THE GENERAL LEGAL COUNCIL OF JAMAICA:

ANTI-MONEY LAUNDERING GUIDANCE

FOR THE

LEGAL PROFESSION

As revised 31 December 2023

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 - A business that is-

  (a) 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; 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 - 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 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 the Public Service
- 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, 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 are 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 clients' 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

3.1 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 or give the appearance of innocence (e.g. profits from businesses or funds of charitable organizations). 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 from criminal sources, such as the drug trade, the smuggling of weapons and other goods, fraud, kidnapping and extortion.

3.2 Unlike money laundering, which is preceded by criminal activity, with financing of terrorism this may not be the case. 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.

3.3 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.

3.4 The TPA also requires that reporting entities such as DNFIs: -

(a) Determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a listed entity, and report to the Designated Authority at least once in every four (4) calendar months or in response to a request made by the Designated Authority, whether or not they are in possession or control of such property. A listed entity is one which the court so designates upon an application by the DPP in respect of:

(i) an entity designated as a terrorist entity by the UNSC;

(ii) an entity which the DPP on the basis of there being reasonable grounds to believe the entity has knowingly committed, or participated in the commission of a terrorism offence, or is knowingly acting on behalf of, at the direction of, or in association with, such an entity; or

(iii) not being an individual, is owned or controlled, directly or indirectly by an entity referred to in sub-paragraph (i).

(b) Report all suspicious transactions to the Designated Authority.

(c) Make and retain for a period of not less than seven (7) years, a record of all:

(i) Complex, unusual or large business transactions; and

(ii) Unusual patterns of transactions, whether completed or not, which appear to be inconsistent with the normal transactions carried out by that customer.

(d) Implement enhanced monitoring in respect of transactions with customers domiciled, resident or incorporated in specified territories.

(e) Ensure that high standards of employee integrity are maintained, and that employees are trained on an on-going basis regarding their responsibilities under the TPA.

(f) Establish and implement programmes, policies, procedures and controls, and establish programmes for training of employees on a continuous basis, to enable them to fulfil their duties under the TPA.

(g) Designate a Nominated Officer at management level who should arrange for independent audits to ensure that compliance programmes are effectively implemented.

(h) Apply targeted financial sanctions with respect to any property owned or controlled by or on behalf of a listed entity or derived or generated from such property.

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 intergovernmental 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. The FATF has issued Guidance for a Risk-Based Approach for Legal Professionals which is accessible at **https:// www.fatf-gafi.org/en/publications/Fatfrecommendations/Rba-legalprofessionals.html.**

As revised in February 2023, the 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 Caribbean Financial Action Task Force ("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.

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

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 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 implementation of 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 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

5.1 Section 5 of The United Nations Security Council Resolutions Implementation Act (The UNSCRIA) 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.

5.2 The UNSCRIA provides for the following: -

(a) a duty on regulated entities including DNFIs to determine whether or not they are in possession of property for a person prescribed under Regulation 3 and to report whether they are, or are not, in possession of property for a person who is so prescribed. These reports are to be made to the Designated Authority. Reporting in this regard must be done in compliance with any directions that may be given by the Designated Authority, (section 5(4)), and the fact that a report has been made must not be disclosed to any other person, (section 5(6)).

(b) statutory protections for persons making reporting obligations under this Act, from civil or criminal liability for breaches of confidentiality; (sections 5(5) - reporting to the Designated Authority and 18 - disclosures to a relevant authority).

(c) restrains persons from dealing directly or indirectly with any assets that are owned or controlled by or on behalf of, or at the direction of, a proscribed person. It also prevents persons from entering into or facilitating, directly or indirectly any transaction in respect of these assets. No person should provide any financial or other related services with respect to these assets or make any property or any financial or other related service available for the benefit of a proscribed person or convert any such property or take steps to convert or disguise that the property is owned or controlled by or on behalf of the person or entity (section 8A as amended in 2019).

(d) the designation of any provision of a law in Jamaica as a UN sanction enforcement law. This designation is done under section 9 and can only be done to the extent that it gives effect to a decision made by the UNSEC under Chapter VII of the UN Charter and which Jamaica would be obliged to carry out under Article 25 of the UN Charter.

(e) monitoring compliance with any UN sanction enforcement law by empowering the regulated authority by written notice to request from any person the information or documents specified in the notice. Non-compliance with this request constitutes an offence (section 15) however a person is not required to give any information or document in response to a request, if to do so would violate legal professional privilege.

(f) the development of regulations to give effect to the Act (such as programmes and policies to be implemented by entities to ensure compliance with the Act; forms of reports or returns to be made under the Act; prescription of penalties (section 21) and to give effect to the UNSCR (section 3).

5.3 When a directive or resolution is issued from the UNSC mandating members to take certain actions and/or refrain from activities pursuant to such directive or mandate, Jamaica would then issue the requisite Regulations under this Act within 30 days giving effect to such a

decision and outlining the specific parameters of compliance (section 3). To give more immediate effect to the UNSCR, section 3A provides for the DPP to make an application to a Judge of the Supreme Court for an order to declare a person/entity to be a proscribed person/entity. Such an order will remain in effect until the passage of the relevant regulations.

5.4 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 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)

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

Regulations also create offences for breaches of the obligations imposed by the POCA (MLP) 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 or merchant bank or building society as defined under the Banking Services Act; a society registered under the Co-operative Societies Act which carries on credit union business; a person who (i) engages in life insurance business within the meaning of the Insurance Act or (ii) performs services as an intermediary in respect of life insurance business within the meaning of the Insurance Act; 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; money transfer and remittance agents and agencies; 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 designated 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 behalf of clients have therefore been designated as non-financial institutions or DNFIs.[6]

[5] See section 16 of POCA (Amendment) Act 2013, which amends paragraph 1(1) (a) of the Fourth Schedule of POCA,
[6] See chapter 2 of this Guidance: Overview of the DNFI Order and the Regulated Sector.

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 corporate service 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 of National Security 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 the Regulations thereunder as well as to issue guidance regarding effective measures to prevent money laundering. The GLC 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 the relevant Regulations thereunder.

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 in order to continually assess the risks of money laundering and terrorist financing, relating to the businesses in the regulated sector which the Competent Authority is responsible for monitoring;

(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[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 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 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 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 includes 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 carry out those activities in the course of their employment as employees (in-house counsel) of other types of businesses or as attorneys who work for government agencies.

Subject to the above, 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, 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; and

(5) acting for or assisting trustees, including executors and administrators of the estate of deceased persons, in the discharge of their duties.

