

# BANK OF JAMAICA

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REFERENCE NO.:

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**TO: ALL REMITTANCE COMPANIES & CAMBIOS**

Bank of Jamaica (the Bank) is considering amendments to the Bank of Jamaica Act (BOJA) to update and strengthen the statutory oversight regime for cambios and remittance companies and to address deficiencies highlighted in the Caribbean Financial Action Task Force (CFATF) Mutual Evaluation Report (MER), 2017, on Jamaica. The proposals for amending the BOJA are being shared with you for your feedback.

In that regard, we have attached:

1. Consultative Document summarising the rationale for the proposals to amend the BOJA and the process for submission of comments regarding these proposals.
2. Appendix detailing the Proposals to amend the BOJA.

The Bank will examine all comments received by the stipulated date. However, please note that the Bank is under no obligation to incorporate all comments in the proposed amendments.

Please be guided accordingly.

Natalie Haynes



Deputy Governor  
Banking and Currency Operations and  
Financial Markets Infrastructure Divisions



## **Consultative Document on Proposed Amendments to the Bank of Jamaica Act (BOJA)**

### **Introduction**

The Caribbean Financial Action Task Force (CFATF), in its Mutual Evaluation Report (MER), 2017 on Jamaica, identified deficiencies in relation to Recommendation 14 of the Financial Action Task Force (FATF) Recommendations on Money or Value Transfer Services (MVTs), requiring active identification and sanctioning of unlicensed or unregistered MVTs providers.

To address this deficiency, Bank of Jamaica (the Bank) has recommended amendments to the BOJA to strengthen the statutory oversight regime for MVTs providers (remittance services providers).

The Bank had also taken the opportunity, in addressing this deficiency in Recommendation 14, to strengthen the oversight regime for cambios (exchange bureaux) to ensure a balanced impact.

### **Rationale for Amendments**

The proposed amendments to the BOJA will:

1. Provide the Bank with remit or powers to confront and penalize unlicensed MVTs as well as licensees who facilitate dealings with unlicensed MVTs by:
  - a. Creating new offences to restrict persons not licensed to operate a MVTs from using any name, designation, trademark or advertisement that implies or leads the public to believe that the person is a licensed or approved MVTs provider.
  - b. Granting the Bank power to, by itself or through an agent, obtain a search warrant to enter premises where the Bank has reasonable grounds to believe a person is carrying on the business of a MVTs without approval.
2. Increase the penalties for non-compliance as the current monetary sanctions are not deemed to be dissuasive.

3. Notwithstanding the focus to specifically address the R14 issues identified in Jamaica's MER, some of the framework amendments proposed for the MVTs regime are also proposed to be extended to the cambio oversight regime under the Bank of Jamaica Act.

### **Consultation**

The Bank invites feedback on the proposed enhancements to the legislative framework as outlined in the attached Appendix. All comments should be in writing and sent via email to [FMIDfeedback@boj.org.jm](mailto:FMIDfeedback@boj.org.jm). **The deadline for submission of comments is 30 October 2020.**

If relevant, please identify yourself and the organisation you represent when providing your comments. The Bank reserves the right to publish any comments you provide, ascribing such comments to the relevant author, unless you expressly request otherwise at the time of making any comments.

In providing your comments please be guided by the following pertinent questions:

1. What is your general view on these amendments? (taking into consideration the rationale for the amendments).
2. What alternative or additional recommendations do you have to strengthen the oversight framework for MVTs or cambios
3. Are there any other concerns that may be addressed?

### **Approach to Implementation of Amendments**

The Bank will review comments received by the stipulated date to ascertain whether any modifications are required to the proposed amendments to the BOJA. Modifications to the proposals for amending the BOJA will be communicated to the Ministry of Finance and the Public Service.

8 October 2020



## **APPENDIX**

### **PROPOSALS FOR AMENDMENT TO THE BANK OF JAMAICA ACT**

1. These proposals for amendment to the Bank of Jamaica Act (BOJA) are to address the deficiencies as identified in the CFATF Mutual Evaluation Report (MER) 2017 In relation to the requirements of Recommendation 14 (R14) on Money or value transfer services which states viz.

