

Guidance in respect of Reporting Requirements Under the Terrorism Prevention Act (“TPA”) and  
The United Nations Security Council Resolutions Implementation Act (“UNSCRIA”)

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### **TPA REPORTING REQUIREMENTS**

1. Attorneys conducting designated activities are termed “reporting entities”<sup>1</sup> and have certain reporting obligations under the TPA including: (1) Suspicious Transactions Reports (“STRs”)<sup>2</sup>; and (2) Listed Entity Reports (“LERs”)<sup>3</sup>.
2. There are also other disclosure obligations under the TPA including a duty to report to a constable as soon as reasonably practicable any information that comes to a person’s attention in the course of his trade, profession or employment on which he reasonably believes that another person has committed a terrorism offence. This duty is however subject to legal professional privilege in the case of Attorneys-at-law.<sup>4</sup>

#### *STRs*

3. STRs should be made with respect to all transactions which an Attorney suspects or has reasonable cause to suspect involve property connected with, or intended to be used in, the commission of a terrorism offence; or involve, or are for the benefit of, any listed entity or terrorist group<sup>5</sup>.
4. STRs are to be submitted to the Chief Technical Director of The Financial Investigations Division (“FID”) using the prescribed *form on* the FID’s goAML web-based reporting portal (“goAML”). STRs should be reported as soon as reasonably practicable and in any event within 15 days after the suspicion or reasonable cause for suspicion arises.

#### *LERs*

5. Attorneys are under a general duty to 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” as determined in accordance with Section 14 of the TPA. Listed entities include entities designated as terrorist entities by the United Nations Security Council and further declared to be so by an Order of a Judge of the Supreme Court of Jamaica upon application made by the Director of Public Prosecutions.
6. The following links can be used to ascertain persons who are listed entities:
  - <https://boj.org.jm/category/notices/anti-terrorism/>
  - <https://www.generallegalcouncil.org/poca/tpa-orders-and-sanction-lists/>
7. Attorneys are also specifically required to make thrice-yearly (every four calendar months)<sup>6</sup> reports as to whether they are in possession or control of property<sup>7</sup> owned or controlled by or on behalf of a listed entity (i.e. LERs). A nil report should be submitted if there are no positive

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<sup>1</sup> The Terrorism Prevention (Designated Reporting Entity) (Attorneys-at-Law) Order, 2019

<sup>2</sup> Section 16 – TPA

<sup>3</sup> Section 15 – TPA

<sup>4</sup> Section 13-TPA

<sup>5</sup> Section 16(3) - TPA

<sup>6</sup> The legislation permits the FID to increase the number of reports but at present three reports are required as a matter of course

<sup>7</sup> Property includes money and all other property, real or personal, including things in action and other intangible or incorporeal property.

matches. LERs are submitted through goAML using the prescribed form. The reporting periods and due dates are set out below:

| No. | Reporting Periods    | Reporting Window |
|-----|----------------------|------------------|
| 1   | January – April      | May 1-31         |
| 2   | May – August         | September 1-30   |
| 3   | September – December | January 1-31     |

8. Attorneys are also obligated, during any period, to make a report in response to a specific request from FID as to whether the Attorney is in possession or control of property owned or controlled by or on behalf of a listed entity.
9. Jamaica’s vulnerability and threat level vis-à-vis terrorism financing has been assessed as low at this time. Notwithstanding, Attorneys must diligently and routinely check their client records as against the UN Sanctions List and ensure that accurate submissions are made in compliance with their reporting obligations. It is most desirable that checks are made at the onboarding of clients.
10. In the event that there is a positive match, this finding must be disclosed in the LER. In other words, a nil return should not be submitted. If the discovery is made prior to the reporting window for submitting the LER, the Attorney must disclose in an STR. A Suspicious Activity Report (SAR) is filed when there is monetary transaction. The obligation under the TPA to make an STR/SAR as summarised above is not limited to transactions involving listed entities. In reporting possession or control, the Attorney should report the number of persons, contracts or accounts (as the case may require) involved and the total value of the assets as well as comply with any directions of the FID
11. The fact of these disclosures should not be communicated to the client to avoid tipping off/ an unauthorized disclosure which is an offence under the TPA.<sup>8</sup>
12. In addition to making the required disclosure, an Attorney is required immediately to cease or refrain from the following<sup>9</sup>:
  - i. dealing directly or indirectly with property owned/controlled by/on behalf of the listed entity or derived or generated from such property (“Listed Entity Property”);
  - ii. entering into or facilitating a transaction involving Listed Entity Property;
  - iii. providing any property referred to in (i) above or providing financial, legal or other services in respect of Listed Entity Property; and
  - iv. converting, concealing or disguising Listed Entity Property.
13. If the Attorney has already come into possession or control of Listed Entity Property, the Attorney is prohibited from dealing with the property until further directed by the FID. This means that if an Attorney has monies on account for a client who is a listed entity, for example, no further steps can be taken to return the monies or to transmit the funds elsewhere. The monies should remain in the Attorney’s client account until further directed by the FID.
14. If there is any undue or prejudicial delay by the FID in issuing directions, the Attorney may consider retaining counsel to approach the Court for directions. The application for directions should be made in the same claim in which the listed entity designation was made by the Court.