(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 engage 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 the 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 DNFI Order as such proceedings have as their purpose the creation of arrangements in respect of property or other assets which will not be the subject of thorough judicial examination to mitigate against the possibility that there is 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 has the responsibility to protect the client's right to LPP.

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-

(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

[8] As amended in 2014

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. This recommendation has been endorsed by the Judicial Committee of the Privy Council as a practical measure to protect the client's privilege against inadvertent disclosure of privileged information.[9]

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 did 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 [10] and tipping-off [11] are of general application to all persons and apply to all attorneys, even those not carrying on Designated Activities.

The obligations on attorneys as DNFIs under the 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 the POCA (MLP) Regulations requires that customer information should be updated periodically and at least every 7 years during the course of the business relationship or at more frequent intervals as warranted by the risk profile of 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.

The POCA (MLP) Regulations at 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) is 29th March 2007, the DNFI Order specifies the effective

[9] *Attorney General and the General Legal Council v The Jamaica Bar Association [2023]UKPC 6*
[10] Sections 92 and 93 POCA
[11] Section 97 POCA

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 the transaction have known connections to criminals;

(e) client or other party wishes to effect the transaction in a 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 the 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 876 928 5141

Reports to the Chief Technical Director of the FID, being the Designated Authority, are made online by registering on the FID portal and completing and submitting the applicable reporting forms and if needed the request for consent to proceed. This can be viewed at: **https://goaml.fid.gov.jm/how-to-report/creating-a-web-report**.

(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 and no conviction for the predicate offence is necessary for a person to be prosecuted for a money laundering offence.[12]

"There can be no doubt that…before a substantive offence of money laundering can be committed, there must have been an antecedent (or "predicate") offence committed by someone, which generated the criminal property concerned. The antecedent offence might of course be one of several different types. Fraud, drug trafficking, smuggling and the management of prostitution are no doubt common kinds of offence which generate money benefits which fall within the definition of criminal property, but there are also many others. So, the Crown must prove that such an antecedent offence was committed by somebody. It does not, however, follow that for a defendant to be convicted of a substantive offence of money laundering, there must have been a conviction for the antecedent offence. What has to be proved is that an antecedent offence was committed, not that a conviction followed. It may quite often happen that there has been no conviction, for example if the antecedent offender has died before he could be prosecuted or has escaped to a place from which he cannot be extradited. A conviction is only one way of proving that an offence has been committed."[13]

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

[12] *Asset Recovery Agency (ex parte)(Jamaica)* [2015] UKPC 1
[13] *Ibid.*

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. This term is defined in section 91 of POCA as the property that constitutes or represents a person's benefit from criminal conduct.

23.3 CRIMINAL CONDUCT

"Criminal conduct" under 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 would constitute an offence if it had 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 (which means having physical custody of criminal property) or using criminal property;

(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 provision 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[14].

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. In some cases, knowledge may be inferred from the fact of possession or from surrounding circumstances or from both.[15] 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".[16] 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.

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.

[14] *Bowman v Fels* [2005] EWCA Civ 226; [2005] 4 All ER 609
[15] *R v. Cyrus Livingston* (1952) 6 JLR 95
[16] *Westminster City Council v. Croyalgrange Ltd.* [1986] 83 Cr. App. R. 155; [1986] 2All ER 353

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 anyone.

Actual knowledge or reasonable grounds to believe that the transaction involved some kind of criminal conduct is an essential element of the offence. In *Holt v. AG* it was held that is necessary to prove that the defendant "had applied her mind to the circumstances in which the money had been produced. Actual knowledge or suspicion that there was criminal conduct of some kind involved is an essential element of the offence. 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."[17]

[17] 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

23.6 STATUTORY DEFENCES

Exemption from liability for the offence of money laundering may arise under 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;[18]

(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. This is sometimes referred to as the "tradesman defence" and 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 him is paid from 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:

[18] *Ibid Holt*

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

(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 refusal.

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.

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 of consent or refusal to the Nominated Officer within five (5) days after giving the verbal response.

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; or

(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 it 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 must 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, and prior to a transaction or activity taking place, or arrangements being put in place, 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) working 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 manner and 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 when required. 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 after the request for consent is made, the attorney or firm may proceed with 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) days (the moratorium period) from the day consent is refused, if the FID wishes to prevent the transaction going ahead after that date. If the FID does not obtain the restraint order within the time stipulated the attorney is deemed to have consent.

In cases where consent is refused, in order to avoid liability for the tipping-off offence, one cannot inform the client of this refusal, but the FID may be consulted to establish what information can be provided to the client.

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

In order to provide a defence against future prosecution for money laundering, the reasons for any conscious decision not to seek consent should be documented. If necessary, where a reasonable excuse for not seeking prior consent exists, an appropriate report should be made as soon as is reasonably practicable after carrying out the instructions, 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 Parish 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. Such report should be made by the Nominated Officer no later than 15 days after receiving the internal report.

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 members 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 internal report, if he has reasonable grounds for knowing or believing that another person, whether or not a client, has engaged in a transaction that could constitute or be related to money laundering.

A sole practitioner who knows or believes, or where there are reasonable grounds to know or believe, that a client 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. Such information must have come to the attention of that practitioner in the course of his practice.

In order to fulfil these obligations, attorneys should pay attention to all complex, large or unusual transactions or patterns of transactions, whether completed or not, in order to determine if the transaction appears to be inconsistent with the transactions usually carried out with that firm by that client or other person.

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".[19] The knowledge must, however, have come to the attorney in the course of his practice 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 would not come within the scope of the 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 client's known legitimate business or source of funds. If a transaction or activity does not produce a money laundering concern at the time it is

[19] *Westminster City Council v. Croyalgrange op. cit.*

conducted, but reasonable grounds for believing this are raised later, an obligation to file a STR 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 Officer. 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 consultation 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. 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.

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.

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:

1. he has a reasonable excuse for not making the disclosure;

2. he is an attorney and the information came to him in privileged circumstances; and

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

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 Parish Court 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 to the Chief Technical Director of the FID, being the Designated Authority, are made online by registering on the FID portal and completing and submitting the applicable suspicious transaction reporting forms and the request for consent to proceed. This can be viewed at:

https://goaml.fid.gov.jm/how-to-report/creating-a-web-report

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 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.

