

BANK OF JAMAICA



CONSULTATION PAPER

Consultation Paper on the Proposed Regulatory and Supervisory Agent
Banking Framework for Jamaica

August 2015

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**Consultation on
the Proposed Regulatory and Supervisory Framework
for Agent Banking in Jamaica**

**(For Deposit Taking Institutions to be licensed under
the Banking Services Act)**

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Table of Contents

INTRODUCTION.....	6
EXECUTIVE SUMMARY.....	8
PART 1: FINANCIAL INCLUSION.....	12
PART 2: AGENT NON-EXCLUSIVITY AND INTEROPERABILITY.....	17
PART 3: ENTITIES PERMITTED TO BE AGENTS	20
PART 4: LOCATION REQUIREMENTS OF ENTITIES TO BE CONSIDERED AS AGENTS.....	21
PART 5: F&P REQUIREMENTS.....	22
PART 6: PERMISSIBLE AND PROHIBITED ACTIVITIES.....	23
PART 7: THE APPROPRIATE AML/CFT FRAMEWORK FOR AGENTS.....	26
PART 8: THE KEY ELEMENTS OF THE RISK MANAGEMENT FRAMEWORK FOR AGENT OPERATIONS.....	29
PART 9: CONSUMER PROTECTION ISSUES.....	30
PART 10: THE GENERAL REGULATORY AND SUPERVISORY REGIME IN RESPECT OF AGENT BANKING.....	32
APPENDIX	36

ABBREVIATIONS

AML	Anti-Money Laundering
ANM	Agent Network Manager
ATM	Automated Teller Machine
BOJ	Bank of Jamaica
BSA	Banking Services Act
CDD	Customer Due Diligence
CFATF	Caribbean Financial Action Task Force
CFT	Counter Financing of Terrorism
CGAP	Consultative Group to Assist the Poor
DNFBP	Designated Non-Financial Business or Profession
DTI	Deposit Taking Institution
FATF	Financial Action Task Force
F&P	Fitness and Propriety
KYC	Know Your Customer
MFI	Micro Finance Institution
NIS	National Insurance Scheme
NGO	Non-Governmental Organization
NRA	National Risk Assessment
PATH	Programme of Advancement through Health and Education
POS	Point of Sale
POCA	Proceeds of Crime Act
RBA	Risk-Based Approach
STR	Suspicious Transaction Reports
TF	Terrorist Financing
TPA	Terrorism Prevention Act
TTR	Threshold Transaction Reports

Introduction

1. With the passage of the Banking Services Act (BSA), a Deposit Taking Institution (DTI) will be allowed, with the approval of the Supervisory Committee, to appoint a body corporate to operate as its Agent in the offering of banking services on its behalf. While Agent banking services are traditionally associated with the aim of engendering better financial inclusion, as a direct objective, the BSA creates a framework which facilitates the offering of certain banking services through Agent operations. This would add to the existing delivery channels such as branch networks and electronic access channels. With the broadening of the access points for the delivery of banking services it is our expectation that financial inclusion will be engendered.

2. Section 108 of the BSA, establishes eligibility requirements for an Agent, in contemplation of the professional responsibility they would be assuming in offering the permissible banking services to customers and operating as an extension of DTIs. These responsibilities would include, among other things, the handling of customer information and the protection of sensitive documents in an Agent's custody.

3. In order to operationalize Section 108 of the BSA, the Bank of Jamaica (BOJ) plans to introduce Agent Banking Regulations and Standards of Sound Practice to establish supervisory expectations regarding the acceptable behavior and conduct which should exist within the Agent banking space.

4. In this regard, this Consultation Paper seeks to provide further details regarding the proposed regulatory and supervisory framework which will allow DTIs, to utilize non-bank third party Agents to offer banking services to their existing customers, as well as those who are beyond the reach of their traditional branch networks.

5. This Paper draws heavily from the FATF Guidance, Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion (2013), the FATF Recommendations (International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation 2012) and Methodology (for assessing compliance, the FATF Recommendations and the Effectiveness of the AML/CFT systems 2013). This paper also draws from the experience of countries that have already implemented an Agent Banking framework including Brazil, India, Kenya and Mexico.

6. The BOJ invites feedback from entities to be licensed under the Banking Services Act (i.e. commercial banks, merchant banks and building societies) as well as all other relevant stakeholders. Comments on this Consultation Paper should be submitted by 30 September 2015 via email to:

Maurene.Simms@boj.org.jm or FISDfeedback@boj.org.jm

Alternatively, comments may be sent by post to:

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Kingston

Executive Summary

Paragraphs 7 to 15 below summarize the key policy positions being proposed to govern Agent Banking operations in Jamaica.

