCRs relating to the prevention and suppression of terrorism and terrorist financing and their successor resolutions. In addition, the deficiencies noted regarding the implementation of targeted financial sanctions for terrorism financing (R. 6) have an impact on wire transfer transactions.

Weighting and Conclusion

Japan meets most of the requirements under R.16. There are some minor deficiencies in relation to c.16.3, 16.8, 16.12, 16.13, 16.15 and 16.17.

Recommendation 16 is rated largely compliant.

Recommendation 17 – Reliance on Third Parties

As was the case at the time of the 3rd Round MER (para. 555), FIs in Japan are not permitted to rely on third-party FIs and DNFBPs to perform CDD measures. Therefore,

Recommendation 17 is not applicable.

Recommendation 18 – Internal Controls and Foreign Branches and Subsidiaries

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 649-673). The main deficiencies were: FIs were not required to adopt and maintain an AML/CFT internal control system including a compliance officer, screening procedures, employee training programme and independent audit; there was no explicit obligation on FIs to ensure that their foreign subsidiaries observed AML/CFT measures consistent with home country requirements and the FATF Recommendations; there was no explicit obligation on either branches or subsidiaries to apply the higher standard where home and host countries' AML/CFT requirements differed. The follow-up process did not monitor progress made by Japan in this area. R.18 introduced some new requirements for implementing independent audit functions for internal supervision and AML/CFT programmes for financial groups.

Criterion 18.1

FIs are required to implement internal policies, procedures and controls for AML/CFT compliance, including:

(a) a compliance program for implementation of preventive measures and a senior compliance official who controls the implementation of AML/CFT policies, compliance, necessary audit (APTCP, article 11, paragraph 1 items (ii)(iii)). While the senior compliance official is not necessarily at the senior management level, FIs supervised by the JFSA are required to appoint an executive responsible for AML/CFT measures (JFSA Guidelines, III-2, item (ii)).

(b) screening procedures to ensure high standards when hiring employees (APTCP Ordinance, article 32, paragraph 1(vi));

(c) an ongoing employee education training (APTCP, article 11, paragraph 1(i));

(d) an independent audit function to test compliance with AML/CFT procedures, policies and controls (APTCP Ordinance, article 32, paragraph 1(vii)).

Criterion 18.2

FIs under the supervision of the JFSA are required to formulate group-wide AML/CFT policies, procedures, and programs, consistently applied across the group, and implement the customer acceptance policy, specific CDD measures and record-keeping standard in a consistent manner throughout the entire group (JFSA Guidelines, III-4(i)).

(a) FIs are required to establish programs for information sharing within the group required for group-wide risk assessments and for ensuring the effectiveness of AML/CFT measures (JFSA Guidelines, III-4(ii)).

(b) Financial groups that operate through overseas offices are required to establish programs that enable the sharing of necessary information and consolidated risk management, including information about the customers, operations involved in unusual transactions, the results of analysis and the status of STR. (JFSA Guidelines, III-4(iv))

(c) There is no specific requirement on group-wide measures to safeguard confidentiality and use of information exchanged.

Criterion 18.3

Financial groups operating through overseas offices are required to pay attention to prevention of transfer of criminal proceeds in the foreign country and ensuring that the foreign legal person or a business office in the foreign country should implement the measures equivalent to those including verification at the transaction. In addition, it is required to notify the competent authority where taking the measures including verification at the transaction is prohibited by laws or regulations in the said foreign country (APTCP article 11, paragraph 1 (iv); APTCP Ordinance article 32, paragraph 2).

If the AML/CFT requirements in the other jurisdictions in which FI's office operates are less strict than those of Japan, the financial group is required to apply and implement the group-wide policies, procedures and programs to those overseas offices in a consistent manner. If this is not permitted by the local regulation, the financial group should inform the responsible supervisory authorities (JFSA

Guidelines, III-4(iv). However, there is no clear requirement that the financial group should also apply appropriate additional measures to manage the ML/TF risks besides informing the responsible supervisory authorities.

Weighting and Conclusion

Japan mostly meets the criteria under R. 18 by the stipulation of APTCP and JFSA's Guidelines with some minor deficiencies: (i) financial groups are not specifically required to share account information among all branches and majority-owned subsidiaries or implement group-wide measures to safeguard confidentiality and use of information exchanged and(ii) there is no specific requirement that financial groups should also apply appropriate additional measures to manage the ML/TF risks besides informing the responsible supervisory authorities.

Recommendation 18 is rated largely compliant.

Recommendation 19 – Higher Risk Countries

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 594-604). The main deficiencies were: there was no requirement in law, regulation or other enforceable means for FIs 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, FIs were not required to examine them and set forth their findings in writing; Japan had no mechanism to implement countermeasures against countries that did not or insufficiently apply the FATF Recommendations. The follow-up process did not monitor progress made by Japan in this area. R.19 has strengthened the requirements to be met by countries and FIs in respect to higher-risk countries.

Criterion 19.1

FIs are required to conduct enhanced CDD when a transaction is deemed to have high risk of ML/TF, including for transactions with customers from higher risk jurisdictions which include Iran and DPRK (APTCP, article 4 (2) (ii), APTCP Ordinance, article 27 item (iii), APTCP Order, article 12 (2)). FIs under the supervision of JFSA are specifically required to take into consideration the high-risk countries designated by the FATF and to apply commensurate risk mitigating measures including EDD (JFSA AML/CFT Guidelines, II-2(1), Required actions (iii), II-2(3)(i), Required actions (i) and (ii), II-2(3)(ii), Required actions (vii)). There is no equivalent provision applicable to other FIs.

Criterion 19.2

As described in c. 19.1, Japan applies enhanced customer due diligence with respect to high-risk countries (APTCP, article 4 (2) (ii), APTCP Ordinance, article 27, item (iii), APTCP Order, article 12 (2)).

(a) However, there is no express link made to jurisdictions designated as higher risk by the FATF, and to the obligation to apply countermeasures when called upon to do so by the FATF.

(b) There is no general requirements for Japan to apply countermeasures for any country for which this is not called for by FATF.

It is unclear if and how Japanese authorities' power to issue administrative guidance (Administrative Procedures Act (Art. 2, sub-paragraph 6) is used to explain to addressees the process to be implemented if one of their customers or transactions would present links with listed countries.

Criterion 19.3

The Ministry of Foreign Affairs, the National Police Agency and the JFSA publish the FATF Statements on their website after each FATF Plenary meeting. In addition, the MOF is able to make use of workshops to distribute lists of countries and alert Japanese mega banks of risk concerns on these countries. Moreover, the annually published NRA also incorporate countries/regions with particular ML/TF risk concerns and it is notified to FIs.

Weighting and Conclusion

There are some minor deficiencies regarding EDD measures applied by FIs which have relationships with high risk countries when it is called for by the FATF; provisions applicable to countries with weaknesses in their AML/CFT systems others than the ones listed by FATF. Deficiency is also related to the lack of relevant specific provisions applicable to FIs not supervised by the JFSA, whose weight is more limited in the Japanese financial sector.

Recommendation 19 is rated largely compliant.

Recommendation 20 – Reporting of suspicious transaction

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 605 to 619). The main technical deficiencies were that the credit guarantee corporations were not subject to a direct, mandatory STR reporting obligation and there were low numbers of STRs submitted by certain categories of FIs.

Criterion 20.1

FIs are required to promptly file any suspicion of ML or TF crimes as set forth in Article 10 of the APOC or crimes set forth in Article 6 of the Anti-Drug Special Provisions Act (APTCP, Art 8(1)). The coverage of the scope of ML is comprehensive, with the exception of certain offences within the category of environmental offences (see c. 3.1). The report must be made promptly once the FI has verified whether there is any suspicion of ML or TF.

FIs are required to report STRs to their relevant supervisory bodies (APTCP, article 8 (1) (see c. 29.1). Supervisory bodies are then required to promptly pass on the STRs to the JAFIC, which is Japan FIU (see c. 29.1) (APTCP, Article 8(5)). Almost all reporting entities (98%) use the dedicated online system for reporting and the STRs are automatically and simultaneously shared with JAFIC. The system therefore ensures prompt reporting to NPSC (JAFIC).

Criterion 20.2

There are no minimum thresholds for reporting in the APTCP and FIs are required to report all suspicious transactions regardless of the amount of the transaction (APTCP Article 8 (1)). There is no explicit obligation in law or regulation requiring FIs to report attempted transactions. However, the reporting on attempted transactions and activities is supported and indicated in practice in the STR reporting form. Authorities indicated that in the Japanese context, 'transactions' is interpreted to

mean transactions both concluded and attempted but not concluded. However, it is not explicit that the provision obliges the specified business operators to file STRs even if the transaction is not completed, despite the practice being reinforced by the filing form.

Weighting and Conclusion

There is minor shortcoming as a requirement to report attempted transaction is not explicitly covered, though it may be indirectly supported in practice. The coverage of the scope of ML is comprehensive, with the exception of certain offences within the category of environmental offences.

Recommendation 20 is rated largely compliant.

Recommendation 21 – Tipping off and confidentiality

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 605 to 619). The main technical deficiencies were that directors, officers and employees of business operators were not prohibited and sanctioned in law from tipping off third parties. The sanctions that were available for tipping off third parties were too low to be dissuasive.

Criterion 21.1

Even though there is no specific provision safeguarding FI personnel from civil or criminal liability, general legal provisions together with the reporting obligation set in law, are sufficient safeguard from civil and criminal liability when reporting STRs in good faith. The Penal Code stipulates that an act performed in accordance with laws and regulations or in the pursuit of lawful business is not punishable and Personal Data Act allows a business operator handling personal information, to provide personal data to a third party without obtaining the prior consent of the person when based on laws and regulation (Penal Code art.35, Personal Data Act, art 23(1)(1)). FI and their personnel are also protected from liability of damage or loss as the civil code liability requires infringing rights of others intentionally or negligently (Civil Code art. 709).

Criterion 21.2

FIs (including the officers and employees thereof) are prohibited from tipping off a customer that they have or intend to file an STR (APTCP, art. 8(3)). This prohibition is reinforced by the Act on the Protection of Personal Information which regulates sharing personal information with third parties (articles 16 and 23). In case the violation of prohibition set in APTCP it is possible to order rectification order, criminal penalties or fine to legal person (APTCP art. 18 and art. 25).

Weighting and Conclusion

Recommendation 21 is rated compliant.

Recommendation 22 – DNFBPs: Customer due diligence

In its 3rd MER, Japan was rated non-compliant with these requirements (para 765 – 833). Technical compliance deficiencies were the same as the ones identified for financial institutions regarding CDD obligations. Progress made by Japan to address those deficiencies was monitored as part of the follow-up process and the FATF concluded in 2016 that Japan had addressed all its deficiencies regarding CDD. There

were also missing obligations regarding PEPs, new technologies and large transactions and unusual transactions; there were deficiencies in the regulatory measures applicable to lawyers, in particular regarding their scope and CDD requirements; there were *de minimis* exemptions from CDD for customers of lawyers, judicial scriveners, accountants and other professionals that were not provided for in FATF standards, and a number of professionals were also exempted from filing requirements, with an impact on the monitoring obligations. The follow-up process did not monitor progress made by Japan in these areas.

Criterion 22.1

DNFBPs are required to comply with CDD requirements as described below. Deficiencies highlighted in R. 10 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

(a) Not applicable. Gambling is prohibited in Japan (Penal Code, article 185-186). Although the Act on Promotion of Development of Specified Integrated Resort District (the "Casino Implementation Act") was promulgated in the Official Gazette on 27 July 2018, which legalized up to three land-based casinos to be operated by authorised private entities in Japan, the relevant provisions on casino operation have not been effective by the end of onsite visit.

(b) Real estate agents are required to comply with CDD requirements (APTCP, article 2, paragraph 2(xl); APTCP Order, article 7, paragraph 1, items (i)(m) and (iv)), with respect to both the purchasers and the vendors of the property.

(c) Dealers in precious metals and stones are required to comply with CDD requirements when they engage in any cash transaction exceeding JPY 2 million (c. USD 19,261/EUR 15,837) in relation to buying and selling of precious metals and precious stones (APTCP, article 2, paragraph 2, item (xli); APTCP Order, article 7, paragraph 1, item (v)).

(d) Lawyers and legal profession corporations (hereinafter referred to as "lawyers") are required to take CDD measures pursuant to the provisions of the Articles of Association of the Japan Federation of Bar Associations ("JFBA") (ACTCP, article 12). All lawyers in Japan (including legal profession corporations and registered foreign lawyers and corporations) have to be a member of the JFBA to practice law (Attorneys Act, articles 30-4 and 47; Act on Special Measures concerning the Handling of Legal Services by Foreign Lawyers, articles 24, paragraph 1, 25, paragraph 1, 40, paragraph 1, 50-7, paragraph 1, 50-4, paragraph 1, and 50-13, paragraph 2).

Lawyers' activities in Japan are governed by the Articles of Association of JFBA, which include measures pertaining to the ethics of lawyers and the discipline of its members (Attorneys Act, article 33, paragraph 2, item 7). Those measures are implemented by rules or regulations (JFBA Articles of Association, article 6, paragraph 1). One of these sets of rules are the *Rules Concerning Verification of Client Identity and Retention of Records* (RVCIRR). The APTCP also refers to these set of rules when it comes to CDD conducted by lawyers (article 12).

The RVCIRR requires lawyers to verify the identity of customers (article 2). This involves determining the person who would benefit from the legal matter (Attorneys Act, article 25; Basic Rules on the Duties of Practicing Attorneys, articles 27 and 28), but it is not demonstrated that the definition of this person or of these people to whom the benefits of the legal matters should be attributed, would match the FATF definition of BO, and would lead to the identification/verification of customers'

representatives and of customers' BOs. Enhanced due diligence measures have to be applied in a set of cases when risks are "particularly high" (RVCIRR, article 3).

Judicial scriveners or judicial scrivener corporations are required to take CDD measures in cases described in c. 22.1. (d) that falls under their scope of activities (APTCP, article 2, paragraph 2 (xliv), article 4; APTCP Order, articles 8, 9).

Certified Administrative Procedures Legal Specialists or Legal Specialist Corporations, Certified public accountants or Auditing firms and Certified Public Tax Accountants or Tax Accountant Corporations are subject to CDD requirements when conducting activities of c. 22.1 (d) that falls under their scope of activities (Certified Administrative Procedures Legal Specialist Act, art. 1; Certified Public Accountant Act, art. 2; Certified Public Accountant Act, art. 2). However, Judicial scriveners, Certified Administrative Procedures Legal Specialists, Certified public accountants and Certified Public Tax Accountants and their respective corporations are only required to conduct customer identification/verification and no other CDD matters including checking the purpose and intended nature of the business relationship, and the BO (APTCP, article 4, paragraph 1).

(e) Postal receiving service providers, telephone receiving service providers and telephone forwarding service providers are required to comply with CDD requirements (APTCP, articles 2, paragraph 2(xlii) and 4 paragraph 1; APTCP Order, article 7, paragraph 1, items (vi)).

Criterion 22.2

DNFBPs except for lawyers as described in c. 22.1(d) are required to comply with the record-keeping requirements in a similar way as financial institutions (see R.11). Deficiencies highlighted in R. 11 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

Lawyers are required to take record-keeping measures pursuant to the provisions of the RVCIRR (APTCP, article 12): they are required to prepare client identity verification and transaction records and keep them for five years after the completion of the transactions (RVCIRR, article 5).

Criterion 22.3

DNFBPs except for lawyers as described in c. 22.1(d) are required to comply with the PEP requirements in the same manner as financial institutions (see R. 12). Deficiencies highlighted in R. 12 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

Lawyers are required to verify the identity of the customer by a strict identity verification measure with regard to a foreign PEP or family members or close associates of the foreign PEP (RVCIRR, article 3, item 3). However, there is no other specific PEP requirement as required in R.12 for lawyers.

Criterion 22.4

DNFBPs are required to comply with the new technologies requirements in the same manner as financial institutions (see R. 15). Deficiencies highlighted in R. 15 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs. There is no such requirement for lawyers.

Criterion 22.5

Similarly to FIs (see R. 17), DNFBPs are not allowed to rely upon a third party to fulfill CDD requirements.

Weighting and Conclusion

There are major deficiencies regarding R. 22: deficiencies highlighted in R.10, 11, 12 and 15 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs. Legal professionals, certified public accountants and certified public tax accountants and their respective corporations are only required to conduct customer identification/verification and no other CDD matters. For lawyers, there is no specific PEP requirement as required in R.12 other than strict verification of identity of the customer, and no new technologies requirements as required in R.15.

Recommendation 22 is rated partially compliant.

Recommendation 23 – DNFBPs: Other measures

In its 3rd MER, Japan was rated partly compliant with these requirements (para. 834 – 846). Technical compliance deficiencies related to the legal professions and accountants who were not subject to an STR reporting obligation; limitations in tipping-off and confidentiality requirements (similar as the ones for financial institutions); lack of requirements with regard to internal controls and higher-risk countries. The follow-up process did not monitor progress made by Japan in these areas.

Criterion 23.1

DNFBPs are required to file STRs in the same manner as financial institutions (see R. 20), with the exception of judicial scriveners or corporations, certified administrative procedures legal specialists or corporations, certified public accountants or audit firms, certified public tax accountants or corporations (APTCP, article 8 (1)), as well as lawyers (APTCP, article 12(1)).

Deficiencies highlighted in R. 20 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

Criterion 23.2

DNFBPs are required to comply with the internal controls requirements in the same manner as financial institutions (see R. 18). Deficiencies highlighted in R. 18 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

In addition, there is no clear requirement for DNFBPs to implement group-wide programmes to all branches and majority-owned subsidiaries (regarding c.18.2), nor to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country (regarding c.18.3).

Criterion 23.3

DNFBPs, except for lawyers as described in c. 22.1(d), are under the same regime as financial institutions regarding transactions with connections to higher risk jurisdictions (see R. 19). Deficiencies highlighted in R. 19 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs.