*Countries should take measures to ensure that natural or legal persons that provide money or value transfer services (MVTs) are licensed or registered and subject to effective systems for monitoring and ensuring compliance with the relevant measures called for in the FATF Recommendation. Countries should take action to identify natural or legal persons that carry out MVTs without a licence or registration, and to apply appropriate sanctions.*

*Any natural or legal person working as an agent should also be licensed or registered by a competent authority, or the MVTs provider should maintain a current list of its agents accessible by competent authorities in the countries in which the MVTs provider and its agents operate. Countries should take measures to ensure that MVTs providers that use agents include them in their AML/CFT programmes and monitor them for compliance with these programmes.*

2. The deficiency identified in the MER is in relation to requiring active identification and sanctioning of unlicensed or unregistered MVTs as follows: -
  - a) No active identification of unlicensed MVTs providers
  - b) Legislation does not provide remit or powers to sanction unlicensed MVTs.
  - c) The monetary sanctions for operating in breach of section 22G are low and are not dissuasive.

**Notwithstanding the focus to specifically address the R14 issues identified in Jamaica's MER, it does make sense to extend some of the framework amendments to the cambio oversight regime under the Bank of Jamaica Act as well, to ensure a balanced impact. The revised proposal therefore extends some of the aforementioned amendments to the cambio oversight framework.**

3. In relation to the deficiencies - no active identification and sanctioning of unlicensed MVTs - these can be addressed by strengthening the governing legislation to:-

Give BOJ the power to, itself or through an agent, obtain a search warrant to enter upon the premises of a person whom the BOJ has reasonable grounds for suspecting is committing or has committed an offence under the BOJA in relation to operating or holding himself out to be an approved money transfer and remittance agent or agency in breach of section 22G of the BOJA or an approved exchange bureau in breach of section 22A and 22B of the BOJ Act.

4. In relation to the deficiency - legislation does not provide remit or powers to sanction unlicensed MVTs, this issue can be addressed by strengthening the governing legislation as follows-

- a) Create an offence for entities licensed under BOJA who undertake or facilitate unauthorised dealings of any kind or nature with a person who appears to be operating as money transfer and remittance agent or agency or exchange bureaux without the approval under Section 22G or in breach of Section 22A, of the BOJA, respectively
- b) Create an offence for persons not licensed to operate money transfer and remittance agent or agency or exchange bureaux who use any name, designation trade mark style description that implies that the person is licensed or approved to do so (e.g. the

words "money transfer", "money value transfer service" or "remittance", "cambio", "exchange bureaux" or "money changer" or any grammatical variation or derivative of those words.

- c) Create an offence for fraudulent misrepresentation that a person is approved or authorized to operate as a money transfer and remittance agent or agent or as an exchange bureaux.
- d) Create an offence where a person issues or causes to be issued any advertisement that reflects or gives the impression that a person is an approved money transfer and remittance agent and agency or an approved exchange bureaux.
- e) Create an offence for the failure to conspicuously display conversion rates and transfer fees for applicable remittance transfers at each approved location.
- f) Create an offence for a person to induce another person to transact business on the basis that a person is an approved money transfer and remittance agent or agency or an approved exchange bureaux.

5. In relation to the deficiency - that the monetary sanctions for operating in breach of Part IVB of the BOJA are low and are not dissuasive this issue can be addressed by strengthening the applicable penalties under governing legislation as follows-

The monetary sanctions should be increased to levels that will be sufficiently dissuasive and effective but proportionate to the offence committed as follows;

Revise the section 22D (1) penalties as follows: -

- i. On summary conviction to a fine not exceeding Five million dollars or to imprisonment for a period not exceeding five years or to both such fine and imprisonment

- ii Update the Appendices to section 22E of the BOJA to:
  - a) add the new offences and the relevant fixed penalties
  - b) amend the description of existing offences to ensure consistency with the legislation
  - c) Increase the fixed penalties for existing offences.
  - d) Remove offences no longer relevant

Note: The section 22E appendices matters are set out in the attached Schedule to this document.

- b) Including wording in the statute to guide the court when determining the type of sanction, and level of any penalty, to be imposed on a person under Part IVA or IVB of the BOJA. It is therefore proposed that the section be amended to reflect that, the Court may take into account all relevant circumstances, including where appropriate:
  - i. whether any benefit was derived and the value thereof;
  - ii. the nature and extent of any loss suffered by any person as a result of the contravention;
  - iii. the financial strength of the person involved in the commission of the offence.

