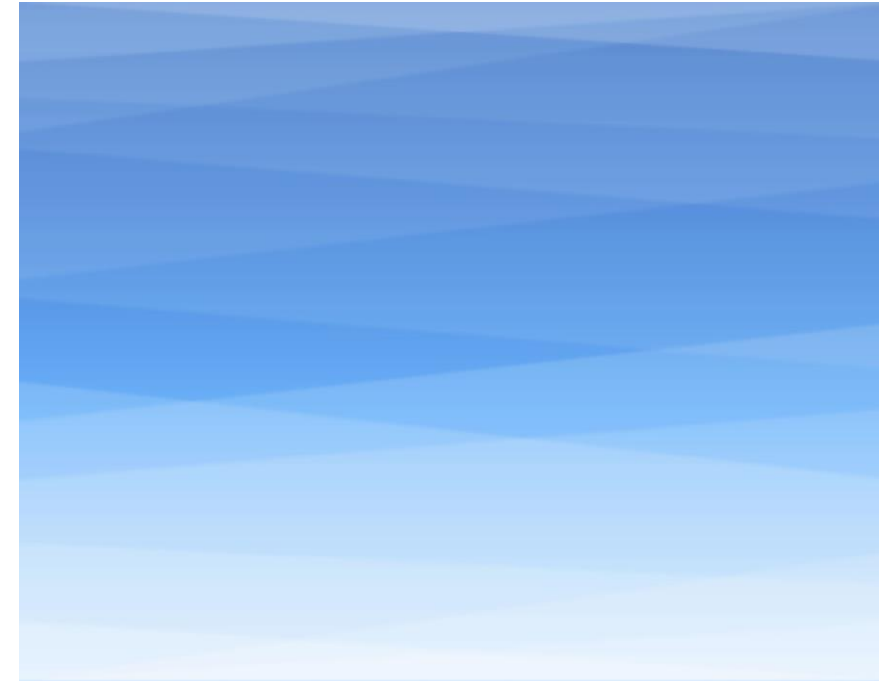



# AML Examinations for the Legal Profession

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Symone M Mayhew KC

July 26, 2023





The Proceeds of Crime Act was amended in 2013 in contemplation of extension of Obligations under Part V of the Act and Regulations to Attorneys participating in certain specified transactions.

# Six Activities – 2013 DNFI Order

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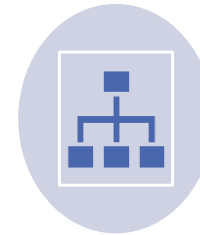
**Purchasing or Selling Real Estate**



