THE GENERAL LEGAL COUNCIL OF JAMAICA:

ANTI-MONEY LAUNDERING GUIDANCE

FOR THE

LEGAL PROFESSION

THE GENERAL LEGAL COUNCIL OF JAMAICA: ANTI-MONEY LAUNDERING GUIDANCE FOR THE LEGAL PROFESSION

GLOSSARY

• AML	Anti-Money Laundering
• Applicant for business	A person seeking to form a business relationship or to carry out a one off transaction with a business in the regulated sector
• Attorney	A person whose name is entered on the Roll of Attorneys-at-law pursuant to section 4 of the LPA and includes a sole practitioner, a firm, partnership or group of attorneys practising together
• BOJ	The Bank of Jamaica
• Business in the regulated sector or regulated sector	A business that is- (a) a financial institution; or (b) a designated non-financial institution
• CDD or KYC	Customer Due Diligence/Know Your Customer
• CFATF	The Caribbean Financial Action Task Force
• CFT	Combating the Financing of Terrorism
• Designated activities	The activities covered by the DNFI Order
• Designated Authority	Means the Chief Technical Director of the FID or such other person as may be designated by the Minister by order
• DNFI or DNFB	A person who is- (a) not primarily engaged in carrying on financial business; and (b) designated as a non-financial institution for the purposes of POCA by the Minister by order
• DNFI Order	The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order 2013 dated 15th November 2013, affirmed in the House of Representatives and in the Senate on 19th November and 29th November 2013 respectively
• DPP	The Director of Public Prosecutions
• Enforcing Authority	The Assets Recovery Agency with respect to an application under section 5(1) or section 57 of POCA or the DPP where the DPP makes proceedings such an application
• EDD	Enhanced Due Diligence
• FATF	Financial Action Task Force

FI	Financial Institutions
FID	The Financial Investigation Division of the Ministry of Finance and Planning
FSC	The Financial Services Commission
GLC	General Legal Council established under the LPA
LPA	Legal Profession Act
LPP	Legal Professional Privilege
ML	Money Laundering
PEP	Politically Exposed Person
POCA	The Proceeds of Crime Act
POCA (MLP) Regulations	The Proceeds of Crime (Money Laundering Prevention) Regulations
STR	Suspicious transaction report or disclosure under POCA
TF	Terrorist Financing
TPA	Terrorism Prevention Act

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1. INTRODUCTION

The Proceeds of Crime Act and the Proceeds of Crime (Money Laundering Prevention) Regulations, as amended in 2013 (Act 26 of 2013), impose duties and responsibilities on a business in the regulated sector to prevent and detect money laundering. By the Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order 2013 with effect from 1st June 2014 attorneys-at-law who engage in certain business activity will be DNFIs and part of the regulated sector. This step has been taken to counteract money-laundering and terrorist financing and brings Jamaica into compliance with its international obligations to effect such measures.

2. WHAT IS MONEY LAUNDERING

Money laundering generally refers to the methods and processes used by criminals to conceal the origin and ownership of the proceeds of their criminal activities. The purpose of money laundering is to allow criminals to maintain control over the proceeds of their crime and to ultimately give the appearance that these proceeds came from a legitimate source and from legal activities.

There are three acknowledged stages to money laundering, that is placement, layering and integration. These stages may not all occur and all or some may be separate and distinct or may overlap. The requirements of the criminal or the criminal organisation as well as the available mechanisms for facilitating money laundering will determine the use of these three basic stages.

2.1 PLACEMENT

This is the stage where criminals dispose of their cash usually by seeking to place it into the financial system. The criminal is most vulnerable to detection at this stage as banks and other financial institutions have well-developed policies and procedures to detect and prevent money laundering. This has increased the risk of other types of businesses and professions being used to facilitate the disposal of illicit proceeds. Attorneys can be targeted because they customarily hold client's money and operate client trust accounts.

2.2 LAYERING

This is the stage where the source of the criminal proceeds is obscured by creating layers of transactions designed to disguise the audit trail. Once layering commences it becomes difficult to detect money laundering. The layering process often involves the use of different types of entities such as companies and trusts and can take place in several

jurisdictions. Attorneys may be targeted to facilitate the conversion of cash into other types of assets within and across jurisdictions.

2.3 INTEGRATION

This is the stage where the criminal proceeds reappear as funds or assets which have been legitimately acquired. Attorneys may be used to purchase property and set up businesses in which criminals invest their funds as well as providing other types of services. This is the stage at which money laundering is most difficult to detect.

3. WHAT IS TERRORIST FINANCING

Terrorist financing is the process by which funds are provided to an individual or group to fund terrorist activities. Unlike money laundering, funds can come from both legitimate sources as well as from criminal activity. Funds may involve low dollar value transactions and give the appearance of innocence and a variety of sources such as personal donations, profits from businesses and charitable organizations e.g., a charitable organization may organise fundraising activities where the contributors to the fundraising activities believe that the funds will go to relief efforts abroad, but, all the funds are actually transferred to a terrorist group. Funds may come, as well as from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

Unlike money laundering, which is preceded by criminal activity, with financing of terrorism there may be fundraising or a criminal activity generating funds prior to the terrorist activity actually taking place. However, like money launderers, terrorism financiers also move funds to disguise their source, destination and purpose for which the funds are to be used to prevent leaving a trail of incriminating evidence, to distance the funds from the crime or the source, and to obscure the intended destination and purpose.

The Terrorism Prevention Act establishes a number of terrorism offences including engaging in or facilitating terrorism, as well as raising or possessing funds for terrorist purposes.

4. INTERNATIONAL STANDARDS TO PREVENT MONEY LAUNDERING

The Financial Action Task Force (FATF) was founded in 1989 by the leading industrial nations at the G7 Paris Summit following the United Nations Convention Against the Illicit Traffic of Narcotic Drugs and Psychotropic Substances (1988 Vienna Convention). It is an independent inter-governmental body created to tackle money-laundering and terrorist financing. The mandate of FATF is to set standards and to promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and financing of proliferation and other related threats to the integrity of the international financial system. The Recommendations made by the FATF are intended to be of universal application.

As revised in February 2012, FATF has issued Forty (40) Recommendations on the international standards on combating money-laundering and the financing of terrorism and proliferation. These are commonly referred to as the FATF Recommendations[1]. FATF has promoted regional inter-governmental bodies to achieve the global implementation of the FATF Recommendations, one such being the CFATF.

The Caribbean Financial Action Task Force is an organisation of states and territories of the Caribbean basin, including Jamaica, which has agreed to implement the FATF's Recommendations as common countermeasures against money laundering and terrorism financing. The CFATF was established as the result of two key meetings convened in Aruba and in Jamaica in the early 1990's. The Member States of the CFATF have entered into a Memorandum of Understanding by which Members among other things agreed to adopt and implement the 1988 UN Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention), endorsed and agreed to implement the FATF Recommendations and to fulfil the obligations expressed in the Kingston Declaration On Money Laundering issued in November 1992 and agreed to adopt and implement any other measures for the prevention and control of the laundering of the proceeds of all serious crimes as defined by the laws of each Member State. Hence the Jamaican Government is committed to implement the FATF Recommendations to combat money laundering and terrorism financing.

Recommendation 22 of the FATF Recommendations requires countries to regulate certain designated non-financial businesses and professions as part of its AML/CFT measures. Among the

[1] See FATF's website: http://www.fatf-gafi.org

DNFBs to be regulated, FATF Recommendation 22(d) has identified attorneys where they engage in certain intermediary financial activities.

5. IMPLEMENTATON OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS

Section 5 of The United Nations Security Council Resolutions Implementation Act requires DNFIs to ascertain whether they are in possession or control of assets owned or controlled by a proscribed individual or entity and to make reports to the Designated Authority at least once every four calendar months and/or in response to a request from the Designated Authority. At the date of this Guidance the form for the making of such report has not been prescribed.

The United Nations Security Council Resolutions Implementation (North Korea) Regulations also proscribed certain individuals and entities, and DFNIs are therefore obligated to ascertain whether they are in possession or control of assets owned or controlled by or on behalf of the proscribed individuals or entities.

6. THE JAMAICAN LEGAL FRAMEWORK ON MONEY LAUNDERING

The Proceeds of Crime Act (POCA) establishes a number of money laundering offences including:

(a) principal money laundering offences[2];

(b) offences of failing to report suspected money laundering[3];

(c) offences of tipping off about a money laundering disclosure, tipping off about a money laundering investigation and prejudicing money laundering investigations[4].

The principal money laundering offences are applicable to all persons whether or not they are regulated under POCA, however, the offences of failing to report suspected money laundering under sections 94 and 95 apply only to persons in the regulated sector.

The Proceeds of Crime (Money Laundering Prevention) Regulations set out requirements for persons in the regulated sector pertaining to regulatory controls such as the nomination of an

[2] POCA sections 92 and 93
[3] POCA sections 94, 95 and 96
[4] POCA section 97

officer in the business to be responsible for the implementation of AML/CFT controls; identification procedures for client identification; verification of the purpose and nature of transactions; record keeping requirements; independent audits; the vetting of the personal and financial history of employees and the training of employees in the provisions of anti-money laundering laws. The POCA (MLP) Regulations also create offences for breaches of the obligations imposed by the Regulations.

7. WHO COMPRISES THE REGULATED SECTOR

Businesses in the regulated sector include a financial institution or an entity that has corporate responsibility for the development and implementation of group wide anti-money laundering, or terrorism financing prevention, policies and procedures for the group of companies of which the entity forms a part, and a designated non-financial institution[5].

(a) A FI is a bank licensed under the Banking Act; a financial institution licensed under the Financial Institutions Act; a building society registered under the Building Societies Act; a society registered under the Co-operative Societies Act; a person who (i) engages in insurance business within the meaning of the Insurance Act or (ii) performs services as an insurance intermediary within the meaning of the Insurance Act (but does not include an insurance consultant or an adjuster); a person licensed under the Bank of Jamaica Act to operate an exchange bureau; a person licensed under the Securities Act as a dealer or investment adviser; approved money transfer and remittance agents and agencies; the National Export Import Bank of Jamaica; and any other person declared by the Minister of National Security, by order subject to affirmative resolution, to be a financial institution for the purposes of POCA.

(b) A DNFI is a person who is not primarily engaged in carrying on financial business and is designated by the Minister of National Security as a non-financial institution pursuant to paragraph 1(2) of the Fourth Schedule of POCA.

(c) In order to implement FATF Recommendation 22, The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order 2013 has been promulgated pursuant to powers conferred on the Minister by paragraph 1(2) of the Fourth Schedule of the POCA. Attorneys who engage in certain activities on

[5] See section 16 of POCA (Amendment) Act 2013, which amends paragraph 1(1) (a) of the Fourth Schedule of POCA,

behalf of clients have therefore been designated as non-financial institutions or DNFIs.[6]

8. WHY ATTORNEYS SHOULD BE REGULATED

In evaluating risks and vulnerable activities, FATF has found that attorneys are susceptible to being used not only in the layering and integration stages of money laundering, as has been the case historically, but also as a means to disguise the origin of funds before placing them into the financial system. Attorneys are often the first professionals consulted for general business advice and on a wide range of regulatory and compliance issues. FATF characterises certain professionals, including attorneys, as "gatekeepers" because they "protect the gates to the financial system," through which the launderer must pass in order to succeed. The term "gatekeepers" therefore includes professional experts such as attorneys, accountants, tax advisers, and trust and service company providers. FATF has noted that the services of gatekeepers are a common element in complex money laundering schemes. Gatekeepers' skills are important in creating legal structures that could be used to launder money and for their ability to manage and perform financial transactions efficiently and to avoid detection. Invariably the services of attorneys are essential to effect such transactions and to give the cloak of legitimacy to same. This is particularly so when the unregulated use of client accounts by attorneys easily facilitates the introduction of illicit funds into the financial system which may then be used for the acquisition of other property or for business activity that has all appearances of legitimacy. Accordingly it is necessary to impose AML/CFT responsibilities on attorneys when they participate or assist clients in certain transactions.

9. THE ROLE OF THE GENERAL LEGAL COUNCIL

The GLC was created by the Legal Profession Act for the purposes of among other things upholding standards of professional conduct. By section 12(7) of the LPA, the GLC is empowered to prescribe standards of professional etiquette and professional conduct for attorneys and to also direct that any specified breaches of its rules shall constitute professional misconduct.

POCA also gives the Minister the power to appoint, in writing, an authority "referred to as the Competent Authority" to monitor compliance by a DNFI with the requirements of POCA and its Regulations thereunder as well as to issue guidance regarding effective measures to prevent

[6] See chapter 2 of this Guidance: Overview of the DNFI Order and the Regulated Sector.

money laundering. The General Legal Council is the Competent Authority for the attorneys who are DNFIs.

The LPA section 5(3C), as amended by the Proceeds of Crime (Amendment) Act 2013, requires that in respect of each calendar year an attorney shall on or before the 31st day of January of the next calendar year complete and file with the GLC a declaration prescribed by regulations indicating whether or not the attorney has in the calendar year concerned, engaged in any of the activities on behalf of any client relating to:

(a) purchasing or selling real estate;

(b) managing clients' money, securities or other assets;

(c) managing bank, savings or securities accounts;

(d) organizing contributions for the creation, operation or management of companies;

(e) creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); and

(f) purchasing or selling a business entity.

The GLC's form of Annual Declaration is contained in Appendix A.

10. POWERS OF THE GENERAL LEGAL COUNCIL AS COMPETENT AUTHORITY

As the Competent Authority, the role of the GLC is to ensure that attorneys operate in compliance with POCA and its Regulations thereto.

The Competent Authority is empowered to:

(a) issue guidelines to attorneys in the regulated sector regarding effective measures to prevent money laundering;

(b) establish such measures as it thinks fit to monitor compliance by attorneys with POCA and the Regulations made under POCA including the carrying out of inspections or other verification procedures, whether on its own, or through a third party;

(c) issue directions to any attorney including directions to take such measures as are necessary to prevent, detect, or reduce the risk of money laundering or terrorism financing;

(d) examine and take copies of information or documents in the possession or control of any attorney relating to the operations of that attorney;

(e) share any examination conducted by it with another competent authority, a Supervisory Authority or the Designated Authority, or an authority in another jurisdiction exercising functions similar to those of any of the aforementioned authorities excepting information which is protected from disclosure under POCA or any other law; and

(f) require by notice in writing, that attorneys register with it such particulars as may be prescribed and/or make such reports in respect of matters specified in the notice.

Where an attorney is convicted of the offence of failing to comply with any requirements or directions issued by the Competent Authority, the conviction for the offence is deemed to be grounds on which the attorney may be suspended or prohibited by the GLC from practising as an attorney.

11. THE SUPERVISORY AUTHORITY

The Fourth Schedule of POCA designates the BOJ and the FSC as supervisory authorities for the purposes of POCA. In particular, as Supervisory Authority, the BOJ preserves general oversight of the financial system. The Supervisory Authority can issue relevant guidance and[7] that may be considered in determining whether an offence has been committed by a business in the regulated sector under sections 94 or 95 of POCA. The Supervisory Authority can also by notice published in the Gazette require that businesses in the regulated sector pay special attention to all business relationships and transactions with customers resident or domiciled in a territory or territories specified by the Supervisory Authority.

[7] Section 94(7) POCA

12. STATUS OF THIS GUIDANCE

This Guidance is issued by the GLC as the Competent Authority for the use and benefit of attorneys. This Guidance represents the GLC's view of the effective measures that attorneys should follow to prevent and detect money laundering. This Guidance has been approved by the Minister and published in the Gazette. In accordance with section 94 (7) of POCA, the court is required to consider compliance with its contents in assessing whether a person committed an offence under that section or under section 95 of POCA. While care has been taken to ensure that this Guidance is accurate, up to date and useful, the GLC will not accept any legal liability in relation to it. This Guidance does not relieve attorneys of the obligation to know and comply with the AML/CFT Laws.