Lawyers are required to apply enhanced due diligence measures when risk is "particularly high". Those situations include transactions involving countries with deficiencies in their AML/CFT systems (RVCIRR, article 3, item 4). The Risk Assessment of Money Laundering in Legal Practice (3rd Edition) further specifies that countries/regions in the FATF Public Statement are at high risk.

Criterion 23.4

DNFBPs, except for lawyers as described in c. 22.1(d), are under the same regime as financial institutions regarding tipping-off and confidentiality requirements (see R. 21).

Weighting and Conclusion

There are still major deficiencies in relation to R.23: deficiencies highlighted in R. 18, 19 and 20 are relevant for DNFBPs. In addition, there is no clear requirement for DNFBPs to implement group-wide programmes to all branches and majority-owned subsidiaries, nor to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country.

Recommendation 23 is rated partially compliant.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 868 to 877), as there was no obligation to gather information on the beneficial ownership and control of companies; access to the shareholders registry relied on general police powers; and bearer shares were not identified nor their identity verified. The follow-up process of Japan which ended in 2016 did not focus on progress made in this area. New FATF R.24 and its Interpretive Note contain more detailed requirements, particularly concerning the information to be collected on beneficial owners (BO).

Criterion 24.1

(a) The different types of legal persons that exist in Japan are identified in the relevant, publicly available legal acts. Stock companies and membership companies (general partnership companies, limited partnership companies and limited liability companies – together 'companies') are identified in the Companies Act. General incorporated associations ('associations') and general incorporated foundations ['foundations'] are identified in the Act on General Incorporated Associations and Foundations ('GIAF Act'). General descriptions of the types and forms of legal person are available from the relevant government agency websites[83].

(b) The website of the Legal Affairs Bureau (MOJ)[84] contains information regarding the process for creating the different types of legal persons. There is publicly available information regarding the process to obtain and record basic information on legal persons through the incorporation process (Companies Act, art. 49, 579 and 911 to 914; GIAF Act, art 22, 163, 301-2and 330) and method for registering a company at the Commercial Register (Commercial Registration Act, art. 17).

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83 See http://houmukyoku.moj.go.jp/homu/touki2.html and www.jetro.go.jp/en/invest/setting_up/ - in Japanese only. Accessed September 2019. Japanese only.

84 See http://houmukyoku.moj.go.jp/homu/touki2.html). Accessed September 2019. Japanese only

Information on the process for recording basic information in relation to publically listed companies is available from the relevant legislation (Financial Instruments and Exchange Act; relevant Cabinet Office Ordinances[85]). Publically available information on the mechanisms for obtaining and recording beneficial ownership information by notaries during the company formation process is available in the relevant Ordinance (Ordinance for the Enforcement of the Notary, Article 13-4) and from the Notary Association Website[86]. Details of the process for obtaining and recording beneficial ownership information by FIs and DNFBPs are detailed in the relevant laws and guidelines which are publically available (APTCP, article 4, paragraph 1, item (iv); APTCP Ordinance, article 11, paragraph 1-3 *etc.*). See also Recommendation 10.

Criterion 24.2

Japan has assessed the risks associated with types of legal persons created in Japan to some extent. The NRA has identified some ML/TF risks related to the misuse of some legal persons (2014 NRA-Baseline Analysis, Section 2.2.(4); 2018 NRA-Follow-up report, Section 4.3.(5)). This includes consideration of the general features of legal persons that make them vulnerable, examples of cases where legal persons have been misused for ML/TF in Japan, and the types of legal person that are most frequently misused. Analysis has also been undertaken by JAFIC. However, there are gaps in the assessment of the risks, including an in-depth assessment of the features of the different types of legal persons that make them more or less vulnerable to abuse in ML/TF schemes.

Criterion 24.3

For all legal persons, incorporation involves preparing articles of incorporation, with the incorporators or founding members signing and attaching a seal to the articles (Companies Act, art.26 and 575, GIAF Act, art.10 and 152).

The articles of incorporation must be submitted to the Commercial and Corporation Registration System ('Commercial Registry') for all companies (Companies Act, art.907, Commercial Registration Act, art. 47, 94-95, 111 and 118). The articles of incorporation include the company name indicating its legal form, the registered office, the purpose and the name and addresses of the incorporators of Stock Companies and members of Membership Companies and a document indicating the consent of appointed directors or auditors including their names (Companies Act, Art. 6, 27 and 576, Commercial Registration Act, art 47). Registration at the Commercial Registry for associations and foundations includes submission of the articles of incorporation of the respective association or foundation (GIAF Act, art.318-9). The articles of incorporation for associations and foundations include equivalent information to that for companies (GIAF Act, Art 11 and 153).

Any person may make a request for the issuance of a document that provides a summary of company information requested on payment of a fee (Commercial Registration Act, article 11). The summary contains all of the information required under 24.3, except for the names of the directors. Although the summary does not include a complete list of directors, the summary does include the specific functions

85 Cabinet Office Ordinance on Disclosure of the Status of Large Volume Holding of Share Certificates; Cabinet Office Ordinance on Disclosure of Corporate Affairs.

86 See www.koshonin.gr.jp/business/b07_4#newteikan. Accessed September 2019. Japanese only.

that certain directors serve within the company (e.g. directors that are members of the audit and supervisory committees) (Regulation on Commercial Registration, Art. 31).

Criterion 24.4

A legal person is formed through the registration of incorporation at its head office (Companies Act, Art. 49 and 579; GIAF Act, Art. 22 and 163). This involves recording information on the company name, proof of incorporation, legal form and status, the address of the registered office, basic regulating powers, and a list of directors (Companies Act, art. 911-914, GIAF Act, Art. 301-302). The information recorded and kept at the head office of the legal person must be updated (Companies Act Art.915, Act on General Incorporated Associations and General Incorporated Foundations, Article 303).

Stock Companies are required to prepare a shareholder register, which includes the names and addresses of shareholders, the number of shares held by each shareholder, and the classes of shares and number held by each shareholder if different classes of shares exist. The shareholder register must be kept at the company head office (Companies Act, art 121 and 125). The classes of shares may include shares with different voting rights, although the classes of share may also be defined by a number of other features including the conditions upon which dividends are received (Companies Act, art 108). Therefore it is not clear whether the information kept in the register on the classes of shares includes the nature of the associated voting rights.

Associations must keep a register of their members at their head offices, which includes the names and addresses of their members (Act on General incorporated associations and general incorporated foundations, art. 31). Membership Companies must include the names and addresses of the members in the articles of incorporation (Companies Act, art. 576). General incorporated foundations have councillors that decide fundamental matters regarding foundations. The names of the councillors are required to be recorded at the foundation's principle office (GIAF, art 170 para 1, art 178 and art. 302, para 2, item (v)).

Shareholder or member registers must be kept at the head office for each respective type of legal person, and information on the location of the head office is kept at the commercial register. However, there is no requirement to maintain the shareholder, member and councillor information for legal persons at a location in the country.

Criterion 24.5

Information included in the articles of incorporation for Stock Companies, Foundations and Associations must be certified by a public notary and submitted to the Commercial Registry (Companies Act, art. 30; GIAF Act, art 13 and 155) (see c. 24.6). The information certified in the articles of incorporation includes the trading name, location of the head office, and the names and addresses of the persons incorporating the stock company, association or foundation. Information on the form, status and basic regulating powers from the articles of incorporation, and some information on the directors is also checked as part of the notarial certification process.

There is no requirement for the information in the Commercial Registry to be updated, unless a company is dissolved, merges with another, or a wholly owned subsidiary is transferred (Commercial Registration Act, arts. 79-89).

There is no similar mechanism required for the articles of incorporation of Membership Companies.

When there is a change in the information held at the head office, the information held must be updated within two weeks (Companies Act Art.915, GIAF Act, Article 303).

There is no requirement for companies to update the register of shareholders (or members in the case of associations and foundations) that they must keep themselves, unless requested to do so by their members. However, a transfer of shares in a stock company can only be performed once the shareholder register has been updated to reflect the transfer (Companies Act, art. 130). This requirement ensures that the list of shareholders is accurate and up-to-date for the purposes of this criterion for stock companies. However, there is no equivalent requirement in place for membership companies, associations or foundations.

Criterion 24.6

(a and **b)** – n/a**(c)** - There are two main mechanisms used by Japan to ensure that information on beneficial ownership of a legal person is available. Both were recently enacted, and so beneficial ownership information may not always available to competent authorities for all legal persons.

The first comes from the system of public notaries. Prior to seeking registration under the Companies Act and the GIAF Act, a person is required to engage a notary collect the name, residence, and date of birth of the beneficial owner of a legal person when the articles of incorporation are certified (Ordinance for Enforcement of the Notary Act, art. 13-4).). Once the notary has identified the beneficial owner and determined they are not a member of an organised crime group or subject to targeted financial sanctions, the notary issues a certificate to the person seeking registration of the legal person (Ordinance for Enforcement of the Notary Act, art. 13-4). However, this information is only current at the time of registration, and has only captured beneficial ownership information for companies formed since this process was enacted in November 2018. While notaries are required to keep records of the beneficial ownership information they have collected (Notary Act, Article 62-4), it is not directly available to competent authorities.

The second mechanism relies on existing information obtained and kept up-to-date by FIs and DNFBPs that are required to conduct CDD on their customers (see R. 10 and 22). However, there are deficiencies in the scope of DNFBPs (in particular lawyers and legal professional corporations) covered under AML/CFT law, and therefore not all DNFBPs are required to undertake CDD and collect information on the beneficial owner when conducting CDD (see R.10 and R.22). In addition, these provisions would not apply to legal persons that do not have a business relationship with an FI or DNFBP, and were formed before the notarial system came into place or updated their beneficial ownership following checks conducted by notaries.

Criterion 24.7

Financial institutions and DNFBPs are required to verify the identity of the BO of the customer for accuracy by taking reasonable measures (APTCP, article 4, paragraph 1; APTCP Order, article 7; APTCP Ordinance, article 11 – see c. 10.5). They also need to ensure that the documents or information collected under CDD process, including on beneficial ownership, is kept up-to-date and relevant, by undertaking reviews of existing records (APTCP Ordinance, article 27, item (iii) – see c. 10.7(b)). However,

not all DNFBPs are required to undertake CDD that includes checks on the beneficial owner – in particular lawyers and legal professional corporations (see R.10 and R.22).

The requirement for FIs and DNFBPs (excluding lawyers and legal professional corporations) to identify and take reasonable measures to verify the identity of the beneficial owner was established in the Act on Prevention of Criminal Proceeds in October 2016, and so there may not be beneficial ownership information available for customers that were legal persons and on-boarded before October 2016. The requirements in the APTCP refer to measures to collect and keep information obtained during the course of CDD, and therefore only through the requirement to periodically update CDD on the basis of materiality and risk would the information be updated (APTCP Ordinance, article 27, item (ii)). This may result in a reporting entity taking a number of years to update CDD, in the absence of a risk-event, rather than updating CDD whenever beneficial ownership changes for customers onboarded before October 2016. Accordingly, this does not allow for beneficial ownership information to be accurate and up-to-date as possible.

Notaries are not required to verify the information collected on the beneficial owner when legal persons are formed. However, notaries are not permitted to issue a notarised deed that violates any law or regulation (Notary Act, art.26), that means in practice, notaries may undertake additional checks if they have a suspicion that the information provided is not accurate or relates to any form of criminality. As above, beneficial ownership information is only collected by notaries when the legal person is formed.

Criterion 24.8

Stock companies with a board of directors must appoint a representative director or equivalent (Companies Act, art 47, 362(3)). The name and address of the representative director or equivalent is required to be registered at the head office of the company (Article 911, Article 3(14)), and the address of the head office is required to be registered at the commercial registry (Commercial Registration Act, Art. 17 and 51). The representative director or equivalent is required to represent the company (Companies Act Art. 349). In addition, a stock company may hire a shareholder administrator to prepare and update the shareholder register kept at the head office of the company (Companies Act Art.123). These points of contact may provide assistance to the competent authorities when seeking for basic information on stock companies. However, there are no specific measures requiring a natural person resident in the country to be accountable to competent authorities for providing basic or beneficial ownership information for legal persons, or similar measures for membership companies, associations or foundations.

Criterion 24.9

FIs and DNFBPs are required to keep transaction records and information obtained through CDD measures, including beneficial ownership information for 7 years after termination of the business relationship (APTCP, article 6, paragraph 1 and 2; APTCP Ordinance, article 19, 20 and 21, see R. 11). In addition, information in the commercial registry should be kept for 20 years after a company has been dissolved or liquidated (Regulation on Commercial Registration, article 34 (4) (ii)).

In terms of the basic information (including shareholder information) kept at the head office of legal persons (see criteria 24.3), the information collected and maintained must be kept at all times. When legal persons are liquidated, liquidators

are required to maintain books of the liquidated entity for 10 years from the completion of the liquidation (Companies Act, articles 508 and 672; Act on General incorporated associations and general incorporated foundations, article 241).

Criterion 24.10

Information on basic ownership is available publically through the Commercial Registry, including to competent authorities, or directly from legal persons on request (see 24.3 to 24.5). The information in the articles of incorporation can be requested electronically from the commercial registry, and can be retrieved almost instantaneously. Some other basic information must be submitted to the Commercial Registry (such as major changes in shareholder structure such as consolidation of shares and mergers – see Commercial Registration Act Article 61 and 79), however it is not clear the extent to which shareholder information is available in the Commercial Registry.

No specific measures are in place to enable competent authorities to obtain timely access to basic information held by companies. Mechanisms are available to seize information when necessary for criminal investigations (see R.31), by the FIU from FIs or 'any other relevant party' (see R.29), and by supervisors when monitoring with AML/CFT compliance (see c.27.3 and c.28.4a). Although Japan has indicated that private and public sector organisations cooperative effectively and respond swiftly to requests to provide information on basic and beneficial ownership, it is not clear how the information above may be obtained on a timely basis in every case (except for basic information available from the company registry).

Criterion 24.11

The issuance of bearer shares, that only existed for stock companies, was prohibited in 1990. Following the prohibition on issuing bearer shares in 1990, stock companies with bearer shareholders were required to provide public notice and call a shareholder meeting. No public notice has been detected by the authorities, and officials at the time of prohibition have reported that they believed that there were no bearer shares in circulation at the time of the prohibition. While it appears unlikely that there remain any bearer shares in circulation, the effectiveness of both of these measures is unclear. As a result, it is possible that bearer shares still exist in Japan today.

Bearer share options may be issued by Stock Companies. Stock companies must prepare a register and record the serial numbers of bearer share options, and the features and numbers held by legal or natural persons. This must be done without delay (Companies Act, Art. 249).

Stock companies are required to prepare a shareholder register, which includes the names and addresses of shareholders, the number and the type of shares held by shareholders, and keep this register at their head office (Companies Act, art 121 and 125). However, it is not clear whether or not the holders of bearer share options must be registered in the shareholder register, or may only be listed in the share option register without including their names and addresses.

Criterion 24.12

Japanese law does not recognise the concept of nominee ownership or directorship

Criterion 24.13

The sanctions that apply to natural persons for failure to comply with the requirements in R.24 are proportionate and dissuasive. However, the sanctions available legal persons are limited.

In the case of non-compliance with the obligations on companies to register and submit basic information as above to the company registry, and to maintain other basic information held at the head office of the company, directors may be subject to a non-penal fine of up to JPY 1 million (c. EUR 7,919/USD 9,631) (Companies Act, art. 976(i - ii), Act on GIAF art. 342 i, ii, vii). There are, however, no sanctions applicable to legal persons themselves.

In addition, in order to ensure the accuracy of the information held by the registry, it is an offence for a person to make a false statement before a public officer, which could result in the official making a false entry in the notarized deed. The punishment for this offence is imprisonment for not more than 5 years or a fine of not more than JPY 500 000 (c.EUR 3,959/USD 4,815) (Criminal Code article 157, paragraph 1). This also captures the beneficial ownership checks conducted by notaries.

If customers give false declaration in response to the CDD process, including for BO information, they are liable for punishment by imprisonment with work of one-year maximum or a fine of not more than JPY 1 million (c.EUR 7,919/USD 9,631), or both (APTCP, art. 27)

FIs or DNFBPs which fail to comply with their requirements to collect and verify basic and BO information on their customers who are legal persons can be issued rectification orders by supervisors (APTCP, art. 18). See c.27.4 and R.35.

Criterion 24.14

There is no specific requirement regarding the rapid provision of basic and beneficial ownership information to foreign competent authorities. Hence, the general rules on international cooperation described in R. 37 and 40 apply with regard to basic information held by company registries, information on shareholders, and the use of investigative powers to obtain beneficial ownership information on behalf of foreign counterparts.

Some basic information on legal persons held in the Commercial Registry is publicly available and can be obtained directly by foreign competent authorities, subject to a fee. Japan also has in place mechanisms to allow for the provision of basic and BO information requested through diplomatic channels (Act on International Assistance in Investigation and Other Related Matters, art. 3), and the MOFA acting as the central authority to provide evidence directly to requested countries without going through diplomatic channels. This process is faster than in cases without treaties. Nevertheless, the rapid provision of this information to foreign authorities will ultimately depend on the domestic mechanisms that have been put in place by Japan to collect and maintain the accuracy of BO information (see c. 24.6).

Criterion 24.15

There is no formal mechanism to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information. However, Japan consider and respond as needed (e.g. further engagement with the other country) when the quality of assistance is unsatisfactory.

Weighting and conclusion

Basic information on legal persons is available to competent authorities, whether rapidly from the company registry, or from companies themselves. It is not clear how quickly or easily this can be obtained from companies. In terms of beneficial ownership information, limited information is available from notaries, and information available from FIs and DNBFPs may not always be complete. These weaknesses mean that timely access to accurate beneficial information is not available to competent authorities in all cases.

Bearer shares are prohibited, although bearer share warrants may be issued and the mitigating measures to prevent their misuse are unclear. Other minor deficiencies exist including gaps in the assessment of ML/TF risks for legal persons.