**Managing Money, Securities or Other Assets**



**Managing Bank Accounts Or Savings Accounts Of Any Kind, Or Securities Accounts**



**Organizing contributions for the creation, operation or management of companies;**

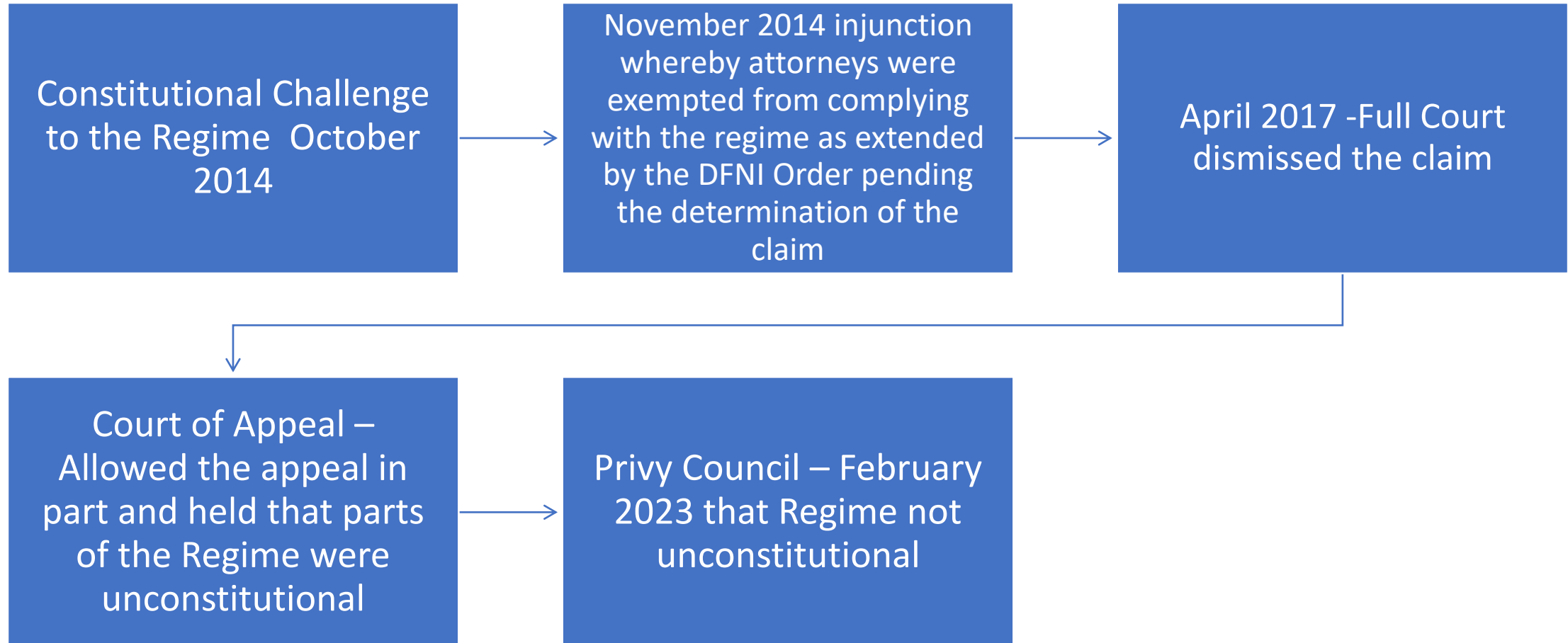



**Creating, operating or managing a legal person or legal arrangement (such as a trust or settlement);**



**Purchasing or selling a business entity.**

# JAMBAR v AG and GLC



- 
- Designated as the Competent Authority for the Legal Profession
  - Legal Profession Act Amended to prescribe filing of an annual declarations by attorney.
  - Issued guidance to the Profession
  - Canons were also amended to restate the attorney's duty of confidentiality in keeping with new AML obligations

ROLE OF THE GLC

# Core Functions of Competent Authority

Monitor compliance by any type of business in the regulated sector with the requirements of the Act and any regulations made under that part

Issue guidelines to businesses in the regulated sector as to effective measures to prevent money laundering.

Ensuring compliance by business in the regulated sector with the AML laws

# Risk-Based Approach (RBA)

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- Competent Authority Level
- Practice Level
- Client Level
- Transaction Level

# MAIN OBLIGATIONS OF ATTORNEYS

Establish policies  
and procedures to  
detect money  
laundering

Appointment of  
Nominated Officer

Reporting  
Obligations

Customer Due  
Diligence

Record Keeping  
Obligations

Employee Due  
Diligence



## GLC's Inspection Regime

- Monitoring , Inspection and verification are essential functions of the Competent Authority in any review to determine compliance with the AML/CFT obligations
- Will be adopting a Risk Based Approach to its supervision of attorneys.
- Risk Assessment will be based on questionnaire to be completed by attorneys

# THE LEGAL PROFESSION (COMPETENT AUTHORITY EXAMINATIONS) REGULATIONS, 2023, Draft



Routine Examinations

Follow up Examinations

Random Examinations

Special Examinations

# Examiners

- Registered Public Accountant
- Examiner Approved by the Council

# Routine Examinations

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## Evaluate compliance with AML/CFT Laws with focus on

- Programmes, procedures and policies for cash transactions (that is notes, coins, bearer negotiable instruments);
- Internal reporting procedures for suspicious transactions;
- 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);
- Programmes for the training of employees on their legal obligations and on the internal systems in place to ensure compliance with AML laws;
- Systems to ensure implementation of AML programmes, policies and procedures;

# Routine Examinations (contd)

Evaluate compliance with AML/CFT Laws with focus on

- Appointment, role and responsibilities of the Nominated Officer required by the AML laws;
- Customer due diligence policies and procedures including more rigorous requirements for high risk clients and transactions (enhanced due diligence policies and procedures);
- The maintenance of records of client identification and verification of identification;
- The maintenance of records including information on all complex, unusual or large transactions or unusual patterns of transactions whether completed or not;
- Procedures to assess the risks arising from practices or developing technology and procedures for developing risk profiles in respect of clients and of the Attorney's operations generally.