CHAPTER 2: OVERVIEW OF THE DNFI ORDER AND THE REGULATED SECTOR

13. WHAT BRINGS AN ATTORNEY WITHIN THE REGULATED SECTOR

By the DNFI order dated 15th November 2013, affirmed in the House of Representatives and in the Senate on 19th November and 29th November 2013 respectively, the following attorneys are classified as DNFIs effective 1st June 2014 by paragraph 3:

> "any person whose name is entered on the Roll of Attorneys-at-law pursuant to section 4 of the Legal Profession Act, and who carries out any of the following activities on behalf of any client-
>
> (a) purchasing or selling real estate;
>
> (b) managing money, securities or other assets;
>
> (c) managing bank accounts or savings accounts of any kind, or securities accounts;
>
> (d) organizing contributions for the creation, operation or management of companies;
>
> (e) creating, operating or managing a legal person or legal arrangement (such as a trust or settlement); or
>
> (f) purchasing or selling a business entity."

14. THE SCOPE OF THE DNFI ORDER

Paragraphs 3(a) to (f) of the DNFI Order sets out in broad terms the activities that if undertaken by an attorney on behalf of a client by any form of participation in any of those activities will bring an attorney within the regulated sector. The language of those paragraphs is adopted from FATF Recommendation 22(d) and is not to be regarded as technical language. Accordingly the terms in the DNFI Order are to be interpreted broadly and are therefore intended to encompass all services provided by an attorney including assisting in the planning or execution of any of the transactions covered by the activities designated in the DNFI Order from the time that the attorney is first engaged or consulted by or on behalf of a client.

Generally a client is any person or entity who, as principal or on behalf of another, retains or employs, or is about to retain or employ an attorney; and including any person or entity who may be liable to pay the charges of an attorney, for any services, fees, costs, charges or disbursements. A client includes an applicant for business.

The DNFI Order is not meant to apply to attorneys who are employees (in-house counsel) of other types of businesses or attorneys who work for government agencies.

Any attorney, whether a sole practitioner or working in a firm or in partnership is subject to the obligations as explained in this guidance when he/she engages in any of the following activities on behalf of a client:

(a) "**Purchasing Or Selling Real Estate**": This activity is to be regarded as encompassing any purchase or sale of residential or commercial real estate, as well as lease and mortgage transactions and transactions which finance a purchase or sale of real estate. No dollar amounts or thresholds are specified and therefore the phrase encompasses all activities of an attorney acting for a client in a real estate transaction, whether the transaction is effected for consideration or not, from the first contemplation to the conclusion of the transaction.

(b) "**Managing Money, Securities Or Other Assets**": This activity comprehends all activities by an attorney when involved in the management or handling of a client's funds, securities or other assets. The phrase comprehends any activities by the attorney in such a transaction including the negotiation and preparation of agreements to grant any right or interest to money, securities or other assets or to appoint an agent or grant power over any money, securities or other assets. The word "securities" is to be understood within the meaning of that term as defined by the Securities Act. "Assets" is to be understood as referring to assets of every kind including but not limited to funds, financial assets, economic resources, property of every kind, whether corporeal or incorporeal, tangible or intangible, movable or immovable however acquired and legal documents and instruments in any form including electronic or digital, evidencing title to assets.

The receipt and holding of funds for professional fees, disbursements, expenses or bail is not within the designated activities.

(c) "**Managing Bank Accounts Or Savings Accounts Of Any Kind, Or Securities Accounts**": This activity comprehends all services provided by an attorney when involved in the management of any funds or securities account on behalf of a client. It is to be read with the explanations provided at sub-paragraph (b) above. The phrase comprehends any activities by the attorney in a transaction whereby funds or securities are lodged with, managed, hypothecated, moved, transferred or withdrawn from any financial institution including the negotiation and preparation of agreements for the creation or operation of any such account and to appoint any signatory or agent or grant any interest, mandate or power in respect of any such account. However the phrase does not include the opening and maintaining of an account for the payment of fees to the attorney, where the attorney's fees are not mixed with any other client money.

(d) "**Organizing Contributions For The Creation, Operation Or Management Of Companies**": This activity comprehends all services provided by an attorney when any person or entity seeks funding or any other contribution in the course of the promotion, incorporation, operation, or management of any company incorporated in Jamaica or elsewhere and includes the allotment, transfer, sale, exchange, mortgaging or charging of any shares or assets of a company, the grant of debentures, mortgages, charges or other security over shares or assets of a company or the arranging, negotiating or promotion of any scheme having the effect or appearing to have the effect of altering the financial position or assets of a company.

(e) "**Creating, Operating Or Managing A Legal Person Or Legal Arrangement (Such As A Trust Or Settlement)**": This activity comprehends all services provided by an attorney when involved in the forming, promotion, incorporation, operation, and management of entities including companies, trusts, clubs, partnerships and any other incorporated or unincorporated entity and whether created in Jamaica or elsewhere. This will also include-

(1) acting or arranging for another person to act as a nominee shareholder, director, secretary, manager or investment advisor of a company or other legal entity;

(2) acting or arranging for another person to act as a partner, manager or investment advisor of a partnership;

(3) acting or arranging for another person to act as a trustee, manager or investment advisor of a trust;

(4) providing the registered office, business address, correspondence address or administrative address or other related services for a company, trust or other entity.

(f) "**Purchasing Or Selling A Business Entity**": This activity comprehends all services provided by an attorney when involved in any transaction by which a person or entity other than the attorney sells, transfers, disposes of, purchases or acquires any interest in a business entity whether incorporated or unincorporated. The phrase encompasses all services or activities of an attorney representing any person or entity such as the vendor, transferor, purchaser, transferee, financier or lender and whether the transaction is for consideration or not from the stage of first contemplation or planning of the transaction to the execution and conclusion of the sale, acquisition, disposal or transfer of the interest in the business and also the voluntary winding up of any company or other entity which is not brought under the supervision of the Court.

15. LITIGATION

Where an attorney does not act in any of the activities comprehended in the DNFI Order, that attorney will not be a DNFI for the purposes of POCA. Further where the attorney is a DNFI, professional activities in transactions other than those designated in the DNFI Order are not within the scope of POCA (MLP) Regulations and those regulations are not applicable to such activities. Accordingly, as a general rule participation in litigation and other forms of dispute resolution by an attorney and the giving of legal advice are not professional activities coming within the scope of the DNFI Order. Activities carried on by an attorney in the normal course of litigation will not be within the DNFI Order. Similarly where litigation results in the order of a court for the payment, transfer or distribution of money, property or assets or for the regulation, management or winding up of a company or other entity, the attorney's continued participation in such transaction will not come within the ambit of the DNFI Order.

There are however some exceptions to the general rule that participation in litigation is not an activity within the DNFI Order, for example non-contentious legal proceedings for the administering of estates of deceased persons would come within the activities designated in the DFNI Order as such proceedings have as its purpose the creation of arrangements in respect of property or other assets which will not be the subject of thorough judicial examination to ensure that there is no illicitly obtained property that is being dealt with by such arrangements. Similarly a further exception is where contentious litigation is bogus or a sham, where the attorney knows or has reasonable grounds to believe that the dispute is concocted for the transfer or dealing with property.

16. LEGAL PROFESSIONAL PRIVILEGE

LPP is a cardinal legal right available to clients of attorneys and LPP is generally preserved and available under POCA. LPP encompasses legal advice privilege which protects from disclosure to any third party communications passing between a client and the attorney for the purpose of giving or receiving legal advice. LPP also includes litigation privilege which protects from disclosure to any third party documents or communications made in any pending or contemplated legal proceedings whether criminal or civil. LPP can only be waived by the attorney's client.

The attorney should however be mindful that LPP and any duty of confidentiality cannot be relied on to shelter an attorney who participates in criminal conduct, nor can LPP be relied on by a client where advice is sought in respect of the commission of an unlawful act. Section 94(8) of POCA expressly excludes from the protection of privileged circumstances, information or any other matter that is communicated or given with the intention of furthering a criminal purpose.

17. CONFIDENTIALITY

In addition to maintaining the client's right of LPP, an attorney also owes a duty of confidentiality to his client but this is subject to the attorney's legal obligations under POCA. The Legal Profession Canons of Professional Ethics Rules at paragraph IV (t) (iii) to (v) inclusive[8] sets out the following exceptions to the attorney's duty of confidentiality, making it permissible for the attorney to disclose to the appropriate authority a client confidence in the following circumstances-

[8] As amended in 2014

(a) in accordance with the provisions of POCA and any Regulations made under that Act;

(b) in accordance with the provisions of the TPA and any regulations made under that Act; or

(c) where the attorney is required by law to disclose knowledge of all material facts relating to a serious offence that has been committed.

Section 137 of POCA also provides protection from suit for breach of confidentiality in respect of transmission of information to an enforcing authority and also general protection from proceedings brought in respect of acts done in good faith in carrying out the provisions of POCA.

18. SEGREGATING DOCUMENTS FOR INSPECTION

The files of an attorney who is a DNFI will be periodically inspected and the attorney will be required to disclose information and documents relating to activities coming within the DNFI Order to the agents of the Competent Authority or the Designated Authority. The powers of the GLC as Competent Authority to examine and take copies of documents and information in the possession or control of any attorney do not extend to information or advice that is subject to LPP or obtained in privileged circumstances. The attorney must be mindful to prevent inadvertent disclosure of communications and documents to which LPP applies and it is recommended that documents and other information to which LPP attaches should be retained by the attorney separately from documents and information which are to be made available for inspection and disclosure.

19. THE COMMENCEMENT DATE

The DNFI Order does not have retroactive effect. This means that POCA (MLP) Regulations that have been extended to attorneys and the obligation to file STR disclosures under sections 94 and 95 of POCA will not take effect before 1st June 2014.

Attorneys should however, be mindful that other provisions of POCA and particularly the offences concerning transactions which involve criminal property [9] and tipping-off [10] are of general

[9] Sections 92 and 93 POCA
[10] Section 97 POCA

application to all persons and apply to all attorneys, even those not carrying on designated activities.

The obligations on attorneys as DNFIs which takes effect on 1st June 2014 under POCA (MLP) Regulations includes the requirement that attorneys comply with CDD obligations before taking any step in existing or ongoing transactions. Regulation 7 (1) (c) of POCA (MLP) Regulations requires that customer information should be updated periodically at least every 7 years during the course of the business relationship or at more frequent intervals as warranted by the risk profile the business relationship and whenever there is doubt about the veracity or adequacy of previously obtained customer information. Further, Regulation 7 (1) (d) stipulates that where the customer information is not updated, the business relationship in question shall not proceed any further and the regulated business shall make an assessment as to whether any disclosure is required under section 94 of POCA.

POCA (MLP) Regulations Regulation 19 (3) specifies that nothing in the Regulations requires a regulated business to obtain information about a transaction prior to 29th March 2007. Although the date that is set out in Regulation 19 (3) of POCA (MLP) Regulations is 29th March 2007, the DNFI Order specifies the effective date as being 1st June 2014 and the latter date is to be read into the Regulations as applicable to attorneys.

The attorney must therefore assess the adequacy of the client information on file and update same where that is necessary to comply with POCA (MLP) Regulations. This means that where the attorney is acting in a transaction that has not been concluded by 1st June 2014, if the attorney has not previously carried out appropriate CDD and risk assessment, the attorney should take no further step until that is done. Further if some form of CDD was carried out but all requisite information was not obtained or is in need of being updated, no step in an ongoing transaction can be taken until the information is obtained. Where there is doubt as to the veracity of that information, before taking any step in the transaction, the attorney should consider the filing of a STR.

In summary, while the obligations upon an attorney as a DNFI do not take effect prior to 1st June 2014, from that date before taking any further step in a transaction commenced before that date, the attorney must ensure compliance with CDD requirements and where warranted by risk assessment, the filing of a STR. Until CDD requirements are satisfied, the attorney should take no step in the transaction.

20. SYSTEMS, POLICIES AND PROCEDURES

Regulation 5 of the POCA (MLP) Regulations requires that a regulated business establish and implement programmes, policies, procedures and controls as may be necessary for the purposes of preventing or detecting money laundering and requires the regulated business to consult with the Competent Authority for the purpose of carrying out its functions under the POCA (MLP) Regulations.

In respect of policies and procedures, where an attorney does not have any prepared policies and procedures for preventing or detecting money laundering, the attorney is at liberty to adopt this Guidance as the basic policies and procedures for the attorney's regulated business activity. The attorney must, however, as required by the demands of his business, supplement the Guidance in writing to maintain effective AML/CFT measures. Staff must be familiarised and receive ongoing training in respect of such AML/CFT measures and a copy of the measures must be kept with the Guidance accessible to attorneys and staff.

21. EXAMPLES OF MONEY LAUNDERING TYPOLOGIES OR RED FLAGS

It should be noted that the obligation to file an STR is not limited to reasonable suspicion aroused by a client but also where suspicion relates to the any other party irrespective of whether the attorney acts for that party. Typical indicators that ought to raise red flags, leading the attorney to make further inquiries and investigations to consider the filing of an STR can be seen from typologies issued by the FATF and some red flag indicators are summarised below. These indicators are by no means intended to be exhaustive.

21.1 EXAMPLES OF SOME RED FLAG INDICATORS IN CDD

(a) client fails to provide satisfactory information about himself or the transaction;

(b) client is an agent or intermediary for other persons or entities that cannot or will not provide satisfactory CDD information;

(c) client or other party involved in the transaction has a criminal record or is known to be under investigation;

(d) client or other party to transaction have known connections to criminals;

(e) client or other party wishes to effect transaction in false name or provides false information;

(f) intermediary requests attorney to act for others who avoid contact with the attorney;

(g) client is overly secretive about purpose or details of the transaction; or

(h) client or other party holds or has held public employment or is the relative of a person holding public employment and engages in an unusual private transaction.

21.2 **EXAMPLES OF SOME RED FLAG INDICATORS IN MISUSE OF CLIENT FUNDS**

(a) transfer of funds into and out of the client's account without requiring legal services from the attorney;

(b) structuring payments in a transaction to avoid the threshold reporting requirements;

(c) aborting transaction whereby funds paid into a client account on behalf of one person are then paid out to third parties when the transaction is aborted;

(d) client with no underlying legal work using client account;

(e) funds sent out of jurisdiction with no adequate or plausible explanation;

(f) third party funding client account with no adequate or commercial reason; or

(g) unusual level of funds passing in and out of client account.

21.3 **SOME RED FLAG INDICATORS IN TRANSACTIONS INVOLVING PURCHASES OF PROPERTY**

(a) purchase in a false name;

(b) transaction inexplicably involves disproportionate injection of private funding/cash;

(c) transaction contains unusual terms such as a term requiring payment of full price before conclusion of transaction;

(d) attorney requested to act for multiple parties without meeting them and/or without all CDD information provided;

(e) funding provided by third parties without legitimate or economic reason;

(f) property transferred by back to back transactions; or

(g) using the vehicle of a company or trust or multiple entities to obscure true ownership.

21.4 **SOME RED FLAG INDICATORS INVOLVING THE CREATION/MANAGEMENT OF COMPANIES OR TRUSTS**

(a) creating company or trust to disguise the real owner or the person with the controlling interest;

(b) use of an intermediary without legitimate or economic reason;

(c) creation of complicated ownership structures without legitimate or economic reason;

(d) creation of shell companies to obscure ownership;

(e) creation of corporate entities in other jurisdictions to receive funds or property without legitimate or economic reason;

(f) creation of complicated ownership structures when there is no legitimate or economic reason; or

(g) company making payments to third party without legitimate or economic reason to do so.

21.5 **SOME RED FLAG INDICATORS IN THE MANAGEMENT OF CLIENTS' AFFAIRS**

(a) client requires introduction to FI to secure banking facilities;

(b) attorney requested to act as nominee for client without disclosing identity of true owner;

(c) attorney requested to open bank account for client to disguise true owner.

(d) private expenditure of client funded by a company or government without evidence of due authorisation;

(e) transaction channels public funds or assets to privately held account or privately owned company; or

(f) client is a public official or family member engaging in an unusual private transaction.

22. WHO DO YOU CONTACT?

The following contact addresses are to be noted:

(a) The FID - To make a disclosure (STR).