In some instances, 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 believes facilitated money laundering, while further steps are yet to be taken which the attorney also believes will facilitate further money laundering. In that case, the attorney should make a suspicious transaction report, on his own initiative to the Nominated Officer if there is one, or to the FID, if there is no Nominated Officer, 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 as well as the reasons 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 OFFENCE

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 OFFENCE OF DISCLOSING A PROTECTED OR AUTHORISED DISCLOSURE

Under section 97(1)(a) of POCA it is an offence if a person knows or has reasonable grounds to believe that -

(i) a protected or authorised disclosure has been made, or is to be made, in accordance with section 100 and that person discloses any information or other matter relating to the disclosure; or

(ii) if a person knows or has reasonable grounds to believe that the Asset Recovery Agency, the DPP or an authorized officer is acting or proposing to act in connection with a money laundering investigation, which is being or about to be conducted, and he discloses information or other matter relating to the investigation.

It is not an offence if the disclosure is made to the Competent Authority or is made in privileged circumstances.[20]

25.2 SANCTIONS

If convicted by a Parish court, a person could be fined up to one million dollars ($1,000,000.00) and/or sentenced to up to one (1) year's 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:

[20] Sections 97 (2) and (3) POCA

(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 OFFENCE

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 the Attorney 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 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.[21]

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.

[21] Section 104 POCA

A person does not commit an offence if:

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

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

26.3 **SANCTIONS**

If convicted by the Parish Court, 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 employee 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) 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 the 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 the 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 and terrorist financing) is established regarding the operations generally, having regard, for example, to the business, products offered, any distribution channels, the national, regional, and international environment in which the regulated business operates and the size and nature of its operations;

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

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

(7) 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;

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

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

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

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

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

(13) 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;

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

(15) 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 discloures (STRs) 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, 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 or impending legislative or 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: RBA AND CUSTOMER DUE DILIGENCE OR KNOW YOUR CUSTOMER POLICIES AND PROCEDURES

29. INTRODUCTION

The implementation of policies and procedures for the assessment of ML/TF risk is fundamental to an effective AML/CFT programme and system of risk management for attorneys. This is known as a risk-based approach (RBA). RBA 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 RBA 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.

The following is intended to inform attorneys of the general areas which the Competent Authority has determined to be essential to their RBA 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 the POCA (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 the attorney is 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 regarding its operations generally (e.g. its business products, distribution channels, the national, regional and international environment in which it operates and the size and nature of its operations;

(g) procedures for establishing a risk profile regarding all its business relationships and one-off transactions to determine the level of risk for each and employment of measures commensurate with the risks identified and which stipulate that simplified due diligence procedures shall not be applied where there is a determination of high risk (Regulation 7A (1) POCA (MLP) Regulations);

(h) 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 all business relationships, one-off transactions, products, business practices and operations is required by the POCA (MLP) Regulations.

Risk assessment is an ongoing process and the more an attorney knows his client and understand**s** his instructions, and knows the parties to business relationships/transactions, 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, the nature and complexity of practice and risk profile.

(Further information and guidance may be found in FATF's 2019 Guidance For a Risk-Based Approach For Legal Professionals)

The assessing of money laundering and terrorist financing risk is an important requirement of the Regulations and a vital step in protecting your practice. There are three important levels of risk assessment:

1. Risk assessment of the entire practice or business is required (Regulation 7A(1)) and should be comprehensive in identifying and assessing all the money laundering and terrorist financing risks your practice faces. This risk assessment is central and fundamental to the AML/CFT policies and controls implemented across your business.

2. Client risk assessments should identify and assess the ML/TF risks identified at the individual client level.

3. Matter risk assessments should be undertaken on each new matter for a client, particularly where risks are novel or non-repetitive.

(a) **First Step: Identification of ML/TF Risks**

This is the first step in utilising a risk based approach. Attorneys should identify any ML/TF risks facing their business with particular emphasis on the type of clients, their geographic location, products, services, business practices and operations. 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.

Jamaica's National Risk Assessment published in August 2021 is an important document to be utilized in this regard (**https://boj.org.jm/national-risk-assessment-final-report-august-2021/)**

At a minimum, attorneys must determine the following:

(1) Who is the client/party to a business relationship? 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 person'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/parties to business relationships and services should be placed into risk categories.

Attorneys may find it helpful to rate a particular risk on a three-tier basis of low, medium or high or on a more granular scale in order to better differentiate between factors and their relevance to the practice. Whichever rating system you choose to use, it is important to keep the approach consistent throughout the document to allow comparability across risk types.

The most commonly-used risk categories are:

a) country or geographic risk;
b) client risk; and
c) risk associated with the particular service offered.

A short explanation of the reasons for each attribution should be included and an overall assessment of risk determined.

The weight given to these risk categories (individually or in combination) in assessing the overall risk of potential ML/TF may vary given the size, sophistication, nature

and scope of services provided by the attorney or firm. These criteria, however, should be considered holistically and not in isolation. Based on their individual practices and reasonable judgements, attorneys will need to independently assess the weight to be given to each risk factor.

Risk assessments should document the circumstances and the identified risks and should not be a tick box exercise.

It is suggested that a client/matter risk assessment template be developed in order to help those making risk assessment decisions. Where this approach is adopted, internal guidance and training on the use of the template should be provided, including how to assess the background and circumstances of the client and matter, and all key risk factors.

Where attorneys are involved in longer term matters, risk assessments should be undertaken at suitable intervals across the life of the matter on a risk sensitive basis, to ensure no significant risk factors have changed in the intervening period (e.g., new parties to the matter, changes in ownership and control, new sources of funds etc.).

Should you adopt the three tier risk rating, clients/parties to business relationships and services provided by the attorney should be placed into three (3) appropriate categories viz., low risk, medium risk or high risk.

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

These are clients/relationships and services that are assessed as having a minimal chance of exposing the attorney to money laundering or financing of terrorist activities, for example Jamaican licensed and regulated financial institutions.

(2) **Medium Risk Clients/Relationships and Services**

These are clients, relationships and services that are assessed as posing some risk, but on an overall assessment there is less than average chance of exposing the attorney to money laundering and/or financing of terrorism.

(3) **High Risk Clients/Relationships and Services**

These are clients, relationships and services that are assessed as having a greater than average chance of exposing the attorney to money laundering and financing of terrorism.

Examples may include: persons 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. (See also further examples given in paragraph 35.5)

(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, among other things, 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 which Regulation 7(5) stipulates for the purposes of Regulation 7(1) (a) shall include reliable 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, and that risk management measures are applied to the conditions under which the business relationship or one-off transaction is dealt with while identification procedures to verify the applicant's identity are being carried out.