Agent Exclusivity and Interoperability

7. While BOJ believes that several benefits can arise from non-exclusive relationships (see definition at paragraph 28), DTIs will be free to offer their services through their Agents exclusively to their customers or to also allow customers of other DTIs to access cash-in and cash-out services (and any other relevant service). The latter position is strongly recommended. Additionally, the BOJ encourages DTIs to implement interoperable systems which facilitate interbank communication (see explanation at paragraph 31). As the market evolves, the BOJ will continuously assess the developments and modify the framework to ensure ongoing relevance.

Entities permitted to act as Agent

8. Section 108(4) of the BSA permits only entities which are legally incorporated in Jamaica to act as Agents. Individuals are therefore not eligible for approval. Section 108(4) also requires that directors, officers, substantial shareholders and key employees of the proposed Agent are fit and proper persons. The BOJ proposes to allow legally incorporated entities with large, wide reaching and dispersed networks (for example chain retailers, supermarkets, pharmacies and micro-finance institutions (MFIs) to operate as Agents. All proposed Agents must satisfy the operating, financial and security requirements to be set out in Supervisory Rules per Section 108(4)(d) of the BSA (the areas to be considered in

this regard are listed in the Appendix). Further, the Supervisory Committee will have the discretion to permit any other body corporate that it deems fit.

Location requirements of Agents

9. The BOJ does not propose the introduction of location-based restrictions, given that global experiences have demonstrated that such restrictions unduly limit the spread of Agents and retard the progress towards financial inclusion.

Fit and Proper Requirements of Agents

10. While the Supervisory Committee has the statutory obligation to ensure that beneficial owners of Agent operators are fit and proper persons, the DTI also has a direct responsibility to ensure that persons with whom they contract to deliver their services are fit and proper persons. In this regard, the BOJ proposes that the Agent Banking Regulations include provisions to clearly reflect this expectation. The Supervisory Committee will take into consideration the effectiveness of the DTI's due diligence process in making its determination on the fitness and propriety of beneficial owners of banking Agents. The BOJ will issue Fit and Proper Guidelines, consistent with those currently applicable to persons operating within DTI entities to set supervisory expectations for conducting Agent due diligence.

Agent Network Management

11. The BOJ will permit large proprietary retail network operators such as grocery chains or other entities such as post offices to sign a single agency agreement with a DTI. Such a proprietary network will be required to manage the Agent function at each location in. In the case of franchises, where each location is

owned by an independent third party, the DTI is responsible for the oversight of each location.

Permissible Activities

12. In addition to activities permitted under Section 108 (1) of the BSA (see paragraph 43), the BOJ proposes a range of financial services to be conducted by Agents, subject to the satisfaction of the eligibility requirements to offer these services, which include:

- Delivery of customer account statements.
- Delivery of payment instruments on behalf of DTI (e.g. dissemination of prepaid cards).
- Cheque encashment.

13. Notwithstanding, the Supervisory Committee will have the discretion to include any other activity as it deems fit per Section 108(1)(f) .

The AML/CFT framework for Agents

14. The ultimate responsibility for satisfying the AML/CFT obligations established under POCA, TPA and the AML/CFT Guidance Notes remains with DTIs. However, Section 108(1) of the BSA permits DTIs to appoint Agents to collect KYC and CDD documentation from customers of the DTI, on the latter's behalf. Notwithstanding the foregoing, Agents are expected to comply with all relevant AML/CFT requirements as the first point of contact when conducting permissible banking business on behalf of a DTI.

15. The authorities are currently reviewing the AML/CFT legislative and regulatory framework with a view to making recommendations for enhancements where necessary. This review process has commenced with a National Risk Assessment (NRA) that has been conducted to identify, assess, and understand ML/TF risks across the various sectors and industries. This will inform the construction of a framework that is sensitive to the varying degrees of risk and allow for the application for enhanced measures in high risk situations and reduced measures where those ML/TF risks are low. Agent banking, as part of the wider financial inclusion initiative, is one area that is likely to benefit from such an approach. The Agent Banking Regulations will reiterate that each DTI will remain fully responsible for the detection, reporting and filing of threshold transactions as well as suspicious activities and transactions conducted by Agents on its behalf. In that regard, the BOJ proposes that the Agent Banking Regulations explicitly require DTIs to establish appropriate systems and arrangements to ensure proper record keeping requirements for itself and for Agents in relation to customer information. It is proposed that the Regulations also require DTIs to establish and implement appropriate AML/CFT training programmes for Agents.

Customer Related Issues

16. The BOJ is aware that various customer related issues may arise when DTIs operate through Agents. Measures will therefore be introduced to specifically address these concerns. Examples of the applicable measures governing DTI-customer relations are the enforceable Code of Conduct provided for by Section 132(4) of the BSA and Section 134 which covers the protection of client's personal information.

PART 1: FINANCIAL INCLUSION

17. Financial Inclusion involves the provision of access to an adequate range of safe, convenient and affordable financial services to groups who have been underserved or excluded from the formal financial sector including low income, rural and undocumented persons.