The Designated Authority
The Chief Technical Director
Financial Investigations Division,
Ministry of Finance & Planning,
1 Shalimar Avenue,
Kingston 3.

Telephone 876 938 1331
Email: justin.felice@fid.gov.jm

For more information please refer to the FID's reporting requirements advisory available at website:

http://www.fid.gov.jm

(b) The Competent Authority

General Legal Council
Manager Investigations Division
78 Harbour Street
Kingston
Email: manager.investdiv@generallegalcouncil.org**Telephone:** 876 922 2319
Fax: 876 948 5824

CHAPTER 3: MONEY LAUNDERING OFFENCES

23. MONEY LAUNDERING OFFENCES

23.1 APPLICATION OF LAW

The relevant sections of POCA are sections 92, 93, 98, 99 and 100. The money laundering offences are of general application and apply to all attorneys-at-law.

Money laundering offences assume that a criminal offence has occurred in order to generate the criminal property which is now being laundered. This is sometimes referred to as a predicate offence. No conviction for the predicate offence is necessary for a person to be prosecuted for a money laundering offence.

The scope of the money laundering offence extends to the proceeds of all crimes to cover any property that is derived from unlawful conduct. It covers the earnings of crime committed in Jamaica as well as illicit wealth generated in another jurisdiction but laundered here.

23.2 CRIMINAL PROPERTY

Under POCA, the laundered proceeds must be proven to be criminal property, as that term is defined in section 91 of POCA, that is, the property constitutes or represents a person's benefit from criminal conduct.

23.3 CRIMINAL CONDUCT

"Criminal conduct" for POCA is all conduct which would constitute an offence in Jamaica. It covers offences which are committed in Jamaica as well as conduct which occurs abroad and which would constitute an offence if it occurred in Jamaica.

23.4 *ACTUS REUS*

Under sections 92 and 93 of POCA the money laundering offences may be committed in a number of ways including:

(a) engaging in a transaction that involves criminal property;

(b) concealing, disguising, disposing of or bringing criminal property into Jamaica (concealing or disguising criminal property includes concealing or disguising its

nature, source, location, disposition, movement, ownership or any rights connected with it);

(c) converting, transferring or removing criminal property from Jamaica;

(d) acquiring, possessing or using criminal property; Possession means having physical custody of criminal property; or

(e) entering into an arrangement to facilitate another person's acquisition, retention, use or control of criminal property.

To enter into an arrangement is to become a party to it. To become concerned in an arrangement suggests a wider practical involvement such as taking steps to put the arrangement into effect. The arrangement must exist and have practical effects relating to the acquisition, retention, use or control of property. The test is whether the arrangement does in fact have the effect of facilitating the acquisition, retention, use or control of criminal property by or on behalf of another person. However, this would not affect the ordinary conduct of litigation by legal professionals, including any step taken in litigation, from the issue of proceedings and the securing of injunctive relief up to final judgment[11].

23.5 ***MENS REA***

The *mens rea* or mental element required for the money laundering offence is either:

(a) knowing; or

(b) having reasonable grounds to believe;

that the property is criminal property.

The first limb relates to actual knowledge. It would also cover a situation where a person has been wilfully blind, in that he has deliberately turned his eyes away from the obvious truth or "refrained from enquiry because he suspected the truth but did not want to have his suspicions confirmed".[12]

The second limb involves a two-tiered test with both a subjective and an objective component. First, it must be shown that the defendant had an actual belief.

[11] *Bowman v Fels [2005] EWCA Civ 226;[2005] 4 All ER 609*
[12] *Westminster City Council v. Croyalgrange Ltd. [1986] 83 Cr. App. R. 155; [1986] 2All ER 353*

The concept of belief is essentially something short of knowledge; it is the state of mind of someone who is not certain that the property is illicit but who says to himself that there is no other reasonable conclusion in the circumstances.

The other aspect of this test is reasonableness, in that it must also be shown that the grounds on which the defendant acted must have been sufficient to induce in a reasonable person the requisite belief.

If an attorney thinks a transaction is suspicious, he is not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. He may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. He does not have to have evidence that money laundering is taking place to have suspicion or grounds on which to form a reasonable belief that the transaction involves the proceeds of crime.

A number of standard warning signs may give cause for concern; however, whether one has a belief or knowledge is a matter for his/her own judgement. To help form that judgement, consider talking through the issues with the Nominated Officer or taking legal advice from another attorney. If an attorney has not yet formed a belief but simply has cause for concern, he may choose to ask the client or others more questions. This choice depends on what the attorney already knows, and how easy it is to make enquiries, without breaching the attorney's duties of confidentiality or tipping-off the client.

Actual knowledge or suspicion that there was criminal conduct of some kind involved is an essential element of the offence[13]. It was not enough to show that she ought to have realised that some crime, such as theft or obtaining by deception, might well have been involved. Knowledge or suspicion that to receive the money…would be irregular, in the sense of a breach of trust, is not automatically the same as knowledge or suspicion that a crime is involved."[14]

[13] In *Holt v. AG* [2014] UKPC 4 it was held that is necessary for the prosecution to prove that the defendant advocate "had applied her mind to the circumstances in which the money had been produced.
[14] Ibid *Holt*

23.6 STATUTORY DEFENCES

The following are defences provided by POCA, where:

(a) an attorney-at-law receives *bona fide* fees for legal representation ("attorney fee defence"). However, this would not cover the situation where the attorney enters into an arrangement with the client to facilitate another attorney's receipt of fees;[15]

(b) acquiring, using or possessing property *bona fide* and without notice that it is criminal property ("*bona fide* defence"). In relation to this offence, an indicator of *bona fides* is where a person provides adequate consideration for the criminal property. The defence is more likely to cover situations where:

(1) a third party seeks to enforce an arm's length debt and, unknown to them, is given criminal property in payment for that debt; or

(2) a person provides goods or services as part of a legitimate arms length transaction but unknown to them is paid from a bank account which contains the proceeds of crime;

(c) prior disclosure of suspicions to the authorities in the manner prescribed by POCA and receipt of the appropriate consent to act ("the consent defence"). The attorney or firm must seek consent from the FID before proceeding with a transaction that gives rise to a money laundering concern; and

(d) subsequent disclosure of knowledge or belief where a reasonable excuse for failing to make prior disclosure exists and the disclosure is made on one's own initiative and as soon as is reasonably practicable after doing the prohibited act ("the reasonable excuse defence").

Under sections 91 and 99 of POCA, a Nominated Officer can only give an appropriate consent to act where he has made a disclosure to the FID and any of the following situations exist:

(1) he receives consent from the FID to proceed with the transaction;

[15] Ibid *Holt*

(2) seven (7) working days have elapsed since he made the disclosure and refusal of consent has not been given; or

(3) refusal of consent has been given but a further ten (10) days have elapsed since receipt of such notice.

During the initial seven (7) working days or subsequent ten (10) day period, as the case might be, a person would be acting illegally by dealing with the funds/property forming the subject-matter of the disclosure.

The POCA recognises the serious implications of this waiting period and therefore section 99(4) authorises the FID to give an initial verbal response of consent or refusal to act. The FID must, however, provide a written form of the notice to the Nominated Officer within five (5) days after giving the verbal notice.

Whilst awaiting consent, an attorney or law firm can tell its client that it is carrying out required due diligence checks and procedures to comply with all applicable laws and internal procedures. It may be useful for attorneys to make clients aware, in their retainer letter, that transactions may sometimes be delayed or refused because of their obligations under the governing statutes. This would provide an explanation for the delay in processing a transaction without violating the tipping-off provisions.

23.7 **AUTHORISED DISCLOSURES**

Section 100 of POCA authorises a person to make a disclosure regarding knowledge or belief of money laundering as a defence to the principal money laundering offences. It specifically provides that an authorised disclosure must be in the prescribed form and can be made either:

(a) before the money laundering activity has occurred; and

(b) after the money laundering activity has occurred, but the person had a reasonable excuse for not disclosing before and he makes the disclosure on his own initiative and as soon as is reasonably practicable for him to make the disclosure.

If a disclosure is authorised, it does not breach any rule which would otherwise restrict it, such as Canon IV (t) of the Legal Profession (Canons of Professional Ethics) Rules, relating to client confidentiality.

In the case of a firm, the disclosure should first be made to the Nominated Officer. The Nominated Officer will consider the disclosure and decide whether to make an external disclosure to the FID.

If there is no Nominated Officer, such as in the case of a sole practitioner, the disclosure should be made directly to the FID.

23.8 THE CONSENT REGIME

It is not open to an attorney to choose whether to report before or report after the event. Where a client instruction is received prior to a transaction or activity taking place, or arrangements being put in place, and there are grounds for knowledge or belief that the transaction or the property involved, may relate to money laundering, a report must be made to the FID, in the prescribed form, and consent sought to proceed with that transaction or activity. In such circumstances, it is an offence for a Nominated Officer to consent to a transaction or activity going ahead within the seven (7) day notice period, from the working day following the date of disclosure, unless the FID gives consent. Where urgent consent is required, use may be made of the process for an oral consent but a formal request for consent must still be made in the prescribed form.

Where a member of staff, including an attorney or the Nominated Officer intends to make a report, but delays doing so, POCA provides a defence where there is a reasonable excuse for not making the report. However, it should be noted that what amounts to a reasonable excuse is untested by case law and would need to be considered on a case-by-case basis.

In the event that the FID does not refuse consent within seven (7) working days following the working day after the disclosure is made, the attorney or firm may process the transaction or activity, subject to normal commercial considerations. If, however, consent is refused within that period, a restraint order must be obtained by the authorities within a further ten (10) calendar days (the moratorium period) from the day consent is refused, if they wish to prevent the transaction going ahead after that date. In cases where consent is refused, one cannot inform the client of this and the FID may be consulted to establish what information can be provided to the client.

Consent from the FID, or where ten (10) working days have elapsed following the refusal of consent, deemed consent provides the person handling the transaction or carrying out the activity, or the Nominated Officer of the reporting firm, with a defence against a possible later charge of laundering the proceeds of crime in respect of that transaction or activity if it proceeds.

In order to provide a defence against future prosecution for failing to report, the reasons for any conscious decision not to report should be documented, or recorded electronically. An appropriate report should be made as soon as is practicable after the event, including full details of the transaction, the circumstances precluding advance notice and details as to where any money or assets were transferred.

23.9 SANCTIONS

The penalties for money laundering are severe. If convicted in a RM court, a person may be liable to a fine of up to three million dollars ($3,000,000.00) and/or a five (5) year sentence, or in the case of a company, a fine of up to five million dollars ($5,000,000.00). If convicted before the Circuit Court the penalty is a fine and/or imprisonment for up to 20 years or, in the case of a company, a fine to be determined by the court.

CHAPTER 4: REPORTING OBLIGATIONS

24. REPORTING OBLIGATIONS UNDER POCA

24.1 CORE OBLIGATIONS

The core reporting obligations arise out of sections 91(2), 94, 95, 98, 99, 100 and 137 of POCA.

All persons in firms in the regulated sector must make an internal report where they have knowledge or belief, or where there are reasonable grounds for having knowledge or belief, that another person has engaged in money laundering.

The firm's Nominated Officer must consider all internal reports and ensure compliance with AML/CFT reporting requirements.

The firm's Nominated Officer must make an external report to the FID as soon as is practicable if he considers that there is knowledge or belief, or reasonable grounds for knowledge or belief, that another person has engaged in money laundering.

24.2 REGULATED SECTOR OBLIGATIONS

Persons in the regulated sector are required to make a report in respect of information that comes to them within the course of a business in the regulated sector where they:

(a) know;

(b) believe; or

(c) have reasonable grounds for knowing or believing,

that a person has engaged in a transaction that could constitute or be related to money laundering. This report is known as a STR.

In order to provide a framework within which STRs may be raised and considered the following is recommended:

(1) each firm must ensure that members of staff report to the firm's Nominated Officer where they have grounds for knowledge or belief that a client or other person has engaged in a money laundering transaction;

(2) the firm's Nominated Officer must consider each report and determine whether it gives reasonable grounds for knowledge or belief;

(3) firms should ensure that staff are appropriately trained in their obligations and in the requirements for making reports to their Nominated Officer; and

(4) if the Nominated Officer determines that a report does give rise to grounds for knowledge or belief, he must report the matter to the FID. Under POCA, the Nominated Officer is required to make a report to the FID as soon as is practicable, but no later than 15 days after receiving the report, if he has grounds for knowing or believing that another person, whether or not a client, is engaged in a money laundering transaction.

A sole practitioner who knows or believes, or where there are reasonable grounds to know or believe, that a client of his, or another person, has been engaged in a transaction that could constitute or be related to money laundering must promptly make a report, in the prescribed form, to the FID within fifteen (15) days after the information or other matter came to his attention.

In order to fulfil these obligations, persons in the regulated sector should:

(1) pay attention to all complex, large or unusual transactions or patterns of transactions in order to determine if the transactions appear to be inconsistent with the transactions carried out with that firm by that client or other person; and

(2) pay special attention to all business relationships and transactions with any customer resident or domiciled in a territory specified in a list of applicable territories published in the Gazette by a Supervisory Authority.

24.3 DEFINING KNOWLEDGE

Having knowledge means actually knowing something to be true. In a criminal court, it must be proved that the individual in fact knew that a person was engaged in money laundering. Knowledge can be inferred from the surrounding circumstances; so, for example, a failure to ask obvious questions may be relied upon by a jury to imply knowledge.

It would therefore cover a situation where a person has been wilfully blind, in that he has deliberately turned his eyes away from the obvious truth or "refrained from enquiry because he suspected the truth but did not want to have his suspicions confirmed"[16] The knowledge must, however, have come to the firm (or to employee or the member of staff) in the course of business or, in the case of a Nominated Officer, as a consequence of a disclosure to him under section 94 of POCA.

Information that comes to the firm or staff member in other circumstances does not come within the scope of the regulated sector obligation to make a report.

24.4 DEFINING REASONABLE GROUNDS FOR BELIEF

This involves a two-tiered test with both a subjective and an objective component. First, it must be shown that the person had an actual belief. The concept of belief is essentially something short of knowledge; it is the state of mind of someone who is not certain that the property is illicit but who says to himself that there is no other reasonable conclusion in the circumstances.

The other aspect of this test is reasonableness, in that it must also be shown that the grounds on which the person acted must have been sufficient to induce in a reasonable person the requisite belief.

24.5 UNUSUAL TRANSACTION

A transaction which appears unusual is not necessarily suspicious. Clients with a stable and predictable transaction profile will have periodic transactions that are unusual for them. Many clients will, for perfectly good reasons, have an erratic pattern of transactions or account activity. The unusual is, in the first instance, only a basis for further enquiry, which may in turn require judgement as to whether it raises reasonable grounds for believing that the transaction involves the proceeds of crime. A suspicious transaction will often be one which is inconsistent with the customer's known legitimate business or source of funds. If a transaction or activity does not produce a money laundering concern at the

[16] *Westminster City Council v. Croyalgrange ibid at footnote 11*

time it is conducted, but reasonable grounds for believing this are raised later, an obligation to report would then arise under section 94 of POCA.

Depending on the circumstances, where a firm is served with a court order in relation to a client this may give rise to reasonable grounds for belief in relation to that client. In such an event, the firm should review the information it holds about that client across the firm, in order to determine whether or not such grounds exist.

24.6 INTERNAL REPORTING

The obligation to report to the Nominated Officer within the firm where they have grounds for knowledge or belief of money laundering is placed on all employees in the regulated sector. The report must be made as soon as is reasonably practicable but no later than 15 days after discovery of the transaction giving rise to the money laundering concern.

All firms need to ensure that all employees know the person to whom they should report their knowledge or belief.

Firms may wish to set up internal systems that allow staff to consult with their supervising partner before sending a report to the Nominated Office. The obligation under POCA is to report "as soon as is reasonably practicable" and, in any event, within fifteen (15) days and so any such consultations should take this timeframe into account. Where a firm sets up such systems it should ensure that they are not used to prevent reports reaching the Nominated Officer whenever a member of staff has stated that they have knowledge or belief that a transaction or activity may involve money laundering.