### **General Comments**

Subsequent to the development of the above proposals additional items were identified for attention in relation to strengthening the framework as follows –

- i. identification of unlicensed operators and
- ii. mandating the display of conversion rates in all cambio outlets,

### **Identification of Unlicensed Operators**

In recognition of the absence in the oversight framework for cambios, of any mechanism to properly deal with the identification of unlicensed operators, it was felt that the BOJA should also be amended to give BOJ the power to, itself or through an

agent, obtain a search warrant to enter upon the premises of a person whom the BOJ has reasonable grounds for suspecting is committing or has committed an offence under the BOJA in relation to operating or holding himself out to be an exchange bureaux.

### **Mandating the Display of Conversion Rates in all Cambio Outlets**

Currently this is a requirement under the existing Operating Directions that apply to Cambios and as such, the penalty reflected therein for not complying with this requirement is administrative and on its own, is not, in our view sufficiently dissuasive. An additional proposal will therefore be made to create an offence for the failure to conspicuously display conversion rates for exchange of foreign currency by an exchange bureaux at each approved location.

The views of the stakeholders on the contemplated approach of extending the proposed MVTSS framework enhancements in these areas to the cambio framework are also invited.

The Operating Directions for both money transfer and remittance agents and agencies and exchange bureaux will be updated to reflect the amendments to the BOJA.



## SCHEDULE

### Appendix (Revised) (Section 22E)

#### PART A

	Offence	Fixed Penalty
1	Failure to display rates at which foreign currency is being purchased or sold.	\$5,000,000.00
2	Failure to remit foreign currency to the Bank in accordance with directions.	\$5,000,000.00
3	Holding foreign currency in excess of the prescribed limits.	\$7,500,000.00
4	Failure to keep accounts and records in respect of the business of the exchange bureaux separate and apart from any other business in foreign currency carried out by the operator thereof.	\$7,500,000.00
5	Failure to issue receipts.	\$7,500,000.00 <sup>1</sup>
6	Failure to display certificate of authorization.	\$7,500,000.00 <sup>2</sup>
7	Failure to keep proper accounts.	\$7,500,000.00
8	Failure to allow examination of accounts etc.	\$7,500,000.00
9	Failure to afford to an authorized officer unimpeded access for the purposes of carrying out any inspection authorized by or under the Act.	\$7,500,000.00
10	Buying or selling foreign currency at a location other than that approved in the authorization.	\$7,500,000.00
11	Purchase of foreign currency in breach of directions given under section 22B by an exchange bureau operated in a hotel.	\$7,500,000.00 <sup>3</sup>

<sup>1</sup> Multiple of penalty on conviction of a body corporate in Parish Court i.e. 1.5 x penalty on conviction in Parish Court. This approach is similar to that used in the BSA.

<sup>2</sup> Multiple of penalty on conviction of a body corporate in Parish Court i.e. 1.5 x penalty on conviction in Parish Court. This approach is similar to that used in the BSA.

<sup>3</sup> Multiple of penalty on conviction of a body corporate in Parish Court i.e. 1.5 x penalty on conviction in Parish Court. This approach is similar to that used in the BSA.

**PART B**

	Offence	Fixed Penalty <sup>4</sup>
1.	Failure to display conversion rates and transfer fees for applicable remittance transfers at each approved location.	\$5,000,000.00
2.	Failure to allow an authorized officer unimpeded access for the purpose of carrying out any inspection authorized by or under the Act.	\$5,000,000.00
3.	Failure to keep accounts and records in respect of the remittance business, separate and apart from any other business carried on.	\$7,500,000.00
4.	Failure to display Certificate of Authorization at the licensed location.	\$7,500,000.00
5.	Failure to keep proper accounts	\$7,500,000.00
6.	Failure to allow examination of accounts and records.	\$7,500,000.00
7.	Carrying on the business of a money transfer and remittance agent or agency at a location other than that approved by the Minister	\$7,500,000.00

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<sup>4</sup> Bases on which penalties are proposed are the same as those outlined for Part A