18. It has been globally accepted that an essential component for the achievement of sustainable national development and growth, is the expansion of financial services to all sections of society. In this regard, financial inclusion has become a major objective in many countries' public policy development strategy.

19. One of the primary impediments to providing financial services to many individuals through branch-based channels is the high cost inherent in using these traditional banking methods. This not only includes the cost incurred by the DTI in servicing low-value accounts through branch channels to customers in remote, low income areas, but also the cost incurred (in both time and expense) by these customers in their efforts to gain access to such banking services which are often times located in more urbanized areas of society. Achieving greater financial inclusion therefore requires innovative business models which reduce cost for both parties thus creating effective channels to provide increased access to financial services.

Financial Inclusion in Jamaica

20. The World Bank Financial Inclusion Data 2011 for Jamaica indicates that 71% of the population 15 years and older had at least a basic savings account at a formal financial institution, of which 67% and 71% represent male and female,

access, respectively. Notwithstanding this relatively high level of penetration, the study also highlighted significant under-utilization of banking services. Hence the objective of Agent Banking in Jamaica is not only to promote greater access to banking services, but also greater utilization.

21. Against this backdrop, the BOJ seeks stakeholders' comments on the details of the proposed framework to allow DTIs to utilize nonbank third party Agents to deliver their services thus expanding access and utilization beyond the traditional branch network.

STAKEHOLDERS IN THE ECO-SYSTEM FOR AGENT BANKING

22. The primary stakeholders who have an important role to play in the Agent Banking framework for financial inclusion include the following :

23. **BOJ** - The BOJ has responsibility for monetary and financial stability, the supervision of deposit-taking institutions, and payment systems oversight. The BOJ also chairs a steering committee that is responsible for developing a proposal that will inform a national financial inclusion strategy.

24. **DTI** – DTIs currently provide an array of financial services and products to customers and are thus important stakeholders as they will be responsible for soliciting and maintaining relationships with eligible third party non-bank retailers to act as Agents.

25. **AGENT** – Any authorized third party retail outlet or nonbank that offers banking services (for e.g. withdrawals, deposits, and account transfers) on behalf of DTIs.

26. **CUSTOMER** – The most important stakeholder in the entire eco-system.

AGENT BANKING SERVICES

27. From a basic standpoint, a retail outlet serving as an Agent for a DTI is a transactional channel permitting DTI customers to perform a range of activities such as cash deposit and withdrawals, and a range of electronic transactions which may include performing inquires on account balances or recent account activities. Notwithstanding the aforementioned, the use of retail Agents introduces new or heightened risks for which the BOJ as regulator has given serious consideration in developing the proposed framework. Examples of such risks include reputational risks which may arise given the Agent's role as the point-of-contact (public face) for the DTI and therefore the actions of the Agent could directly impact the reputation of the DTI. Operational risk exposures also arise from the likelihood of failure of employees, systems and processes of the Agent. One major risk that must be effectively managed by the DTI is the strategic risk posed by Agent activity, i.e. effectively identifying, assessing and managing the Agent banking channel and ensuring on an ongoing basis that it fits within the DTI's strategic objectives. These strategic objectives include those relating to customer segmentation, service proposition, and branding objectives. Further, the use of Agents adds a special dimension to the challenge of satisfying AML/CFT requirements as well as consumer protection standards and requirements (see Part 8 for further information).

The following depicts an example of the basic cash in /cash out operation of an Agent

Figure 1 - Cash-in

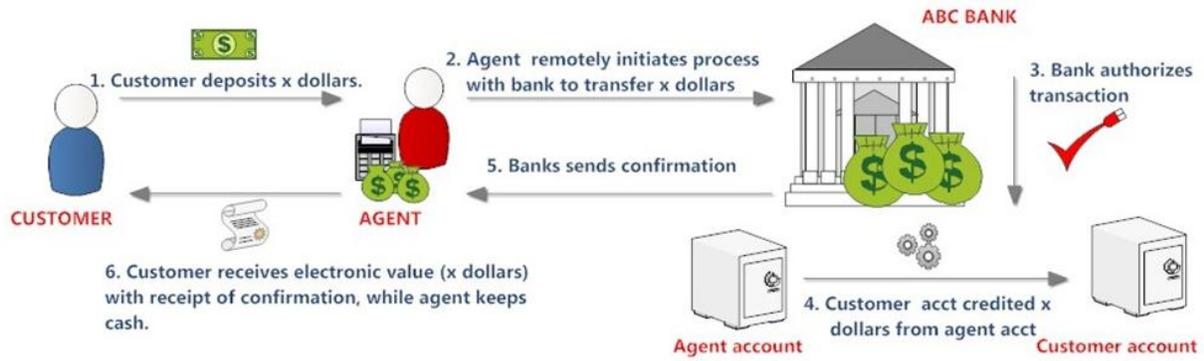
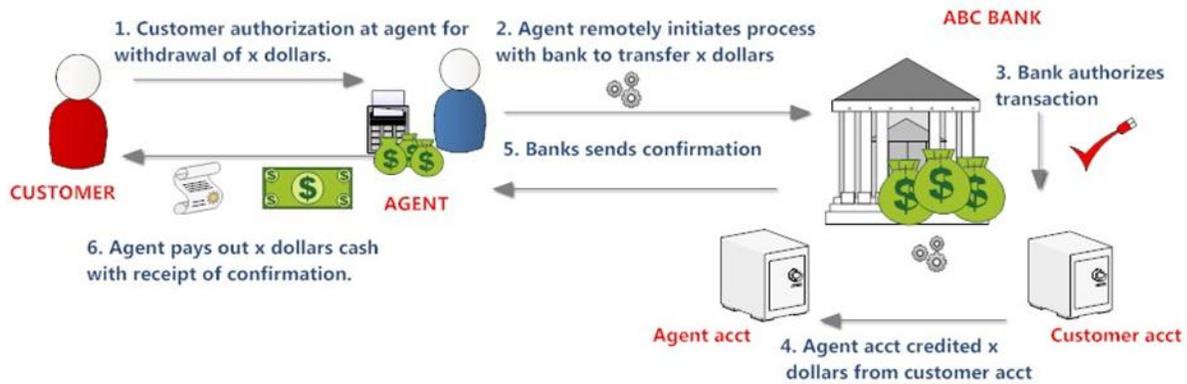