Recommendation 24 is rated partially compliant.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 878 - 885). The deficiencies in CDD obligations to identify beneficial ownership implied difficulties in transparency concerning BO and control of trusts, and Japan had not implemented mechanisms or measures to ensure transparency concerning BO and structure of control of trusts and other legal arrangements. It was also unclear whether the information that could be accessed by law enforcement agencies reflected the true beneficial ownership and control of trusts. The follow-up process of Japan which ended in 2016 did not focus on progress made in this area. The revised Recommendation (R. 25) is applicable to all countries, including those that do not recognise trusts.

Criterion 25.1

The Trust Act establishes the legal foundation for the formation and settlement of all trusts in Japan. As a result, express trusts and discretionary trusts are the only legal arrangements able to be formed under Japanese law.

As trusts have traditionally been used for commercial enterprise, most trusts are settled and administered by trust companies or trust businesses that include the country's largest banks and FIs. If a legal or natural person acts as a trustee as a 'business', they must be licensed under the Trust Business Act. If a natural or legal person does not act as a trustee on commercial grounds, they do not have to be registered under the Trust Business Act and subject to its requirements. These legal arrangements are called 'civil trusts'.

(a) For 'civil trusts', trustees managing trust property must provide a yearly report to a beneficiary on the status of the property held in trust by the trustee (Trust Act, Art.37). The report includes balance sheet information and a profit and loss statement. This obligation indirectly requires a trustee to periodically identify one of the beneficiaries of the trust. However there are no specific requirements for trustees of civil trusts to obtain and hold adequate, accurate, and current information on the identity of the settlor, the protector (if any), the other beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust.

Trust companies and businesses captured by the Trust Business Act are subject to APTCP (art. 2) when they form a trust. They are required to conduct CDD (APTCP

Order, art 7, para 1 item (i) (c) and (d)) on the beneficiary - considered a 'customer' (APTCP Order, art. 5), and identify and verify the beneficial owner (see R.10). The settlor would be considered a customer as a 'user' of the trust company or trust business (APTCP, Art.2(3)) and therefore also be subject to CDD requirements and beneficial owner checks. Trust companies and businesses are required to keep this information updated (see c. 10. 7 (b)).

(b) Japan does not require trustees of any trust governed under its law to hold basic information on other regulated agents of, service providers to, the trust, including investment advisors or managers, accountants, and tax advisors.

(c) Trust companies and businesses are required to keep transaction records and information obtained through CDD measures for 7 years after termination of the business relationship (APTCP, article 6, paragraph 1 and 2; APTCP Ordinance, article 19, 20 and 21, see R. 11). This includes foreign trustees licensed under the Trust Business Act as trust companies or trust businesses.

Trustees of civil trusts are required to keep records for 10 years of the yearly trust property reports prepared pursuant to Article 37 of the Trust Act.

Criterion 25.2

As part of the CDD process, trust companies are required to keep the CDD information collected up-to-date (see c. 10.3, 4, 5 and 7 (b)). These obligations do not apply to persons settling and administering civil trusts.

Criterion 25.3

When FIs or DNFBPs conduct transactions or form a business relationship with a person that claims to be acting on behalf of the customer, they are required to verify that the person concerned is acting on behalf of the customer, and to verify the identity of the person concerned at the time of the transactions (see c. 10.4 and 22.1). This would apply to trustees should they disclose that they are acting on behalf of a trust. This includes checking the occupation of the customer as part of the CDD process. See R.10 (APTCP guidelines p.11). In addition, trust companies are businesses registered under the Trust Business Act (art. 3), with their registration published on the JFSA website. This too applies to foreign trust businesses engaged in 'trust business' in a foreign country in accordance with that country's laws and regulations that are also required to register under the Trust Business Act (Trust Business Act, art 2(5-6), arts 53-64).

However, there are no specific measures placed on trustees, of any domestic or foreign trust, to disclose their status to an FI or DNFBP when forming a business relationship or carrying out an occasional transaction above the threshold.

Criterion 25.4

There are no laws nor enforceable means that prevent trustees from providing any information to competent authorities relating to the trust; or from providing FIs and DNFBPs, upon request, with information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship.

Criterion 25.5

When necessary for criminal investigations, public prosecutors and judicial police officials have the authority to take measures including examinations, investigative inquiries, and seizure upon a warrant issued by a judge, which enable them to access a trust's information including on the beneficial ownership, residence of the trustee, and any assets held or managed by the financial institution or DNFBP (Code of Criminal Procedure articles 197 and 218). The FIU also has powers to access materials, opinions and any other necessary assistance, including information on beneficial ownership (APTCP, article 3, paragraph 4). Supervisors are empowered to compel production of any information relevant to monitoring compliance with AML/CFT requirements (see c. 27.3 and 28.4 (a)).

However, there is no specific requirement to ensure that this information can be obtained in a timely manner.

Criterion 25.6

There is no specific requirement or mechanism in place in Japan to support the rapid provision of information, including BO information, on trusts to foreign competent authorities. Hence, the general rules on international cooperation described in R. 37 and 40 apply.

Within the framework of MLA, Japan may provide, through diplomatic channels, basic corporate information as well as beneficial ownership information based on the request from foreign authorities (Act on International Assistance in Investigation and Other Related Matters, art. 3). In the case of MLA requests based on applicable bilateral or multilateral treaties, the central authority who receives MLA requests from foreign authorities (Ministry of Foreign Affairs or of Justice) may provide the evidence directly to the requesting country without going through diplomatic channels.

Criterion 25.7

For civil trusts, non-criminal fines of up to 1 million yen (c. EUR 8 200/USD 9 200) may be applicable for trustees that fail to make a yearly report on trust property administered under the trust (Trust Act, art. 270(i-iv). As the only requirement placed on trustees of civil trusts to ensure transparency of these legal arrangements, this financial sanction for non-compliance is not proportionate and dissuasive and therefore not an effective deterrent.

For trust companies or businesses, it is an offence to conduct a trust business or company without a licence, which is punishable with imprisonment with required labour for not more than three years, or a fine of not more than 3 million yen (approx. USD28,000) or both (Trust Business Act, art. 91(1)). Furthermore, trust companies that fail to comply with their AML/CFT and transparency requirements can be issued rectification orders by supervisors in accordance with the APTCP potentially also resulting in imprisonment in the most severe case - see c. 27.4 and R.35. In addition, the Prime Minister may revoke a trust company's license when a trust company violates their legal or regulatory obligations (Trust Business Act, art. 44 and 45). The officer or liquidator of a Trust Company may also be punished by a non-criminal fine of not more than JPY one million if a business improvement order has been violated (c.EUR 7,919/USD 9,631) (Trust Business Act, art. 99).

Overall, for trust companies and businesses, trustees may be legally liable for failing to perform their duties, and there are proportionate and dissuasive sanctions for failing to comply.

Criterion 25.8

There are no specific sanctions applicable when trusts do not grant timely access to information referred to in c.25.1. However, refusal by a trust company or business to provide supervisors with a requested report or material would be punished by imprisonment with work of max. one year or a fine of max. JPY three million (c. EUR 23,756/USD 28,892), or both (APTCP, art. 15 and 26; Trust Business Act art. 42 and 93). These sanctions are proportionate and dissuasive.

Weighting and conclusion

The vast majority of domestic trusts operating in Japan are formed by trust companies and businesses, which are treated as FIs under the APTCP, requiring CDD to be conducted on the settlor and beneficiaries to the trusts with the information required to be kept up-to-date and made available to law enforcement, and other measures in line with the requirements of R.25. However, there are no specific measures placed on trustees to disclose their status to an FI or DNFBP when forming a business relationship, nor requirements on civil trusts to hold information on the settlor, trustee or beneficiaries, or sanctions available to trustees. These deficiencies together represent moderate shortcomings, as the gaps represent vulnerabilities that could enable the misuse of trusts in Japan, particular for civil and foreign trusts.

Recommendation 25 is rated partially compliant.

Recommendation 26 - Regulation and supervision of financial institutions

In its 3rd MER, Japan was rated largely compliant with these requirements (para 727 – 740). The main deficiencies were that money exchangers and financial leasing companies were not required to be licensed or registered; although money exchangers were subject to reporting requirements when their business volumes exceeded a certain threshold; the risk that money exchangers did not report when they should, especially for individuals money exchangers, was not fully addressed; fit and proper requirements only applied to some of senior management for banking institutions ; for securities and insurance, the fit and proper tests did not include requirements on expertise. The new R.26 strengthens the principle of supervision and controls, in accordance with a risk-based approach.

Criterion 26.1

The following supervisors have responsibility for regulating and supervising FIs' compliance with AML/CFT requirements (APTCP, art. 2, para. 2 and art. 22(1)):

- for banks, Shinkin bank, Shinkin Central bank, credit cooperatives, federation of credit cooperatives, insurance companies, foreign insurance companies, low cost, short term insurers, financial instruments business operators, securities finance companies, trust companies, persons engaged in specially permitted services for qualified institutional investors, mutual loan companies, money lenders, money market brokers/dealer for call loan and funds transfer service providers: the JFSA (APTCP, article 22 (1) items (i) and (5)).

  For a number of securities-related service providers, the authority of the supervisory body can be delegated to the SESC (APTCP, article 22 (6) to (8)).

Additionally, parts of the designated supervisory body's activities can be administered by prefectural governors (APTCP, article 22 (9)) and relevant measures can be taken for the execution of supervisory activities (APTCP, article 22 (10)). For a number of FIs (some banks incl. labor banks, agricultural cooperative banks and fishery cooperative banks, Norinchukin Bank, Shokochukin Bank, the Development Bank, as well as for insurance companies, financial instruments business operators, securities finance companies, persons engaged in specially permitted services for qualified institutional investors, this translates into "delegations of authority" from the relevant AML/CFT supervisor to the Director General of the Local Finance Bureau and/or the prefectural governors (APTCP Order, articles 20 to 33).

Money lenders that are licensed/registered to conduct business in a single prefectural area are under the supervision of the prefectural governor (Money Lending Business Act, article 3 (1) and APTCP article 22 (9)). The situation is similar for labor banks and federations of labor banks, agricultural cooperatives and federations of agricultural cooperatives, fishery cooperatives and federations of fisheries cooperatives, fishery processing cooperatives and federations of fishery processing cooperatives and specified joint real estate enterprises (Labor Bank Act, article 98, article 98-2, paragraph 1 and 2; Order for Enforcement of Labor Bank Act, article 11; Agricultural Cooperatives Act, article 98, paragraph 1, 2, 13 and 15; Order for Enforcement of the Agricultural Cooperatives Act, article 63; Fishery Cooperative Act, article 127, paragraph 1, 2, 13 and 15; Order for Enforcement of Fishery Cooperatives Act, article 30; Real Estate Specified Joint Enterprise Act, article 3, paragraph 1).

- for labor banks and the federation of labor banks: the JFSA and the Ministry for Health, Labour and Welfare (MHLW) (APTCP, article 22 (1) item (ii) and (5)).
- for agricultural cooperatives, the federation of agricultural cooperatives, fishery cooperatives, the federation of fishery cooperatives, fishery processing cooperatives and the federation of fishery processing cooperatives: the JFSA and the Ministry of Agriculture, Forestry and Fisheries (MAFF) (APTCP, article 22 (1), items (iii) and (iv); Agricultural Cooperatives Act, article 98, paragraph 1 and 2; Fishery Cooperative Act, article 127, paragraph 1 and 2).
- for federation of fisheries cooperatives for mutual aid: the MAFF (APTCP, article 22 (1), items (iii) and (iv); Fishery Cooperative Act, article 127, paragraph 1 and 2).
- for Norinchukin Bank: the JFSA and the MAFF (APTCP, article 22 (1), item (v) and (5)).
- for Shokochukin Bank: the JFSA, the Ministry of Finance (MOF) and the Minister of Economy, Trade and Industry (METI) (APTCP, article 22 (1), items (vi)).
- for the Development Bank of Japan Inc. and currency exchange operators (CEOs): the MOF (APTCP, article 22 (1), item (vii) and (xiii)).
- for specified joint real estate enterprises: the JFSA and the Minister of Land, Infrastructure, Transport, and Tourism (MLIT) (APTCP, article 22 (1), item (viii); Act on Specified Joint Real Estate Ventures, article 49, paragraph 1, item (i)).
- for commodity derivatives business operators: the MAFF and the METI (APTCP, article 22 (1), item (ix)).

- for the organization for Postal Savings, Postal Life Insurance and Post Office Network: the Ministry of Internal Affairs and Communication (MIAC) (APTCP, article 22 (1), items (xii)).
- for financial leasing companies and credit card companies: the METI (APTCP, article 22 (1), item (xiv)).
- for book-entry transfer institutions, account management institutions and electronic monetary claim recording institutions: the JFSA and the Minister of Justice (APTCP, article 22 (1), item (x));
- for book-entry transfer institutions and account management institutions which deal with national government bonds: the JFSA and the Minister of Justice and the Minister of Finance (APTCP, article 22 (1), item (xi)).

Criterion 26.2

Core Principles FIs in Japan include banks and other depository institutions, insurance companies and financial instrument business operators. Prior to commencing business, a number of FIs in the banking and insurance sectors are required to be licensed to carry on business in Japan (Banking Act, art. 4; Shinkin Bank Act, art. 4; Labor Bank Act, art. 6; Insurance Business Act, art. 3 and 185).

The authorisation or approval process applicable to cooperative-type of banks would amount to a licensing process since the authorisation/approval can only be granted if conditions regarding the content of the articles of association or activity plans, and managerial capacities are met (Small and Medium-Sized Enterprise Cooperatives Act, Art.27-2(1) and (4); Act on Financial Businesses by Cooperative, Art.3(1)(i); Agriculture Cooperatives Act, art. 59; Fishery Cooperatives Act, Art. 63).

The Shokochukin Bank, the Norinchukin Bank as well as the Organisation for Postal Savings, the Postal Life Insurance and Post Office Network and the Development Bank of Japan were created by a specific Act (i.e. Shokochukin Bank Limited Act; Norinchukin Bank Act; Act on the Organization for Postal Savings, Postal Life Insurance and Post Office Network; Development Bank of Japan Inc. Act). Under these Acts, they are not licensed as such, but are under the direct authority of the MOF, the METI, the JFSA, the MAFF, and the MIAC, and are regulated and supervised, including for AML/CFT purposes, along the same principles and rules as other banking institutions.

Financial instrument business operators are required to be registered, and not licensed. However, the applicable registration process imposes that a number of conditions are met and the registration authority retains the power to reject applications for registration if all conditions are not satisfactorily met, for example if the necessary personnel structure or the necessary system to perform financial instrument activities is lacking (Financial Instruments and Exchange Act, art. 29). Other, non-core FIs have to be licensed or registered: securities finance companies (Financial Instruments and Exchange Act, art. 156-24), trust companies and company conducting self-declared trust business (Trust Business Act, art.3 and 7); specified joint real estate enterprises (Real Estate Specified Joint Enterprise Act, Art. 3, 41, 58(2) and 59(2)); commodity derivatives business operators (Commodity Transactions Act, article 190 (1); money lenders (Money Lending Business Act, art.3); money market brokers/dealer for call loan (Money Lending Business Act, art.2(1)(v), Cabinet Order for Enforcement of the money Lending Business Act, art.1-2(1)(iii)) and credit card companies (Installment Sales Act, art.31).

Funds transfer service providers have to be registered (Payment Services Act, art. 37).

Financial leasing companies are not subject to any licensing or registration requirements.

Currency exchange operators (CEOs) are not required to be registered nor licensed. However, there is a transaction reporting system for money exchangers conducting business of more than JPY 1 million (USD 9,631/EUR 7,919) per month (Foreign Exchange and Foreign Trade Act, Article 55-8).

The JFSA prevents the establishment of shell banks by examining the prospects of the financial basis and balance, the location of the head office and sales offices, and the existence of the executive officers (Banking Act, article 4, paragraph (1) and Ordinance for Enforcement of the Banking Act, article 1-8, paragraph (1)). The JFSA also prevent the continued operation of shell banks by requiring banks to regularly submit various business operation report and also by having semi-annual face-to-face meetings with banks (Banking Act, article 19, paragraph 1); .

Criterion 26.3

Requirements to prevent criminals or their associates from acting as directors and executive officers of banks apply (Banking Act, art. 4(2) and 7-2(1), Shinkin Act, art. 11(4) and 34, Act on financial business by cooperatives, art. 5-4; Fishery Cooperative Law, art. 34-4; Norinchukin Bank Act, art 24-4; Agriculture cooperative Law, art 30-4(1)), Shokochukin Bank Act, art. 19(1). For insurance companies and mutual companies, fit and proper requirements also apply to directors (Insurance business Act, art. 3.2, 5 and 8-2). For securities companies, fit and proper requirements apply to financial instrument business operators (Financial instruments and Exchange Act, art. 29-4). Relevant requirements apply to other FIs (Trust Company Act, art. 5, Real Estate Specified Joint Enterprise Act, art. 6, 7 and 44, Payment Service Act, art. 40, Commodity Exchange Act, art. 193, Installment Sales Act, art. 33-2), except for currency exchange operators and financial leasing companies.

Fit and proper requirements apply to FIs' board members or equivalent bodies (Companies Act, art 362; Shinkin Act, art 36(2); Small and Medium-Sized Enterprise Cooperatives Act, art 36-5(2); Fishery Cooperative Law, art 36(2); Norinchukin Bank Act art 27(2); Agriculture cooperative Law, art 32(2)). Fit and proper requirements also apply to holders of significant or controlling interest but only for a limited number of FIs (Banking Act, art. 52-9 and 52-10; Shokochukin Bank Limited Act, art. 8 and 9; Financial instruments and Exchange Act, art. 32(1) and (2), 29(1) and (2), Trust Company Act, art. 5(2) and 18; Insurance Business Act, art. 271-10 and 271-11; Money Lending Business Act, art 6). A number of FIs in Japan are organised on a cooperative model to which the concept of significant or controlling shareholders would not be applicable (Shinkin bank, labor banks, agricultural cooperatives, and fishery cooperatives).

Criterion 26.4

(a) Banking, securities and insurance institutions are regulated and supervised in line with Core principles, where relevant for AML/CFT[87], and on a risk-basis for those

[87] See July 2017 IMF FSAP Report www.imf.org/en/Publications/CR/Issues/2017/07/31/Japan-Financial-System-Stability-Assessment-45151

under the responsibility of the JFSA (JFSA Guidelines, IV-1). There is no explicit requirement to apply consolidated group supervision for AML/CFT purposes.