24.7 THE NOMINATED OFFICER

The firm's Nominated Officer must consider each report and determine whether it gives rise to knowledge or belief, or reasonable grounds for knowledge or belief. The firm must permit the Nominated Officer to have access to any information, including 'know your client' information, in the firm's possession which could be relevant. The Nominated Officer may also require further information to be obtained, from the client, if necessary, or from an intermediary who introduced the client to the firm. Any approach to the client or to the intermediary should be made sensitively, and probably by someone other than the Nominated Officer, to minimise the risk of alerting the client or an intermediary that a disclosure to the FID is being considered. Such an alert may constitute tipping-off.

Short or direct reporting lines, with a minimum number of people between the person with the knowledge or belief and the Nominated Officer, will ensure speed, confidentiality and swift access to the Nominated Officer.

If the Nominated Officer decides not to make a report to the FID, the reasons for not doing so should be clearly documented, or recorded electronically, and retained with the internal report.

24.8 DEFENCES TO OFFENCES OF FAILURE TO DISCLOSE

There are three situations in which a person would not have committed an offence for failing to disclose:

(a) he has a reasonable excuse for not making the disclosure;

(b) he is an attorney and the information came to him in privileged circumstances; and

(c) he lacked the knowledge or suspicion of money laundering in circumstances where he did not receive the relevant compliance training from his employer.

The first situation is the only defence which applies to all failure to disclose offences.

24.9 PRIVILEGED CIRCUMSTANCES

No offence is committed if the information or other matter giving rise to knowledge or belief comes to an attorney in privileged circumstances.

Privileged circumstances means information communicated:

(a) by a client, or a representative of a client, in connection with the giving of legal advice to the client;

(b) by a client, or by a representative of a client, seeking legal advice from the attorney; or

(c) by a person in connection with legal proceedings or contemplated legal proceedings.

However, this exemption will not apply if information is communicated or given to the attorney with the intention of furthering a criminal purpose.

24.10 EXTERNAL REPORTING

The firm's Nominated Officer must report to the FID any transaction or activity that, after his evaluation, he knows or believes, or has reasonable grounds to know or believe, may be linked to a money laundering transaction. Such reports must be made as soon as is reasonably practicable and no more than fifteen (15) days after the information comes to him.

24.11 OFFENCE BY NOMINATED OFFICER AND SANCTIONS

A Nominated Officer in the regulated sector commits a separate offence if, as a result of an internal disclosure under section 94 of POCA, he knows or believes, or has reasonable grounds for knowing or believing, that another person is engaged in money laundering and he fails to disclose this information to the FID within fifteen (15) days after receipt of the internal disclosure.

The penalty on conviction before a Resident Magistrate is a fine not exceeding one million dollars ($1,000,000.00) and/or imprisonment for a term not exceeding twelve (12) months. The penalty on conviction before the Circuit Court is a fine and/or imprisonment for a term not exceeding ten (10) years.

24.12 FORM OF THE REPORT

The report should be in the form prescribed by the Minister of National Security under POCA.

24.13 WHERE AND HOW TO SEND REPORT

The national reception point for disclosure of knowledge or belief of money laundering activity, and for seeking consent to continue to proceed with a transaction or activity, is the FID.

Reports must be sent in sealed envelopes/packages stamped "confidential" and addressed to:

The Designated Authority
The Chief Technical Director
Financial Investigations Division
1 Shalimar Avenue
Kingston 3

Failure to ensure that packages or letters are properly addressed may result in unauthorised disclosures.

24.14 "SAFE HARBOUR" PROVISIONS AND EXEMPTION FROM LIABILITY

Sections 100(2), 100(6) and 137 of POCA provide "safe harbour" exemptions for persons who act in compliance with POCA. Consequently, where an attorney makes a disclosure or submits a report in accordance with POCA, that attorney would be exempt from liability for breach of any obligation of confidentiality that may otherwise occur as a result of the disclosure of such information. This would include exemption from liability for professional misconduct under the Legal Profession (Canons of Professional Ethics) Rules.

Further, where a person carries out an obligation under POCA, in good faith, that person enjoys immunity from any action, suit or other proceeding being brought against him in relation to that act or omission.

24.15 FACTORS THAT MAY AROUSE A MONEY LAUNDERING CONCERN

Money launderers are always developing new techniques, so no list of examples can ever be exhaustive. However, these are some key factors which may heighten a client's risk profile or give one cause for concern and prompt further enquiries:

(a) an excessively obstructive or secretive client;

(b) unusual instructions that is instructions that are unusual in themselves, or that are unusual for the firm or the client;

(c) instructions or cases that change unexpectedly might be suspicious, especially if there seems to be no logical reason for the changes;

(d) a client deposits funds into the attorney's client account but then ends the relationship for no apparent reason;

(e) a client tells the attorney that funds are coming from one source and at the last minute the source changes;

(f) complex or unusually large transactions for that client;

(g) unusual patterns of transactions which have no apparent economic purpose;

(h) buying and selling property with no discernible reason or in circumstances which appear unusual;

(i) large cash transactions;

(j) structuring cash transactions;

(k) if the client is based far away from the attorney's offices, the attorney should consider why he has been instructed, if the reason is not readily apparent; or

(l) if the client or funds are from a "high risk" category such as a jurisdiction where the production of drugs, drug trafficking, terrorism or corruption is prevalent.

It is not unusual for a transactional matter to seem legitimate early in the retainer, but to develop in such a way as to arouse concern later on. It may be that certain steps have already taken place which the attorney now believe facilitated money laundering, while further steps are yet to be taken which the attorney also believe will facilitate further money laundering. The attorney should make a disclosure, of his own initiative, as soon as is reasonably practicable after he first knows or believes that criminal property is involved in the retainer.

An attorney should also make a disclosure seeking consent for the rest of the transaction to proceed, while fully documenting the reasons why he came to know or believe that criminal property was involved and why he did not believe this to be the case initially.

It should be noted that these reporting requirements are not meant to transform attorneys into the police or financial investigators. The requirements are also not meant for attorneys to place themselves in harm's way but merely requires vigilance in ensuring that transactions undertaken are genuine and do not assist in furthering or facilitating a financial crime such as money laundering.

CHAPTER 5: TIPPING OFF OFFENCES

25. THE TIPPING OFF OFFENCES UNDER POCA

In an attempt to prevent an investigation from being jeopardized by unauthorized disclosures, POCA makes it an offence for a person to disclose information that is likely to prejudice an investigation in certain specified circumstances. The relevant sections are sections 97 and 98 of POCA.

25.1 TWO TYPES OF TIPPING-OFF OFFENCES

25.1.1 THE OFFENCE OF DISCLOSING A PROTECTED OR AUTHORISED DISCLOSURE

Under section 97(1) of POCA it is an offence to disclose that a disclosure has been made by any person to a Nominated Officer, the FID or an authorised officer including a constable or customs officer, if that disclosure is likely to prejudice any investigation that might be carried out as a result of the protected or authorised disclosure. This offence can only be committed:

(1) after a protected or authorised disclosure has been made to the Nominated Officer , the FID or an authorised officer; and

(2) if the person knows or believes that by disclosing this information it is likely to prejudice any investigation related to the initial disclosure.

It is not an offence if at the time of making the disclosure the person did not know or suspect that the disclosure was likely to be prejudicial to the investigation.

25.1.2 THE OFFENCE OF DISCLOSING AN INVESTIGATION

It is an offence where a person knows, or has reasonable grounds to believe, that the Enforcing Authority is acting or proposing to act in connection with an existing or imminent money laundering investigation, and he makes a disclosure of information relating to the investigation to any other person.

25.2 SANCTIONS

If convicted by a Resident Magistrate's court, a person could be fined up to one million dollars ($1,000,000.00) and/or sentenced to up to one (1) year imprisonment. A conviction in the Circuit Court could attract a fine or up to ten (10) years imprisonment.

25.3 DEFENCES TO THE OFFENCE OF TIPPING OFF

A person would not be liable for the tipping off offences where:

(a) the disclosure is made in carrying out a function that the person has in relation to the enforcement of POCA or other law relating to criminal conduct or benefit from criminal conduct;

(b) the disclosure is made to an attorney for the purpose of obtaining legal advice;

(c) the disclosure is made to the Competent Authority; or

(d) the disclosure is made to a client or client's representative in connection with the giving of legal advice to that client, or to any person in connection with existing or contemplated legal proceedings, unless the disclosure is made with the intention of furthering a criminal purpose.

25.4 CONSEQUENCES OF THE TIPPING-OFF OFFENCES

In practical terms the tipping-off offence means that an attorney cannot:

(a) at the time, tell a client that a transaction is being delayed because a report is awaiting consent from the FID; or

(b) later, (unless the FID agrees, or a court order is obtained permitting disclosure) tell a client that a transaction or activity was delayed because a report had been made under POCA; or

(c) tell the client that law enforcement is conducting an investigation.

However, there is nothing in POCA which prevents an attorney from making normal enquiries about a client's instructions, and the proposed retainer, in order to remove, if possible, any concerns and to enable the firm to decide whether to take on or continue the retainer.

It is not tipping-off to include a paragraph about one's obligations under the POCA in the attorney's letter of engagement or to inform the client in general terms of the attorney's legal obligations under POCA.

26. THE OFFENCE OF PREJUDICING AN INVESTIGATION

26.1 THE OFFENCE

A person commits an offence where he knows or has reasonable grounds to believe that an appropriate officer is acting or proposing to act in connection with a forfeiture, civil recovery or money laundering investigation and he:

(a) makes a disclosure that is likely to prejudice that investigation;

(b) falsifies, conceals, destroys or otherwise disposes of documents relevant to the investigation; or

(c) causes or permits the falsification, concealment, destruction or disposal of such documents.[17]

26.2 DEFENCES

A person does not commit an offence if:

(a) he does not know or have reasonable grounds to believe that the disclosure is likely to prejudice the investigation; or

(b) the disclosure is made in exercise of a function under POCA or other law.

An attorney does not commit an offence if the disclosure is made:

(a) to a client, or a representative of a client, in connection with the giving of legal advice by the attorney to the client; or

(b) to any person in connection with legal proceedings or contemplated legal proceedings.

However, this exemption will not apply if information is communicated or given to the attorney with the intention of furthering a criminal purpose.

A person does not commit an offence if:

(a) he does not know or suspect that the documents are relevant to the investigation; or

[17] Section 104 POCA

(b) he does not intend to conceal any facts from an appropriate officer.

26.3 **SANCTIONS**

If convicted by the RM the defendant is liable to a fine not exceeding one million dollars ($1,000,000.00) and/or imprisonment for up to one (1) year. If convicted before a Circuit Court the penalty is a fine and/or imprisonment for up to ten (10) years.

CHAPTER 6: NOMINATED OFFICER OBLIGATIONS

27. THE NOMINATED OFFICER REQUIREMENT

Regulation 5(3) of the POCA (MLP) Regulations stipulates *inter alia* that a regulated business shall nominate an officer of the business who performs management functions to be responsible for ensuring the implementation of the programmes, policies, procedures and controls required by Regulation 5 for preventing and detecting money laundering including the reporting of transactions referred to in sections 94 or 95 of POCA.

Regulation 15 of the POCA (MLP) Regulations stipulates that internal reporting procedures maintained by a regulated business shall include provisions for:

(a) identifying a Nominated Officer, to whom a report is to be made of any information or other matter which comes to the attention of the person handling the relevant financial business and in whose opinion gives rise to some knowledge or suspicion, that another person is engaged in money laundering;

(b) that such report be considered in the light of all other relevant information by the Nominated Officer, or by another person acting on behalf of the Nominated Officer, for the purpose of determining whether or not the information or other matter contained in the report gives rise to such knowledge or suspicion;

(c) the Nominated Officer/person acting on his behalf to have reasonable access to other information that may be of assistance to him and is available to the regulated business; and

(d) the Nominated Officer/person acting on his behalf to report as required under section 95 of POCA.

The Nominated Officer should also be the person who receives "authorised disclosure[s]" in respect of sections 92 and 93 of POCA and seeks "appropriate consent" to act from the Designated Authority**.**

The Nominated Officer should also have responsibility for monitoring AML/CFT programmes, policies, procedures and controls and ensuring that reporting requirements to the Designated Authority are fulfilled in accordance with the relevant statutes, regulations, guidance from Competent Authority and the policies and procedures of the attorney-at- law .

28. CHOOSING THE NOMINATED OFFICER

The Nominated Officer, being a person at management level, should have sufficient seniority to facilitate the making of requisite decisions, and have access to the information that will inform these decisions. Decisions of the Nominated Officer can impact the clients and the Attorney's exposure to civil, criminal, regulatory and disciplinary sanctions. The size and nature of the firm will have an impact on the qualities and qualifications of Nominated Officer. The Nominated Officer should however be independent of the audit function.

All firms must put in place, suitable arrangements for "cover", when the Nominated Officer is absent.

Larger firms may wish to consider the formation of a Compliance Committee comprised of appropriate persons, to which the Nominated Officer may report on a periodic basis and which may provide guidance to the Nominated Officer on matters covered by this Guidance.

A sole practitioner who does not nominate a person who performs management functions to be the Nominated Officer, must himself carry out the function of the Nominated Officer. So far as practicable the following paragraphs therefore apply to the sole practitioner who carries out the function of the Nominated Officer.

Firms or attorneys that operate within a group, or that have several offices or branches, should appoint a Nominated Officer with responsibility for the group/offices/branches.

28.1 THE ROLE AND RESPONSIBILITIES OF THE NOMINATED OFFICER

The role and responsibilities of the Nominated Officer should at a minimum include:

(a) development and implementation of programmes, policies, procedures and controls including:

(1) preparing and updating policies and procedures and disseminating information to relevant persons;

(2) assisting in implementing compliance programmes;

(3) ensuring that the compliance programme complies with applicable laws, regulations, guidance from the Competent Authority and the AML/CFT policies of the firm;

(4) ensuring that a risk profile (i.e. formal assessment of level of risk of money laundering) is established for business relationships and one-off transactions and a determination made of which are high risk;

(5) establishing procedures to assess the risk of money laundering arising from business/client relationships, products and business practices (new or existing) and developing technologies applied/used in respect of same;

(6) ensuring that special attention is paid to all business relationships and transactions with anyone resident domiciled in a territory specified in a list of applicable territories, published by notice in the Gazette by a Supervisory Authority;

(7) ensuring that the firm's enhanced due diligence procedures are appropriate;

(8) providing assistance to staff on AML/CFT issues that may arise in respect of new clients and business relationships;

(9) responding to internal and external enquiries in respect of the AML/CFT policies and procedures of the firm;

(10) ensuring implementation and observation of the internal controls and procedures;

(11) co-ordinating of an annual audit of the AML/CFT programme;

(12) ensuring that recommendations from any examination by the Competent Authority and internal/external audit are promptly reported to the relevant internal body for review and are approved and implemented;

(13) co-ordinating with relevant persons e.g. on AML matters and investigations; and

(14) acting as a liaison between the firm, the Competent Authority, and law enforcement agencies, with respect to compliance matters and investigations.

(b) ensuring training of attorneys and employees including:

(1) the establishment of on-going training in respect of AML/CFT matters and the policies of the firm in respect thereof, and maintaining and reviewing records evidencing such training;

(2) that new attorneys and employees receive appropriate training in respect of AML/CFT immediately upon assuming employment; and

(3) advising in respect of proposed or impending changes to AML/CFT laws, regulations or regulatory guidance.

(c) reporting including:

(1) seeking the consent of the Designated Authority in respect of transactions in accordance with the requirements of POCA and the POCA (MLP) Regulations;

(2) receiving and evaluating disclosures STR's in respect of suspected money laundering and ensuring timely filing of reports in respect thereof, with the Designated Authority;

(3) providing advice and guidance to attorneys and employees on the identification of suspicious transactions;

(4) maintaining files or copies of STR's submitted to the Designated Authority in accordance with relevant laws, regulations, regulatory guidance and the policy of the firm;

(5) providing reports on a regular periodic basis to the partners/other relevant persons within the firm, on AML/CFT issues; and

(6) preparing and submitting, at least on an annual basis, of a comprehensive report to the partners/relevant persons within the firm, in respect of the effectiveness of the AML/CFT framework of the firm.