Figure 2 - Cash-out



PART 2: AGENT NON-EXCLUSIVITY AND INTEROPERABILITY

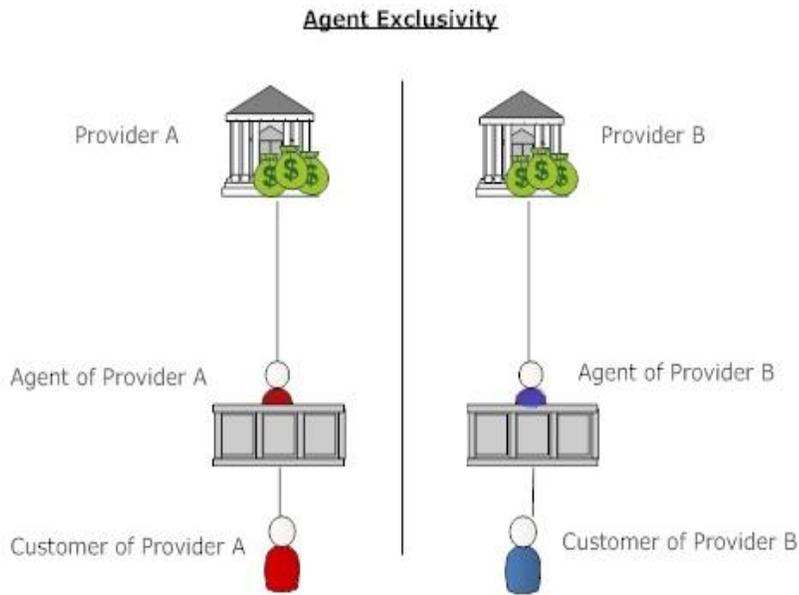
28. The term “Agent exclusivity” refers to the situation in which only customers of a particular DTI can access the permitted banking services (including cash in cash out) at Agents of that DTI. On the other hand, “non-exclusive” Agents are those from which customers of another DTI can carry out (*at a minimum*) cash-in cash-out activities.

29. Permitting Agent exclusivity provides an incentive for first movers to invest in and train potential Agents. However, Agent non-exclusivity expands the access to financial services by providing more access points to a wider number of customers while limiting the potential emergence of a dominant Agent service provider which could ultimately limit competition in this segment.

30. In some jurisdictions, Agent non-exclusivity has been introduced in a manner similar to the Multilink ATM arrangements. Here, a service provider would permit customers of another service provider to use its Agent to carryout transactions at a cost.

31. Interoperability refers to the facilitation of communication between disparate systems of different service providers. This allows for customers of provider A to send money to customers of provider B. In order for this to take place, a link (directly or indirectly) must exist between DTIs platforms.