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 within fourteen (14) days after the contact is first made, Regulation 7(4B) (a) and (b) shall apply. (See paragraph 30 below).

Regulation 7(1A) stipulates that Guidelines issued by the Competent Authority for the purposes of Regulation 7(1)(b) may include (a) limitations on the number or types of transactions that may be performed; and (b) requirements for monitoring large or complex transactions that are outside of the norm for the business relationship or one-off transaction in question.

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 shall make in respect thereof all required disclosures under section 94 of POCA (disclosures as to transactions which could constitute or be related to money laundering).

(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 and mother's maiden name. It also includes any other information used to verify the applicant for business' identity or the true nature of the applicant for business' trade, profession or source of funds.

(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) the 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;

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

(C) in the case of an insurance contract, it identifies and verifies the identity of the beneficiary;

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

(A) the identity and verification of identity of individuals who hold ten percent or more of the ownership of that person and the individuals who exercise ultimate effective control over that person; or

(B) the identity and verification of the identity of the senior manager who makes/implements decisions, where it is not possible to identify the individual with ultimate effective control or there is doubt about that individual's identity;

(3) for a body corporate which is licensed or otherwise authorized under the laws of the jurisdiction in which registered, establishment of:

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

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

(C) evidence of incorporation; and

(D) in the case of a legal arrangement involving life insurance

i) the identity and verification of the identity of the beneficiary at the time of pay-out; and

ii) in any case where the beneficiary is designated other than by name (for example, by reference to characteristics or a class), it obtains sufficient information to enable it to identify and verify the identity of the beneficiary at the time of pay-out and the regulated business shall take the identity of the beneficiary into account in determining whether enhanced due diligence measures should be applied under Regulation 7A(4).

(4) Regulation 2 stipulates that "ultimate beneficial owner" means:

a) in relation to a body corporate, the individual who ultimately owns or controls that body corporate;

b) in relation to an applicant for business, the individual on whose behalf the applicant for business conducts the business or one-off transaction concerned;

c) in the case of a trust, settlement or other legal arrangement, the individual who ultimately owns or controls the trust, settlement, or other legal arrangement (as the case may be).

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.

29.7 SATISFACTORY EVIDENCE OF IDENTITY

The following Regulations also 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 all the persons on whose behalf he acts are the persons he claims them 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 and all the persons on whose behalf he acts are the persons he claims them to be.

(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[22];

(b) where transactions are 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.

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

Regulation 7(4) of the POCA (MLP) Regulations provides that subject to regulation 7(4A) for the purposes of regulation 7 (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.

Regulation 7(4A) of the POCA (MLP) Regulations provides that in any case where the regulated business has reasonable grounds to-

a) suspect that a business relationship or one-off transaction constitutes or could be related to money laundering; and

b) believes that carrying out due diligence procedures as required under regulation 7 (4) might have the effect of alerting any person that a suspicion has been formed as described in paragraph (a) above,

the regulated business shall instead of performing the due diligence procedures, make the required report under section 94 or 95 of the Act (as the case may be).

Regulation 7(4B) of POCA (MLP) Regulations provides that where a regulated business is not satisfied, on the outcome of any of the due diligence procedures required to be conducted under the regulations in respect of any business relationship or one-off transaction -

a) the business relationship or one-off transaction shall not proceed any further, unless conducted with the permission of, and in accordance with guidelines issued by, the competent authority; and
b) the regulated business shall make an assessment as to whether any disclosure is required under section 94 of the Act (disclosure as to transactions that constitute or are related to money laundering).

31. RISK ASSESMENT

31.1 ESTABLISHMENT OF A RISK PROFILE

(a) **Assessment of Overall Risk Posed by the Business/Practice -** Reg 7A (1) of the POCA (MLP) Regulations requires all attorneys carrying on business in the regulated sector to

establish a risk profile in respect of their operations (hereafter called a practice risk profile or PRP) and to employ measures commensurate with the risk identified to effectively mitigate those risks.

An Attorney must maintain a documented PRP to identify the risk of money laundering and terrorist financing to which the practice may be subject. In addition, the attorney must establish an individual risk profile for all business relationships and one off-transactions to determine the level of risk for each. This is separate from the PRP. The PRP and individual risk profile must be made available for inspection by the Competent Authority upon request. In establishing the risk profile of the practice /business, attorneys should generally have regard to the following factors which are not exhaustive :

i. Your clients (e.g. their demographics e.g. are they PEPS or persons or entities residing or domiciled overseas or other high risk entities, do they have a cash intensive source of income?);
ii. The countries or geographic areas in which your services are provided or to which your clients are linked or derive their income;
iii. The nature of your services (e.g. Conveyancing, tax advice, managing client money or assets);
iv. The size and nature of your operations;
v. The frequency and complexity of the transactions in which you engage;
vi. Your distribution channels e.g. Online, apps or portals, in person, or non-face to face, or remote;
vii. The national, regional and international environment and with particular regard to the national risk assessment which identifies the AML risk to which Jamaica is exposed. These include -
    - Jamaica's National Risk Assessment identifying local and transnational gangs engaging in violent crime, scamming and extortion, trafficking in guns, illicit drugs and people, see: https://boj.org.jm/national-risk-assessment-final-report-august-2021/
    - The FATF Guidance for a Risk Based Approach for Legal Professionals see: https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Rba-legal-professionals.html.

- The FATF mutual evaluations of the jurisdictions in which you do business or to which your clients are linked.

Your PRP must be comprehensive, tailored to the practice, accurate and kept up to date. For the avoidance of doubt, the PRP must be a distinct written document. You should retain copes of all previous versions of your PRP for reference and to evidence your continued compliance. Your PRP should be reviewed, discussed and approved by Senior Management. All steps taken to review the risk assessment must be recorded and the date of last review should be recorded.

The PRP should provide a general overview of the practice, addressing its key features, including:

- number of partners/staff and other metrics indicating the scale of the practice;
- (where appropriate) rate of staff turnover and other aspects of staff culture;
- a description of the areas of practice and their relative size and significance to the business ;
- types of clients served; and
- location of the practice and, where relevant, any international exposure the practice might have.

The PRP should be kept under continual review to maintain its accuracy in dealing with emerging risks and in any event a periodic review should be carried out (at least every one to two years. It is also important to ensure that the PRP reflects changes in the practice.

Regulation 7A(1) also provides that the Attorney should employ measures commensurate with the risk identified to effectively mitigate those risk, but shall not employ simplified due diligence procedures in respect of a business relationship or one-off transaction which the attorney determines to be high risk.

