

THE LEGAL PROFESSION (COMPETENT AUTHORITY EXAMINATIONS) REGULATIONS, 2023

In exercise of the powers conferred upon the General Legal Council by section 12(7) of the Legal Profession Act and pursuant to section 91A of the Proceeds of Crime Act and of every other power hereunto enabling, the following Regulations are hereby made:-

PART I. *Preliminary*

1. These Regulations may be cited as the Legal Profession (Competent Authority Examinations) Regulations, 2023.
2. In these Regulations, unless the context otherwise requires-
Accountant means a Public Accountant practising as a sole practitioner or in a firm:
 - (a) holding a valid practising certificate from the Public Accountancy Board under the Public Accountancy Act;
and
 - (b) approved by the Competent Authority to conduct examinations.

AML laws mean laws relating to anti-money laundering and without prejudice to the generality of the foregoing includes The Proceeds of Crime Act and the Regulations made pursuant thereto, the Terrorist Prevention Act, Regulations made pursuant

thereto and the Legal Profession (Annual Declaration of Activities) Regulations 2014.

Approved Examiner means such person approved by the Competent Authority to conduct examinations.

Attorney means a person whose name is entered on the Roll of Attorneys-at-law pursuant to section 4 of the Legal Profession Act, who carries out any of the Designated Activities on behalf of a client and where applicable includes a partnership.

Competent Authority means the General Legal Council as authorized under Section 91(g) of the Proceeds of Crime Act.

Designated Activities are the activities stipulated in The Proceeds of Crime (Designated Non-Financial Institution) (Attorneys-at-Law) Order, 2013.

PART II. Examination Procedures

3. The Competent Authority is empowered to administer or cause to be administered four types of examinations in respect of an Attorney's practice:
 - (a) routine annual examinations to test and evaluate compliance with applicable AML laws;
 - (b) follow-up examinations for the purpose of addressing any inadequacies identified in the routine annual examinations;

- (c) random examinations whenever in its discretion it thinks fit and on giving fourteen (14) days' notice to the Attorney;
- (d) special examinations where the Competent Authority has cause to be concerned about compliance by an Attorney with AML laws.

4. A routine annual examination shall be conducted-

- (a) by an Accountant or Approved Examiner; and
- (b) for an annual examination period from January 1 of a year to December 31 of that year.

5(1). Every Attorney shall not later than June 30 of each calendar year deliver to the Secretary of The General Legal Council a duly completed routine examination report in the form set out in the First Schedule, in respect of the preceding calendar year. Provided that the Competent Authority may in its discretion dispense with or postpone the requirement for a routine examination in any particular year on such terms and conditions as the Competent Authority deems appropriate where on its assessment of the Attorney's practice it determines that there is no or minimal risk of the Attorney's practice engaging in or facilitating money laundering or terrorist financing.

- (2). An Attorney shall ensure that the person who is engaged to conduct a routine annual examination is an Accountant or an Approved Examiner as stipulated in these Regulations.
- (3). The Accountant or Approved Examiner conducting the routine annual examination shall be -
 - (a) selected and engaged by the Attorney;
 - (b) independent of the Attorney; and
 - (c) paid by the Attorney in respect of all costs of the examination and completion and submission of all reports required in relation thereto.
- (4). For the purposes of Regulation 5 (3) (b), “independent” shall mean an Accountant or Approved Examiner who is not a “relative” or “close associate” of the Attorney as defined in Regulation 7A(7) of The Proceeds of Crime (Money Laundering Prevention) Regulations.
6. The routine annual examination will evaluate compliance with applicable AML laws with a focus on the following:
 - (a) programmes, procedures and policies for cash transactions (that is notes, coins, 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 the training of employees on their legal obligations and on the internal systems in place to ensure compliance with AML laws;
- (e) systems to ensure implementation of AML programmes, policies and procedures;
- (f) appointment, role and responsibilities of the Nominated Officer required by the AML laws;
- (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 including information on all complex, unusual or large transactions or unusual patterns of transactions whether completed or not;
- (j) 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.