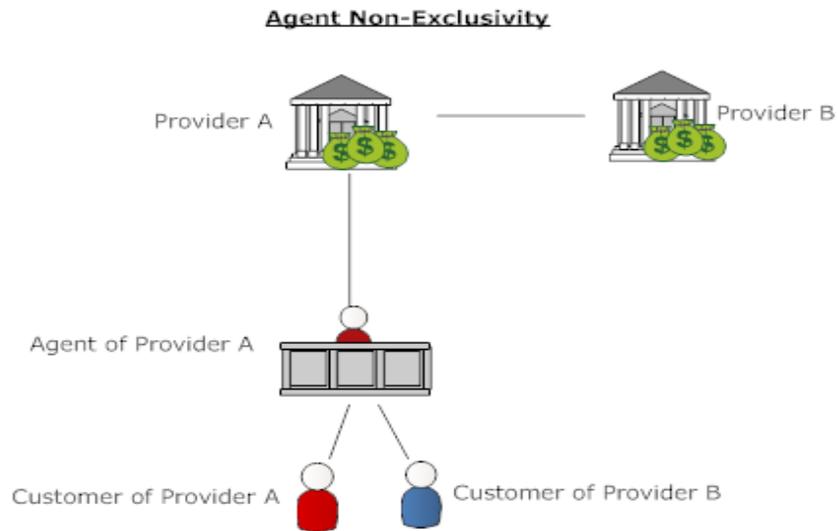
The following depicts an example of Agent Exclusivity



*Only Provider A customers can access Agents of Provider A

*Only Provider B customers can access Agents of Provider B

The following depicts an example of Agent Non-Exclusivity



* Agent of Provider A can be accessed by customers of provider A or provider B through interconnected platform

Recommendation:

32. The BOJ will allow DTIs the freedom to contract with Agents whether exclusively or non-exclusively as they deem appropriate. Additionally, the BOJ encourages DTIs to implement interoperable systems which facilitate interbank communication. As the market evolves, the BOJ will continuously assess the developments and modify the framework where there are opportunities for improvements.

PART 3: ENTITIES PERMITTED TO BE AGENTS

33. Agents, as extensions of the banking system, will need to be able to provide limited but professional banking services to customers, keep records, handle cash and manage liquidity. Indeed, Agents are subject to the same secrecy obligations as bank employees set out at 134 of the BSA.

Recommendations:

34. The BOJ proposes to allow legally incorporated entities with large, wide reaching and dispersed networks (for example chain retailers, franchises, supermarkets, pharmacies and micro-finance institutions (MFIs)) to operate as Agents, provided that these entities satisfy the criteria specified in Section 108(4)(d) of the BSA (See appendix for the eligibility criteria proposed to be issued as Supervisory Rules).

35. The BSA prohibits individuals from acting as Agents based on the position taken that such arrangements could place the risks of Agent operations beyond the Supervisory Authority's and the banking industry's tolerance levels.

PART 4: LOCATION REQUIREMENTS OF ENTITIES TO BE CONSIDERED AS AGENTS

36. Some countries restrict the location of Agents, though such restrictions are sometimes eased when regulators recognize that they create obstacles to financial inclusion. The experiences of different countries have shown that overly restrictive location requirements can complicate the business case for viable Agent-based banking and ultimately work against financial inclusion goals.

Recommendation:

37. The BOJ proposes that the framework does not introduce location-based restrictions, particularly given that the global experiences reflect that the costs of such restrictions unduly limit the spread of Agents and ultimately financial access.

PART 5: FIT & PROPER REQUIREMENTS

38. While fit and proper criteria listed in Regulations are often not seen as problematic, providers have occasionally argued that compliance with particular details can impose significant cost, particularly with respect to gathering documentation.

Recommendations:

39. The BOJ proposes the establishment of a fit-and-proper framework that will require licensees to conduct thorough fit and proper assessments as part of the due diligence process in engaging an Agent. These assessments are to be done in accordance with Guidelines to be issued by the BOJ. The Supervisory Committee will utilize the due diligence conducted by DTIs in determining the F&P for Agents. An Agent's permission to operate is contingent on the continuing fitness and propriety of the relevant individuals associated with the Agent.

40. The Agent Banking Fit-and-Proper Guidelines will articulate the specific requirements to guide banks in selecting and vetting Agents, and conducting fit-and-proper tests. This includes the submission of relevant forms and documents to validate/verify that, among other things; an Agent has a good reputation, no relevant criminal records (see Section 3(1) of the BSA) and is not an undischarged bankrupt. Further, the fit-and-proper requirements will be structured to specify other criteria such as, literacy, minimum age, or technical or operational capability.

PART 6: PERMISSIBLE AND PROHIBITED ACTIVITIES

41. Our research has revealed that regulators in some jurisdictions allow different categories of Agents based on the nature the services they offer on behalf of the DTI, with less stringent eligibility standards being established for those Agents offering more basic services, such as cash-in and cash-out.

42. Due to the fact that Agents are an extension of DTIs and usually have less resources and expertise than a typical branch, most regulators perceive that financial services delivery through these channels pose higher risks than traditional banking. In many cases regulators and policy makers may be motivated to introduce measures within the regulatory and supervisory frameworks to effectively mitigate the higher risk. One such measure is to prescribe the activities that Agents can be permitted to carry out on behalf of DTIs. The BOJ supports this approach.

43. Section 108 of the BSA establishes that an Agent can offer one or more of the following services to DTI's customers:

- Deposits and withdrawals (including cash and cheques etc).
- Electronic transfer of funds.
- Account balance enquiries.
- The collection of know your customer (KYC) and customer due diligence (CDD) documentation from customers for services or facilities, so, however, that, the deposit taking institution shall remain responsible for the analysis or verification of the adequacy and acceptability of that documentation.