(b) Assessment of Client Risk - Regulation 7A(2) of the POCA (MLP) Regulations stipulates that the high-risk category includes:

(1) any individual in any state analogous to 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/ who has held a senior management position in an international organization; relatives[23]/close associates[24] of all the above.

(2) a person not ordinarily resident in Jamaica, a trustee, a company with nominee shareholders or bearer shares, a person who is not the ultimate beneficial owner of the assets concerned in the business relationship or one-off transaction, such other as may be specified by the Supervisory Authority by notice published in the Gazette, and where the applicant for business was, but is no longer a person not ordinarily resident in Jamaica the attorney shall determine whether the level of risk of money laundering nevertheless requires an application of enhanced due diligence procedures.

(c) Assessment of Transaction Risk - 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.

[23] 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.

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

The Client Risk Factor Questionnaire in Appendix D may be used as a guide, and shall be expanded and adjusted as circumstances may require.

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 and 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.

31.4 Regulations 7A(5A) and 7A(5C) provide as follows:

(5A) Subject to Regulation 7A(1), where a business relationship or one-off transaction is determined to be low-risk, a business in the regulated sector may apply simplified due diligence procedures with respect thereto if the conditions set out in regulation 7A (5B) are met.

These conditions are that –

a) a proper evaluation of the risk was conducted by the regulated business, which justifies the adoption of the simplified due diligence procedures:

b) the regulated business has identified and documented the risks of money laundering involved and –

i) implements appropriate controls and systems to reduce or mitigate those risks; and

ii) reviews the risks identified, and the controls and systems to reduce or mitigate those risks, on an ongoing basis, and to ensure the employment of enhanced due diligence procedures should there be any change in circumstances which renders the business relationship or one-off transaction high-risk; and

c) having regard to guidance given by the competent authority concerned, the matter is an appropriate one for the application of simplified due diligence procedures.

(5C) simplified due diligence procedures include any one or more of the following-

a) requiring only one form of Government-issued identification from the applicant for business concerned, or accepting forms of identification other than Government-issued identification;

b) accepting identification verification from third parties who are under analogous obligations with respect to customer identification and verification procedures as concerns the prevention of money laundering

c) collecting only basic information, such as names, addresses and dates of birth or in the case of bodies corporate , date and place of incorporation;

d) reliance on publicly available documents or such other documents as the competent authority may specify, or

e) such other procedures as the competent authority may specify.

31.5 In respect of any business relationship or transaction with any class of persons specified by the supervisory authority, or any applicant for business resident or domiciled or incorporated in a territory specified in a list published under section 94A of the POCA, the competent authority may direct that businesses in the regulated sector –

a) impose such limits, on those business relationships or transactions, as may be specified in writing by the competent authority for that purpose (whether in the form of limits based on threshold amounts, prohibitions as to transactions with specified persons, or otherwise);
b) provide any reports required under these Regulations at more frequent intervals, as specified in the direction;
c) carry out, or permit to be carried out, such additional audit requirements as may be specified in the direction; and
d) not rely on any assurance referred to in regulation 12 for the purposes of verifying the identity of the person or applicant for business.[25]

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. (Different amounts may be specified by the Minister for different categories of regulated business by order published in the Gazette, or in the case of any category of regulated business, such

[25] Regulation 7B

an order may be made by the Minister on the recommendation of the competent authority and the designated authority.)

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. Risk management measures must be applied to the conditions under which the client relationship is dealt with while identification procedures to verify identity are being carried out.

Note the stipulation in Regulation 7(1)(b) if identity is not verified within fourteen (14) days.

34. IDENTIFICATION AND VERIFICATION PROCEDURES

An individual's identity has a number of components, including his/her name, current and past addresses, and 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) and mother's maiden name;

(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 e.g. social security number in the case of the United States of America.

(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, and/or the ultimate beneficial owner.;

(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[26].

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: Government issued driver's licence, Jamaican Elector Registration Identification Card, identification pages of Passport, National Council for Senior Citizens Identification Card, or Diplomatic Identification Card issued by the Ministry of Foreign Affairs, current known employer or public sector

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

employee identification card with a photograph, signed by both the employee and the employer and which has an expiry date. A risk assessment should be employed as to the type of identification accepted where best forms of identification are not available.

(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**

Where verification of identity does not take place within fourteen (14) days after contact is first made, Regulation 7(4B) (a) and (b) of the POCA (MLP) Regulations shall apply.

Risk Management measures are to be applied to the conditions under which the business relationship/one-off transaction is dealt with while identification procedures to verify identity are being carried out. (Regulation 7(1)(a)(ii) POCA (MLP) Regulations).

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 (not older than three (3) months) from a utility provider such as a telephone, internet, cable, water or electricity service provider (in the case of a minor or a student, a bill in the name of the parent/guardian will suffice);

(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;

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

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

(8) Letter from a Justice of the Peace to whom the client is publicly known and who can confirm that the referenced address is the individual's true place of residence;

(9) Official letter issued by a government agency/authority and mailed to the customer with a date not past three months,

For existing clients/business relationships, letters sent by post by 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 identity and the source of funds[27].

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

If the applicant is low-risk, simplified due diligence procedures may be applied as prescribed in Regulation 7A(5A) of the POCA (MLP) Regulations.

Regulation 7A(5C) of the POCA (MLP) Regulations provides examples of simplified due diligence procedures.

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

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

(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;

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

(G) verification of source of funds, wealth and 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 senior 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 and source of funds and wealth.

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.

Regulation 7A (2) of the POCA (MLP) Regulations provides that where a person was not ordinarily resident in Jamaica, and becomes resident, a determination shall be made as to whether the level of risk of money laundering nevertheless requires the application of enhanced due diligence procedures.

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.

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 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 and affiliates with any charities if applicable;

(6) a list of names, addresses and nationalities of the individuals (e.g. owners, directors, beneficiaries) who exercise 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;

(7) 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 and the individual such as the senior manager, who exercises effective control/ implementation of decisions;

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

(9) group corporate structure, where applicable;

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

(11) source of funds/wealth;

(12) Taxpayer Registration Number;

(13) The most recent annual returns filed with the Registrar of Companies.

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

The 2019 amendments to the POCA (MLP) Regulations prescribe the same identification and verification procedures as for unlisted companies.