# Frequency of Routine Examinations

- Draft Regulations provide for these to be annual
- The Regulations provide for GLC in its discretion to postpone or dispense with annual examinations based on risk assessment of the attorney.
- Likely that only high risk group that will be subject to annual examinations

# Random Examinations

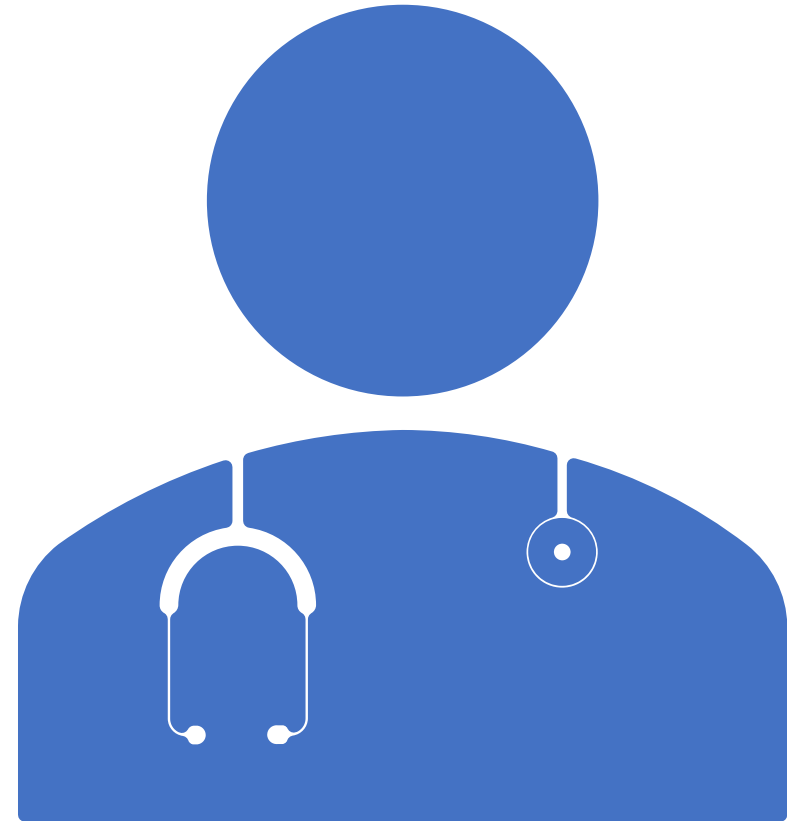
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- Upon giving fourteen (14) days' notice to the Nominated Officer or to the Attorney.
- A random examination will evaluate compliance with applicable AML laws

## Deficiencies Identified In Routine or Random Examinations

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- Brought to Attorney's attention
- Follow up examination scheduled
- Timeline for remedial measures
- If satisfactory report to the GLC
- If not satisfactorily addressed - GLC will write to attorney advising of further time to remedy
- If still not addressed –legal or disciplinary matter





# Follow Up Examination

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- The Examiner will review with the Attorney-
  - the deficiencies noted in the routine examination
  - the steps which the Attorney should take to remedy these deficiencies and the timeline for remedying same
  - and record the contents of the review in writing, sign the record and give a copy to the Attorney.

# Special Examinations

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- Where the GLC has cause to be concerned about the compliance of an Attorney with AML laws;  
or
- Where the GLC has cause to believe that the Attorney is providing designated activities but has declared otherwise in the annual declaration required under section 5(3C) of The Legal Profession Act.

# Documents to be Inspected

- An Attorney shall maintain and make available for inspection:
  - all client records and files in respect of designated activities; and
  - a list of all clients and matters categorized in accordance with the risk rating designated by the Attorney.



# Confidentiality

- Attorneys owe a duty of confidentiality to clients, subject to the attorney's legal obligations under POCA.
- The Legal Profession Canons of Professional Ethics Rules sets out exceptions to the attorney's duty of confidentiality, making it permissible for the attorney to disclose to the appropriate authority a client confidence
  - in accordance with the provisions of POCA and any Regulations made under that Act;
  - in accordance with the provisions of the TPA and any regulations made under that Act; or
  - where the attorney is required by law to disclose knowledge of all material facts relating to a serious offence that has been committed.