7. The examination period for the first routine examination shall be reckoned from January 1, 2023.
8. Where an Attorney first engages in Designated Activities on or after January 1 in any year, the examination period shall be reckoned from January 1 of the year following the year in which the Attorney becomes so engaged.
9. The Attorney shall –
 - (a) ensure that an Accountant or Approved Examiner completes the examination form in the First Schedule, during the course of the routine examination; and
 - (b) submit the form to the Competent Authority for evaluation within the time stipulated in these Regulations.
10. The submission of a satisfactory routine examination report in respect of a calendar year shall satisfy any requirement for an independent audit as specified by AML laws.
11. Where on a routine examination deficiencies are found in the practice of an Attorney, the Competent Authority upon completion of its evaluation of the examination form submitted by the Attorney, may issue a notice advising of a follow up

examination, to be initiated within 90 days of completion of its evaluation.

12. The Competent Authority may appoint an examiner for the purpose of conducting follow-up, random and special examinations. Such an examiner may include an employee of the Competent Authority.
13. At a follow-up examination, the examiner will review with the Attorney-
 - (a) the deficiencies noted in the routine examination;
 - (b) the steps which the Attorney should take to remedy these deficiencies and the timeline for remedying sameand record the contents of the review in writing, sign the record and give a copy to the Attorney.
14. The examiner will, upon further follow-up, assess the progress of the steps identified and, if satisfied with the progress, make a report to this effect to the Attorney.
15. Where an Attorney does not address the deficiencies as identified in the follow-up examination, the Competent Authority shall-
 - (a) send a letter to the Attorney, together with a copy of the written record of the review, reminding the Attorney of the steps required to address the deficiencies; and

(b) give to the Attorney a reasonable period of time within which to remedy all deficiencies,

and at the end of the period referred to in sub-paragraph (b) of this paragraph, an examiner shall interview the Attorney, for the purpose of ascertaining whether the deficiencies have been remedied. A written report as to whether the deficiencies have been remedied shall be submitted within 30 days by the examiner to the Competent Authority. Where any deficiency has not been remedied the Competent Authority will determine whether legal or disciplinary proceedings are to be pursued.

16. The Competent Authority may conduct a random examination whenever it thinks fit, and upon giving fourteen (14) days' notice to the Nominated Officer or to the Attorney, in the form set out in the Second Schedule. A random examination will evaluate compliance with applicable AML laws as set out in paragraph 6 hereof.

17. Special examinations may be conducted in any of the following circumstances:

- (a) where the Competent Authority has cause to be concerned about the compliance of an Attorney with AML laws; or
- (b) where the Competent Authority 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.

18. The special examination may, at the discretion of the Competent Authority, be either a full examination or an examination focused on specific issues only.
19. In the case of a special examination the Competent Authority shall determine what period of notice if any should be given to the Attorney.
20. For the purpose of complying with the requirements of an examination pursuant to these Regulations, an Attorney shall maintain and make available for inspection: -
 - (a) client and business records and files in respect of designated activities; and
 - (b) a list of all clients and matters categorized in accordance with the risk rating designated by the Attorney such as high, medium or low.

This provision does not apply to records and files that are subject to legal professional privilege or which would constitute tipping off under to section 97 of The Proceeds of Crime Act.

21. An Attorney shall not obstruct an examiner or accountant in the due performance of his functions under these Regulations.

22. A breach of Regulations 5(1), 5(2), 5(3), 15, 20 and 21 by an Attorney shall constitute misconduct in a professional respect for the purposes of Section 12(7) of the Legal Profession Act.

**FIRST SCHEDULE
GENERAL LEGAL COUNCIL'S ANTI-MONEY LAUNDERING
EXAMINATION FORM TO BE COMPLETED BY EXAMINER**

[Regulation 9 1(a)]

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 30 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) the examiner will render further assistance as reasonably required by the General Legal Council in the course of its assessment of this form; and
 - e) a list of other Partners or Attorneys shall be attached if the space provided is inadequate

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

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

PARTNERS:

<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?

COMMENTS
(General Legal
Council
use only)

PART VI:

GENERAL COMMENTS/REPORT ON SPECIAL ISSUES

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

Examination Date

Day/Month/ Year

Examination Period

Day/Month/Year to
Day/Month/Year

Name of Examiner

Signature of Examiner

**SECOND SCHEDULE
NOTICE OF RANDOM EXAMINATION**

(Regulation 16)

[Name and Address of Nominated Officer]

Dear ,

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

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

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

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

The Manager,
Investigations Division,
General Legal Council,
78 Harbour Street,
Kingston,
Telephone: 922-2319

Dated this 26th day of April 2023



Denise E. Kitson
Chairman



Althea Richards
Secretary