34.5.3 **RECOMMENDED INFORMATION, DOCUMENTATION AND VERIFICATION**

(1) For individuals who exercise ultimate effective control of an entity and directors, shareholders and individuals holding ten percent or more of the voting rights or ownership of a body corporate, the recommended information, documentation and verification is the same as recommended for individuals[28].

[28] See as appropriate in this paragraph 34

(2) Regulation 7(4) of the POCA (MLP) Regulations also stipulates that subject to Regulation 7(4A)[29] there should be reasonable due diligence concerning identification and 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;

(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; and

[29] See paragraph 30

(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 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 licensed bank, merchant bank, building society, or co-operative society carrying on credit union business, 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 and verify the identity of the principal, agent, each 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.[30]

Regulations 11(5) and 11(6) of the POCA (MLP) Regulations provide that without prejudice to Regulation 11 (4) if there are reasonable grounds to believe that:

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

(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 specific provisions in respect of introduced business and should be noted.

Generally, where business is 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

(c) notwithstanding any reliance on an introducer's representations, an attorney should procure and review all of the client's KYC data, make a risk assessment in respect of the transaction, business relationship and client and satisfy himself that there is no suspicion of money laundering. Copies of the data 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.

In the case of an insurance contract, the identity of the beneficiary is to be established and verified.

In the case of a legal arrangement involving life insurance -

i) the identity of the beneficiary at the time of pay-out is identified and verified and

ii) in the case where the beneficiary is designated other than by name (for example, by reference to characteristics or a class) sufficient information for identification and verification of the identity of the beneficiary at the time of pay-out should be obtained and the identity of the beneficiary be taken into account in determining whether enhanced due diligence measures should be applied under regulation 7A (4).

35.5 HIGH RISK RELATIONSHIPS OR TRANSACTIONS

The following categories are also 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 also 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. NPO

35.5.2 NON-PROFIT ORGANIZATIONS (s)[31]

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 NPOs, 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 NPOs, 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.[32]

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

[31] NPOs have been found to be attractive for the financing of terrorism.

[32] For example, the Charity Commission or equivalent body.

minimum, it is recommended that attorneys follow the procedures outlined below to assist in the identification of non-face-to-face customers[33]:

(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;

(4) where 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)). [34] 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.

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

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

(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 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 or 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 which should apply appropriate measures to minimise the risk of money laundering and shall advise the Competent Authority of the inability, the reason therefor, and measures taken to minimise the risk of money laundering.[35]

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

CHAPTER 8: EMPLOYEE DUE DILIGENCE

38. EMPLOYEE DUE DILIGENCE

The Attorney's staff members can be an effective defence against the Attorney becoming inadvertently involved in money laundering or terrorist financing. Providing employees with adequate training, in order to equip them with appropriate AML awareness, skills and knowledge is a key part of AML controls, and an important way to mitigate the risks[36].

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, taking into account the size and nature of the business concerned, 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[37] 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 relevant financial business, aware of:

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

[36] SRA section 8.1
[37] Regulation 6(1)(b) POCA (MLP) Regulation.

(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 transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering[38].

For the purposes of the POCA (MLP) Regulations employees include persons who have entered into or work under a contract of service, 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.

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 and level of independent authority and decision-making 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.

[38] POCA (MLP) Regulation 6

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, the type of business they undertake and the outcomes of risk assessments. However, training must be structured to ensure compliance with all 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. New employees should be trained as soon as possible after they join, ideally as part of their induction process and before undertaking any regulated work. In addition, the Nominated Officer should be aware of internal staff transfers. Where staff roles or responsibilities change, their training needs may change. This should be considered and addressed by the practice as soon as possible after a member of staff has moved internally.

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 both to update on new developments and to refresh existing knowledge. You should take a risk-based approach to determining how often specific, role-based AML training should take place, although some form of high level basic AML awareness/refresher training should be undertaken annually across all relevant employees. Some type of training for all employees at least every two years is recommended.

Robust, ongoing training of staff is important, commensurate to their roles and responsibilities within the organization. Staff who are responsible for conducting searches using an electronic verification system must be adequately trained to ensure the validity and accuracy of client data input, and that all necessary data is submitted in the right fields. Staff responsible for evaluating and making decisions on sanctions, PEPs or adverse media screening outputs must be adequately trained with regards to what those outputs mean, and what further actions may be required to ensure required verifications are obtained. Specific training should be given to employees undertaking an active role in due diligence procedures or discounting/escalating potential screening matches.

Attorneys should ensure the system and use of personal data is compliant with all relevant regulations including data protection legislation. Access rights to such information must be rigorously controlled and Attorneys should consider using standards such as two-factor authentication as a means of ensuring security.

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 AML/CFT laws, policies and procedures to detect and prevent money laundering including identification, recordkeeping, and reporting requirements and the importance of these policies and procedures.

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, reviewed and updated as needed. 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. Treating all employees as employees relevant to compliance with AML will bring the added benefit of allowing more fluid internal transfers of staff across roles and work areas. Again, training should be appropriate for each post holder and business area, and relevant to the risks they are likely to come across.

The Nominated Officer is responsible for the content, roll-out and completion of AML training across the practice. Training outcomes should be reviewed and assessed so that the Nominated Officer/senior management can be reasonably confident of the adequacy of that training, and that key messages in relation to regulatory requirements and the policies, controls and procedures of the practice have been delivered effectively and any deficiencies addressed in future training.

A comprehensive written record 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;

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

(e) training documentation (presentations, notes, hand-outs, copies of online content, etc.), attendance records, and dates of training; and

(f) the results of any assessments carried out.

CHAPTER 9: RECORD KEEPING OBLIGATONS

42. GENERAL STATUTORY REQUIREMENT TO MAINTAIN RECORDS

The POCA (MLP) Regulations[39] 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.

Additionally, all practices (including sole practitioners) must be able to demonstrate that they have adopted a risk-based approach to the management of money laundering/terrorism financing risk within their businesses. In practice this means retaining documents and records to demonstrate this. Retaining accurate and comprehensive records is also important for facilitating cooperation with law enforcement and potentially defending yourself against criminal prosecution.

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, 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

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

(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 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[40].

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) Written records of all the steps taken to identify and assess the risks of money laundering and terrorist financing which the practice is subject to. This is the case for the risk assessment of the Attorney's operations generally, and any client or matter risk assessments undertaken.

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

(c) source of funds declarations;

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

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

(f) client information records;

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

(g) copies of official corporate records;

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

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

(j) the names, addresses, position, titles and other official information pertaining to the Attorney's employees and their relevant history;

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

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

Beyond the specific documents mentioned, Attorneys should retain records of anything that can help demonstrate compliance with AML/CFT laws and regulations including the POCA (MLP) Regulations. This may include recording any comments or considerations which have been made while considering and completing these documents and also in carrying out risk assessments of the Attorney's practice, clients and transactions.