# Legal Professional Privilege

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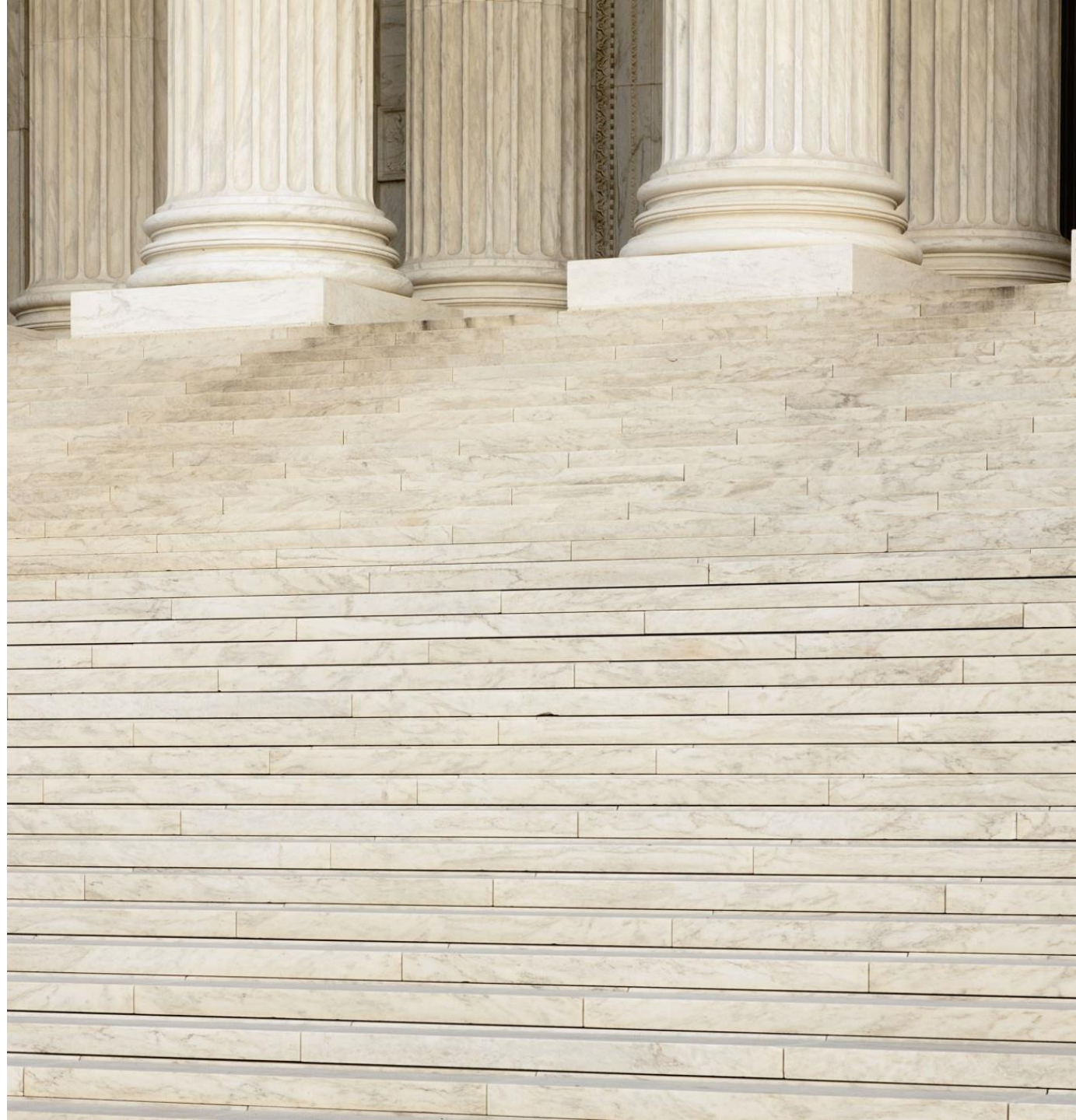
- Section 91A (3) of POCA expressly provides that the power of the GLC as a competent authority to inspect and take copies of documents and information expressly excludes information subject to LPP



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# Legal Professional Privilege

- Cardinal legal right available to clients of attorneys preserved under POCA
- 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.
  - 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





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## Segregation of Documents for Inspection

- Attorney is Gatekeeper of client's privilege (LPP).
- Attorney must be mindful to prevent inadvertent disclosure of communications and documents to which LPP applies.
- 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.
- Even if privileged document inadvertently disclosed during the inspection does not lose its privileged status.