- Any other services that the Supervisory Committee may in writing approve.

44. The provision of these services through Agents will enable customers to carry-out several transactions including: salary payment, payment for goods and services, transfer of government benefits (e.g. NIS and PATH), bill payment as well as the delivery of cards and other payment instruments.

Recommendations:

45. In addition to activities permitted per Section 108 (1) of the Banking Services Act (BSA) the BOJ proposes that, in accordance with the powers granted under BSA (refer paragraph 58(6) above), that the Supervisory Committee prescribe by Notice, that the following activities be permissible for Agents:-

- a. Delivery of account statements.
- b. Delivery of payment instruments on behalf of DTI (e.g. dissemination of prepaid cards).
- c. Cheque encashment as per DTI's rules and operational procedures

46. The BOJ further proposes that the Regulations explicitly prohibit Agents from engaging in the activities outlined below:

- Providing a guarantee on behalf of the DTI.
- Offering banking services on its own accord.
- Opening accounts, granting loans or carrying out any appraisal function for purposes of opening an account or granting of a loan or any other facility except as may be permitted under the BSA.
- Providing loans on behalf of the DTI.

47. The BOJ will also prohibit Agents from engaging in certain operational activities as under:

- Charging the customer a fee for services provided on behalf of the DTI.
- Continuing with the agency business where the principal ceases to be fit and proper.
- Providing, rendering or holding itself out to be providing or rendering any banking service which is not specifically permitted in the contract.
- Being an Agent operation that is owned or managed by a bank's employee or associate (to prevent conflict of interest issues).
- Undertaking activities that the DTI, whether in the contract document or otherwise, specify that the Agent is prohibited from undertaking.

PART 7: THE APPROPRIATE AML/CFT FRAMEWORK FOR AGENTS

48. In considering the appropriate AML/CFT approach for DTIs within the context of Agent banking operations, the BOJ has been principally guided by the FATF recommendations. The FATF has indicated that countries should use a risk-based approach to build their AML/CFT regime that addresses the most pressing money laundering and terrorist financing (ML/TF) risks. In that regard, consideration is being given to balancing the financial inclusion objective against the application of an overly cautious approach to AML/CFT safeguards as this can have the unintended consequences of excluding legitimate businesses and consumers from the formal financial system.

49. Based on the new FATF recommendations most countries are now in the process of implementing a risk-based approach to managing AML/TF risks. It is appreciated that a risk-based approach is likely to facilitate greater financial inclusion if it allows the application of reduced CDD measures for those customers with low risk while focusing greater resources to areas of higher risk. The settlement of policy determinations for financial inclusion now being looked at by the authorities will influence the evolution of the wider Agent banking eco-system.

Verifying Customer Identity (Customer Due Diligence and Record-keeping)

50. According to Consultative Group to Assist the Poor (CGAP), permitting customer verification at remote locations through Agents (who likely have no experience in CDD measures and are one step removed from the financial institutions that are well versed in CDD) could impede anti-money laundering and

combating financing of terrorism (AML/CFT) efforts. Nevertheless, the potential financial inclusion benefits could be significant.

51. Some regulators, in allowing DTIs to leverage the reach of retail Agent networks allow Agents to play a role in verifying customer identity for account opening and transactional purposes. The common requirement, however, is that the DTIs retain the ultimate obligation under the applicable AML/CFT regulations and thus retain full responsibility for Agent compliance.

52. Agents are viewed by the FATF as simply an extension of the financial services providers. Consequently, the conduct of CDD by these Agents is treated as if conducted by the principal financial institution. The customers themselves generally view the Agent as a point of access and as a representative of the principal financial institution.

Recommendations:

53. Section 108 of the BSA provides for Agents, on behalf of the DTI, to collect KYC and CDD documentation from DTI customers to facilitate satisfaction of AML/CFT requirements. Regulations will provide further details on the obligations of the DTI and the Agent with regard to record-keeping, training and oversight to ensure, among other things, that these activities are being carried out in a manner consistent with POCA and the AML/CFT Guidance Notes.

54. A NRA will be conducted in order to identify, assess, and understand ML/TF risks from this particular area, that is, Agent banking. This is an essential part of the implementation and development of the AML/CFT regime, which includes

laws, regulations, enforcement and other measures geared at mitigating ML/TF risks. It assists in the prioritization and efficient allocation of resources by authorities. The results of a NRA can also provide useful information to financial institutions and designated non-financial businesses and professions (DNFBPs) to support the conduct of their own risk assessments. Once ML/TF risks are properly understood, country authorities may apply AML/CFT measures in a way that ensures they are commensurate with those risks, i.e. following the risk-based approach (RBA), which is central to the FATF standards as is set out in Recommendation 1, its Interpretive Note (INR 1) as well as in other Recommendations (e.g., Recommendations 10, 26 and 28).