(b) MOF has developed risk-based tool and conducted risk assessment for currency exchange operators, and MAFF and METI performed a first risk assessment for commodity derivatives business operator in 2019. However, financial supervisors have not developed the risk based tools for the AML/CFT supervision for other FIs.

Criterion 26.5

The JFSA allocates supervisory resources according to a number of factors (JFSA Guidelines, IV-1):
(a) The level of the identified ML/FT risks of the FIs under its remit, through information collected from interviews or other qualitative researches about internal controls.
(b) The results of the NRA;
(c) The characteristics of FIs and business categories including the variety of products and services, transactions types, countries and geographic areas, and customer base.

JFSA, based on these factors, decides target FIs subject to its onsite and offsite monitoring, and formulates a monitoring plan annually. There is no clear information available regarding the approach adopted for FIs that are not supervised by the JFSA.

Criterion 26.6

The JFSA conducts Corporate Risk Rating (CRR), in which the inherent risks and controls of individual FIs and residual risks are assessed, at least once a year and the CRR of individual FI is modified based on supervisory information obtained by monitoring as necessary even in the middle of a monitoring plan. The MOF conducts the risk profiling on Currency Exchange Operators (CEOs), by assessing residual risk from inherent risks and internal control level, based on the result of inspections to the CEOs.

There is no clear information available regarding the periodical review of the ML/TF risk profile of FIs that are not supervised by the JFSA.

Weighting and Conclusion

Japan meets or mostly meets all the criteria for the regulation and supervision of FIs with minor deficiencies still remaining for c. 26.2 – 26.6 and which mainly affect FIs not supervised by the JFSA and with less weight in the Japanese financial sector.

Recommendation 26 is rated largely compliant.

Recommendation 27 – Powers of Supervision

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 697-706). The main deficiencies related to effectiveness issues which are not assessed as part of technical compliance under the 2013 Methodology. The new R.27 extends the range of disciplinary and financial sanctions powers which the supervisors should have, including the power to withdraw the licenses of FIs.

Criterion 27.1

Supervisors as prescribed by the APTCP (article 2, paragraph 2, and article 22, see c. 26.1) are empowered to take a range of measures, including requesting reports or material, providing guidance and issuing orders for rectification, in order to supervise

or monitor and ensure compliance by FIs with AML/CFT requirements (APTCP, articles 15-18).

Criterion 27.2

Supervisors are empowered to conduct on-site inspections of FIs to monitor their compliance with the AML/CFT requirements (APTCP, article 16; and provisions of the relevant banking acts, for example: Banking Act, article 25; Shinkin Bank Act, article 89).

Criterion 27.3

Supervisors are empowered to compel production of reports or materials relevant to monitoring compliance with the AML/CFT requirements (APTCP, article 15; and provisions of the relevant banking acts, for example: Banking Act, article 24, paragraph 1; Shinkin Bank Act, article 89, paragraph 1).

Criterion 27.4

As per APTCP, financial supervisors are empowered to issue rectification orders to a financial institution for its violation of some APTCP provisions, namely article 4 on the verification of CDD information, articles 6 and 7 on transaction records, article 8 on reporting suspicious transactions, article 9 on verification at the time of establishing the correspondent banking relationship and article 10 on notification pertaining to foreign exchange transactions (APTCP, article 18). There are criminal sanctions available for natural persons or legal entity who violate the order of rectification (APTCP, article 25 and 31).

Violations of other APTCP requirements would not be subject to such supervisory actions. For example, article 11 which sets obligations on FIs to put in place internal controls, compliance and audit functions is not targeted by article 18. Nevertheless, most of the cases of AML/CFT breaches do amount to the breach of sectoral requirement, financial supervisors are empowered to apply a range of sanctions, which include business improvement orders, business suspension orders, revocation of licence/registration, order to dismiss directors based on the relevant sectoral legislation (for ex. Banking Act, articles 24 to 28, Payment Services Act, articles 63-15 to 63-17; Shinkin Bank Act, article 89 (1); Financial Business by Cooperatives Act, article 6, item (1); Commodity Derivatives Transaction Act, article 231, item (1), article 232, item (1), article 236, item (1); Instalment Sales Act: article 33-5, article 34-2(2)1 and article 40(3)). Especially, the business suspension orders and revocation of licence/registration are punitive sanctions, as FIs would suffer from economic loss.

However, AML/CFT supervisors do not have powers to impose direct financial sanctions to FIs or individuals. It is not clear if other financial supervisors can impose a range of disciplinary and financial sanctions.

Weighting and Conclusion

JFSA, which is the main AML/CFT banking supervisor in Japan has all the required powers, with a shortcoming related to the absence of power to impose financial sanctions. It is also not clear if other financial supervisors can impose a range of disciplinary and financial sanctions. Those amount to minor shortcomings.

Recommendation 27 is rated largely compliant.

Recommendation 28 - Regulation and supervision of DNFBPs

In its 3rd MER, Japan was rated partly compliant with these requirements (para 847 – 857). Deficiencies mainly related to the effectiveness of the supervisory regime, which is not assessed as part of technical compliance under the 2013 Methodology. The new FATF requirements strengthen the risk-based approach to regulation and supervision of DNFBPs.

Criterion 28.1

Gambling was prohibited in Japan until very recently. The Act to Implement Specified Integrated Resort Areas (the "Casino Implementation Act") was promulgated by the Japanese Diet on 20 July 2018. It legalized gambling by private entities in Japan. It will only come into for three years after its promulgation (i.e. by July 2021).

Criterion 28.2

The following competent administrative authorities have responsibility for regulating and supervising DNFBPs' compliance with AML/CFT requirements (APTCP, art. 2, para. 2 and art. 22):

- For real estate brokers: MLIT (APTCP, article 22 (1) item (xv));
- For dealers in precious metals and stones: METI (for Antique Dealer and Pawnbroker: Prefectural Public Safety Commissions) (APTCP, article 22 (1) item (xiv) and (4));
- For lawyers and legal profession corporations: Japan Federation of Bar Associations (JFBA) (APTCP, article 12; Attorney Act, article 45, paragraph 2, article 46, paragraph 2, article 33, paragraph 2);
- For Judicial scriveners and Judicial scrivener corporations: MOJ (APTCP, article 22 (1) item (xvi));
- For Certified Administrative Procedures Legal Specialists and Certified Administrative Procedures Legal Specialist Corporations: the prefectural governor (APTCP, article 22 (1) item (xvii));
- For Certified public accountant or audit firm: JFSA (APTCP, article 22 (1) item (i), and article 2 (xlvi)) For Certified public tax accountants and Certified public tax accountant Corporations: MOF (APTCP, article 22 (1) item (xiii))
- For postal receiving service providers: METI (APTCP, article 22 (1) item (xiv)) ,
- For telephone receiving service providers and telephone forwarding service providers: MIAC (APTCP, article 22 (1) item (xii))

For a number of DNFBPs (real estate brokers, judicial scriveners and certified public tax accountants), parts of the designated supervisory body's activities can be administered by the Director General of the Local or Regional Bureaus and relevant measures can be taken for the execution of supervisory activities (APTCP, article 22 (10); APTCP Order, articles 34 to 36).

Criterion 28.3

DNFBPs in Japan are subject to general compliance controls, conducted in particular by METI, MLIT and JFBA, which include an AML/CFT part. This does not amount to AML/CFT monitoring and supervision systems.

Some supervisors require supervised entities to provide an annual report or answer a questionnaire on the application of AML/CFT controls (e.g. MOJ, MOF, JFBA, MLIT) (see MER, Chapter 6).

Criterion 28.4

The relevant supervisory bodies are empowered to supervise AML/CFT compliance and take relevant measures including:

(a) General powers to perform their functions, including powers to monitor compliance (APTCP, articles 15-18, 22)

(b) As part of their licensing/registration process, some DNFBP supervisors take measures to check that applicants for professional licenses or qualifications have a good reputation or would not damage the credibility of the profession, or have not been sentenced to criminal or disciplinary sanctions (Real estate brokerage Act, article 5; Second-hand articles Dealer Act, article 4; Pawnbroker Business Act, article 3; Attorney Act, articles 7, 12, 15, 30-4, 30-22 and 72; Judicial Scriveners Act, article 8 and 10(1)(iii); Certified Public Accountants Act, article 4, 18-2(2), 34-10-10(3) (4); Certified Public Tax Accountants Act, article 4, 24, item 3-5, b of item 6, and item 7; Telecommunications Business Act, article 16). In Japan the members of a legal profession corporation (including the owners and members managing a legal professional corporations) must be a lawyer, which prevents criminals or their associates from holding a significant or controlling interest or a management function in the corporation (Attorney Act, Articles 7, 12, 15, 27, 30-4, 30-12, 30-13 item 1, 30-22, 56, 57, 72, and 77).In addition, no measures are in place to prevent people from holding a significant or controlling interest or a management function for all other DNFBPs.

(c) Supervisors are empowered to issue rectification orders for violation of some AML/CFT requirements (APTCP, article 18) (see c. 27.4), and supervisory bodies have the power to impose sanctions pursuant to sectoral laws regulating DNFBPs' business, including suspension of operation, withdrawal of license when DNFBPs are licensed (Real Estate Brokerage Act, article 65, paragraph 2, article 66; Second-hand Articles Dealer Act, article 6, 24; Pawnbroker Business Act, article 25; Attorney Act, article 30-23, 56, 57, 58(2), 67(3) and 70-7; Judicial Scriveners Act, article 47 and 48; Certified Administrative Procedures Legal Specialists Act, article 14 and article 14-2; Certified Public Accountants Act, article 30, 31, 34-21(2) , 34-29(2); Certified Public Tax Accountants Act, article 45, 46; Telecommunications Business Act, article 185, 187). However, deficiencies identified in R.35 also apply to DNFBP supervisors.

Criterion 28.5

JFSA, who supervises certified public accountants and audit firms, conducts AML/CFT supervision with some risk-based elements (see c. 26.4). For lawyers and legal profession corporations, the JFBA formulated a guideline for risk assessment and conducted risk assessment through evaluating risk assessment reports submitted. Based on the understanding of ML/TF risks and characteristics of the operator (size

of the firm and its areas of practice), the JFBA and other bar associations conducted supervision actions.

Weighting and Conclusion

DNFBPs in Japan are not subject to specific AML/CFT monitoring and supervision systems by supervisory authorities. In addition, there is no measure in place to prevent people from holding a significant or controlling interest or a management function in some DNFBPs. DNFBP supervisors have not implemented supervision on a risk-based approach.

Recommendation 28 is rated partially compliant.

Recommendation 29 - Financial intelligence units

In its 3rd MER, Japan was rated largely compliant with these requirements (pages 65-79). The main technical deficiencies were that the FIU (JAFIC) lacked adequate human resources involved in STR analysis. STR analysis did not include access to cross border currency reports. JAFIC needed to develop its strategic analysis capability regarding typologies and methodologies, for dissemination to LEAs and for feedback to FIs and DNFBPs. The FATF Standards have been significantly strengthened in this area by imposing new requirements which focus on the FIU's strategic and operational analysis functions, and the FIU's powers to disseminate information upon request and request additional information from reporting entities.

Criterion 29.1

The JAFIC is established within the NPA, under the supervision of the NPSC (APTCP, Articles 3, 8, 13-14). JAFIC is the central agency responsible for the receipt and analysis of disclosures filed by reporting entities and the disseminations to domestic and foreign agencies. The Police Act provides further statutory support to the designated role of JAFIC as the FIU (Police Act article 5(4)(viii) and article 17).

JAFIC is responsible to promptly and appropriately collect, arrange, and analyse information on criminal proceeds including information on STRs reported by FI/DNFBPs so that such information can be disseminated and utilized effectively in ML/TF investigations into criminal cases; inquiries into irregularities; and cooperation, including the international exchange of information (APTCP articles 3(2), article 8, article 13(1), article 14(1-2)).

Criterion 29.2

(a) FI/DNFBP are required to report STRs to their relevant AML/CFT supervisory body (see R. 20). Supervisory bodies are then required to pass STRs onto the JAFIC. In practice reporting entities use the dedicated online system for reporting and the STRs are automatically and simultaneously shared with JAFIC. The system ensures prompt reporting to JAFIC.

(b) National legislation does not require reporting entities to file any other information with JAFIC.

Criterion 29.3

(a) STRs are required to include CDD information and JAFIC is empowered to obtain and use additional information from reporting entities to perform its analysis

properly (APTCP, Article 3(4)). Reporting entities must provide information requested pursuant to that article.

(b) JAFIC can access law enforcement, administrative and financial information. This includes information from public authorities as well as from obliged entities and other parties (APTCP, Article 3(4& (5)). JAFIC is entitled to receive tax information held by local tax bureaus, and may request tax information held by NTA.

Criterion 29.4

(a) JAFIC has a process to prioritize STRs for analysis. The analysis process uses available and obtainable information to identify specific targets, to follow the trail of particular activities or transactions, and to determine links between those targets and possible proceeds of crime in ML, predicate offences and TF.

(b) JAFIC conducts strategic analysis, which uses available and obtainable information, including data that may be provided by other competent authorities, to identify ML and TF related trends, patterns and typologies. NPSC (JAFIC) forms teams for strategic analysis and focuses on ML/TF risks identified in the national risk assessment and integrates the latest risk recognition of business operators, LEAs and supervisory authorities.

Criterion 29.5

JAFIC has power to disseminate spontaneously and upon request information and the results of its analysis to prosecutors, relevant investigation authorities, tax authorities, Customs, the SESC and the Fair Trade Commission (APTCP, Article 13) for the purpose of the investigation of criminal cases or inquiry into irregularities (criminal matters). Competence to disseminate the information to supervisory authorities is conducted on the basis of the requirement for cooperation (APTCP, Article 3 (3) and (5)).

As the JAFIC information system is not connected to external lines, when data is disseminated to other recipients than prefectural police, data is encrypted, saved on electronic devices and provided by in-person delivery. Although there is no dedicated, secured and protected electronic channels in use, JAFIC can disseminate information to those competent authorities effectively and appropriately.

Criterion 29.6

(a) The Act on the Protection of Personal Information and the National Public Service Act states the general requirement requiring the JAFIC to guarantee the secrecy and the protection of information it detains. The Rule on implementation of the Act on Prevention of Transfer of Criminal Proceeds and Police Information Security Directive established on Common Standards for Information Security Measures for Government Agencies and Related Agencies, are supplementing provisions on handling, storing and when disseminating information . In addition practical rules referring to NPSC (JAFIC) and police information supplement these provisions.

(b) Upon employment, national public officers are checked not to fall under the provisions for disqualification (National Public Service Act, Article 38). Members of JAFIC are prohibited from divulging any secret which may have come to their knowledge in the course of their duties not only during their tenure but also after their retirement (National Public Service Act art 100(1)). All JAFIC staff receiving

training and briefings on their responsibilities for data security, confidentiality and government's common standards on handling information.

(c) JAFIC information is protected by limiting access to JAFIC facilities and information, including information technology systems. Terminals are installed to designated lockable areas and access to these areas is limited to permitted persons.

Criterion 29.7

(a) NPSC (JAFIC) has the authority and capacity to carry out its functions freely, including the autonomous decision to analyse, request and/or forward or disseminate specific information. The Director General of the Organised Crime Department of the NPA's Criminal Investigation Bureau is acting as the Head of the JAFIC and is competent to decide analyse, request and/or forward or disseminate information. The Head of JAFIC provides information regarding individual cases by his own determination without asking for a decision from the National Public Safety Commission or Criminal Investigation Bureau (APTCP Article 3 (2) and (4), Article 13).

(b) The APTCP set out the powers for NPSC (JAFIC) to make arrangements or engage independently with other domestic competent authorities or foreign counterparts on the exchange of information (Articles 3(4-5), Article 1314(1).)

(c) NPSC (JAFIC)s distinct core functions are set out in Article 5 of the Police Act and Article 3 of the APTCP.

(d) NPSC **(**JAFIC) has its own budget, it maintains such budget separately from other agencies and is able to spend its budget without interference by other agencies. The Head of JAFIC can select persons who are qualified to perform JAFIC tasks including analysis. The Head of JAFIC can determine personnel allocation and assignment periods at JAFIC. The term of office of the Head of JAFIC is not fixed and as a national public officer, his/her status is guaranteed.

Criterion 29.8

Japan's FIU has been a member of Egmont since 2000

Weighting and Conclusion

Recommendation 29 is rated compliant.

Recommendation 30 – Responsibilities of Law Enforcement and Investigative Authorities

In its 3rd MER, Japan was rated compliant with these requirements (paras 409-414).

Criterion 30.1

The NPA, prefectural police and the PPO are the designated authorities with inherent responsibility for ensuring that criminal offences are investigated in Japan (Code of Criminal Procedure (CCP), art 189(2), 191). The PPO may, deemed necessary, investigate an offense and a public prosecutor's assistant may investigate offences under the orders of a public prosecutor (CCP, art 191). The PPO will investigate cases sent by the police as necessary, in cooperation with the police (Article 192 of the CCP), and determine whether or not to file a prosecution. The PPO may independently investigate certain cases, mainly those related to finance and economics that have not been sent by the police. The NTA (Act on General Rules for National Taxes, article 131

to article 154), the Customs authority (Customs Act, article 119 to article 143), the SESC (Financial Instruments and Exchange Act, article 210 to article 226) and local Public Entity (Local Tax Act, article 22-3 to article 22-25) are the administrative bodies that may investigate certain predicate offences within the framework of national AML/CFT policies. The Japan Coast Guard is authorized to investigate any crimes at sea, including predicates, ML and TF (Japan Coastal Guard Act, Article 2). The narcotics control department is able to investigate predicate drug offences and associated ML or TF cases (Narcotics and Psychotropics Control Act, Article 54, paragraph 5).