# GLC Examinations Manual

- Sets out procedures for the Examinations
- Basic Steps in the Examination
  - Scoping and planning stage (also referred to as “off-site” examination)
  - on-site examination stage; and
  - Developing conclusions and finalizing the examination.
- Sample Questions for Interview



# Duration of Examination

- The process of planning and executing an examination by the GLC, from start to completion, generally should take approximately ten (10) working days; divided equally between the planning phase and the actual execution of the examination.

## APPENDIX B:

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

General Legal Council's Anti-Money Laundering Examination Form to be completed by Examiner

*Instructions*

Please read all instructions carefully before completing this form

Examination Period: \_\_\_\_\_

Name of Examiner: \_\_\_\_\_

*What is the purpose of this form?*

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

*Who should complete this form?*

This form shall be used by the General Legal Council, Accountants and Approved Examiners.

*Please indicate below the type of examination to be conducted:*

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

*Notes to the Examiner:*

1. All examinations are risk-based. An examiner shall not proceed with an examination where he has determined that the Attorney has not categorized clients into "high" and "low" risk. The examiner shall advise the GLC in writing immediately.
2. The Examination Form should be type-written and returned to the General Legal Council no later than 30th June in respect of a routine examination and within 21 working days subsequent to the completion date of any other examination.
3. The routine examination period commences on 1st January of a year and ends 31st December of the same year.
4. By undertaking this examination, the examiner understands and agrees that:
  - (a) the examiner has assumed a direct duty to the General Legal Council as the Competent Authority;
  - (b) the examination on which this report is based will be conducted diligently, impartially and with reasonable professional care;
  - (c) full disclosure of all information relevant to the attorney's compliance with the Jamaican AML/CFT laws will either be contained in or attached to the form;
  - (d) he examiner will render further assistance as reasonably required by the General Legal Council in the course of its assessment of this form; and
  - (e) a list of other Partners or Attorneys shall be attached if the space provided is inadequate.

**PART I:  
PARTICULARS OF THE ATTORNEY/FIRM**

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

**PARTNERS:**

<u>Name</u>	<u>Position</u>	<u>Appointment Date</u>	<u>Cessation Date</u>
_____	_____	_____	_____
_____	_____	_____	_____

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

**ATTORNEYS:**

<u>Name</u>	<u>Date Admitted</u>	<u>Starting Date</u>	<u>Ending Date</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

**PART II:  
RISK-BASED CUSTOMER VERIFICATION PROCEDURES  
AND RECORDS**

**COMMENTS**  
(for General Legal  
Council  
use only)

12. Are there policies and procedures for assessing AML/CFT risk?

13. Are the policies and procedures implemented in accordance with AML Laws?

14. Is there categorization of operations and clients services into either "high" "medium" or "low" risk for money laundering and terrorist financing showing the criteria used for such categorization?

Yes  No

*If the answer to this Question is "No", the examiner should not proceed with the examination and should immediately notify the General Legal Council.*

15. Total number of client files on record

Number of high risk files

Number of medium risk files

Number of low risk files

16. Total number of client files examined

Number of high risk files

Number of medium risk files

Number of low risk files

17. Has the identity of each client for the file examined been established and verified in accordance with the AML law.

Yes  No

18. What number and percentage of files examined did not comply with question 17?

#  %

**COMMENTS**  
(for General Legal  
Council  
use only)

**PART III:  
TRANSACTIONS RECORD KEEPING PROCEDURES**

19. What is the number of the client files examined that did not have all transaction records including verification in accordance with Jamaican Anti-Money Laundering and Counter Terrorism Financing laws? # \_\_\_\_\_

**PART IV:  
NOMINATED OFFICER**

20. Name of Nominated Officer (NO) \_\_\_\_\_

21. Has he/she confirmed he/she is aware of his/her responsibilities under the POCA (MLP) Regulations?

Yes  No

22. Is there an internal AML/CFT staff training programme in place?

Yes  No

If "Yes", please attach list of the session topics and attendees.

**COMMENTS**  
(for General Legal  
Council use only)

**PART V:**  
**TRAINING AND STAFF AWARENESS PROCEDURES**

23. Has any staff attended/participated in AML/CFT training sessions conducted either locally or abroad during the examination period?

Yes  No

If "Yes", please attach list of venue(s), participant(s), date(s) and proof of attendance

24. Does the General Legal Council's most current Guidance form part of the AML/CFT training and awareness procedures for staff?

Yes  No

25. Do internal AML/CFT compliance reviews take place?

Yes  No

26. What is the frequency of such reviews?

\_\_\_\_\_



Questions