(d) monitoring, including:

(1) ensuring that record retention requirements and due diligence requirements are in keeping with AML/CFT laws, regulations and regulatory guidelines;

(2) conducting periodic reviews where a STR has been filed and making recommendations to the partners/relevant persons within the firm regarding the termination of client or other business relationships and for the refusal to undertake new business from clients/other persons;

(3) ensuring periodic checks in respect of new clients/client databases against relevant government listings of sanctioned persons/entities and other terrorist watch lists, are performed to ensure that the firm does not/has not entered into relationships with known/suspected terrorists;

(4) escalating matters of concern to the partners/other relevant persons within the firm; and

(5) ensuring that enhanced monitoring is undertaken as required by the law, regulations or regulatory guidance, including but not limited to enhanced monitoring for high risk persons.

28.2 THE NOMINATED OFFICER'S REPORT

The Nominated Officer's report should at a minimum include details of:

(1) the firm's compliance with relevant statutes, regulations and guidance from the Competent Authority;

(2) number and frequency of required disclosures (suspicious transactions) detected and reported to the Designated Authority;

(3) any trends observed from a review of transactions detected and reported (e.g. trends in relation to specific types of business/geographic areas);

(4) compliance in relation to customer due diligence standards as set out in any guidance from the Competent Authority as well as the policies of the firm;

(5) the success/level of compliance in updating the customer records for pre-existing customers;

(6) the findings of any/the annual AML/CFT audits undertaken by (external and internal) auditors, and findings emanating from reviews/examinations

of the Competent Authority as well as steps taken to effectively address AML/CFT weaknesses detected;

(7) effectiveness of monitoring of high-risk relationships and information as to any challenges posed by that area of the operations of the firm;

(8) programmes employed over the reporting period for ensuring employee awareness and integrity, including training programmes for staff, and the effectiveness of such programmes;

(9) the overall relationship with the Designated Authority and general guidance received therefrom; and

(10) any proposed/impending legislative/regulatory changes as regards AML/CFT, with an assessment of the impact of same and advice as to how necessary operational changes will be implemented to ensure continuing adherence by the firm.

This report will be subject to review by the Competent Authority.

28.3 CRIMINAL LIABILITY OF THE NOMINATED OFFICER

There are criminal penalties prescribed that affect the Nominated Officer. These include failure of the Nominated Officer (without reasonable excuse) to make the "required disclosure" under section 95 of POCA and for failure to follow the prescribed procedure in section 99 of POCA, prior to the giving of consent to the doing of a prohibited act under section 92 and section 93 of POCA.

CHAPTER 7: CUSTOMER DUE DILIGENCE OR KNOW YOUR CUSTOMER POLICIES AND PROCEDURES

29. INTRODUCTION

The implementation of KYC policies and procedures is fundamental to an effective AML/CFT programme and system of risk management for attorneys. KYC policies and procedures must clearly establish expectations and specific responsibilities, be properly documented and communicated to all staff. As far as is reasonably practicable, attorneys should apply KYC policies and procedures to all financial transactions undertaken whether client related or not. Attorneys with branches should ensure that their due diligence procedures are implemented on a group wide basis.

There is no obligation to conduct CDD in accordance with the POCA (MLP) Regulations where an attorney does not provide services within the regulated sector and covered by the DNFI Order.

The following is intended to inform attorneys of the general areas which the Competent Authority has determined to be essential to their KYC policies and procedures and is not intended to cover all possible permutations. Attorneys should address queries to the Competent Authority.

Attorneys should ensure that all contracts, agreements and arrangements into which they enter, allow for legal termination where continuing the relationship could lead to legal or reputational risk, due to non-compliance with the requirements of POCA and POC (MLP) Regulations and/or suspected criminal activity.

29.1 CONTENTS OF KYC POLICIES AND PROCEDURES

At minimum, KYC policies and procedures should address:

(a) processes to ensure proper identification of all parties to a transaction and documentation requirements in respect thereof and to verify the information received;

(b) processes to determine and verify the nature of the business of persons with whom doing business, to find out what is usual in respect thereof, and have a basis on which to determine if a transaction is suspicious;

(c) transaction verification procedures;

(d) procedures to record, review and retain customer information;

(e) procedures to assess the risk of money laundering from products, business practices and developing technologies and to identify, manage and mitigate those risks;

(f) procedures for establishing a risk profile for all business relationships and one-off transactions, to determine which are high risk; and

(g) due diligence procedures for all business relationships and one-off transactions and enhanced due diligence procedures for those which are high risk.

29.2 **RISK-BASED APPROACH**

A risk based approach to AML/CFT is a system for assessing and managing the risk posed by money laundering and the financing of terrorist activity. This approach involves the identification, categorisation, and mitigation of risk. A risk-based approach to products and business practices is required by the POCA (MLP) Regulations.

Risk assessment is an ongoing process and the more an attorney knows his client and understand his instructions, the better he will be able to assess risk and recognize suspicious transactions. The risk assessment process and decisions taken, should be appropriately recorded.

The level of internal controls and extent of monitoring will be affected by the size of the firm, nature and complexity of practice and risk profile.

(a) **First Step: Identification of AML/CFT Risks**

This is the first step in utilising a risk based approach. Attorneys should identify any AML/CFT risks facing their business with particular emphasis on the type of clients, their geographic location, products, services and business practices. All available information should be reviewed from time to time including inter alia: public information, published money laundering typologies and terrorist lists; listed entity bulletins; notifications by the Supervisory Authority and notifications and directives of the Designated Authority.

At a minimum, attorneys must determine the following:

(1) Who is the client? Is there public information that associates this person with any money laundering or terrorist financing activity?

(2) What is the person's business? Is this client's occupation or business activities commonly linked to or associated with money laundering or terrorist financing activities?

(3) Where is the person located or resident? Does the person's jurisdiction apply globally acceptable AML/CFT standards? Is the jurisdiction associated with high levels of corruption or terrorist activity?

(4) What services or products does the person require? Do the services and products offer the movement of funds and anonymity usually linked to money laundering and financing of terrorist activities? Are they complicated financial or property transactions which involve structures that could obscure ownership of property?

(b) **Second Step: Categorisation of Risk**

Clients and services provided by the attorney should be placed into two (2) categories viz., low risk or high risk.

(1) **Low Risk Clients and Services**

These are clients and services that have a less than average chance of exposing the attorney to money laundering or financing of terrorist activities, for example. Jamaican licensed and regulated financial institutions.

(2) **High Risk Clients and Services**

These are clients and services that have a greater than average chance of exposing the attorney to money laundering and financing of terrorism.

Examples may include: person maintaining trading operations in known drug producing/trans-shipment locations; products which allow customers to move value from one jurisdiction to another; requests for products and services which do not make commercial or legal sense, in the context of the

information provided by the client; or the high risk persons stipulated in the POCA (MLP) Regulations.

(c) **Enhanced Due Diligence**

Enhanced Due Diligence procedures must be applied where the risk is considered high.

29.3 **FORMATION OF A BUSINESS RELATIONSHIP/ONE-OFF TRANSACTION**

Regulation 6 of the POCA (MLP) Regulations provides that a regulated business such as attorneys covered by the DNFI Order shall not form a business relationship or carry out a one-off transaction with or for another person unless it maintains the following procedures:

(a) identification procedures and transaction verification procedures in accordance with Regulations 7 and 11 of the POCA (MLP) Regulations; and

(b) procedures to assess the risk of money laundering arising from its products and business practices (new or existing) and developing technologies applied or used in such products and practices and shall not commence or continue any such product or practice without implementing measures to identify, manage and mitigate those risks .

Failure to comply is a criminal offence and is subject to the prescribed penalties.

29.4 **IDENTIFICATION PROCEDURES**

Regulation 7(1)(a) of the POCA (MLP) Regulations provides that, subject to Regulation 8, identification procedures should require that as soon as practicable after a regulated business first makes contact with an applicant for business concerning any particular business relationship or one-off transaction, the following should take place:

(a) the applicant for business must produce satisfactory evidence of identity (i.e. evidence from an independent source e.g. recent bill from a utility provider such as internet, telephone, cable, water or electricity service provider); and

(b) the regulated business must take such measures as specified in its identification procedures as will verify the applicant's identity.

29.5 **VERIFICATION OF IDENTITY**

Regulation 7(1) (b) of the POCA (MLP) Regulations stipulates that where the regulated business is unable to verify the applicant's identity, the business relationship or one-off transaction shall proceed no further and the regulated business shall make an assessment as to whether any disclosure is required under section 94 of POCA[18].

29.6 **CUSTOMER INFORMATION**

Important Regulations dealing with the obtaining of customer information, include:

(a) Regulation 7(1)(c) of the POCA (MLP) Regulations stipulates that customer information is to be kept under review for accuracy and updated at least once every seven (7) years or more frequently as warranted by the risk profile of the business relationship as determined by the regulated business, in accordance with Regulation 7A and whenever there is any doubt about the adequacy or veracity of previously obtained customer information.

(b) Regulation 7(1)(d) of the POCA (MLP) Regulations stipulates that where customer information is not updated as required the business relationship shall proceed no further and the regulated business should consider whether any disclosure is required under section 94 of POCA.

(c) Regulation 7(5) of the POCA (MLP) Regulations stipulates that: **"**Customer Information" for natural persons includes full name, current address, taxpayer registration/other reference number, date and place of birth.

(d) Regulation 13(1)(c) of the POCA (MLP) Regulations prescribes the customer information in the following circumstances:

(1) for a settlement, trust or other type of legal arrangement establishment of:

(A) identity (as the case may require) of the settlor, legal owner, any person who exercises effective control of the legal arrangement and each beneficiary, including ultimate beneficial owners of property concerned in the arrangement; and

(B) the legal status of the arrangement and provisions regulating the power to bind the parties involved;

[18] Section 94 deals with disclosures as to transactions which constitute or are related to money laundering.

(2) for a person other than an individual, establishment of:

(A) identity of individuals who exercise ultimate effective control or

(B) the identity of the senior manager who makes/implements decisions, where it is not possible to identify individuals with ultimate effective control;

(3) for a body corporate (other than one listed on a stock exchange) which is licensed or otherwise authorized under the laws of the jurisdiction in which registered, establishment of:

(A) identity of each director and shareholder (if any) holding ten percent (10%) or more of the voting rights;

(B) its address and provisions regulating the power to bind the body corporate and

(C) evidence of incorporation;

No body corporate, director or shareholder is exempt from identification procedures required by the POCA (MLP) Regulations, where a person handling the transaction suspects that the transaction amounts to money laundering[19].

29.7 SATISFACTORY EVIDENCE OF IDENTITY

The following Regulations address the issue of satisfactory evidence of identity.

(a) Regulation 13(1) of the POCA (MLP) Regulations stipulates that evidence of identity is satisfactory if:

(1) it is reasonably capable of establishing that the applicant for business is whom he claims to be; and

(2) the evidence of identity establishes to the reasonable satisfaction of the person who obtains same, that the applicant for business is the person whom he claims to be.

[19] Regulation 13(3) of the POCA (MLP) Regulations

(b) Regulation 13(2) of the POCA (MLP) Regulations stipulates that in determining for the purposes of Regulation 7, the period within which satisfactory evidence of identity of the applicant for business has to be obtained in relation to a business relationship or one off transaction, all the circumstances shall be taken into account, including:

(1) the nature of the business relationship or one off transaction;

(2) the geographical locations of the parties; and

(3) whether it is practical to obtain the evidence before commitments are entered into by the parties or before money is transferred.

30. TRANSACTION VERIFICATION

Regulations 7(2) and 7(3) of the POCA (MLP) Regulations provide inter alia that transaction verification procedures of a regulated business should require that in relation to any business relationship or any one-off transaction, the regulated business takes such measures as specified in its transaction verification procedures, as will produce satisfactory evidence as to the purpose and intended nature of the business relationship or one-off transaction in any of the following circumstances:

(a) where any transaction involves the prescribed amount[20];

(b) where transactions carried out in a single operation or in several operations that appear to be linked;

(c) where a transaction is carried out by means of wire transfers;

(d) where there is any doubt about the veracity or adequacy of previously obtained evidence of identity;

(e) where the reporting entity is required to make a report under section 94 or 95 of POCA.

Regulation 7(2)(b) of the POCA (MLP) Regulations provides that where such evidence is not obtained, the business relationship or one-off transaction shall not proceed any further.

[20] See Regulation 3(8) of the POCA (MLP) Regulations.

Regulation 7(4) of the POCA (MLP) Regulations provides that for the purposes of paragraphs (1) and (2) where the applicant for business is a body corporate reasonable due diligence should be carried out concerning the identification of the body corporate and transaction verification.

31. RISK ASSESMENT

31.1 ESTABLISHMENT OF A RISK PROFILE

The POCA (MLP) Regulations provide as follows:

(a) Regulation 7A(1): a business in the regulated sector shall establish a risk profile (i.e. a formal assessment of level of risk of money laundering) for all business relationships and one-off transactions, and determine which are high risk.

(b) Regulation 7A(2) of the POCA (MLP) Regulations stipulates that the high risk category includes any individual in any state analogous to:

(1) heads of state/government, member of any House of Parliament, Minister of Government, member of judiciary, military official above captain, Assistant Commissioner of Police or above, Permanent Secretary, Chief Technical Director, chief officer in charge of a Ministry, department of Government, executive agency or statutory body, director/chief executive of any company in which Government owns controlling interest, an official of any political party, an individual holding/has held a senior management position in an international organization; relatives[21]/close associates[22] of all the above.

(2) person not ordinarily resident in Jamaica, a trustee, a company with nominee shareholders or bearer shares, such other as may be specified by the Supervisory Authority.

[21] The POCA (MLP) Regulations define a "relative" as a (i) spouse (including a single woman or single man, who has cohabited with a single man or a single woman respectively, for not less than five (5) years and "single woman" and "single man" include a widow or widower as the case may be, or a divorcee); (ii) a child (including step or adopted child); (iii) the spouse of the child; (iv) parents; (v) brother; or (vi) sister.

[22] The POCA (MLP) Regulations defines a "close associate" as an individual who is a business partner or associated in any other form, in a common commercial enterprise;

(c) Regulation 7A(3) of the POCA (MLP) Regulations provides that subject to subparagraph (4), a business in the regulated sector is to carry out reasonable due diligence in the conduct of every transaction to ensure that same is:

(1) consistent with its knowledge of the applicant for business, the applicant's trade or profession, the applicant's risk profile and the stated source of the funds involved; and

(2) verified as to the identity of the applicant for business and the source of the funds involved.

(d) Regulation 7A(4) of the POCA (MLP) Regulations provides that where a business relationship or one-off transaction is determined to be high-risk, a business in the regulated sector shall carry out enhanced due diligence procedures with respect thereto.

31.2 **ENHANCED DUE DILIGENCE**

Regulation 7A(5) of the POCA (MLP) Regulations provides that enhanced due diligence shall require:

(a) obtaining senior management approval to commence or continue the business relationship or one-off transaction;

(b) verification of the source of funds or wealth held by the applicant for business and all other persons concerned in the business relationship or one-off transaction;

(c) enhanced monitoring throughout the course of the business relationship or one-off transaction, which shall include:

(1) a requirement for more frequent updating of customer information;

(2) a requirement for more detailed information as to the business relationship or one-off transaction;

(3) a requirement for more detailed information about the applicant for business and other parties concerned in the transaction;

(4) an increase in the number and timing of controls applied to the transaction;

(5) the selection of patterns of actions that require more detailed examination;

(6) a requirement that the first payment in the transaction be carried out through an account, in the name of the applicant for business, with a financial institution; and

(7) identification and verification standards equivalent to those required by POCA and any Regulations made under POCA.

31.3 OBTAINING SENIOR MANAGEMENT APPROVAL FOR A HIGH RISK MATTER

It is recommended that attorneys nominate a person(s) with appropriate authority, to exercise the senior management approval required for EDD and that all attorneys and employees be advised of the nomination.