Criterion 30.2

As police, PPO and Japan Coast Guard are authorised to investigate ML and TF and all other criminal offences, they are authorised to conduct parallel ML investigations. The Narcotics Control Department is authorized to investigate ML cases related to drug crimes as predicated offenses, in parallel with such crimes. Other LEAs are able to refer cases to the NPA or public prosecutors (or coast guard for matters at sea) to follow up with parallel ML/TF investigations.

Criterion 30.3

Police and the PPO are the designated competent authorities to expeditiously identify, trace, and initiate freezing and seizing of property that is, or may become, subject to confiscation, or is suspected of being proceeds of crime (Criminal Procedure Code, articles 197 and 218, see c. 4.2 (a)).

Other administrative bodies responsible for investigating certain predicates may take investigative measures to identify and trace and initiate seizing of property that may become subject to confiscation. As set out in R.4, under the Anti-Drug Special Act and the APOC, in order to confiscate the property subject to confiscation under each Act, a court or a judge may, upon request of a judicial police official, a public prosecutor or ex officio, issue a preservation order pending confiscation.

Criterion 30.4

A number of authorities that are not LEAs handle financial investigations involving predicate offences that occur within their scope of operations.

Non-LEAs may assist LEAs in carrying out criminal investigations in any cases, including ML associated with relevant predicates (CCP, art 193).

Criterion 30.5

This criterion is not applicable in the Japanese context.

Weighting and Conclusion

Recommendation 30 is rated compliant.

Recommendation 31 – Powers of Law Enforcement and Investigative Authorities

In its 3rd MER, Japan was rated largely compliant with these requirements (paras 386-408 and p.237). More training and investigatory resources were needed for AML/CFT law enforcement authorities.

Criterion 31.1

(a) Police officials and public prosecutors have the authority to obtain identification data, account files, business records, and other relevant records/documents/information held by financial institutions, DNFBPs, and other natural or legal persons (Code of Criminal Procedure articles 197, 218 and 222 which cross-reference detailed provisions on search warrants in Chapter IX of the Code).

(b) The same CCP provisions highlighted above cover the search of persons and premises.

(c) The CCP empowers police and prosecutors to conduct interrogations for the purpose of investigation, and ask public offices or public or private organizations to make reports on necessary matters relating to the investigation (art 197, 198).

(d) Public prosecutors and judicial police officials may, if necessary for investigation of an offense, conduct seizures, searches or inspections of the persons and premises upon a warrant issued by a judge (CCP art198, 199, and 218 (1 &2)).

Criterion 31.2

In relation to undercover operations, art. 197(1) of the CCP does not explicitly make reference to undercover operations, it is unclear as to how this provision could provide sufficient legal basis for the competent authorities to conduct undercover operations. It appears the term "such examination as is necessary to achieve its objective may be conducted" is too general and is not specific enough.

(b) Public prosecutors and judicial police officials may intercept crime-related communications under a wiretapping warrant issued by a judge (Act on Wiretapping for Criminal Investigation, art 3). However, it appears that this does not apply to ML offence but only applies to crimes stipulated in Appended Table 1 of the Act, including the illegal trafficking in drugs or the crimes stipulated in Appended 2 of the Act.

(c) When the article to be seized under a warrant issued by a judge is a computer, public prosecutors and judicial police officials may access and seize the computer and related records (CCP, art 218(2))

(d) Controlled delivery is clearly available in relation to drugs (CCP article 197(1) and Anti-Drug Special Act, art 3 and 4).

As with undercover operations, art 197(1) of the CCP, however unlike the drugs law, there is not a clear legal basis to otherwise relieve investigating officers who permit controlled delivery of possible criminal liability.

Criterion 31.3

(a) and (b) The CCP empowers police and prosecutors to ask private organizations to make reports on necessary matters relating to the investigation (art 198), which allows them to identify, in a timely manner whether natural or legal persons hold or control accounts. (b) The same provision would be available to police and prosecutors to ensure that competent authorities can identify assets without prior notification to the owner.

Criterion 31.4

Public prosecutors and judicial police officials may, when they find it necessary for the investigation into ML, associated predicate offences and TF, request the JAFIC for

the inspection or copying of the records of information on suspicious transactions or the delivery of copies thereof, and detailed information including analytical products relevant to a matter (APTCP, Article 13, paragraph 2).

Weighting and Conclusion

Japan meets most of the requirements of R.31 except a minor gap of failing to have an express provision which could provide sufficient legal basis for the competent authorities to conduct undercover operations.

Recommendation 31 is rated largely compliant.

Recommendation 32 – Cash couriers

In its 3rd MER, Japan was rated non-compliant with these requirements (para. 443 to 465 and p.242). It was found that Japan needed to establish an AML/CFT enforcement capability for cross border movement of currency and bearer negotiable instruments. Fundamental gaps were identified at that time. The Customs Act was amended with a view to address the deficiencies during the follow-up process (1st FUR 2010; 7th FUR 2013). R. 32 contains new requirements regarding the declaration system and the safeguards in place to ensure the secured use of information collected.

Criterion 32.1

Japan implements a declaration system for all incoming and outgoing cross-border transportation of goods (Customs Act, article 67) and a declaration system for all incoming and outgoing cross-border transportation of "means of payment". Means of payment include banknotes, government money bills, small denomination bills, and coins, checks (including traveller's checks), bills of exchange, postal money orders, and letters of credit (FEFTA, art. 6 (1) (vii) and 19; Foreign Exchange Order, article 8-2 (1)).

Criterion 32.2

The declaration system applies to all transportation of means of payment whose value exceeds JPY 1 million (c.EUR 7,919/USD 9,631), following the (b) approach. The declaration is made to the Customs authority, which has to authorise the movement after examination of the transported currency. Any "negligence or false declaration" is subject to imprisonment for not more than 5 years or a fine up to JPY 10 million (EUR 79,186/ USD 96,307) (FEFTA, Art.111(1) subpara.1 and 2; Art 71).

Criterion 32.3 - Not applicable.

Criterion 32.4

As part of their general powers of investigation applicable to any breach of obligations related to transportation of goods (Customs Act, article 105), Customs officials are entitled to seek information and where relevant conduct search. Although breaches of the currency transportation declaration obligation are not specifically addressed by Japanese legislation, the Act would give Customs officials the authority to request and obtain further information with regard to the origin of the currency or BNIs, and their intended use.

Criterion 32.5

Failure to make a declaration or a false declaration is subject to imprisonment "with labor" for up to five years, or a fine not exceeding JPY 10 million (EUR 79,186/ USD 96,307) (when the value of the currency exceeds JPY 2 million (EUR 15,837/USD 19,261), the fine shall not exceed five times the value), or to both, where currency is subjected to seizure (Customs Act, article 111). It appears the sanctions are proportionate.

Criterion 32.6

The FIU can obtain information from the Customs on request (APTCP, art. 3 (2), see c. 2.3).

Criterion 32.7

When Customs officials find it necessary for the purpose of carrying out their duties pursuant to the provisions of any other Act relating to Customs duty, they may request cooperation from other government agencies (Customs Act, art. 105-3). They can also receive assistance from police or maritime safety officials for investigations of criminal cases (for ex. Customs Act, article 121, 129, 130). This would include the Immigration Bureau.

Criterion 32.8

Art.105 of the Customs Act does not explicitly provide that the competent authorities are given powers to stop or restrain currency or BNIs in the events of R.32.8(a) or (b).

Criterion 32.9

Custom authorities cooperate with foreign counterparts (Customs Act, article 108-2). This would extend to cooperation and assistance regarding the declaration system.

Criterion 32.10

Any information collected through the declaration would be governed by the Act on the Protection of Personal Information held by the relevant administrative authorities which would ensure the proper use of same.

Criterion 32.11

(a) The criminal sanction regimes for ML and for TF offences apply to carriers who transport currencies or BNIs related to ML or to TF.

(b) The general provisions applicable to confiscation of proceeds of crimes would also be applicable to currency or BNIs.

Weighting and Conclusion

While Japan has implemented a generally comprehensive declaration system, competent authorities are not expressly given powers to stop or restrain currency or BNIs in the events of a false declaration or suspicion of ML or TF.

Recommendation 32 is rated largely compliant.

Recommendation 33 – Statistics

In its 3rd Round MER, Japan was rated largely compliant with these requirements (para.1074). The main technical deficiency was that no statistics were available on the sanctions applied to legal persons convicted for ML; on the number of persons convicted for the predicate offences and ML; 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. Japanese authorities appeared able to provide statistics on request, but it was uncertain that they were systematically maintained.

Criterion 33.1

(a) The FIU maintains yearly statistics of STRs received and disseminated (APTCP Rules of Implementation, article 14 (1)).

(b) and **(c)** The Ministry of Justice and LEAs maintain statistics on ML investigations, prosecutions and convictions, and on many aspects of asset restraint and confiscation with the exception of instruments of crime.

(d) Japan maintains statistics on mutual legal assistance received or sent, requests of extradition executed; requests for information received or sent by the FIU from/to foreign FIUs and spontaneous disseminations received or sent by the FIU from/to foreign FIUs; requests for information received or sent by the National Police Agency from/to foreign Police departments (National Police Agency Organizational Ordinance, art. 30; Rule on the implementation of the APTCP).

Weighting and Conclusion

Statistics are available on STRs and on MLA for some authorities. Comprehensive statistics are not available on property frozen, seized and confiscated.

Recommendation 33 is rated largely compliant.

Recommendation 34 – Guidance and feedback

In its 3rd Round MER, Japan was rated largely compliant with these requirements (para.636, 746 and 747, 814 to 816, 863). Guidance and feedback on AML/CFT obligations was satisfactorily provided to FIs, but not for DNFBPs. There was also an absence of specific or case-by-case feedback to reporting institutions, and of actions taken to promote STR filing by insurance and securities sector.

Criterion 34.1

In 2018, the JFSA adopted AML/CFT Guidelines in order to set a common minimum standard for the understanding of ML/TF risks by the financial sectors under its supervision. They were amended in April 2019 to clarify that risk assessment should be conducted on all customers (see MER, 1.4.4). In August 2019, the METI published similar Guidelines for credit card companies, and jointly with MAFF, similar Guidelines for commodity derivatives business operators. In September 2019, METI also supervised the publication by the Japan Leasing Association of similar Guidelines for financial leasing companies.

Over the last four years, supervisory bodies and the FIU have delivered training on AML/CFT measures to FIs. The FIU also visits some FIs on a regular basis, including the mega-banks, to give feedback on STRs received. JFSA held briefing sessions for FIs under its supervision on FATF developments and facilitated the sharing of best practices on AML/CFT controls. These included sessions with top-level managers of

FIs. JFSA also published in 2018 reports providing feedback on the implementation of risk management systems by FIs and on the results of its supervisory activities.

Since 2015, some DNFBPs (real estate agents, dealers in precious metals, judicial scriveners, postal receiving service providers, certified public tax accountants and certified public accountants) have benefited from training by their supervisory authorities, assisted in some cases by national industry associations. Some sectors, including antique dealers, pawnshops, dealers in precious metals and stones, also received written notices on legislative changes from their supervisors.

The FIU has also provided Guidelines on STR reporting to all reporting entities. A list of reference cases of suspicious transactions is available on the JAFIC website, with red flag indicators for reporting entities.

Weighting and Conclusion

Although Japan has worked with FIs to ensure that they are applying national AML/CFT measures and detecting and reporting suspicious transactions, less focus has been placed on DNFBPs.

Recommendation 34 is rated largely compliant.

Recommendation 35 – Sanctions

Criterion 35.1

In relation to R.6. –Under FEFTA, there is a general requirement that FIs should obtain permission for the exchange transactions with a customer when it is necessary "for the fulfilment of obligations under treaties or other international agreements which Japan has signed or when he/she deems particularly necessary to enable Japan to contribute to international efforts to achieve international peace" (FEFTA, article 16-17). The violation of such obligation would subject to an order of suspension of business pertaining to foreign exchange transactions or restriction of business by Minister of Finance (FEFTA, article 17-2). However, the sanctions are not explicitly linked to FI or DNFBP's failure to apply preventive measures related to TFS for TF.

In relation to R.8. - NPO-specific penalties combined with those provided for in the Penal Code allow Japanese authorities to apply effective, proportionate, and dissuasive sanctions for NPO-related violations (see c. 8.4 (b)).

In relation to R.9-23. - FIs or DNFBPs which fail to comply with the applicable preventive measures, especially with regard to CDD obligations, can be issued rectification orders by supervisors (APTCP, article 18). The violation of the rectification order of APTCP will lead to criminal sanctions to FIs, while APTCP provision on sanctions would not cover all AML/CFT obligations like putting in place internal controls and setting up compliance and audit functions (see c. 27. 4),

Nevertheless, there is a range of administrative sanctions which include: business improvement orders, business suspension orders, revocation of licence/registration, order to dismiss directors prescribed by the Banking Act and other financial service acts (see c. 27.4) or business acts (see c. 28.5). These sanctions can be imposed by supervisors in cases of breaches of sectoral requirements, including but not limited to, AML/CFT obligations stipulated in APTCP and JFSA Guidelines which would amount to a breach of a sectoral requirement.

However, AML/CFT supervisors do not have powers to impose direct financial sanctions to individuals or FIs and it is not clear if other financial supervisors can impose a range of disciplinary and financial sanctions (see c.27.4).

Criterion 35.2

While there is no specific provision on the application of sanctions to directors and senior managers, when FI or DNFBPs are sanctioned as legal persons, all types of natural persons, including directors and senior managers are punishable under the relevant provisions in the Criminal Proceeds Act, when acting as direct offenders or as accomplices. In addition, when AML/CFT breaches amount to the breach of another sectoral requirement, financial supervisors are empowered to apply a range of sanctions, which include order to dismiss directors based on the relevant sectoral legislation.

Weighting and Conclusion

Japan mostly meets the criteria under R.35 with several minor deficiencies: AML/CFT supervisors do not have powers to impose direct financial sanctions to individuals or FIs; it is not clear if other financial supervisors other than JFSA can impose a range of disciplinary and financial sanctions; there is no specific provision on the application of sanctions to directors and senior managers, when FI or DNFBPs are sanctioned as legal persons.

Recommendation 35 is rated largely compliant.

Recommendation 36 – International instruments

In its 3rd MER, Japan was rated partially compliant with these requirements (para. 605 to 619). The main technical deficiencies were that Japan had not become party to the Palermo convention of fully implemented the freezing obligation relative to UN TF Convention. There were weaknesses in the ability to implement TFS against terrorism and a number of weaknesses in the ability to seek and provide MLA, including extradition.

In 2016 the FATF follow-up process found that although Japan had yet to fully implement the Palermo Convention, Japan had addressed most of these deficiencies to a level essentially equivalent to largely compliant.

Criterion 36.1

In July 2017 Japan became a party to the Palermo Convention (as well as its protocols on trafficking in persons and smuggling of migrants), and the Merida Convention. Japan joined both conventions without reservation.

Criterion 36.2

Japan has a definition of a money laundering offence that is broadly in line with Art. 3(1) parts b and c of the Vienna Convention, and Art. 6(1) of the Palermo Convention.

Japan's implementation of the TF Convention is broadly in line with Art. 2, however one deficiency remains regarding the intentional element to intimidate the public (see c. 5.1).

Japan has broadly implemented the other provisions of the Vienna Convention, the Palermo Convention, the TF Convention and the International Convention for the Suppression of the Financing of Terrorism.

Weighting and Conclusion

Japan is a party to all required Conventions and has implemented all the required ones, but some deficiencies remain regarding some implementing measures, especially regarding the Vienna Convention and the TF Convention.

Recommendation 36 is rated largely compliant.

Recommendation 37– Mutual Legal Assistance

In its 3rd MER, Japan was rated partially compliant with these requirements (paras 959-997). Gaps included requirements to request assistance in investigation through diplomatic channels; process burdens related to providing opinions ahead of providing assistance; an absence of bilateral and multilateral treaties or agreements; impediment related to protected categories of persons; requirement for requesting state to demonstrate indispensability of evidence; and gaps with predicates in the context of dual criminality. In 2016 the FATF follow-up process found that Japan had addressed most of these deficiencies to a level essentially equivalent to largely compliant.

Criterion 37.1

The conduct of MLA in Japan is governed by the Act on International Assistance in Investigation and Other Related Matters (MLA Act), the Act on Assistance Based on Commission by Foreign Courts (Courts Assistance Act), bilateral MLA Treaties/Agreements on Mutual Legal Assistance in Criminal Matters (MLAT/MLAA), and multilateral conventions.

The MLA Act (Art 4 & 8) and the Courts Assistance Act provide the legal basis for providing evidence necessary for investigation and other relevant assistance to foreign authorities even in the absence of bilateral MLAT/MLAA. The MLA Law and related laws, such as the APOC, the Anti-Drug Special Provisions Act and the Courts Assistance Act, collectively allow Japan to consider the provision of assistance for ML, TF and predicate offences:

(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;

(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.

Given there is a gap in relation to the scope of coverage of environmental offences, including as predicates to laundering, it follows that there is no clear legal basis to request or provide MLA in relation to those offences or actions in relation to related instruments or proceeds of crime.

Criterion 37.2

The MOJ is the Central Authority for MLA under a majority of treaties/conventions or MLATs/MLAAs. All the communication concerning the MLA in such cases is made directly between the Central Authorities. For non-treaty based requests, the MOFA (diplomatic channels) is the receiving authority for requests. Public prosecutors, judicial police officials, or courts execute the MLA request, such as providing evidence, through diplomatic channels, in accordance with the procedures prescribed under the MLA Act and the Courts Assistance Act.

Japan has MLATs/MLAA with 32 countries/regions and is a party to a range of relevant treaties/conventions. The MOJ may accept a request directly from the foreign counterpart if provided in treaties, or consent may be granted by the MFA in cases of requests that require particularly urgent assistance in terms of investigation, or where there is a strong need for secrecy and the requesting country wishes not to go through diplomatic channels. When an MLA request is deemed to be urgent and serious it may be given priority in execution.

Japan has a case management system to monitor the progress of cases. The MOJ, the International Affairs Division at the Criminal Affairs Bureau, maintains a list of incoming and outgoing MLA in order to monitor and manage the status of the requests. The MOJ, regularly reviews the list and the status of each MLA request, and takes appropriate measures to ensure that such assistance is executed in a timely manner.