55. The Agent banking framework to be established will include Agents carrying out transactions on the behalf of DTIs and their customers. Notwithstanding the fact that Agents can collect documentation for DTIs, all AML/CFT obligations will remain with the DTI in keeping with the requirements of the POCA and TPA (and their attendant Regulations) as well as BOJ Guidance Notes and any other relevant guidance that may be prescribed by the BOJ. Therefore the requirements imposed on DTIs in relation to record keeping as well as the reporting and filing of STRs and TTRs remain the ultimate responsibility of DTIs.

56. DTIs will be liable for their Agents' compliance with the relevant AML/CFT measures.

PART 8: THE KEY ELEMENTS OF THE RISK MANAGEMENT FRAMEWORK FOR AGENT OPERATIONS

57. The DTI is expected to establish the appropriate risk management framework to facilitate the establishment of Agent Banking. In order to achieve this objective, Standards of Sound Practice will set out that DTIs are required to:

- a. Establish Board approved policies and procedures to ensure that Agents consistently follow prudent risk management practices.
- b. Establish Board approved controls and procedures to ensure that Agents act only on the specific instructions of the customer. Ensure the separation of Agent banking operations from all other business activities hosted at the Agent location.
- c. Require that DTIs' customer funds are insulated against creditors of the Agent, in the event of the Agent's insolvency.
- d. Obtain appropriate and adequate insurance coverage for potential losses which may arise as a result of conducting business through an Agent.

PART 9: CONSUMER PROTECTION ISSUES

58. One of the most important ingredients for the development of Agent banking (a form of branchless banking) is trust. Policy makers in the countries studied are concerned about the challenges of protecting customers of branchless banking as they perceive that financial services delivery through branchless channels presents a greater risk than traditional banking. In many cases regulators and policy makers may be motivated to act at an early stage so as to introduce sufficient legal certainty for depositors and private investors. Research has identified several policy objectives which correlate with the major consumer protection issues of moment. We highlight some of these issues below.

The issue of reducing the opportunity for Agent fraud and other harmful conduct

59. Regulations will require DTIs to establish adequate internal controls and processes to identify, measure and mitigate the risk of fraud (and other related risks) at Agent locations and to ensure that systems are in place to handle consumer complaints related to Agent actions.

60. In order to reduce the incidence of “fake Agents”, the BOJ website will host a list of all approved Agent locations in Jamaica. DTIs are also expected to maintain a similar list for Agents with whom they are engaged

61. The Regulations will require that every customer transaction carried out through an Agent be settled against the Agent’s account with the contracting DTI.

62. Regulations will require Agents to provide customers with a receipt/proof of transaction for every transaction. DTIs should inform consumers of their role in assessing the legitimacy of receipts.

The issue of ensuring clear and effective disclosure

63. With regard to ensuring clear and effective disclosure, Regulations (whether the Code of Conduct or Agent Banking Regulations) will require a DTI to disclose all fees and charges involved in its transactions.

The issue of protecting clients' personal information

64. Regulations and Supervisory Rules will require DTIs to train their Agents with respect to customer confidentiality and anti-money laundering obligations.

PART 10: THE GENERAL REGULATORY AND SUPERVISORY REGIME IN RESPECT OF AGENT BANKING

65. Supervisory authorities typically address the regulation and supervision of DTI/ Agent operations ex ante via licensing requirements and/or ex post via ongoing monitoring of a DTI's Agent activity which in some cases involves the direct supervision of Agents. Ex ante licensing requirements are usually set by Regulations that, inter alia, prescribe who can be an Agent, including minimum criteria, and what activities are permitted. The licensing process will also include the evaluation of the DTI's ability to engage in Agent banking activities without incurring undue risks. Ex post supervision is less prescriptive and requires more principles-based decision-making on the part of the Supervisory authority. The proposed regime reflects elements of both ex ante and ex post regulatory and supervisory approaches.

Recommendation:

66. The Regulations will make provision for the Agent approval process which will include assessing the DTI's capacity, ability and readiness to engage Agents in offering banking services, as well as the third party Agent's suitability for the provision of those services.

67. A DTI would submit the following information along with the formal application for authorization to engage in Agent banking operations: -

- The business case and strategy for Agent banking
- The proposed number of Agents to be engaged by the DTI and for which supervisory authorization will be requested.
- The DTI's related due diligence, policy and procedures.

- The services to be provided through Agents.
- A copy of the draft standard agency contract.
- AML/CFT policies and procedures to govern Agent operations.
- Internal control procedures in relation to the proposed Agent Banking operations.
- Any other information or requirement as requested by the Supervisory Committee.

68. The DTI may submit an application either for a standalone third party Agent or an Agent with network of locations. Where an application is made for the authorization of an Agent with a large network, the Regulations will set out the DTIs responsibility in ensuring that each Agent location meets the relevant eligibility criteria as specified in Supervisory Rules.