<sup>8</sup> Section 17- TPA

<sup>9</sup> Section 6 – TPA; Section 14 (4A) - TPA

15. From time to time, listed entities may also be discharged from that designation by further order of the Court. The Attorney's obligation to refrain from dealing with Listed Entity Property may also simultaneously be discharged. It is therefore important for the Attorney to implement systems and controls to keep up-to-date with the listed entity designations.
16. There are criminal sanctions for breaches of the obligations imposed on reporting entities under the TPA.

### **UNSCRIA REPORTING REQUIREMENTS**

17. For the purposes of UNSCRIA, Attorneys conducting designated activities are also classified as "reporting entities"<sup>10</sup> and are obligated to submit Proscribed Entity Reports ("PERs").
18. All reporting obligations under UNSCRIA are independent of and without prejudice to any reporting obligation under TPA.<sup>11</sup>
19. Proscribed entities are (1) persons proscribed by regulations made under Section 3(2) of UNSCRIA<sup>12</sup>; and (2) persons declared to be so by a Judge of the Supreme Court pursuant to Section 3A(2) of UNSCRIA.
20. Attorneys are under a general duty to determine on a continuing basis whether they are in possession or control of assets<sup>13</sup> owned or controlled by or on behalf of a proscribed person or entity.<sup>14</sup> Such assets are "freezable assets" under the 2013 UNSCRIA Regulations.
21. Attorneys are also specifically required to make thrice-yearly (every four calendar months) reports as to whether they are in possession or control of property owned or controlled by or on behalf of a proscribed entity (i.e. PERs). PERs are submitted through goAML using the prescribed form. A nil report should be submitted if they are not in possession or control of such assets. The reporting periods and due dates are set out below:

| <b>No.</b> | <b>Reporting Periods</b> | <b>Reporting Window</b> |
|------------|--------------------------|-------------------------|
| 1          | January - April          | May1- 31                |
| 2          | May – August             | September 1- 30         |
| 3          | September - December     | January 1- 31           |

22. In reporting possession or control, the Attorney should report the number of persons, contracts or accounts (as the case may require) involved and the total value of the assets as well as comply with any directions of the FID. The fact of a PER should not be communicated to the

<sup>10</sup> Section 2 "designated non-financial institutions" – UNSCRIA; Section 5 – UNSCRIA; and the Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order 2013, The Terrorism Prevention (Designated Reporting Entity) (Attorneys-at-Law) Order 2019 and section 2 United Nation Security Council Resolutions Implementation (Reporting Entities) Regulations 2019

<sup>11</sup> The United Nations Security Council Resolutions Implementation (Reporting Entities) Regulations, 2019

<sup>12</sup> They must be designated as proscribed persons or entities by a decision of the United Nations Security Council pursuant to Chapter VII of the Charter of the United Nations.

<sup>13</sup> Assets is defined as property of any kind whether tangible or intangible, movable or immovable, however acquired; and owned wholly or jointly, directly or indirectly by a proscribed entity or a legal document or instrument evidencing title to or interest in such property including bank credits, travellers cheques, money orders, shares, securities, bonds, debt instruments, drafts and letters of credit

<sup>14</sup> Section 5(2) – UNSCRIA and section 5(3A)(C)- UNSCRIA

client or any other person, subject to stated exceptions in the legislation, to avoid tipping off which is an offence under UNSCRIA.<sup>15</sup>

23. In addition to the disclosure in the PER, an Attorney is required immediately to cease or refrain from the following<sup>16</sup>:

- i. dealing directly or indirectly with assets belonging to or controlled by or on behalf of the proscribed entity including funds derived from or generated from property owned or controlled by the proscribed entity. (“Proscribed Entity Assets”);
- ii. entering into or facilitating a transaction involving Proscribed Entity Assets;
- iii. providing financial, legal or other services in respect of Proscribed Entity Assets;
- iv. making property available to the proscribed entity; and
- v. converting or disguising Proscribed Entity Assets.

24. If the Attorney has already come into possession or control of Proscribed Entity Assets, the Attorney is prohibited from dealing with the asset until further directed by the FID. This means that if an Attorney has monies on account for a client who is a proscribed entity, for example, no further steps can be taken to return the monies or to transmit the funds elsewhere. The monies should remain in the Attorney’s client account until further directed by the FID.

25. Although the assets of proscribed entities are “freezable assets” under the Regulations to the UNSCRIA, Attorneys are not responsible, *per se*, for freezing these assets. Attorneys are only under a reporting obligation to FID and a “no-dealing” and the other obligations pursuant to Section 8A of UNSCRIA.

26. If there is any undue or prejudicial delay by the FID in issuing directions, the Attorney may consider retaining counsel to approach the Court for directions.

27. Section 5(3A) of UNSCRIA imposes additional reporting obligations on reporting entities including Attorneys in respect of the following:

- i. any transaction or attempted transaction that is believed or known to be related to a proscribed entity;
- ii. any assets that are owned or controlled by or on behalf of a proscribed entity which are in the possession or under the control of the Attorney;
- iii. any breach of UNSCRIA by a proscribed entity; and
- iv. any action taken in relation to a proscribed entity in compliance with any directive or requirements under UNSCRIA.

28. The Section 5 reports are to be made using the prescribed form on the goAML portal. The reports can be made as initial, special, in response to the Designated Authority or for the reporting period within the four (4) calendar months.

29. There are criminal sanctions for breaches of the obligations imposed on reporting entities under UNSCRIA.

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<sup>15</sup> Section 5(3)(6) UNSCRIA

<sup>16</sup> Section 8A – UNSCRIA