32. DE MINIMIS TRANSACTIONS

Regulation 8 of the POCA (MLP) Regulations provides that identification procedures stipulated in Regulation 7 are not required for customer transactions of a value of United States Two Hundred and Fifty Dollars (US$250.00) (or any such amount as the Minister may prescribe) or its equivalent in any currency or less UNLESS the transaction gives rise to knowledge or belief or reasonable grounds for the knowledge or belief, that the transaction constitutes or is related to money laundering.

33. COMPETENT AUTHORITY RECOMMENDATION ON TIMING RELATIVE TO OBTAINING SATISFACTORY EVIDENCE OF IDENTITY AND VERIFICATION THEREOF

Although Regulation 7(1)(a) of the POCA (MLP) Regulations provides that satisfactory evidence of identity and verification of identity, may be obtained as soon as reasonably practicable after contact is first made with the applicant for business, the Competent Authority recommends that as far as possible, such matters be dealt with prior to entering into a business relationship or one off transaction. The attorney must document the basis for determination that the transaction/relationship could proceed. This should include a consideration of the nature of the proposed transaction/relationship/geographic location of parties and assessment of risks.

34. IDENTIFICATION AND VERIFICATION PROCEDURES

An individual's identity has a number of components, including his/her name, current and past addresses, date and place of birth. Identification of an individual is simply being told of their identifying details, such as name and address etc. Verification on the other hand is obtaining some evidence which supports that the person is who he says he is.

THE FOLLOWING INFORMATION AND DOCUMENTATION IS RECOMMENDED.

34.1 INDIVIDUALS/APPLICANTS FOR BUSINESS: RESIDENTS OF JAMAICA

(a) true name and names used (alias(es);

(b) marital status and maiden name (if applicable);

(c) permanent and postal address (if different);

(d) previous addresses (if applicable);

(e) date and place (country) of birth;

(f) nationality;

(g) country of residence;

(h) profession/occupation;

(i) name and address of workplace;

(j) telephone numbers (home, work, cellular, fax);

(k) source of funds/wealth (where applicable);

(l) Taxpayer Registration Number (TRN)/other reference number issued by a government agency;

(m) type/purpose of transaction and likely value of same;

(n) name and details, as above, of any other person who has a beneficial interest in the transaction;

(o) name and details as above of any agent likely to be conducting business in respect of the proposed transaction and of appropriate evidence of authorization of agent); and

(p) details of whether the applicant for business or any relative or close associate is in the high risk category of persons including those specified in Regulation 7A[23].

34.1.1 **DOCUMENTATION FOR IDENTIFICATION**

(1) Valid current picture identification. This should be examined, copied and a copy retained. The best forms of identification are the most difficult to obtain illegally. Examples of appropriate forms of identification include: Jamaican driver's licence, Jamaican Elector Registration Identification Card, passport (first five pages), National Council for Senior Citizens Identification Card, or Diplomatic Identification Card issued by the Ministry of Foreign Affairs.

(2) Taxpayer Registration Number ("TRN") Where a TRN is not held, another reference number such as a NIS number may be accepted.

34.1.2 **VERIFICATION OF KYC DETAILS**

Verification of name, permanent address and employment/business details should be obtained from a source independent of the attorney and may include the following:

(1) a recent bill from a utility provider such as a telephone, internet, cable, water or electricity service provider;

(2) checking of a local telephone directory or listing and calling the number for verification;

(3) independent confirmation of national identification with relevant government authorities;

(4) checking the current voters list;

(5) visits to the applicant's residence or work address, where applicable;

[23] This will assist with risk assessment and implementation of enhanced due diligence procedures if applicable.

(6) confirmation of stated place of employment with employer; or

(7) obtaining a bank statement/mortgage statement/insurance certificate.

For existing clients/business relationships, letters sent by post the attorney which are not returned unclaimed, may be taken as delivered to their permanent address on record if their mailing address is not different from their postal address.

34.1.3 **TRANSACTION VERIFICATION**

Pursuant to Regulation 7A(3) of the POCA (MLP) Regulations, reasonable due diligence is to be employed in the conduct of every transaction, to ensure that same is consistent with the attorney's knowledge of the applicant for business, his trade, profession, risk profile and stated source of funds and verified as to the source of funds[24].

If the applicant is high risk, then the enhanced procedures prescribed in Regulation 7A(5) of the POCA (MLP) Regulations will apply.

Transaction verification involves obtaining satisfactory evidence of the purpose and intended nature of the transaction. Verification processes include:

(A) ensuring that agents produce evidence of authority and instructions in respect of a transaction (e.g. so that an intended J$100,000.00 transaction is not superseded by a J$1,000,000.00 transaction);

(B) checking that transactions conducted are the ones indicated and are genuine e.g. correct documentation, invoicing etc.;

(C) checking that the transaction is consistent with industry/sector norms and your knowledge of the person;

(D) considering whether or not the transaction reflects commercial reality;

(E) checking that no listed entity under the TPA is involved in the transaction;

[24] See further Regulations 7(2) and 7(3) of the POCA (MLP) Regulations.

(F) ensuring that breach of applicable laws/industry requirements are not facilitated by the transaction;

(G) verification of source of funds/property, the subject of the transaction; and

(H) checking the authority of agents to verify the instructions.

34.2 INDIVIDUALS/APPLICANTS FOR BUSINESS: NON RESIDENTS OF JAMAICA

Persons not ordinarily resident in Jamaica are included in the high-risk category and are subject to the enhanced due diligence procedures specified in Regulation 7A(5) of the POCA (MLP) Regulations. The person(s) with management authority who is/are required to consider if the relationship should be commenced or continued, should consider, among other things, whether the applicant is from a country with sub-standard or no AML/CFT programmes, or with a known history of drug trafficking, corruption or terrorism.

Subject to Regulation 7A(5) of the POCA (MLP) Regulations and the recommendations below, personal information and the verification for non-residents is the same required for Jamaican residents.

34.2.1 DOCUMENTATION

Particular attention should be paid to the place of origin of the relevant document, as standards vary among countries.

(1) Valid, current picture identification. Examples of appropriate identification for applicants for business who reside abroad include:

(A) identification pages of Passport;

(B) Resident Alien Card (USA)/equivalent;

(C) Driver's Licence issued by the country of residence;

(D) State issued non-driver photo identification card issued by the Department of Motor Vehicles (USA only);

(E) National identification with photograph; and

(F) Diplomatic identification cards.

More than one (1) type of identification may be taken as an enhanced due diligence measure. If there is doubt about the authenticity of documentation, the attorney should make contact with the relevant embassy or consulate for advice in respect of same.

(2) Social Security Number (USA) or equivalent in any other country;

(3) Reason for doing business in Jamaica; and

(4) Two (2) references, to be obtained from any of the following persons: attorneys-at-law, notaries public, registered accountants, consular officers, justices of the peace and regulated financial institutions.

Referees should indicate that the applicant for business is known to be of good character and is someone who is recommended for business.

The name, address, occupation, telephone number and contact details of the referees, should be provided by the applicant for business. Where reference letters are provided, these should be no more than three (3) months old.

34.2.2 CERTIFICATION OF DOCUMENTS IN RESPECT OF INDIVIDUAL APPLICANTS FOR BUSINESS: NON-RESIDENTS OF JAMAICA

Attorneys should endeavour to view originals and retain a photocopy of same, and should note on the copy that the original was viewed, and date and sign the same.

All copy documentation (including, but not limited to photocopied identification, and proof of address) should be certified, as true copies of the original by one of the following foreign officials: a notary public, clerk of the courts, consular officer, attorney-at-law, registered accountant, justice of the peace or commissioner of oaths.

The certifier should sign the copy document printing his name, contact details and position and affix his official seal, if any.

34.3 EXISTING BUSINESS RELATIONSHIPS

Regulation 19 of the POCA (MLP) Regulations stipulates that the obligations of a regulated business, apply to business relationships formed prior to the relevant date, as they apply in respect of an applicant for business. There is, however, no requirement to obtain information or evidence in respect of any transaction conducted prior to the relevant date.

34.4 CLIENTS UNABLE TO PRODUCE RECOMMENDED DOCUMENTATION

An attorney should consider whether a client's inability to provide recommended verification documents, is consistent with the client's profile and circumstances, or whether this gives rise to the suspicion of money laundering or terrorist financing. Where there is an assessment that there is a good reason for not meeting the recommended verification requirements, a letter may be accepted from an appropriate and reputable person, who knows the prospective client and who can verify the client's identity. Examples of appropriate persons include teachers, medical practitioners, ministers of religion and principals of educational institutions.

34.5 IDENTIFICATION OF BODIES CORPORATE (TO INCLUDE UNINCORPORATED ENTITIES)

Corporate entities may be used as a means of ensuring anonymity.

It is necessary to understand the structure of the prospective corporate client, the source of funds, as well as the beneficial owners and controllers.

Photocopies of relevant business/corporate documents should be taken and retained. The original documents should be examined for authenticity.

34.5.1 INFORMATION AND DOCUMENTATION RECOMMENDED IN RESPECT OF UNLISTED JAMAICAN BODIES CORPORATE, INCLUDING COMPANIES, AS APPLICABLE:

(1) Certificate of Incorporation or certificate of registration, stating the entity's full name and country of incorporation;

(2) Certificate of Registration under the Registration of Business Names Act;

(3) Articles of Incorporation (or for companies incorporated prior to The Companies Act 2004, Memorandum and Articles of Association if relevant) or Partnership Deed;

(4) director's resolution authorizing the company's management to engage in the transaction;

(5) a description of the principal line of business or major suppliers if applicable;

(6) list of names, addresses and nationalities of the individuals (e.g. owners, directors, beneficiaries who exercises ultimate control over that person or where such person(s) cannot be identified the name, addresses and nationality of the senior manager who makes/implements decisions[25];

(7) a copy of the licence/approval to operate, where the principal line of business is one that falls under a regulatory/supervisory body;

(8) group corporate structure, where applicable;

(9) address and location of business operations and address (including previous addresses) of registered office, if different from location of business;

(10) source of funds/wealth; and

(11) Taxpayer Registration Number;

34.5.2 **A JAMAICAN COMPANY OTHER THAN ONE LISTED ON A STOCK EXCHANGE**

A list of names, addresses and nationalities of each director and shareholder (if any) holding ten percent or more of the voting rights in the company.

34.5.3 **A COMPANY LISTED ON THE JAMAICA STOCK EXCHANGE**

KYC due diligence can be satisfied if it is established to the attorney's satisfaction that it is a company whose shares/securities are listed and currently traded on the Jamaica Stock Exchange (JSE) or any other recognised stock exchange.

This method of conducting KYC due diligence applies only where the applicant for business is the listed company and not to any unlisted parent/holding/subsidiary/and or affiliated companies. Any such unlisted company, would be subject to the KYC recommendations for unlisted companies. In addition,

[25] See below for recommendations for a Jamaican company, other than one listed on a stock exchange.

no body corporate, shareholder or director is exempt from the identification procedures required by the POCA (MLP) Regulations, where money laundering is suspected.

34.5.4 RECOMMENDED INFORMATION, DOCUMENTATION AND VERIFICATION

(1) For individuals who exercise ultimate control of an entity and directors and shareholders holding ten percent or more of the voting rights of a body corporate, the recommended information, documentation and verification is the same as recommended for individuals[26].

(2) Regulation 7(4) of the POCA (MLP) Regulations also stipulates that there should be reasonable due diligence concerning transaction verification in the case of a body corporate.

34.6 HIGH RISK CORPORATE ENTITIES

High risk entities include a person, e.g. a company, which is not ordinarily resident in Jamaica and a company having nominee shareholders or shares held in bearer form. These entities are subject to the enhanced due diligence procedures specified in Regulation 7A(5) of the POCA (MLP) Regulations. The senior management which is required to consider if the relationship may be commenced or continued, should consider inter alia, whether the applicant is from a country with sub-standard or no AML/CFT programmes or with a known history of drug trafficking, corruption or terrorism.

Where the identity of a business/body corporate is in doubt, a search should be conducted at the Companies Office of Jamaica, or at any trade or professional, regulatory or other appropriate source.

34.7 IDENTIFICATION OF OVERSEAS BODIES CORPORATE, THEIR DIRECTORS, SHAREHOLDERS AND PERSONS WHO EXERCISE CONTROL OF THEM

Subject to the enhanced due diligence procedures stipulated in Regulation 7A (5) of the POCA (MLP) Regulations the following is recommended for persons in this category:

(a) equivalent information and documentation as for Jamaican bodies corporate;

[26] See as appropriate in paragraph 34

(b) letter from the entity signed by its duly authorized representatives indicating the reason for doing business in Jamaica; and

(c) evidence of an overseas company's identity and existence may be verified by:

(1) a search of the relevant company registry, including the Company Office Of Jamaica in the case of an overseas company registered under the Companies Act;

(2) for listed companies, from a copy of the dated page of the website of the relevant stock exchange showing the listing.

34.8 CERTIFICATION OF DOCUMENTS FOR UNLISTED OVERSEAS BODIES CORPORATE

All copy documents including, but not limited to those showing identity and proof of address, should be certified as true copies of the original in the same manner and by the same persons recommended above for non-resident individuals.

35. IDENTIFICATION REQUIREMENTS IN SPECIAL CASES

35.1 PAYMENTS BY POST ETC.

Regulation 10 of the POCA (MLP) Regulations provides that where it is reasonable in all the circumstances, for a payment to be made or details thereof sent by post, telephone or other electronic means, and the payment is debited from an account held in the name of an applicant for business, at either a bank licensed under the Banking Act, financial institution licensed under the Financial Institutions Act, a building society registered under the Building Societies Act or a society registered under the Co-operative Societies Act, that fact shall constitute the required evidence of identity, for the purposes of Regulation 7.

35.2 AGENCY

Regulation 11(1) of the POCA (MLP) Regulations prescribes that where the applicant for business is an agent i.e. is acting other than as principal, reasonable measures should be taken:

(a) to establish the identity of the principal, agent, each beneficiary and the ultimate beneficial owner of the property/funds; and

(b) to verify the agent's authority to act.

The measures that are to be considered reasonable will be based on the circumstances in each case and the best practice in the applicable field of business in those circumstances.[27]

Regulations 11(5) and 11(6) of the POCA (MLP) Regulations provide that if there are reasonable grounds to believe that:

(a) the agent is based/incorporated/formed under the law of a country with at least equivalent provisions to POCA Part V; and

(b) the agent would be a regulated business if situated in Jamaica and acts in the course of a business in relation to which a foreign regulatory body exercises regulatory functions and controls;

it shall be reasonable to accept a written assurance from the agent, that evidence of the identity of any principal on whose behalf the agent may act, has been obtained and recorded under procedures maintained by the agent.

35.3 INTRODUCED BUSINESS

Regulation 12 of the POCA (MLP) Regulations contains provisions in respect of introduced business.

Where businesses being introduced by individuals or companies, the ultimate responsibility is placed on the recipient attorney to know the referred client and his/her business.

Attorneys should not place excessive reliance on identification procedures that introducers may have performed, without carefully assessing the fitness and propriety of introducers as well as the customer identification and due diligence standards that the introducers maintain using the following criteria:-

(a) introducers should adhere to minimum KYC standards as outlined in this Guidance;

(b) one must be able to verify the due diligence procedures undertaken by the introducer at any stage and the reliability of systems put in place to verify identity, financial history and KYC details of the client; and

[27] The POCA (MLP) Regulation 11(4).

(c) notwithstanding any reliance on an introducer's representations, attorney should procure and review all relevant identification data, and other documentation relating to the client's identification, financial history and KYC data and satisfy himself as to whether the transaction/relationship is high or low risk and that there is no suspicion of money laundering. Copies should be taken, retained and be available for review by the Competent Authority.

Where an Attorney determines that the identification standards of the introducer are unsatisfactory or weak or that the matter is high risk, or if money laundering is suspected, then he/she should conduct his/her own due diligence assessment. The prospective client should be interviewed whenever possible.

Where it is determined that the proposed client is high risk, enhanced due diligence procedures must be applied.