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 and 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 are 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 [41] 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 warranted by the risk profile[42] of the business relationship or transaction and whenever there is any doubt about the veracity or adequacy of previously obtained information. An attorney must therefore devise systems, policies and procedures for recording reviewing and updating required customer information and risk profiles.

OTHER CONSIDERATIONS

If the practice undertakes internal re-organisation, or is involved in acquisitions, mergers or divestments, it is important that all records remain easily retrievable and accessible, both during and after such structural changes.

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

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

CHAPTER 10: COMPETENT AUTHORITY EXAMINATIONS

47. LEGAL FRAMEWORK AND RISK-BASED APPROACH

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 has also been designated as the competent authority under the Terrorism Prevention Act (TPA) and the United Nations Security Council Resolutions Implementation Act (UNSCRIA) and in this regard must ensure that regulated businesses have policies and procedures in place to counter the financing of terrorism and the proliferation of weapons of mass destruction as required by the TPA and its regulations and the UNSCRIA and its regulations. The GLC, , has implemented a system of inspections/examinations of an attorney's legal practice (whether conducted as a sole practitioner or in partnership) which will be carried out in accordance with the Legal Profession (Competent Authority Examinations) Regulations 2024.

The GLC's approach t supervision is risk based. Accordingly, the GLC will schedule more frequent examinations with Attorneys rated as high risk but it will, from time to time, also examine the practices of attorneys who are assessed as low and medium-risk. An inspection does not necessarily mean that the GLC considers an attorney or firm to be at high risk of being a target for the prohibited activities.

To decide which attorneys or firms the GLC considers to be high risk, it will periodically request attorneys to submit a self-assessment questionnaire to inform the GLC of the Attorney's own risk assessment and level of compliance. The GLC may also use information it holds or which becomes available about attorneys when deciding their level of risk. However, there is no single factor that will cause the GLC to consider an attorney or firm to be high risk.

48. NATURE AND TYPES OF 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 as well as the TPA and the UNSCRIA and their regulations.

The GLC's inspection regime comprises the submission of a periodic self-assessment questionnaire coupled with three types of examination, namely, routine examinations, follow-up examinations, and special examinations. Each of the three types of examinations may include offsite (i.e. desk-based reviews) and on-site (physical inspection of law practice) examinations. Further details of these examinations are set out in the Legal Profession (Competent Authority Examinations) Regulations 2024.

Only persons approved and appointed as examiners by the GLC are authorised to conduct the three types of examination. Such appointed persons may include employees of the GLC. All examiners are to be suitably credentialed and conferred with a valid letter of authority by the GLC.

49. ROUTINE EXAMINATION

The examination period for routine examinations will be such examination period as is deemed appropriate by the GLC in accordance with the risk rating of attorneys.

The routine examination should test and evaluate compliance with applicable anti-money laundering (AML), countering the financing of terrorism (CFT) and countering the financing of the proliferation of weapons of mass destruction (CFP) laws with a focus on the following:

(a) programmes, procedures and policies in respect of cash transactions, that is transactions involving notes, coins or bearer negotiable instruments;

(b) internal reporting procedures for 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 duties and on the internal systems in place to ensure compliance with AML/CFT/CFP obligations;

(e) systems to ensure implementation of programmes, policies and procedures for AML/CFT/CFP;

(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 on all complex, unusual or large transactions or unusual patterns of transactions whether completed or not; and

(j) procedures for risk identification and assessment in respect of clients and of the operations of the attorney or firm, generally.

Where on a routine examination deficiencies are found in the practice of an Attorney, the GLC shall issue a notice to the Attorney advising of:

a. the deficiencies noted in the routine examination;
b. the steps which the Attorney should take to remedy the deficiencies and the timeline for remedying same; and
c. the date of a follow-up examination to be determined by the GLC.

50. FOLLOW-UP EXAMINATION

The objective of a follow-up examination is to review and assess the progress of the steps taken by the Attorney to remedy the deficiencies identified on the routine examination and communicated to the Attorney. Following a follow-up examination, the examiner will prepare a written report regarding his findings on the review and assessment which shall also be delivered to the Attorney who will then sign and return to the examiner a copy of the written report.

A follow-up examination may determine that an Attorney has not addressed the deficiencies identified and communicated on the routine examination. In such a case, the GLC will send a letter to the Attorney, together with a copy of the written report of the review, informing the Attorney of the steps required to address the deficiencies and the timeline for completion. At the end of the timeline, the examiner will interview the Attorney for the purpose of ascertaining whether the deficiencies have been remedied.

A failure to address the deficiencies during the follow-up examination will amount to misconduct in a professional respect and may result in disciplinary proceedings being brought by the GLC against the Attorney.

51. SPECIAL EXAMINATION

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

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

In the case of a special examination the GLC shall determine what period of notice is given to the attorney or firm, which in any event, shall not be less than three days' notice.

52. DOCUMENTS TO BE PROVIDED PRIOR TO AN EXAMINATION

For the purpose of complying with the requirements of an examination, an Attorney shall maintain and make available to the Examiner for inspection: -

(a) the risk assessment for the Attorney's practice;
(b) client and business records and files in respect of Designated Activities as requested by the Examiner; and
(c) a list of all clients and matters in respect of Designated Activities categorized in accordance with the risk rating assigned to them by the Attorney.

The aforementioned records and files include but are not limited to:

(a) AML/CFT/CFP policies and procedures;
(b) Client risk assessment template;
(c) Copies of any audits on policies and procedures, including any recommendations or follow-up action arising from them;

(d) Training records;

(e) A list of the fee earners;

(f) Matter lists to enable the selection of files to review;

(g) If any case management system or processes allow, a list of any open matters identified as high risk by the attorney or firm;

(h) A completed short questionnaire describing the services the attorney or firm provides.

The examinations by the GLC do not apply to disclosure of records and files that are subject to legal professional privilege and the disclosures which would constitute tipping off under AML/CFT/CFP laws.

Ahead of an examination, the GLC examiner may deliver to the attorney or firm a written request for the attorney or firm to deliver to the GLC copies of any documents or records required for inspection.