Criterion 37.3

Art. 2 of the MLA Act restricts the provision of MLA under any of the following circumstances:

(i) When the offence for which assistance is requested is a political offence;

(ii) When dual criminality is absent; or

(iii) When, regarding assistance in examination of a witness or provision of articles of evidence, the requesting country fails to provide documents ascertaining that such evidence is essential for their investigation.

The previous MER highlighted that 'political offences' are not further defined, leaving some doubt as to its coverage and highlighted concerns that the additional restriction to a requesting state having to prove that such evidence is 'essential' may create evidentiary burdens. This may be less problematic as Japan has greatly increased its membership of multilateral treaties and MLAT/MLAAs. It is unclear as to the concerns/problems highlighted above have been addressed or rectified, in particular it remains unclear as to the legal meaning of "political offences" in the context of the Japanese law.

Various MLAT/MLAA override the restriction on dual criminality in the MLA Law and makes the requirement of dual criminality only a discretionary ground of refusal (Art. 3, paragraph 1 (4) of the Japan-U.S. MLAT, Art. 3, paragraph 1 (5) of the Japan-Republic of Korea MLAT, Art. 3, paragraph 1 (5) of the Japan-People's Republic of China MLAT, Art. 3, paragraph 1 (6) of the Japan-Hong Kong MLAA, Art. 11, paragraph 2 of the Japan-EU MLAA, and Art. 3, paragraph 1 (5) of the Japan-Russian Federation MLAT). This enables Japan to exercise its discretion to provide MLA, to 32 countries or regions even if dual criminality cannot be established.

With regard to the principle of reciprocity in MLA, it is suggested that the scope of the guarantee is not to be interpreted in a strict manner. Thus, the requirement for reciprocity prescribed under the domestic law does not hinder the efficiency of MLA or impose unreasonable or unduly restrictive conditions on the execution of MLA.

Criterion 37.4

(a) There is no domestic legislation or provisions in existing MLAT/MLAA that prevent Japan from executing MLA solely because of the involvement of fiscal matters.

(b) Authorities will not refuse a request for MLA on the grounds of secrecy or confidentiality requirements on financial institutions or DNFBPs.

Criterion 37.5

Officials are required, under the National Public Service Act (art 100(1)), to maintain confidentiality, which would apply to MLA requests received and the information contained in them. Japan has developed its "Common Standards for Information Security Measures for Government Agencies and Related Agencies", which prescribes information security measures that are commonly required for all ministries and agencies concerning electronic data. This would apply to safeguarding the information received from foreign authorities. Police officials which are one of the executing authorities are local public servants, are obliged under the Local Public Service Act not to divulge secrets which may come to their knowledge in the performance of their duties (art.34, para.1)

Criterion 37.6

The MLA Act, in principle, restricts MLA when dual criminality is not present. However, by stipulating otherwise in treaties and MLAT/MLAA, dual criminality is discretionary in those matters, including for requests that do not involve coercive actions.

Criterion 37.7

Japan broadly recognizes dual criminality and applies the MLA Act in a flexible manner in its practical application. To this end when dual criminality is required for MLA, even when the constituent elements of an offence set forth in the requesting country are not stipulated in the same way under Japanese law, authorities acknowledge dual criminality as long as the series of social facts actually performed by the offender contain any act that would constitute an offence if committed in Japan. Technical legal differences that may exist between Japan and the requesting country, such as differences in the classifications or definitions of offences, do not prevent Japan from providing MLA. Japan cited case law confirming this approach (Tokyo High Court Case Review, March 30, 1989, *Hanrei-Jihou* No. 1305 p.150)

Criterion 37.8

The authorities and investigation techniques available to competent authorities under the Code of Criminal Procedure may also be performed in order to execute MLA requests from foreign authorities. (MLA Law Art. 13). These include:

(a) - all of the specific powers required under R. 31 relating to the production, search and seizure of information, documents, or evidence (including financial records) from

financial institutions, or other natural or legal persons, and the taking of witness statements;

(b) - a broad range of other powers and investigative techniques save and except the clear legal basis for undercover operation.

Weighting and Conclusion

There are minor gaps in the coverage of certain environmental offences, and as such there is no clear legal basis to request or provide MLA in relation to those offences. Undercover operations are not available pursuant to and MLA request.

Recommendation 37 is rated largely compliant.

Recommendation 38 – MLA – Freezing and Confiscation

In its 3rd MER, Japan was rated largely compliant with these requirements (paras 998-1015). There were weaknesses with the post-confiscation use of its confiscated property or collection orders. As dual criminality was required, the limitation in the ML and TF offences limited the Japan's capacity to restrain and confiscate in the context of MLA.

Criterion 38.1

As set out in the 2008 MER, Art. 59 to 74 of the APOC, assuming reciprocity quarantines, provides for authority to obtain a preservation (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 MLAT between Japan and the requesting country. In addition, in relation to drug crimes, Art. 21 and 22 of the Anti-Drug Special Act, provide that in cases where Japan and the requesting state are parties to any bilateral or multilateral convention, Japan will mandatorily assist, subject to limitations set out in Art. 21, paragraphs (1) to (6).

Both APOC and the Anti-Drug Special Act allow authorities to use the powers analysed in Rec 4 in the course of responding to MLA requests.

Under the provisions cited above, save and except the proceeds of certain environmental crimes and the proceeds generated from the crimes committed by criminals who have absconded, died or whose whereabouts is unknown, confiscation can take place for:

(a) Property laundered (Anti-Drug Special Act, Art. 2 (4) and (5) and 11; APOC, Art. 2 (2) and (4), and 13);

(b) Proceeds of drug offences or the like and other crime proceeds, which would include income or other benefits derived from such proceeds (Anti-Drug Special Act, Art. 2 (4) and (5) and 11, para 1; APOC, Art. 2 (2) and (4) and 13).

Instrumentalities used or intended for use would also be included in assets that can be confiscated (Penal Code, Art. 19 (1) (i) and (ii)).

(c) Property provided or intended to be provided for TF offences or for an attempt of these offences (APOC, Art. 2 (2) iv) and Appended table 2 (32)).

(d) Forfeiture of an amount of money equivalent to the value of the property applies when the confiscation cannot take place because it is inappropriate in light of the

nature of the property, the conditions of its use, the existence of third party rights to such property (Anti-Drug Special Act, Art. 13; APOC, Art. 16) or for any other reasons (Anti-Drug Special Act, Art. 13; APOC, Art. 16; Penal Code, Art. 19-2). Third parties are fully protected as a result of Art. 59, paragraph 3 of the Act on the Punishment of Organized Crime. In addition, items 2 and 4 of Art. 59 (1) operate to require that the relevant property would be subject to the confiscation order if the case had taken place in Japan.

If the relevant property is moveable then it must be seized, using the MLA Law and the CCP or relevant provisions under the Penal Code. Freezing provisions (preservation orders), are available. The PPO must apply to the judge for preservation of such property for confiscation (APOC, Art. 66 and 67). Art. 68 of APOC deals with foreign requests where no prosecution has been instituted. In that case the preservation 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, Art. 68, paragraph 2 allows for the court to approve a further series of 30-day extensions of the preservation order. If necessary, the judge in Japan may examine the facts supporting the foreign order pursuant to Art. 70 of APOC. Art. 71 of APOC allows the public prosecutor to request the attendance of any person for interrogation and Art. 73 applies the provisions of the CCP to such cases.

If the request seeks the actual confiscation of property on the basis of a final foreign confiscation order, as opposed to its preservation pending a confiscation order from the requesting state pursuant to Art. 59 of APOC, the prosecutor requests a court review. That review begins, pursuant to Art. 62 of APOC, 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 Art. 59 of APOC. 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 Art. 62, paragraphs 3 to 9, issues its judgement. If the order involves a collection of equivalent value, Art. 62 of APOC, paragraph 4 provides that the final order of enforcement be made in yen. The relevant judgements can be appealed pursuant to Art. 63 of APOC. Finally, assuming unsuccessful appeals the confiscation order is executed as if it were a final judgment for confiscation issued by a Japanese court (Art. 64) and Art. 62, paragraph 5 of APOC provides that no challenge of the foreign order be made in Japan.

(e) When acting on an MLA request for the execution of a finally binding adjudication of collection of equivalent value, a public prosecutor shall apply to a court for an examination of whether assistance may be provided (APOC Art. 62 & 64, Anti-Drug Special Act Art. 23) and the as a result of the examination by the court, the public prosecutor may collect an equivalent value. When making an MLA request for preservation for the purpose of collection of equivalent value, the PPO shall apply to a judge to prohibit the disposition of the property concerning the MLA request with a preservation order for collection of equivalent value. (APOC Art. 67, Anti-Drug Special Act Art. 23). The judge may proscribe the disposition of the property by issuing a preservation order for collection of equivalent value if the judge finds that there are reasonable grounds to deem that the collection of equivalent value should be imposed, and that there is a possibility that the execution of the court decision of collection of equivalent value would be impossible or extremely difficult. (APOC Art. 43, Art. 59, paragraph 1, item (vii), Art. 73, paragraph 1, Anti-Drug Special Act Art. 20 and 23)

Criterion 38.2

Japan does not appear to have the authority to provide assistance for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures, at a minimum in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown, unless this is inconsistent with fundamental principles of domestic law.

Criterion 38.3

(a) Japan has included elements of arrangements for co-ordinating seizure and confiscation actions with MLAT/MLAA partners.

(b) When all or part of the executed property pertaining to an MLA request is to be granted to a requesting country, the Chief Prosecutor of the District PPO, to whom the Minister of Justice ordered to take necessary measures for assistance in the execution of the final and unappealable adjudication of confiscation or collection of equivalent value, retains such executed property for the purpose of making the grant. This is based on the order by the Minister of Justice (APOC Art. 64-2(2-3), Anti-Drug Special Act Art. 23) and mechanisms for managing, and when necessary disposing of, property frozen, seized or confiscated under those same agreements (see criterion 4.4). Measures described in c. 4.4 apply *mutatis mutandis*, based on the provision of Article 73 of the APOC.

Criterion 38.4

When a foreign country that requested assistance in the execution of a final and unappealable adjudication of confiscation or collection of equivalent value requests for grant of the executed property, all or part of the executed property may be granted to the requesting country (APOC Art. 64-2(2-3), Anti-Drug Special Act Art. 22).

Decisions to grant property and the amount to be granted are made case-by-case based on consultations with the requesting country. Authorities consider various circumstances such as the characteristics of the property (e.g. whether the property is considered appropriate to be returned to the victims) and the balance between the requesting country and Japan regarding the contributions made in the process of confiscation or collection.

Weighting and Conclusion

There are minor gaps in the coverage of certain environmental offences, and as such there is no clear legal basis to request or provide MLA in relation to those offences. There is no legal basis to provide assistance to requests for co-operation made on the basis of non-conviction based confiscation proceedings and related provisional measures, at a minimum in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown.

Recommendation 38 is rated largely compliant.

Recommendation 39 – MLA – Extradition

In its 3rd MER, Japan was rated partially compliant with these requirements (paras 1016-1050). There were weaknesses with the minimum sentence for extradition; prosecuting nationals in lieu of extradition; and gaps in the ML and TF offences limited the ability to grant extradition requests with the application of dual criminality. In

2016 the FATF follow-up process found that Japan had addressed most of these deficiencies to a level essentially equivalent to largely compliant.

Japan can execute extradition requests from foreign countries regarding a person to whom criminal proceedings have been carried out, in accordance with the Act of Extradition, bilateral treaties of extradition, and multilateral conventions. The Act provides the legal basis for executing extradition requests even in the absence of bilateral treaties.

Criterion 39.1

(a) The Act of Extradition provides a basis for extradition for ML (save and except certain environmental crimes as predicate offence) and TF even in the absence of bilateral treaties. The limitations on extradition do not apply to ML or TF (Act of Extradition Art. 2, paragraph 4).

(b) Extradition requests received from foreign countries are managed by the International Affairs Division at the Criminal Affairs Bureau of the MOJ. The case management of MLA requests explained in Criterion 37.2 is applied also to the case management of extradition requests.

Processes for timely execution of extradition cases are included in the Act of Extradition. When the Tokyo High Court receives the application for an examination on whether a case is extraditable, it shall promptly begin its examination and render a decision, and when the fugitive is detained under a detention permit, the decision shall be rendered, at the latest, within two months from the day on which the fugitive was taken into custody. (Act of Extradition Art. 9(1)).

(c) Japan does not pose unreasonable or unduly restrictive conditions on the execution of requests. Art. 2 of the Act on Extradition stipulates nine circumstances where extradition is restricted. These restrictive conditions appear to be reasonable and a number can be overcome when otherwise provided for in a treaty to which Japan is a party.

Criterion 39.2

(a) The Act of Extradition, in principle, prohibits the extradition of Japanese nationals, but it provides that extradition may be executed when the extradition treaty provides otherwise (Art. 2). Japan's two bilateral extradition treaties (Japan / US and Japan / South Korea) provide for the extradition each parties' nationals at the discretion of the requested party.

(b) Japan is bound by provision in the multilateral conventions that it is party to, which stipulate that in cases where extradition is refused on the grounds that the person is a national of the requested Party, the requested Party shall be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution at the request of the requesting Party. In such a case, the MOJ transmits the request and evidence to the competent authorities (police, public prosecutors, etc.), and those authorities conduct necessary investigations. Then, public prosecutors decide whether or not to prosecute the case.

Criterion 39.3

Cases where dual criminality is required for extradition, even when the constituent elements of an offence set forth in the requesting country are not stipulated in the

same way under Japanese law, it is noted that dual criminality as long as the series of social facts actually performed by the offender contain any act that would constitute an offence if committed in Japan

Criterion 39.4

When receiving a request for extradition, the Tokyo High Court examines the appropriateness of the extradition. (Act of Extradition, art 8). The Tokyo High Court renders a decision, at the latest, within two months from the day on which the fugitive was taken into custody, and this decision is not appealable. In this examination, the criteria of whether there is probable cause to suspect that the fugitive committed the act constituting the requested offence is exempted if the fugitive was convicted in the requesting country for the requested offence (Act of Extradition, Art. 2(vi)).

Japan does not have any simplified extradition mechanisms, with authorities noting that the original procedure of extradition is sufficiently prompt already, not allowing appealing against the decision of the court related to extradition.

Weighting and Conclusion

There are minor gaps in the coverage of certain environmental offences, and as such there is no clear legal basis to request or provide extradition in relation to those offences. There is no legal basis to provide for simplified extradition mechanisms.

Recommendation 39 is rated largely compliant.

Recommendation 40 – Other forms of international cooperation

In its 3rd MER, Japan was rated largely compliant with these requirements (para. 1051 – 1073). The main deficiencies related to effectiveness issues which are not reviewed as part of technical compliance under the 2013 Methodology.

Criterion 40.1

Japan's competent authorities are able to implement international cooperation extensively with a wide range of tools in relation to ML, associated predicate offences and TF. The information can be provided both spontaneously and upon request.

Criterion 40.2

(a) Most competent authorities have a legal basis to provide international cooperation:

- JAFIC (APTCP, article 14, paragraph 1; Police Law, article 5, paragraph 4, item 8, and article 17)
- JFSA (Act for Establishment of the Financial Services Agency, article 4 (1) (xxv))
- NPA (Act on International Assistance in Investigation and Other Related Matters, article 18(1); Police Act, article 5, paragraph 4, item 9, and article 17)
- Tax authority (Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties, article 8-2) Customs (Customs Act, article 108-2)
- MOF (Act for Establishment of the Ministry of Finance, article 4 (1))

- MIAC (Act for Establishment of the Ministry of Internal Affairs and Communications, Article 4 (1), item (xcii))
- MHLW (Act for Establishment of the Ministry of Health, Labour and Welfare, Article 4 (1), item (cix))
- Ministry of Agriculture, Forestry and Fisheries (Act for Establishment of the Ministry of Agriculture, Forestry and Fisheries, Article 4 (1), item (xiii))
- METI (Act for Establishment of the Ministry of Economy, Trade and Industry, Article 4 (1), item (lviii))
- Ministry of Land, Infrastructure, Transport and Tourism (Act for Establishment of the Ministry of Land, Infrastructure, Transport and Tourism, Article 4 (1), item (cxxv))

There is no specific legal provisions for the international cooperation of JFBA in its role as AML/CFT supervisor.

(b) Competent authorities are not prevented from using the most efficient means possible for providing the widest range of assistance.

(c) Most competent authorities use secure gateways and mechanisms to transfer their requests:

- NPSC (JAFIC) is a member of the Egmont Group and uses the Egmont Secure Web to transmit and respond to the requests for cooperation.
- The JFSA identifies contact points in the framework of IOSCO MMOU, IAIS MMOU and MOU/EOL/MOC/SOI. There are also requirements on keeping the confidentiality of exchanged information.
- For the Police, Tax authorities and Customs, there is a special unit set up in each authority to deal with exchange of information.

However, there is no information available on the secure gateways and mechanisms used by other competent authorities, including supervisory bodies of FIs not supervised by the JFSA and of DNFBPs.

(d) Although the JAFIC follows the Egmont Principles for the prioritisation or timely execution of requests, there is no processes for other agencies applying equivalent same principles at the national level.

The NTA responds to the information request within 90 day or gives a status update to the requesting country for all cases, in accordance with the rule set forth by the Global Forum on Transparency and Exchange of Information for Tax Purpose principles. Japan Customs internal rules require that exchanges of information with a certain foreign Customs should occur on a priority basis, if the case is provided in a Customs mutual assistance agreement, or if it is a matter of urgency. However, there is no clear processes for the prioritisation of requests. For other competent authorities, there is no clear process for the prioritisation and timely execution of requests

(e) Japanese stipulates that documents prepared and obtained by government officials shall be appropriately managed (filed and maintained) (Public Records and Archives Management Act, article 2(4), article 5, and article 6; Common Standards for Information Security Measures for Government Agencies and Related Agencies,

Chapter 3) This would apply to safeguarding the information received from foreign authorities.