35.4 SETTLEMENTS, TRUSTS AND OTHER LEGAL ARRANGEMENTS

The information and documentation requirements to identify and verify the identity of all parties specified in the Regulation 13 of the POCA (MLP) Regulations and to verify their transactions are the same as those prescribed for individuals and corporate bodies in this Chapter.

35.5 HIGH RISK RELATIONSHIPS OR TRANSACTIONS

The following categories are to be among those treated as high risk. Attorneys should develop their own list of the types of applicants for business/business or relationships which are likely to pose a higher than average risk to the attorney and to which enhanced due diligence procedures are to be applied. These could, for example, include applicants for business involved in cash intensive businesses.

The following categories are among those to be treated as high risk:

35.5.1 POLITICALLY EXPOSED PERSONS (PEPS) :

These are persons locally or abroad who are or who have been entrusted with prominent public functions and anyone who is their "relative" or "close associate" within the meaning of POCA.

35.5.2 NON-PROFIT ORGANIZATIONS (NPOS)[28]

Senior management should first ensure that the principal officers of the NPO are duly identified and the purpose and intended nature of the business is legitimate, before approval is granted to proceed.

In assessing the risk associated with NPO's, regard should be taken of:

(1) the purpose, ideology or philosophy of the NPO;

(2) the geographic areas served (including head office and operational areas);

(3) its organizational structure;

(4) its donor and volunteer base;

(5) its funding and disbursement criteria; and

(6) its affiliation with other NPO's, governments and groups.

As part of the monitoring processes, note should be taken of whether funds are sent to high risk countries. Where possible, enquiries should be made with the appropriate governing body.[29]

35.5.3 NON FACE-TO-FACE CUSTOMERS AND EMERGING TECHNOLOGIES

Attorneys should proactively assess various risks posed by emerging technologies and design customer identification procedures with due regard to such risks. At a minimum, it is recommended that attorneys follow the procedures outlined below to assist in the identification of non-face-to-face customers[30]:

(1) documents presented should be certified as recommended in this Chapter;

(2) additional documents to verify identity should be obtained;

(3) independent and if possible, face-to-face contact should be made;

[28] NPO's have been found to be attractive for the financing of terrorism.

[29] For example The Charity Commission or equivalent body.

[30] The FATF website provides information on new payment methods such as electronic payment systems, electronic purses and virtual currency.

(4) wWhere third party introduction is being facilitated, this must be subject to ensuring that the introducer meets the criteria outlined in respect of introducers;

(5) if possible, the first payment should be made through a financial institution, which is subject to similar AML/CFT laws.

35.5.4 COUNTRIES WITH INADEQUATE AML/CFT FRAMEWORKS

Added care is to be exercised when dealing with clients residing in countries with weak or non-existent laws and regulations to detect and prevent money laundering and terrorist financing. As a general guide in identifying these jurisdictions, one may refer from time to time to the FATF's list of countries, which have been identified as "non-cooperative" in the fight against money laundering (i.e. Non-cooperative Countries and Territories (NCCT))[31]. The Supervisory Authority will also periodically give updates on countries with inadequate AML/CFT frameworks.

36. PROHIBITED ACCOUNTS: ANONYMOUS ACCOUNTS, ACCOUNTS IN FICTITIOUS NAMES AND NUMBERED ACCOUNTS

Regulation 16 prescribes that a regulated business shall not in the course of its relevant financial business, permit any person to conduct any business by means of any anonymous or numbered accounts or accounts in fictitious names.

(a) "Anonymous account": any account for which a regulated business does not have such information as would, when submitted to the identification and transaction verification procedures prescribed by the POCA (MLP) Regulations, constitute evidence of identity which meets the requirements of Regulations 11 and 13 of the POCA (MLP) Regulations.

(b) "Fictitious name": any name which when subjected to the identification procedures required by the POCA (MLP) Regulations, does not constitute, in relation to the

[31] This may be accessed at the FATF's website http://fatf-gafi.org/.

person conducting the transaction, such evidence of identity as meets the requirements of the Regulations.

(c) "Numbered Account": an account identifiable solely by reference to the number/s assigned to it.

37. APPLICATION OF STANDARDS TO OVERSEAS BRANCHES

Regulation 18 of the POCA (MLP) Regulations prescribes that regulated businesses shall ensure that its branches and subsidiaries outside of Jamaica implement, where necessary, and conform with standards and conduct set out in Part V of POCA and the POCA (MLP) Regulations. Where there is a difference in standards, among branches any subsidiaries there should be compliance with the highest required standard. Where this is not possible, it is the responsibility of the regulated business to ensure that it is so advised by the branch or subsidiary and shall advise the Competent Authority[32].

[32] Contravention of Regulation 18 is a criminal offence for which penalties are prescribed.

38. EMPLOYEE DUE DILIGENCE

By virtue of Regulation 5 of the POCA (MLP) Regulations every attorney within the regulated sector must establish and implement such programmes, policies, procedures, and controls as may be necessary for the purpose of preventing or detecting money laundering. This includes:

(a) establishing procedures to ensure high standards of integrity of employees;

(b) developing a system to evaluate the personal employment and financial history of employees;

(c) establishing programmes for training employees on a continuing basis and for instructing them as to their AML/CFT responsibilities; and

(d) making arrangements for independent audits in order to ensure that the aforesaid programmes are being implemented.

Further, the POCA (MLP) Regulations [33] prohibits the attorney from forming a business relationship or carrying out a one-off transaction with or for another person unless the attorney takes appropriate measures from time to time for the purpose of making employees, whose duties include the handling of financial business, aware of:

(a) his internal KYC, recordkeeping, control, communication and risk assessment procedures pursuant to Regulation 6(1)(a) of the POCA (MLP) Regulations; and

(b) the provisions of applicable AML/CFT legislation and regulations;

and from time to time provides such employees with training in the recognition and handling of suspicious transactions.

For the purposes of the POCA (MLP) Regulations employees include persons who have entered into or work under a contract of services, or a contract for services whether such contract is express or implied, oral, or in writing, whether or not for gain or reward. For the purposes of this Guidance, all attorneys, including partners, involved in the practice of law shall be treated as employees.

[33] Regulation 6(1)(b) POCA (MLP) Regulation.

Failure to comply with the requirements of Regulation 6(1) of the POCA (MLP) Regulations constitutes an offence which renders the attorney liable to criminal sanction and disciplinary action.

39. HIRING PROCESS

Potential employees should be subject to a comprehensive screening process which should cover their background, honesty, competence and integrity.

The hiring process for employees may include:

(a) background and employment history disclosure and verification;

(b) reference checks;

(c) police checks; and

(d) financial history disclosure and verification.

The extent of employee screening should be proportionate to the risk associated with the role and function of the employee in the attorney's practice.

Employment contracts should incorporate appropriate terms by which the employees agree to adhere to the attorney's internal AML/CFT policies and AML/CFT laws.

40. ONGOING MONITORING

Comprehensive screening at the recruitment stage should be followed by the institution of processes geared towards ensuring the continued maintenance of a high level of integrity and competence among employees.

During the period of employment, employees should be monitored for and investigated in respect of, inter alia:

(a) lifestyle changes which cannot be supported or explained by known income;

(b) unusual transactions;

(c) inappropriate client relationships;

(d) associations with persons known to be involved in criminal activities;

(e) refusal to take holidays.

Attorneys should take steps, where feasible, to rotate the role and function of employees and should also take steps to restrict access to the firm and its systems by past employees.

It is recommended that a Code of Ethics be established as a guide for employee conduct and that it be readily available to all employees who should, on an annual basis, confirm in writing that they have read it and understand its terms. In addition, regular performance evaluations or appraisals should be conducted and should include a review of the employee's performance concerning, and adherence to, internal policies and procedures including codes of conduct and AML/CFT requirements.

Failure to adhere to AML/CFT internal policies or laws should be addressed in the firm's Discipline Policy. The importance of adherence to AML/CFT policies and procedures should therefore be affirmed by the imposition of appropriate disciplinary actions for breaches by employees of the attorney's AML/CFT policies.

41. TRAINING AND COMMUNICATION

FATF guidance to legal professionals on the issue of training effectively provides that attorneys should review their own employees and available resources and implement training programmes that provide appropriate AML/CT information that:

(a) is tailored to the relevant employee responsibility (e.g. client contact or administration);

(b) contains the appropriate level of detail (e.g. considering the nature of the services provided by the attorney);

(c) is delivered at a frequency suitable to the risk level of the type of work undertaken by the attorney; and

(d) tests employees knowledge of the information provided.

The POCA (MLP) Regulations do not specify the exact nature of the training to be given to employees in the regulated sector. Each attorney should therefore tailor their training programme to suit their own needs, depending on size, resources and the type of business they undertake.

However, training must be structured to ensure compliance with all of the requirements of applicable law.

A system of training and communication should therefore be implemented to ensure that employees are made aware on a continuous basis of:

(a) AML/CFT obligations of attorneys and employees under the law;

(b) money laundering methods and the risks relevant to attorneys;

(c) the internal policies and procedures to detect and prevent money laundering including identification, recordkeeping, and internal reporting requirements and the importance of these policies and procedures;

(d) how to recognize and handle suspicious transactions;

(e) the personal liability of employees under the law for money laundering and other offences (including failure to report and tipping off); and

(f) the procedures relating to dealing with production and restraint orders.

New employees, irrespective of seniority, are to be trained in the background and nature of money laundering and the need to report suspicious transactions to the Nominated Officer. In addition, it is important that all employees receive appropriate refresher training to maintain the prominence that the issue of money laundering prevention requires. Training should take place at regular and appropriate intervals having regard to the risk profile of the practice and the level of involvement of particular employees in ensuring compliance. Some type of training for all employees at least every two years is recommended.

When setting up a training and communication system the attorney should consider which employees require training, the form and frequency of such training and how emerging risk factors will be communicated to employees in a timely manner. Where appropriate, employees should receive targeted training for increased awareness concerning the provision of services involving the designated activities to higher risk clients.

Employees should be trained to a level which is appropriate to their work and level of responsibility. In the determination of who should receive training and the type of training which they should receive the attorney should take into account whether the employee deals with clients

in an area of practice within the regulated sector, handles funds or otherwise assists with compliance. The Nominated Officer should receive in-depth and intensive training on an ongoing basis in respect of all areas identified in paragraph(c) above.

Training may take different forms and may be external or internal and include face to face training seminars, completion of online training sessions, attendance at AML/CFT conferences, review of publications on current AML/CT issues and practice group meetings for discussion of AML/CFT issues and risk factors.

An AML/CFT policies and procedures manual should be prepared and all employees should be required, on an annual basis, to acknowledge that the manual has been read and understood and that breach of its terms may result in dismissal from employment and, in some cases, criminal sanctions.

Evidence of the attorney's assessment of training needs and steps taken to meet such needs should be kept by the attorney and may include ensuring that:

(a) training sessions are subject to rigorous registration systems that require signing by trainees and trainers and true records of the training session documented and retained in formal training registers;

(b) videotaping of training sessions with the full knowledge of the participants;

(c) delivery of documented certification to employees upon satisfactory completion of training sessions; and

(d) verification by the Nominated Officer that the training session has taken place.

CHAPTER 9: RECORD KEEPING OBLIGATONS

42. GENERAL STATUTORY REQUIREMENT TO MAINTAIN RECORDS

The POCA (MLP) Regulations[34] provides that no regulated business shall form a business relationship or carry out a one-off transaction, with or for another person unless the regulated business maintains with respect to that business relationship or one-off transaction, record-keeping procedures that are in accordance with Regulation 14 of the POCA (MLP) Regulations.

Attorneys who are DNFIs are required to keep certain records for use as evidence in investigations into money laundering or terrorist financing. These records are an essential component of the audit trail in these investigations. The objective of the statutory requirement is to ensure that, so far as is practicable, an attorney who may have been involved in a transaction/s, which is the subject of an investigation can provide the authorities with appropriate information and documents on his part of the audit trail.

Failure to maintain record-keeping procedures in accordance with Regulation 14 of the POCA (MLP) Regulations is an offence punishable by fines and/or imprisonment under the POCA (MLP) Regulations.

The requisite records must be kept for the prescribed period which according to Regulation 14(5) is:

(a) a period of seven (7) years commencing on the date on which the relevant financial business (being financial business carried on by a regulated business) was completed or the business relationship was terminated, whichever occurs later; or

(b) such other period as may be specified by the Designated Authority, by notice in writing given to the attorney or firm concerned, before the expiration of the seven (7) year period referred to in sub-paragraph (a) above.

Records relating to the identification and verification of the identity of an applicant for business and other customer due diligence including but not limited to customer information, information

[34] See POCA (MLP) Regulation 6(1)(a)(ii)

that informs the risk assessment profile of that applicant for business, transaction verification as required by Regulation 7 of the POCA (MLP) Regulations, and STR's must be retained for seven (7) years after the end of the business relationship. In keeping with best practices, the date when the business relationship ends is the date of: i) the carrying out of a one-off transaction or the last in the series of transactions; or ii) the ending of the business relationship, i.e. the closing of the client file or termination of the retainer or engagement; or iii) the commencement of proceedings to recover debts payable on insolvency.

It is recommended that where formalities to end a client relationship have not been undertaken, but a period of seven (7) years has elapsed since the date when the last transaction was carried out, then the seven (7) year retention period commences on the date of the completion of the last transaction.

Where records relate to on-going investigations, they must be retained until it is confirmed by the FID or local law enforcement agency that the case or investigation has been closed.

43. HOW RECORDS ARE TO BE KEPT

Records must be kept in a manner and form that allows for and facilitates the reconstruction of transactions. The manner and format of retention should permit retrieval of records within a reasonable time to satisfy obligations, to produce information and orders and enable the Competent Authority, itself or through authorized competent third parties to assess the attorney's observance of and compliance with AML/CFT laws and regulations and this Guidance.

Records may be kept in electronic or written form including:

(a) by way of original documents;

(b) by way of good photocopies of original documents;

(c) on microfiche;

(d) in scanned form; or

(e) in computerized or electronic form.

Where an obligation exists to keep records, copies of the relevant documentation are sufficient, unless the law specifically requires otherwise. An attorney must take care to satisfy himself that

copy records maintained are true and accurate reproductions of the original document. The file should indicate, where possible, how the copies were obtained.

In cases where it is not reasonably practical given the special circumstances of a case, to obtain actual copies of the documents or provide such information as would enable a copy to be made, an Attorney may provide sufficient information to enable the details as to a person's identity in the relevant document to be re-obtained[35].

44. WHAT RECORDS ARE TO BE KEPT

The required records must indicate the nature of the evidence and must be comprised of matters, including:

(a) all domestic and international transaction records, wire transfers and other electronic funds transfers and payments by post;

(b) source of funds declarations;

(c) client's identification and verification records as required by the POCA (MLP) Regulations;

(d) information on funds transfers including information on persons involved within the meaning of the POCA (MLP) Regulations;

(e) client's information records;

(f) copies of official corporate records;

(g) copies of STRs submitted to the Nominated Officer or FID;

(h) evidence of all enquiries (date, nature of enquiry, name of officer, agency and powers being exercised) made by any competent authority or person;

(i) the names, addresses, position titles and other official information pertaining to your employees and their relevant history;

(j) all wire transfers records in accordance with the requirements of POCA; and

[35] See Regulation 14(3)(c)).

(k) other relevant records that would reasonably be considered relevant to the prevention and detection of money laundering or terrorist financing.

45. TRANSACTION RECORDS

The investigating authorities also need to be able to establish a profile of any suspect transaction, including, for example, in addition to information on the beneficial owner of the account or facility involved in a transaction, any intermediaries involved, the volume of funds flowing through the account or facility. Further, in the case of selected transactions, information may be required on the origin of the funds (if known); the form in which the funds were offered or withdrawn, i.e. cash, cheques, etc., the identity of the person undertaking the transaction, the destination of the funds, and the form of instruction and authority.

The transaction records which must be kept must include the following information:

(a) the nature of the transaction;

(b) the amount of the transaction, and the currency in which it was denominated;

(c) the date on which the transaction was conducted;

(d) the parties to the transaction;

(e) where applicable, the account or facility through which the transaction was conducted, and any other facilities or accounts (whether or not provided by the Attorney) directly involved in the transaction; and

(f) all other files and business correspondence and records connected to the transaction.