53. SUSPICIOUS TRANSACTION REPORTS (STRs)

In the course of any examination, suspicious transaction reports (STRs) that have been made to the Designated Authority should not be disclosed to any examiner who is not an officer of the GLC. If the GLC wishes to review a copy of any report or request for consent submitted to the FID, this will be specifically requested and the inspection will be done at the attorney's office. The report should not be copied and the GLC will not request copies from the attorney. Copies of such documents must not be sent to the GLC.

54. SELF-AUDITS

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

55. POWERS OF THE COMPETENT AUTHORITY

As Competent Authority, the GLC has the following powers, *inter alia*, under section 91A of 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 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, subject to those matters covered by LPP;

(c) share information pertaining to any examination of the attorney's business with another competent authority, a supervisory authority, 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 including 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;

(f) continually assess the risks of money laundering and terrorist financing, relating to the businesses in the regulated sector that the GLC is responsible for monitoring, and tailor its activities (including any directions or requirements that may be issued, or measures or procedures that may be established) under the POCA accordingly.

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: THE CLIENT RISK FACTOR QUESTIONNAIRE

*To be adjusted/expanded as circumstances require

CLIENT RISK	*NOTES*
STATUS OF CLIENT • How well do you know your client and background? • Is your client known to you personally/existing client, or new business relationship? • Is your client a high risk person/entity e.g., a PEP? • Has your client been introduced to you by a 3rd Party? Is the instruction from your client channelled through a 3rd party? If so, why? Have you noted the requirements for introduced business? • Are you aware of your client having any links to criminality?	
FACE-TO-FACE CONTACT • Have you met with your client face-to-face or is it a non-face-to-face transaction? Non-face-to-face is a factor suggesting high risk. • If non-face-to-face, are you comfortable there is a legitimate reason for this and what is the reason?	
LOCATION OF CLIENT • Where is your client based? Locally/overseas? • Is your client based/resident/linked to a high risk jurisdiction/high risk country? • Does your client have connections to a jurisdiction where ML controls are weak? Are funds being sent to/from any of these places? • Have you carried out a check of the list issued by the Supervisory Authority or any other relevant terrorist lists pertaining to AML/CFT?	
CLIENT DUE DILIGENCE **Has your client provided the requisite information and documentation e.g.** regarding ID and address information and verification as follows: • Acceptable documentation to verify identity and address within 14 days/ • Acceptable non-standard documentation to verify identity and address within 14 days? • Have you been able to confirm the authenticity/professional status of the certifier (where required) of any copies of documentation e.g. ID/address verification?	

• Has your client been cooperative in the process or have they delayed providing ID and address verification / appeared reluctant to do so?	
FINANCIAL PROFILE OF CLIENT • Does the stated source of wealth / source of funds and the amount of money involved stack up with what you know of your client, for example given their age and occupation? • Is your client involved in / run a high risk or high cash turnover business? Is there the potential that the funds are from untaxed income? Is there a potential the funds are the proceeds of fraud?	

AML-REGULATED LEGAL SERVICE RISK	*NOTES*
TYPE OF LEGAL SERVICE • Could the type of transaction be used for the purposes of money laundering or is it at a higher risk of money laundering? - E.g., Will / Power of Attorney - lower risk - Conveyancing / Commercial Property - higher risk • Does the transaction make sense or is it overly complex given the underlying nature of the business being conducted? • Does it make sense that your client has asked your firm to carry out this type of transaction? (e.g. is it within your area of expertise/local geographical area?)	
VALUE OF LEGAL SERVICE/ASSET/TRANSACTION • Does the value of the transaction appear to fall within the financial means of your client, given their income and savings?	
SOURCE OF FUNDS • Is the source of funds clear and identifiable? • Are funds coming from a recognised financial/credit institution (e.g. a loan or mortgage) or are they personal funds? If no loan or mortgage, enquire into the source of wealth. It may be prudent to ask for some supporting evidence to confirm the information provided and then reconsider the ML/TF risks involved. • Is any funding coming from overseas? From where? From who? Connection to client? • Are any of the funds being paid by a third party otherwise unconnected to the transaction? • Does your client seek to change the source of funds at the last minute? • Has your client paid excess funds into your client account? Why/How?	

• Is it being proposed that funds come from outside Jamaica and gain entry to the Jamaican financial system for the first time via your client account? • Could the client be trying to route funds through the attorney without an underlying transaction? ***N.B. Standard CDD requires attorneys to understand the client's source of funds/wealth. <u>Evidence</u> of source of funds/wealth is only required if there is a high ML/TF risk and, in such circumstances,*** attorneys ***must consider whether any documentation could possibly negate the risk that the attorney might themselves unwittingly commit the substantive offence of ML/TF by proceeding.***	
DESTINATION OF FUNDS • Has your client requested that proceeds of a transaction be paid to someone other than a lender or themselves? • Are proceeds of a transaction to be paid to an overseas account?	

Reminder - After you have completed the questionnaire, complete the file note (below) to document your thought process for individual ML/TF Customer Risk Assessment, CDD measures and any other compliance decisions.

<u>MONEY LAUNDERING RISK ASSESSMENT – FILE NOTE</u>

This should be completed at the beginning of the transaction, during the transaction if anything changes and just before the transaction is completed. Assessment of risk should take both client and transaction risk into consideration and will dictate whether Standard or Enhanced Client Due Diligence (CDD) is required and if the client/transaction is accepted and if any disclosure is made to the FID.

INITIAL ASSESSMENT OF RISK:	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Enhanced CDD)
Please note below reasons for your assessment:			
SIGNED BY:	DATE:		

INTERIM RISK ASSESSMENT – HAVE ANY RISK FACTORS CHANGED?	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Enhanced CDD)
Please note below reasons for your assessment: *(If no, quick note stating as such, signed and dated – evidences that a review has been undertaken and consideration has been made)*			
SIGNED BY:	DATE:		

FINAL RISK ASSESSMENT – HAVE THERE BEEN ANY LAST MINUTE CHANGES THAT GIVE CAUSE FOR CONCERN?	LOW (Standard CDD)	MEDIUM (Standard CDD)	HIGH (Enhanced CDD)
Please note below reasons for your assessment: *(Should be undertaken before monies are transacted/enter the client A/C)*			
SIGNED BY:	DATE:		

If you have assessed the risk as <u>high</u> at the beginning or thereafter at any point during the relationship/ transaction or if you have any reservations or concerns, please refer to the Nominated Officer before commencing or continuing to act for the client. Remember that one of the enhanced due diligence measures required by the POCA (MLP) Regulations, is obtaining senior management approval to commence or continue the business relationship or one off transaction.