For JFBA, information obtained through international cooperation is used only for the purposes for which it was obtained and is not intended to be disclosed. This is supported by the obligation of confidentiality imposed on lawyers by the Attorney Act (article 23) and Basic Rules on the Duties of Practicing Attorneys.

Criterion 40.3

Bilateral or multilateral agreements or arrangements to co-operate are negotiated and signed in a timely way, and with a wide range of foreign counterparts. The JAFIC has signed MoU with FIUs of 106 countries/regions for cooperation (with 7 countries in 2017, 3 countries in 2018 and 2 countries as of July 2019). The NPA has concluded documents on international cooperation with police authorities of 6 countries. By December 1, 2019, Japan had concluded 74 tax conventions which enabled NTA to exchange information regarding tax matters with 129 jurisdictions. JFSA has also progressively developed a bilateral cooperation framework through exchanges of letters arrangements with a number of foreign counterparts.

Regarding multilateral cooperation, the JFSA is a signing party of the International Organisation of Security Commissions (IOSCO) Multilateral MOU and the International Association of Insurance Supervisors (IAIS) multilateral MOU. The NPA exchanges information with more than 190 countries and regions via INTERPOL-ICPO.

A number of Japan's competent authorities are therefore able to negotiate and sign bilateral and multilateral agreements or arrangements in a timely manner with a wide range of foreign counterparts if needed. They cover operational tasks, including information exchanges.

JFBA is a member of the International Bar Association (IBA), and has concluded agreements with foreign bar associations to conduct a variety of cooperation and information sharing.

Criterion 40.4

While there is no specific requirement for requesting competent authorities to provide feedback on request and in a timely manner to competent authorities from which they have received assistance, on the use and usefulness of the information obtained, there are no legal and practical obstacles to providing such feedback, which is provided in practice.

Criterion 40.5

(a) Japanese competent authorities do not refuse requests for information or assistance from foreign counterparts for fiscal matters reasons

(b) Although there is a legal framework that imposes a general confidentiality on FIs and DNFBPs with regard to personal data, it does not prevent them from providing information to NPSC (JAFIC) and the authorities of financial supervision, law enforcement as well as financial investigation, nor does it impede the provision of information to the respective foreign authorities (Act on the Protection of Personal Information, art. 23, para. 1, item 4).

(c) Japanese competent authorities have not refused a request for assistance on the ground that there be an inquiry, investigation or proceeding underway in Japan.

(d) The fact that the nature or status of the requesting counterpart authority is different from that of its foreign counterparts is not a restrictive condition for exchange of information in Japan.

For (a), (b) and (c), there is no legal or practical obstacles in terms of exchange of information or assistance based on these different grounds.

Criterion 40.6

Competent authorities ensure that information exchanged by competent authorities is used only for the purpose for, and by the authorities, for which the information was sought or provided. This is supported by national data protection provisions and international MOUs with foreign counterparts.

Criterion 40.7

Exchanged information with foreign counterpart authorities is managed in the same way as information obtained from domestic sources within the same category of "administrative documents" in terms of the protection they deserve (Public Records and Archives Management Act, article 2, paragraph 4).

The national government officials and local government officials are obliged to keep the confidentiality of any information that they have obtained through their duties during the tenures as well as after the retirement (National Public Service Act, article 100, paragraph 1; Local Public Service Act, article 34, paragraph 1). For JFBA obligation of confidentiality imposed on lawyers is based on the Attorney Act (article 23) and Basic Rules on the Duties of Practicing Attorneys.

Criterion 40.8

JAFIC can provide assistance to foreign counterparts, and exchange with them material and information it can acquire from the enquiries to the public authorities, business operators or other parties (APTCP, article 3, paragraph 2 and 4; article 14, paragraph 1). However, it is unclear if that could extend to conducting inquiries on behalf of foreign counterparts.

There is no restriction to the use of JFSA's powers of inspection or of requesting reports to respond to international cooperation requests, and no legal or practical obstacle for financial supervisors to conduct inquiries on behalf of foreign counterparts (see c. 40.15).

When a request for international cooperation is made through the INTERPOL-ICPO or as MLA/MLAT or through the MOFA, the NPA can inquire the concerned persons or parties, conduct on-site investigations, request documents, etc., and make inquiries to public offices (Act on International Assistance in Investigation and Other Related Matters, article 18(8)).

The NTA is able to make inquiries on behalf of foreign counterparts and exchange information obtained domestically if the request is from a country with which Japan has signed a Tax Convention, but is not authorised to do so if the request is from another jurisdiction based on confidentiality obligations regulated by domestic law (Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties, articles 8-2 and 9).

Customs may provide information held by Customs regarding information deemed to contribute to the execution of the duties of the foreign Customs authorities concerned (Custom Act, article 108-2).

While there is no clear statutory basis for the JFBA to share information based on international cooperation, JFBA has concluded agreements with foreign bar associations to conduct a variety of cooperation and information sharing. JFBA is able to share information at its own discretion, including information collected on behalf of foreign counterparts.

Criterion 40.9

JAFIC can provide, spontaneously as well as upon request, foreign FIUs with information of suspicious transactions which are deemed to contribute the fulfillment of their duties (APTCP, article 14, para. 1). In addition, NPSC (JAFIC) has set forth an information exchange framework by signing bilateral MoUs with foreign FIUs from 106 countries and regions (as of July 2019).

Criterion 40.10

JAFIC provides feedback on the use and usefulness of the information to its foreign counterparts upon request, on the basis of the Egmont principles (see c. 40.2 (d)).

Criterion 40.11

(a) and **(b)** All information that is accessible or available directly or indirectly for JAFIC may be provided to foreign FIUs under reciprocity based on MoUs (APTCP, article 3, paragraph 2, 4 and article 14, paragraph 1).

Criterion 40.12

The Act for Establishment of the Financial Services Agency provides the legal basis for the JFSA to provide co-operation with its foreign counterparts (article 4, paragraph, item 25(xxv)). Similarly. there are other Acts which provide the legal basis for other financial supervisors to provide co-operation their foreign counterparts respectively (Act for Establishment of the MIAC, article 4(1), Act for Establishment of the MHLW, article 4(1), Act for Establishment of the MAFF, article 4(1), Act for Establishment of the METI, article 4(1), Act for Establishment of the MLIT, article 4(1)).

Criterion 40.13

There is no legal or practical obstacle to financial supervisors' exchanges of domestically available information related to or relevant for AML/CFT purposes with foreign counterparts. These activities are among the mandates of JFSA's international cooperation stipulated in the Act for Establishment of the Financial Services Agency while there is no specific provision which allow them to do such exchanges.

Criterion 40.14

The JFSA is tasked to conduct international cooperation in its areas of responsibility (Act for Establishment of the Financial Services Agency, article 4, paragraph 25, item xxv). JFSA supervises FIs at group-level as well as entity-base and monitor their management system, including but not limited to, of AML/CFT, cooperating with other supervisors that have a shared responsibility for FIs operating in the same group.

(a) The regulatory information and general information on the financial sector is generally publicly available.

(b) The prudential information, such as information on the financial institution's business activities, beneficial ownership, management, and fit and properness may be confidential information. JFSA is allowed to exchange confidential information with relevant foreign counterparts if there are special reasons to justify the exchange (Act on the Protection of Personal Information Held by Administrative Organs, article 8-2 paragraph 4). JFSA exchanges such information with relevant foreign counterparts if necessary mainly through supervisory colleges and bilateral meetings.

(c) As mentioned in (b), JFSA is allowed to exchange confidential information with relevant foreign counterparts if there are special reasons to justify the exchange. A number of AML/CFT information, such as customer due diligence information, customer files, samples of accounts and transaction information would fall within this category of confidential information In practice, AML/CFT information can be treated as confidential information which can be exchanged between JFSA and foreign counterparts in accordance with Act on the Protection of Personal Information Held by Administrative Organs, article 8-2, paragraph 4.

(b) and (c) discussed above would be applicable to other FI supervisors (see c. 40.1).

Criterion 40.15

There is no legal or practical obstacle for financial supervisors to conduct inquiries on behalf of foreign counterparts, or to authorise and facilitate the ability of foreign counterparts to conduct the inquiries themselves in the country. These activities are among the mandates of JFSA's international cooperation covered in the Act for Establishment of the Financial Services Agency, while there is no specific provision to allow them explicitly to conduct such supervisory activity. There were plenty of cases that JFSA conducted supervisory cooperation with foreign counterparts regarding the inspection of FIs. In practice, JFSA and foreign counterparts hold the meetings or teleconferences for discussing the main issues whenever JFSA or foreign counterparts conduct inspections to FIs. Given the outcome of those meetings or teleconferences, inquiries by foreign counterparts are reflected in the key points of inspections and off-site monitoring by JFSA, while JFSA supports the foreign counterparts to inspect Japanese branches of foreign financial institutions.

Criterion 40.16

While there is no clear legal or regulatory provision that would ensure that financial supervisors get the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use that information for supervisory or non-supervisory purposes, JFSA's MOUs with foreign counterparts prescribe that exchanged information should not be shared with a third party without prior consent of the other party, which is seen in practice between JFSA and foreign counterparts.

Criterion 40.17

Based on ICPO requests regarding cooperation with foreign states on criminal cases, the NPA and the NPSC are able to exchange information for intelligence and investigative purposes with foreign counterparts, including in relation to money laundering, associated predicate offences or terrorist financing, and for the

identification and tracing of the proceeds and instrumentalities of crime. (Act on International Assistance in Investigation and Other Related Matters, article 8 and 18).

Other LEAs such as NTA, Customs and Coast Guard may ask for NPA's support to request for information for investigation purposes. They have also their own mechanisms to request for information from their foreign counterparts in line with their national competences and tasks.

Criterion 40.18

The NPA and NPSC can take all necessary measures to conduct investigations, including using their powers to conduct inquiries and obtain information on behalf of foreign counterparts. (Act on International Assistance in Investigation and Other Related Matters, article articles 6 and 18, paragraph 6, 7 and 8)]. Other LEAs such as NTA, Customs and Coast Guard have also their own mechanisms to request for information and measures from their foreign counterparts within their scope of law enforcement.

Criterion 40.19

When investigating the same case as a foreign law enforcement authority, the NPA provides investigation cooperation by establishing a framework for investigation consultation and cooperation through the INTERPOL-ICPO (Act on International Assistance in Investigation and Other Related Matters, article 18). There is no specific provision on joint investigation teams with foreign authorities. Other LEAs (NTA, Customs and Coast Guard) are able to form joint investigation teams or establish bilateral or multilateral arrangements based on tax convention, Customs mutual assistance agreements and mutual arrangements to enable such joint investigations.

Criterion 40.20

There is no legal provision that prevent the relevant authorities from requesting information indirectly to whichever foreign authorities. As in all cooperation, principle of reciprocity is prerequisite for cooperation. International bilateral and multilateral information exchange frameworks prohibit the use of information obtained through international cooperation for other purposes than requested and submitted.

When the competent authority requests information on behalf of other authorities, the competent authority which requested the information clearly imparts to the foreign authority concerned for what purpose the information will be used, and on whose behalf the request is being made.

Weighting and Conclusion

In general, the AML/CFT authorities have basic competence to conduct international cooperation and Japan mostly meet the criteria under R.40. There are minor shortcomings related to the powers they have to conduct this work. While there is no explicit, binding legal or regulatory provision related to some criteria, powers are interpreted from MOUs or established in practice.

Recommendation 40 is rated largely compliant.

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	• Deficiencies in the NRA methodology which does not enable a comprehensive overview of Japan's ML/TF risks. • It is not clear that the results of the NRA have been used as a basis for a risk-based approach at the national level and for the allocation of resources of relevant authorities. • There are technical deficiencies affecting some financial supervisors and DNFBP supervisors' risk-based approach to the supervision of AML/CFT obligations, and risk assessments and risk mitigation measures required from FIs and DNFBPs.
2. National cooperation and coordination	PC	• There is no clear responsibility for the definition of AML/CFT policies informed by risks and regularly reviewed, and for the coordination of AML/CFT actions as well as for combating PF activities. • There are regular liaison meetings of data protection and privacy bodies that involve AML/CFT authorities but it is unclear to what extent AML/CFT is a focus of these meetings.
3. Money laundering offences	LC	• There is a minor gap in the range of offences included in the category of environmental offences. • Sanctions available to be imposed on natural or legal persons are not proportionate and dissuasive.
4. Confiscation and provisional measures	LC	• The minor gap in the scope of coverage of environmental offences as predicate offences affects the scope of confiscation. • There are gaps with confiscation of proceeds when criminals who have absconded, died or whose whereabouts is unknown.
5. Terrorist financing offence	PC	• The TF Act does not criminalise the financing of a terrorist organisation or individual terrorist in the absence of a link to a specific terrorist act. • Proportionate and dissuasive criminal sanctions do not apply to natural persons convicted of TF for all types of TF offences. • The sanctions for legal persons are not proportionate and dissuasive. • The TF Act does not apply to self-funding. • The TF Act is inconsistent with Article 2(1)(a) of the Terrorist Financing Convention, as it requires the element of intent to "intimidate[e] the public," *etc*. for the offences identified in the treaties listed in the UN TF Convention annex. • The TF Act does not criminalise the financing of travel for the purpose of providing or receiving of terrorist training without a link to a specific terrorist act.
6. Targeted financial sanctions related to terrorism & TF	PC	• Japan does not implement TFS without delay. • Japan has not demonstrated that the asset-freezing obligations extend to (i) all funds or other assets that are owned or controlled by the designated person or entity; (ii) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; (iii) funds or other assets derived from or generated from or other assets owned or controlled directly or indirectly by designated persons or entities; and (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities. • It is unclear whether the prohibitions under FEFTA and TAFA extend to transactions indirectly involving designated parties, including entities acting on behalf or at the direction of designated parties. • It is unclear, whether notices of new designations are distributed to all DNFBPs or where guidance is provided to DNFBPs on their obligations. • Japan does not require DNFBPs to report frozen assets or actions taken in relation to TFS. • It unclear whether there is a mechanism in place to relay notification of de listing to all DNFBPs immediately upon de-listing and unfreezing action(s). • Japan did not provide information demonstrating that authorities provide guidance to FIs and DNFBPs regarding obligations to respect de-listing and unfreezing actions. • Japan did not demonstrate that an evidentiary standard of proof of "reasonable grounds" or "reasonable basis" is applied in deciding whether to propose designations.

Recommendations	Rating	Factor(s) underlying the rating
		• Japan did not demonstrate that relevant authorities follow the procedures and standard forms for nominations to the Committees ("UN Procedures"). • Japan did not demonstrate that relevant authorities provide as much relevant information as possible in support of nominations to the Committees, as Japan has not submitted any nominations of its own (vice co-sponsoring other countries' nominations). Japan also did not provide formal domestic procedures regarding the provision of such information. • It is unclear whether the Japan makes a prompt determination following requests from third countries under UNSCR 1373. • Japan did not demonstrate that the IAM and other relevant authorities apply an evidentiary standard of proof of "reasonable grounds" or "reasonable basis" in deciding whether to designate individuals or entities. • Japan did not demonstrate that relevant authorities provide as much identifying and other specific information as possible to support a designation request to another country. • Japan does not have publicly-known procedures to submit de-listing requests to the relevant UN sanctions Committee in cases of designated persons and entities that do not continue to meet the criteria for designation. • Japan does not have formal procedures to facilitate review of designations pursuant to UNSCR 1988 by the 1988 Committee, in accordance with applicable Committee guidelines and procedures.
7. Targeted financial sanctions related to proliferation	PC	• Japan does not implement TFS without delay. • Japan cannot freeze the funds of a designee in Japan between two Japanese residents if a Japanese resident is subject to designation. • It is unclear whether freezing obligations extend to all funds or other assets in line with the FATF definition. • Japan has not demonstrated that the asset-freezing obligations extend to (i) all funds or other assets that are owned or controlled by the designated person or entity; (ii) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; (iii) funds or other assets derived from or generated from or other assets owned or controlled directly or indirectly by designated persons or entities; or (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities. • Japan does not appear to provide specific guidance to FIs and DNFBPs as to their asset-freezing obligations under the FEFTA. • Japan does not require DNFBPs to report assets frozen or related actions. • Japan does not systematically monitor DNFBPs for compliance with FEFTA. • Japan has not provided guidance to FIs and other persons and entities, including DNFBPs, that may be holding funds or other assets on their obligations to respect a de-listing or unfreezing action. • It is not clear that Japan must submit prior notification to the Security Council of the intention to make or receive such payment or to authorise, where appropriate, the unfreezing of funds or other assets in relation to a payment due under a contract entered into prior to the listing
8. Non-profit organisations	NC	• NPOs that are not legally incorporated or that fall outside of the specific categories provided for in the Japanese framework are not required to register. As a result, Japan has not identified these limited types of NPOs, which nonetheless may fall within the FATF definition. • Japan has not used all relevant sources of information to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. • Japan did not identify the nature of threats posed by terrorist entities to Japanese at-risk NPOs or how terrorist actors abuse those NPOs. • Japan has not recently and substantially reviewed the adequacy of measures to respond appropriately to TF risk in the NPO sector. • Japan has not periodically assessed the NPO sector, reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. • Japan has not undertaken outreach or educational programmes on TF risks with a wide range of NPOs and the donor community.