Transaction records must be kept in such manner and form as shall facilitate the reconstruction of the transaction.

46. UPDATING OF RECORDS

The POCA (MLP) Regulations [36] requires customer information concerning any business relationship to be kept under review, with a view to ensuring its accuracy and to be updated at least once every seven (7) years during the business relationship, or at more frequent intervals as

[36] Regulation 7(1)(c) of the POCA (MLP) Regulations

warranted by the risk profile[37] of the business relationship or transaction and whenever there is any doubt about the veracity or adequacy of previously obtained information. A regulated business must therefore devise systems, policies and procedures for recording reviewing and updating required customer information.

[37] The risk profile is to be determined in accordance with Regulation 7A

CHAPTER 10: COMPETENT AUTHORITY EXAMINATIONS

47. LEGAL FRAMEWORK

Section 91A(2)(a) of the POCA provides that the Competent Authority shall establish such measures as it thinks fit, including carrying out or directing a third party to carry out, such inspections or such verification procedures as may be necessary for the purpose of ensuring that a business in the regulated sector operates in compliance with the POCA and the POCA (MLP) Regulations. The GLC, as the Competent Authority, accordingly administers examinations of an attorney's legal practice (whether conducted as a sole practitioner or in partnership) for this purpose.

48. NATURE AND TYPES OF INSPECTION/EXAMINATION

An examination is not intended to be an audit of the business activities of an attorney but rather a procedure by which the GLC tests the adequacy of the programmes, policies, procedures, controls and systems implemented by attorneys engaged in designated activities to ensure compliance with the POCA Part V and the POCA (MLP) Regulations.

The GLC administers four types of examination, namely, routine biennial examinations, follow-up examinations, random examinations and special examinations.

Public accountants or chartered accountants holding a valid practising certificate from the Public Accountancy Board under the Public Accountancy Act are authorised by the GLC to conduct examinations on its behalf. Routine examinations will be conducted by such an accountant selected by the attorney in keeping with paragraph 49 below and who is independent of the attorney. Follow up, random and special examinations will be conducted by GLC personnel or agents.

49. ROUTINE EXAMINATION

It shall be the responsibility of the attorney or firm to ensure that the accountant who conducts a routine examination is so authorized by the GLC and that attorney shall pay all the accountant's costs with respect to the examination.

The examination period of the GLC for routine examinations is a two year period from January 1 of a year to December 31 of the following year and a routine examination must be completed by June 1 immediately following the end of each examination year. At the date that this Guidance

comes into effect, the examination period shall be reckoned from January 1 of the following year and the first routine examination must be completed on or before June 1, 2017. Where an attorney commences practice as a DNFI on or after 1st June 2014 the examination period shall be reckoned from January 1 of the year following the year in which the attorney commences practice as a DFNI.

The routine examination will test and evaluate compliance with applicable AML/CFT laws with a focus on the following:

(a) procedures and policies in respect of cash transactions;[38]

(b) internal reporting procedures in respect of suspicious transactions;

(c) procedures to ensure high standards of integrity of employees including systems to evaluate the personal employment and financial history of employees (employee due diligence policies and procedures);

(d) programmes for training of employees on their legal obligations and on the internal systems in place to ensure AML/CFT compliance;

(e) a system of independent audits to ensure AML/CFT programmes, policies and procedures are being implemented;

(f) appointment, role and responsibilities of the Nominated Officer;

(g) customer due diligence policies and procedures including more rigorous requirements for high risk clients and transactions (enhanced due diligence policies and procedures);

(h) the maintenance of records of client identification and verification of identification;

(i) the maintenance of records of complex, unusual or large transactions or unusual patterns of transactions pursuant to section 94(4) of the POCA; and

(j) procedures to assess the risks arising from practices or developing technology and procedures for developing risk profiles in respect of clients.

[38] See section 101A of POCA

The examination form appearing in Appendix B shall be completed by the examiner in the course of a routine examination and will be discussed with the attorney at the end of the examination. Thereafter it will be submitted to the GLC for evaluation.

Where an adverse rating is received on a routine examination, a follow-up examination will be scheduled.

50. FOLLOW-UP EXAMINATION

Follow-up examinations are conducted for the purpose of addressing any inadequacies identified in the routine examination.

Where an adverse rating is given, the GLC will issue a notice advising of a follow-up examination to be initiated within ninety (90) days of the completion of their evaluation of the examination form.

At the follow-up examination the examiner will discuss with the attorney the deficiencies noted in the routine examination, the steps which the attorney will take to remedy these deficiencies and the timeline for remedying same. The content of these discussions will be recorded in writing and signed by the examiner and a copy thereof given to the attorney.

The examiner will assess the progress of the agreed steps and if this is satisfactory a report to this effect will be made and there will be no further visit in respect of these issues.

In the event that an attorney does not address the deficiencies as agreed in the follow-up examination, the following steps will be taken:

(a) A letter will be sent by the GLC to the attorney referring to discussions at previous meetings and including the written record of such discussions and reminding the attorney of the measures agreed upon to address the deficiencies. A period of time will be given to the attorney within which to remedy all deficiencies.

(b) At the end of the period referred to in paragraph (a) above an examiner will attend on the attorney for the purpose of ascertaining whether the deficiencies have been remedied.

(c) If upon examination it is found that the deficiencies have been remedied, then a report will be written to this effect. If it is determined that there has been

insufficient progress made then a report will be written to this effect and the GLC will determine whether legal or disciplinary action is to be pursued.

51. RANDOM EXAMINATION

The GLC may whenever it thinks fit, and upon giving two (2) weeks' notice in the form set out in Appendix C to the Nominated Officer, conduct a random examination.

52. SPECIAL EXAMINATION

Special examinations will be conducted in circumstances where the GLC has cause to be concerned about the compliance of the relevant attorney with relevant AML/CFT laws and, without prejudice to the generality of the foregoing, where it has cause to believe that the attorney is providing designated activities but has declared otherwise in the annual declaration required under section 5(3C) of the Legal Profession Act.

The special examination may, at the discretion of the GLC, be either a full examination or one focused on a specific issue only.

In the case of a special examination the GLC shall determine what period of notice is reasonable.

53. SELF-AUDITS

Attorneys are required to conduct their own internal audits from time to time to ensure their compliance with all applicable AML/CFT laws and established policies, procedures and controls.

54. POWERS OF THE COMPETENT AUTHORITY

As Competent Authority the GLC has the following powers, inter alia, under section 91A of the POCA in addition to the powers of inspection and examination namely the power to:

(a) issue directions to attorneys, which may include directions as to measures to be taken for AML prevention, detection or risk reduction;

(b) examine and take copies of information and documents in the attorney's possession or control, and relating to the operations of the attorney's business;

(c) share information pertaining to any examination of the attorney's business with another Competent Authority, a supervisory authority or the FID or an authority in

another jurisdiction exercising functions similar to these authorities but this does not include information protected from disclosure by law such as privileged information;

(d) impose a requirement (if none exists) for registration of persons with such particulars that may be prescribed; and

(e) impose requirements for reporting to the GLC.

APPENDIX A: GENERAL LEGAL COUNCIL'S ANNUAL DECLARATION PURSUANT TO SECTION 5(3C) OF THE LEGAL PROFESSION ACT

Annual Declaration

To be filed in respect of each calendar year
on or before the 31st January of the next calendar year
Pursuant to Section 5(3C) of the Legal Profession Act

Reporting Year: _____

Part 1 – Basic Information for Attorney(s)

1. Name of Attorney/Firm: _____
2. Please indicate the structure of your practice:

   [ ] Sole Practitioner [ ] Partnership [ ] other (please indicate): _____
3. Business Address :
4. Contact details: Telephone _____, fax _____, email _____
5. Number of premises/locations from which the Attorney/Firm operates:
6. Address & Contact details for other locations:
7. Name and details of Attorney making this declaration (who shall be, where applicable, the Attorney making this declaration on behalf of the partnership of which he/she is a partner).
   a. Name:
   b. Attorney no.:
   c. Home Address:
   d. Contact no.: _____ (Work) _____ (Cell)
   e. Email:
8. Where this declaration is being made on behalf of a firm, set out the names and position of all attorneys in the firm during the Reporting Year (attach list if space provided below is inadequate):

Name of Attorney	**Position**

Part 2 - Activity Information

9. Please indicate whether you or your firm has for the last ensuing calendar year engaged in any of the following activities on behalf of any client: (**We advise that you refer to the GLC Anti-money Laundering Guidance for the Legal Profession regarding the activities listed below*)

Yes	No	
[ ]	[ ]	Purchasing or selling real estate
[ ]	[ ]	Managing clients' money, securities or other assets
[ ]	[ ]	Managing bank, savings or securities accounts
[ ]	[ ]	Organizing contributions for the creation, operation or management of companies
[ ]	[ ]	Creating, operating or managing a legal person or legal arrangement (such as a trust or settlement)
[ ]	[ ]	Purchasing or selling a business entity
[ ]		None of the above activities

Part 3 – Nominated Officer *(Pursuant to Regulation 5(3) of the Proceeds of Crime (Money Laundering Prevention) Regulations, 2007)*

(An attorney who does not engage in any of the activities listed at paragraph 8 of this Declaration need not have a nominated officer)

10. Name of Nominated Officer if applicable:

    a. Address (if different from Business Address stated above):

    b. Contact no:

    c. Email:

Declaration:

I declare that the information provided herein is true, correct and complete and that I have complied with the provisions of Section 5(3C) of the Legal Profession Act

Signature:
Name:
Date:

OR

I, [*insert name*], being a Partner of [*insert name of Firm*], declare that I have the authority and have been duly appointed by the partnership to make this declaration on its behalf. I further declare that on behalf of all the attorneys constituting the partnership that the information provided herein is true, correct and complete and that the partnership has complied with the provisions of Section 5(3C) of the Legal Profession Act.

Signature:
Name of Partner:
Date:

APPENDIX B: GENERAL LEGAL COUNCIL ANTI-MONEY LAUNDERING EXAMINATION FORM TO BE PREPARED BY EXAMINER

GENERAL LEGAL COUNCIL ANTI-MONEY LAUNDERING EXAMINATION FORM

Instructions
Please read all instructions carefully before completing this form

Examination Period: _____

Name of Examiner: _____

What is the purpose of this form?
The purpose of this form is to assess the level of compliance of Attorneys with the requirements of the Jamaican AML/CFT laws and regulatory guidance.

Who should complete this form?
This form shall be used by the General Legal Council and Accountants duly authorized to act as agents of the General Legal Council to conduct Examinations.

Please indicate below the type of examination to be conducted:

Routine Examination	☐
Follow-up Examination	☐
Random Examination	☐
Special Examination	☐

Notes to the Examiner:

1. All examinations are risk-based. An examiner shall not proceed with an examination where he has determined that the Attorney has not categorized clients into "high" and "low" risk. The examiner shall advise the GLC in writing immediately.

2. The Examination Form should be type-written and returned to the General Legal Council within ten (10) working days subsequent to the completion date of the examination.

3. The routine examination period commences 1st January and ends 31st December of the following year.

4. By undertaking this examination, the examiner understands and agrees that:

   a) the examiner has assumed a direct duty to the General Legal Council as the Competent Authority;

   b) the examination on which this report is based will be conducted diligently, impartially and with reasonable professional care;

   c) full disclosure of all information relevant to the attorney's compliance with the Jamaican AML/CFT laws will either be contained in or attached to the form;

   d) the examiner will render further assistance as reasonably required by the General Legal Council in the course of its assessment of this form; and

   e) a list of other Partners or Attorneys shall be attached if the space provided is inadequate.

PART I:
PARTICULARS OF THE ATTORNEY/FIRM

1. **Name of Attorney/Firm:** _____
2. **TRN:** _____
3. **Street Address:** _____
4. **Postal Address:** _____
5. **Telephone #:** _____ **Fax #:** _____
6. **E-mail Address:** _____
7. **Number of premises / locations from which the attorney operates** _____
8. **Address and contact details for other locations** _____
9. **Number of Staff:** _____
10. **Details of Partners over the examination period:**

PARTNERS:

Name	Position	Appointment Date	Cessation Date

11. **Details of Attorneys with the firm over the examination period?**

ATTORNEYS:

Name	Date Admitted	Starting Date	Ending Date

		COMMENTS (for General Legal Council use only)
	PART II: **RISK-BASED CUSTOMER VERIFICATION PROCEDURES AND RECORDS**	
12.	*Are there policies and procedures that categorize facilities into either "<u>high</u>" or "<u>low</u>" risk for money laundering showing the criteria used for such categorization?* *Yes* ☐ *No* ☐ ***If the answer to Question 11 above is "No", the examiner should <u>not</u> proceed with the examination and should immediately notify the General Legal Council. The Attorney's/Firm's clients should be categorized into either "high" or "low" risk for money laundering.***	
13.	*Total number of client files on record* ☐ • *Number of high risk files* ☐ • *Number of low risk files* ☐	
14.	Total number of client files examined ☐ • Number of high risk files ☐ • Number of low risk files ☐	
15.	Has the identity of each client for the file examined been established and verified in accordance with the AML law. Yes ☐ No ☐	
16.	What number and percentage of files examined <u>did not</u> comply with question 15? # ☐ % ☐	

	COMMENTS (for General Legal Council use only)
PART III: **TRANSACTIONS RECORD KEEPING PROCEDURES**	
17. What is the number of the client files examined that did not have all transaction records including verification in accordance with Jamaican Anti-Money Laundering law? #	_____
PART IV: **SUSPICIOUS TRANSACTIONS REPORTING PROCEDURES**	
18. Name of Nominated Officer (NO) _____	_____
19. Has he/she confirmed he/she is aware of his/her responsibilities under the POCA (MLP) Regulations? Yes No	_____
20. How many suspicious transactions reports have been made to the Nominated Officer during this examination period?	
21. How many suspicious transactions reports have been made to the Designated Authority during this examination period?	
22. Is there an internal AML/CFT staff training programme in place? Yes No If "Yes", please attach list of the session topics and attendees.	

	COMMENTS (for General Legal Council use only)
PART V: **TRAINING AND STAFF AWARENESS PROCEDURES**	
23. Has any staff attended/participated in AML/CFT training sessions conducted either locally or abroad during the examination period? Yes No If "Yes", please attach list of venue(s), participant(s), date(s) and proof of attendance	
24. Does the General Legal Council's most current Guidance form part of the AML/CFT training and awareness procedures for staff? Yes No	
25. Do internal AML/CFT compliance reviews take place? Yes ☐ No ☐	
26. What is the frequency of such reviews? _____	

	COMMENTS (General Legal Council use only)

PART VI:

GENERAL COMMENTS/REPORT ON SPECIAL ISSUES

(Please attach additional information if space above is not sufficient)

Examination Date _____ **Day/Month/ Year**

Examination Period _____ **Day/Month/Year to Day/Month/Year**

Name of Examiner _____

Signature of Examiner _____

APPENDIX C: NOTICE OF RANDOM EXAMINATION

[Name and Address of Nominated Officer]

Dear ,

We refer to section 91 of the Proceeds of Crime Act and the General Legal Council of Jamaica: Anti-Money Laundering Guidance for the Legal Profession dated 2014.

The regulated business of [name of attorney/firm] has been selected for a random examination which will be conducted by [name of examiner] [of the Investigations Division of the GLC] [a public accountant appointed by the General Legal Council] on the day of , being not less than two weeks from the date of this letter, commencing at 10:00 a.m.

To facilitate the examination you are asked to make available to the examiner such records, whether written or electronic, as he or she may require. The examiner will take such time as is necessary in all the circumstances to conduct the random examination but it is not anticipated that this examination should take longer than [ ] days.

Should you have any queries concerning the proposed examination kindly direct same to:

The Manager,
Investigations Division,
General Legal Council,
40 Duke Street,
Kingston,
Telephone: 876 922 2319 Ext 325.

Yours sincerely,

General Legal Council