69. A comprehensive guideline will set out the authorization process for Agents which will outline the Agent approval process as well as the criteria and documentation to be submitted as part of the application process.

70. The Regulations will require DTIs to obtain supervisory non-objection prior to any major operational or infrastructural change, expansion of Agent services as well as notification of any material change in the agency agreement. The Regulations will also require that, subsequent to authorization, the DTI immediately notify the Supervisor of any material change in information as it concerns the Agent, which can include a change of, name, location or services offered as well as other relevant information. Additionally, the Regulations will

require each DTI to submit to the Supervisor a comprehensive Annual Report on its Agent operations.

71. The Supervisory Authority will adopt a risk-based approach to the ongoing monitoring and supervision of Agent operations. The Supervisor may place reliance on the work of independently conducted assessments or reviews commissioned by the DTI (e.g. external audits). A methodology will be established to assess and rank the systemic importance of the Agent delivery channel or conversely the systemic importance of a DTI given the extent of its Agent outreach. This will guide the intensity and frequency of focus given to particular Agents within the annual supervisory programme, including the application of intervention and enforcement measures.

72. In addition to the aforementioned authorization guidelines, The Supervisory Committee will issue additional Standards and Guidelines for DTIs in relation to their management of Agent relationships and operations.

73. The Supervisory Committee will design and implement supervisory returns for Agents. The nature and frequency of reports to be submitted will be determined by the Supervisory Committee.

74. Onsite supervision of Agents will also be performed during the routine onsite supervision of DTIs.

75. Regulations will make clear that DTIs are to be held ultimately liable for the actions or omissions of Agents to the extent that those Agents carry out financial services on behalf of the DTI.

76. As a part of its public education strategy and in order to protect customers from being defrauded by “fake Agents”, a DTI wishing to offer its services through Agents will be required to publicly disclose and maintain a list of all its Agent locations (at a minimum via its website).

77. The Regulations will require DTIs to establish transaction limits for Agents based on the DTIs assessment of the Agents’ risk profile and capabilities among other things.

78. Regulations will require that DTIs establish appropriate mechanisms to ensure reliability, continuity, and safety of the Agent service channels including the establishment of adequate technology, systems and procedures.

79. Where, in the view of the Supervisor the DTI has demonstrated poor or ineffective management of its Agent relationships, or where such relationships in the opinion of the Supervisor expose the DTI to undue risk, the Supervisor may prohibit or suspend the DTI from the further use of Agents or from contracting with new Agents (for example if the DTI’s Agent business has expanded beyond its ability to manage). The Supervisor may also implement any administrative sanction as the Regulations provide for.

Revocation of Approval and Termination of Agent Contract

80. Standards of Sound Practice will give examples of grounds on which the Supervisory Committee may revoke an Agent approval per Section 108 (8) of the BSA, including where:

- a. The approval is subsequently found to have been obtained by fraudulent means, for example, by the use of forged documents, incorrect statements, or misleading information.
- b. The DTI and/or Agent violates the relevant provisions of the Regulations or Guidelines.

81. The Regulations will require the DTI to have the ability to terminate the agency contract on the following grounds:

- a. The DTI surrenders its license or has had its license revoked.
- b. If the Agent no longer meets the fit and proper criteria.
- c. Violates any provision of the BSA, Regulations or BOJ Directive or Guideline as may be prescribed.

82. Where the Supervisory Committee revokes an approval, it shall:

- a. Issue a public advisory in such manner as it deems appropriate.
- b. Require the DTI to issue an advisory on its website and in at least two daily newspapers informing the public, inter alia, that the Agent is no longer authorized to transact on its behalf as well as the date on which the approval has been cancelled by the Supervisory Committee; and
- c.

- d. Request the DTI to surrender to the BOJ the original of the authorization certificate issued to it

83. Following the cancellation of the approval, the DTI shall take steps to ensure that the Agent ceases to provide any Agent banking services to the public.

END OF CONSULTATION PAPER

APPENDIX

The following list sets out the overarching considerations that the Supervisory Committee will use in determining the scope for the proposed operating, security and financial requirements for entities wishing to act as Agents:

1. Nature of Business (main business activities).
2. Years in operation.
3. Financial performance (profitability, liquidity, solvency etc.).
4. Reputation.
5. Physical security.
6. Capacity to commit resources to Agent operations.
7. Cash management capabilities (including systems and capacity to accept and disburse cash).
8. Robust system for interactions between Agents and DTIs concerning customer transactions (e.g. POS, SMS etc.).
9. Arrangements in place to ensure protection of customer information.
10. Suitability of facilities.
11. Location of prospective Agent.
12. In the case of permitted Agent Network Management arrangements (chain retailers, supermarkets etc.), the management and oversight arrangements between the Network Manager and each Agent location.