Recommendations	Rating	Factor(s) underlying the rating
		• Japan does not work with NPOs to develop and refine best practices to address TF risk and vulnerabilities. • Japan has not taken steps to promote effective supervision or monitoring such that they are able to demonstrate that risk based measures apply to NPOs at risk of terrorist financing abuse. • Japan has in place a legal framework that allows the relevant authorities to demand records, conduct on-site inspections and impose remedial actions. However these only relate to governance procedures and there are no risk-based measures applied to NPOs at risk of TF abuse. • Japan has not ensured effective co-operation, co-ordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs. • Japan has not ensured that full access to information on the administration and management of particular NPOs (including financial and programmatic information) may be obtained during the course of an investigation. • Japan has not identified specific points of contact and procedures to respond to international requests for information regarding particular NPOs suspected of terrorist financing or involvement in other forms of terrorist support, relying only on existing mechanisms for international cooperation.
9. Financial institution secrecy laws	C	• All criteria are met.
10. Customer due diligence	LC	• There is no explicit prohibition for FIs to keep anonymous accounts or accounts in obviously fictitious names. • The verification method of the identity of a person that claims to be acting on behalf of the customer is not reliable, and the exemption from verification based on the FI's own knowledge should be substantiated by the production of documented evidence of this knowledge. • The required information to identify legal arrangements is not specified. Although trust businesses and companies are subject to the APTCP and must register, there are no similar requirements for civil trusts that are not considered trust businesses or companies. There are also no requirement for trustees to declare their status to FIs. • The APTCP Order and Ordinance are not explicit that the settlor, the trustee(s) and the beneficiaries or class of beneficiaries should be identified. • There is no clear requirement for FIs either to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable, or to take enhanced measures including identifying and verifying any change in the identity of the BO of the beneficiary at the time of payout. • There is no provision for FIs that are not supervised by the JFSA to apply EDD in any situation assessed as higher risk. • FIs have some flexibility to continue to engage into the relationship or conduct the transaction, if a customer does not respond to the request for verification (CDD measures) at the time of transaction. In addition, FIs are not required to terminate the business relationship under this scenario. • There is no legal provision that permit FIs not to pursue the CDD process in cases where they form a suspicion of ML/TF and reasonably believe that performing the CDD process will tip-off the customer
11. Record keeping	LC	• Small transactions are exempt from the record-keeping requirements. • There is no explicit provision that CDD information and transaction records should be available swiftly to competent authorities.
12. Politically exposed persons	PC	• FIs that are not supervised by the JFSA are not required to put in place risk management systems to determine whether a customer or the BO is a PEP. • In the case where a customer is a foreign PEP, FIs are required to obtain approval of a "senior compliance officer" who is not required to be part of the FIs' senior management to commence or continue the business relationship • FIs are required to conduct verification of the source of wealth and source of funds, but only when the transaction involves transfer of property exceeding JPY two million(EUR 15,837/USD 19,261) • FIs that are not supervised by the JFSA are not required to conduct enhanced ongoing monitoring on relationship with foreign PEPs

Recommendations	Rating	Factor(s) underlying the rating
		• Domestic PEPs or persons who have been entrusted with a prominent function by an international organisation are not recognised as a specific category of customers. • Requirements of criteria 12.1 (a)-(d) do not apply to family members or close associates of domestic PEPs or persons who have been entrusted with a prominent function by an international organisation. • There is no clear provision requiring FIs to determine if the beneficiaries and/or the BO of beneficiary of life insurance policies are PEPs
13. Correspondent banking	LC	• For FIs entering cross-border correspondent banking relationships, the requirement is not specific enough regarding the need to determine if the respondent has been subject to a ML/TF investigation or regulatory action. • There is no provision to control services for "payable-through accounts (PTA)" under Japanese legislation.
14. Money or value transfer services	LC	• Japanese MVTS providers are not specifically required to include their agents in their AML/CFT programmes and monitor them for compliance with these programmes.
15. New technologies	LC	• FIs that are not supervised by JFSA are not required to analyze and evaluate ML/TF risks before offering new products and services, or to conduct transactions using new technologies or those with new characteristics. • The deficiencies with respect to the understanding, assessment and mitigation of AML/CFT risks identified in R.1 carry through to c.15.3 regarding VA/VASPs. • There is a scope deficiency in the Japanese definition of VASPs, with regard to iii) and iv) of the FATF definition. • There are no legal or regulatory measures to prevent criminals or their associates from holding, or being the BO of, a significant or controlling interest of a VCEP. • A person who provides VC exchange services without obtaining registration is not subject to appropriate pecuniary sanctions. • The deficiencies highlighted in the risk-based approach to JFSA supervision (c. 26. 4 to 6) are also relevant for VCEPs. • The minor deficiencies identified in R.35 apply to VCEPs. • The analysis of R.9 to 21, including the deficiencies identified, applies to VCEPs. • The shortcomings identified in the TFS for TF and PF are also relevant for VCEPs. • It is not clear if the JFSA has a legal basis for exchanging information with foreign counterparts regardless of the supervisors' nature or status and differences in the nomenclature or status of foreign VASPs.
16. Wire transfers	LC	• FIs are not required to acquire originator and beneficiary information below the threshold of JPY 100 000 (EUR 792/USD 963) • There is no clear provision that prohibits the ordering FI to execute the wire transfer if it does not comply with the requirements specified at c.16.1-c.16.7 • There is no special requirement on intermediary FIs as specified under the FATF Methodology c.16.12. • Beneficiary FIs are not obliged to take reasonable measures to specifically identify cross-border wire transfers that lack required originator information or required beneficiary information. • Beneficiary FIs are not required to take actions specified under the FATF Methodology c. 16.15, although there is a general requirement. • There is no specific requirement applicable in cases where MVTS providers control both the ordering and the beneficiary side of a wire transfer.
17. Reliance on third parties	N/A	
18. Internal controls and foreign branches and subsidiaries	LC	• FIs senior compliance official responsible for internal compliance program is not necessarily at the senior management level. • Financial groups are not specifically required to share account information among all branches and majority-owned subsidiaries or implement group-wide measures to safeguard confidentiality and use of information exchanged. • There is no specific requirement that financial groups should apply appropriate additional measures to manage the ML/TF risks besides informing the responsible supervisory authorities.
19. Higher-risk countries	LC	• FIs not under the supervision of JFSA are not specifically required to apply commensurate risk mitigating measures including EDD to transactions linked to countries for which this is called for by the FATF.

Recommendations	Rating	Factor(s) underlying the rating
		• There is no express link made between higher risk countries identified by Japan and jurisdictions designated as higher risk by the FATF, and with the obligation to apply countermeasures when called upon to do so by the FATF. • There is no general requirement for Japan to apply countermeasures for any country for which this is not called for by FATF.
20. Reporting of suspicious transaction	LC	• A requirement to report attempted transaction is not explicitly covered • The scope of the STR reporting obligation is affected by a minor gaps in the predicate offence category of environmental offences
21. Tipping-off and confidentiality	C	• All criteria are met.
22. DNFBPs: Customer due diligence	PC	• Deficiencies highlighted in R.10, 11, 12 and 15 in relation to the provisions of the APTCP, APTCP Order and APTCP Ordinance are also relevant for DNFBPs. • Legal professionals, certified public accountants and certified public tax accountants and their respective corporations are not required to apply other CDD requirements than conducting customer identification/verification. • For lawyers, there is no specific PEP requirement as required in R.12 other than strict verification of identity of the customer, and no new technologies requirement as required in R.15.
23. DNFBPs: Other measures	PC	• Deficiencies highlighted in R. 18, 19 and 20 are relevant for DNFBPs. • Judicial scriveners or corporations, certified administrative procedures legal specialists or corporations, certified public accountants or audit firms, certified public tax accountants or corporations, as well as lawyers are not required to file STRs. • There is no clear requirement for DNFBPs to implement group-wide programmes to all branches and majority-owned subsidiaries, nor to ensure that their foreign branches and majority-owned subsidiaries apply AML/CFT measures consistent with the home country • Lawyers are not specifically required to apply appropriate measures to transactions linked to higher risks countries.
24. Transparency and beneficial ownership of legal persons	PC	• Japan has not fully assessed the ML/TF risks associated with all types of legal person created in the country. • The company registry does not record lists of company directors and this information is not publically available in the registry. • It is not clear whether the information kept in the register of shareholders at the company head office of a stock company includes information on the nature of the voting rights associated with the shareholding. • There is no requirement to maintain shareholder, member and councillor information for legal persons in the country. • There is no requirement for the information in the commercial registry to be updated, unless a company is dissolved, merges with another, or a wholly owned subsidiary is transferred. • There are no mechanisms to ensure the accuracy of the information in criteria 24.3 and 24.4 for membership companies. • There are no requirements for membership companies, associations or foundations to update shareholder, member or councillor information. • There are gaps in both of the mechanisms used by Japan (existing information via FIs and some DNFBPs and notarial checks) to ensure that information on beneficial ownership of a legal person is available to law enforcement in a timely manner. Not all DNFBPs are required to collect BO information, and notaries have only been collecting information on certain types of legal person when incorporated since November 2018. If a company does not have a relationship with an FI or DNFBP required to collect BO information, or the information is not required to be checked by a notary, no information on the beneficial owner is available. • FIs and some DNBFPs have been required to verify the identity of the beneficial owner of new customers since October 2016, however it is not clear whether these FIs and DNFBPs have accurate, up-to-date information on the beneficial ownership of all customers on-boarded before October 2016. • There are no specific measures requiring a natural person resident in the country to be accountable to competent authorities for providing basic or beneficial ownership information for legal persons, or similar measures for membership companies, associations or foundations.

Recommendations	Rating	Factor(s) underlying the rating
		• It is not clear whether competent authorities, and in particular law enforcement authorities, can obtain basic and beneficial ownership information in a timely manner, with the exception of the basic information stored in the company registry. • Although the issuance of bearer shares was prohibited in 1990, while it is unlikely that bearer shares are still in circulation, no specific mechanisms have been put in place in line with R.24 to prohibit any bearer shares in circulation or ensure that they are not misused. • Bearer share options may be issued by Stock Companies, and it is unclear whether the holders of bearer share options must be registered in the shareholder register, or may only be listed in the share option register without including their names and addresses. • There are limited sanctions available for legal persons should that fail to comply with their requirements. • The rapid provision of information on basic and beneficial ownership for international co-cooperation is limited by the breadth and accuracy of information available in Japan. • There is no consistent mechanism to monitor the quality of assistance received from other countries in response to requests for basic and beneficial ownership information.
25. Transparency and beneficial ownership of legal arrangements	PC	• There are no specific requirements for trustees of civil trusts to obtain and hold adequate, accurate, and current information on the identity of the settlor, the protector (if any), the other beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust • Japan does not require trustees of any trust governed under its law to hold basic information on other regulated agents of, service providers to, the trust, including investment advisors or managers, accountants, and tax advisors. • There are no requirements to keep the information on the beneficiary and settlor up-to-date for persons settling and administering civil trusts. • There are no specific measures placed on trustees, of any domestic or foreign trust, to disclose their status to an FI or DNFBP when forming a business relationship or carrying out an occasional transaction above the threshold. • There are no specific requirements to ensure that information on the basic and beneficial owner(s) of trusts held by relevant parties can be accessed in a timely manner. • There is no specific requirement or mechanism in place in Japan to support the rapid provision of information, including BO information, on trusts to foreign competent authorities. • There are only fines available to trustees of civil trusts that fail to meet their obligations, which are not proportionate or dissuasive. • There are no sanctions available for failing to grant competent authorities timely accessing to information on trusts under 25.1 apart from in the case when a trust company or business fails to provide supervisors with a requested report or material.
26. Regulation and supervision of financial institutions	LC	• Financial leasing companies and currency exchange operators are not required to be registered nor licensed, and the requirements to prevent criminals or their associates from holding a significant or controlling interest, or holding a management function do not apply to those FIs. • There is no explicit requirement to apply consolidated group supervision for AML/CFT purposes to Core principles FIs. • Not all financial supervisors have developed a risk-based approach to AML/CFT supervision. • There is no clear information available regarding how the supervisory resources are allocated for FIs that are not supervised by the JFSA, as well as for the periodical review of the ML/TF risk profile of those FIs.
27. Powers of supervisors	LC	• The range of sanctions applicable by the JFSA does not include financial sanctions, which is a limit to its ability to impose an appropriate range of sanctions, in line with R. 35. • It is unclear if other financial supervisors can impose a range of disciplinary and financial sanctions, in line with R. 35.
28. Regulation and supervision of DNFBPs	PC	• DNFBPs are subject to general compliance controls which do not amount to AML/CFT monitoring and supervision systems. • Not all DNFBPs are required to take measures to prevent people from holding a significant or controlling interest or a management function. • Ii is unclear if all DNFBPs supervisors can impose an appropriate range of sanctions for failure to comply with all AML/CFT requirements. • DNFBP supervisors have not implemented supervision on a risk-based approach.
29. Financial intelligence units	C	• All criteria are met.

Recommendations	Rating	Factor(s) underlying the rating
30. Responsibilities of law enforcement and investigative authorities	C	• All criteria are met.
31. Powers of law enforcement and investigative authorities	LC	• There is a minor gap of failing to have an express provision which could provide sufficient legal basis for the competent authorities to conduct undercover operations.
32. Cash couriers	LC	• Competent authorities are not empowered to stop or restrain currency or BNIs in the events of a false declaration or suspicion of ML or TF.
33. Statistics	LC	• Some authorities do not maintain statistics on STRs and on MLA. • Comprehensive statistics are not available on property frozen, seized and confiscated.
34. Guidance and feedback	LC	• Insufficient guidance has been provided to DNFBPs for the application of national AML/CFT measures.
35. Sanctions	LC	• In relation to R.6, sanctions are not explicitly linked to FI or DNFBP's failure to apply preventive measures related to TFS for TF. • In relation to R.9-23, AML/CFT supervisors do not have powers to impose direct financial sanctions to individuals or FIs and DNFBPs. • It is not clear if financial supervisors other than JFSA can impose a range of disciplinary and financial sanctions for AML/CFT failures. • There is no specific provision on the application of sanctions to directors and senior managers, when FI or DNFBPs are sanctioned as legal persons.
36. International instruments	LC	• There are deficiencies in implementing measures required under the Vienna Convention and the TF Convention.
37. Mutual legal assistance	LC	• The scope of MLA is affected by minor gaps in the predicate offence category of environmental offences • Undercover operations are not available pursuant to and MLA request • Some minor concerns remain in relation to requirements for dual criminality
38. Mutual legal assistance: freezing and confiscation	LC	• The scope of MLA is affected by minor gaps in the predicate offence category of environmental offences • Gaps with a basis to provide assistance for non-conviction based confiscation proceedings and related provisional measures, at a minimum in circumstances when a perpetrator is unavailable by reason of death, flight, absence, or the perpetrator is unknown
39. Extradition	LC	• The scope of MLA is affected by minor gaps in the predicate offence category of environmental offences • No legal basis to provide for simplified extradition mechanisms.
40. Other forms of international cooperation	.LC	• There is no specific legal provisions for the international cooperation of JBFA in its role as AML/CFT supervisor. • No information is available on the secure gateways and mechanisms used by other FI supervisors than JFSA and by DNFBP supervisors. • There is no process for the prioritisation or timely execution of requests for agencies others than JAFIC and Japan Customs. • There is no specific requirement on competent authorities to provide feedback on request and in a timely manner to competent authorities from which they have received assistance. • There is no specific provision which allow financial supervisors' exchanges of domestically available information related to or relevant for AML/CFT purposes with foreign counterparts • There is no clear provision that would ensure that financial supervisors get the prior authorisation of the requested financial supervisor for any dissemination of information exchanged, or use that information for supervisory or non-supervisory purposes • There is no specific provision on joint investigation teams with foreign authorities for NPA

Glossary of Acronyms[88]

ACRONYM	DEFINITION
APOC	Act on Punishment of Organised Crimes and Control of Proceeds
APTCP	Act on the Prevention of Transfer of Criminal Proceeds
ATMs	Automatic teller machines
BIS	Bank of International Settlement
BO	Beneficial ownership
CIS	Collective investment schemes
CRS	Common reporting standard
DPRK	Democratic People's Republic of Korea
FEFTA	Foreign Exchange and Foreign Trade Act
FI	Financial institution
FTF	Foreign terrorist fighter
G-SIBs	Global systemically important banks
GDP	Gross domestic product
IAIS	International Association of Insurance Supervisors
ICPO	International Criminal Police Organization
IOSCO	International Organisation of Securities Commissions
IP	Internet protocol
ISIL	Islamic State of Iraq and the Levant
JAFIC	Japanese FIU
JCG	Japan Coast Guard
JFBA	Japanese Federation of Bar Associations
JFSA	Japanese Financial Services Agency
JVCEA	Japan Virtual and Crypto Assets Exchange Association
LEAs	Law enforcement agencies
LFBs	Local financial bureaus
MAFF	Ministry of Agriculture, Forestry and Fisheries
METI	Ministry of Economy, Trade and Industry
MHLW	Ministry of Health, Labour, and Welfare
MIAC	Ministry of Internal Affairs and Communication
MLA	Mutual legal assistance
MLAA	Mutual legal assistance agreement
MLAT	Mutual legal assistance treaty
MLIT	Ministry of Land, Infrastructure, Transport, and Tourism
MMOU	Multilateral memorandum of understanding
MOF	Ministry of Finance
MOFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
MOU	Memorandum of understanding
NCD	Narcotic Control Department
NPA	National Police Agency

[88] Acronyms already defined in the FATF 40 Recommendations are not included in this Glossary.

ACRONYM	DEFINITION
NPSC	National Public Safety Commission
NRA	National risk assessment
NRA-FURs	National risk assessment follow-up reports
NSC	National Security Council
NTA	National Tax Agency
PF	Proliferation financing
PIPC	Personal Information Protection Commission
PoE	Panel of Experts
PPO	Public Prosecution Office
PSA	Payment Services Act
PSIA	Public Security Intelligence Agency
QIIs	Qualified institutional investors
SDD	Simplified due diligence
SESC	Securities and Exchange Surveillance Commission
TAFA	Terrorist Asset Freezing Act
TF	Terrorist financing
TFS	Targeted financial sanctions
UNCAC	UN Convention against Corruption
UNSD	UN Sanctions Division
UNTOC	UN Convention against Transnational Organised Crime
VAs	Virtual assets
VC	Virtual currencies
VCEPs	Virtual currency exchange providers
WMD	Weapons of Massive Destruction

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Anti-money laundering and counter-terrorist financing measures - Japan

Fourth Round Mutual Evaluation Report

In this report: a summary of the anti-money laundering (AML) / counter-terrorist financing (CTF) measures in place in Japan as at the time of the on-site visit from 29 October to 15 November 2019.

The report analyses the level of effectiveness of Japan's AML/CTF system, the level of compliance with the FATF 40 Recommendations and provides recommendations on how their AML/CFT system could be strengthened.