



# ADVISORY

FEBRUARY 2020

## **ADVISORY ON AMENDMENTS TO DEFINITION OF FINANCIAL INSTITUTION UNDER POCA, TPA AND UNSCRIA**

This Advisory is directed to:

General Insurance Companies

Insurance Intermediaries (General Classes of Business)

The Financial Services Commission (FSC) advises that there have been amendments effective November 15, 2019 to the following legislation:

- Proceeds of Crime Act (POCA);
- Terrorism Prevention Act (TPA); and
- United Nations Security Council Resolutions Implementation Act (UNSCRIA).

Specifically, Section 2 of the aforementioned legislation have been amended to exclude the following as obliged entities under the legislation:

- general insurance companies; and
- insurance intermediaries that carry out general insurance business.

Accordingly, the **new** definition of financial institution in section 2 (e) of POCA, TPA and UNSCRIA with respect to businesses in the insurance industry is:

***“a person who-***

- I. carries on life insurance business within the meaning of the Insurance Act; or***
- II. performs services as an insurance intermediary, in respect of life insurance business, within the meaning of the Insurance Act,***

***but does not include an insurance consultant or an adjuster”***

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### **General Insurance Company Functioning as a Financial Holding Company**

Where a general insurance company functions as a financial holding company in a financial group, then the general insurance company remains a regulated entity in keeping with the provisions of the Fourth Schedule of POCA.

### **AML Measures that General Insurance Businesses are to Maintain**

Notwithstanding the amendments to the referenced legislation, general insurance businesses (including intermediaries) are directed to maintain some Anti-Money Laundering (AML) measures to deter persons from using its financial products and services for illicit purposes.<sup>1</sup>

The measures that are to be maintained are:

- A. The development of a comprehensive AML Policy and Procedures Manual that is updated annually and readily accessible to all employees;
- B. The appointment of a Nominated Officer (this need not be a fully dedicated post);
- C. The establishment and use of Identification Requirements for all customers (both natural and legal persons). The following information constitutes, at a minimum, appropriate identity elements for a natural person:
  - Full Registered Name (and any other name used)
  - Date of Birth
  - Taxpayer Registration Number (or equivalent for foreign customers)
  - Gender
  - Current Permanent Address
  - Telephone Number
  - Nationality
  - Occupation/Business Activity (For employed persons – Name of Employer);
- D. The provision of AML training for relevant employees on a needs basis. Relevant employees include the Nominated Officer, any other staff employed in the Compliance Unit/Business Area and employees interacting directly with customers;

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<sup>1</sup> Pursuant to Section 6 (2) (f) of the Financial Services Commission Act which states that the Commission shall “implement measures designed to reduce the possibility of a prescribed financial institution being used for any purpose connected with an offence involving fraud, theft or money laundering”

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- E. The implementation of Risk Assessment of customers and products;
- F. The development and use of appropriate systems and procedures for the identification of unusual and suspicious transactions;
- G. The establishment and use of processes to submit Authorized Disclosures to the Financial Investigations Division; and
- H. The establishment and use of recordkeeping provisions/measures including the maintenance of records, for a minimum of seven (7) years.

**Protected and Authorized Disclosures**

For persons not regulated under POCA, the provision to make a disclosure<sup>2</sup> in relation to suspicious transactions or activities is contained in section 100 of POCA. The conditions on which a person can make this report are as follows:

- a) The information or other matter disclosed was obtained in the course of the reporting person's trade, profession, business or employment;
- b) The information or other matter causes the person making the disclosure to know or believe, or to have reasonable grounds for knowing or believing that another person has engaged in money laundering; and
- c) The disclosure is made to an authorized officer<sup>3</sup> or nominated officer as soon as is reasonably practicable after the said information or other matter comes to the person making the disclosure.

Section 100(4) of POCA allows persons in both the regulated and non-regulated sectors to make an authorized disclosure and to seek appropriate consent<sup>4</sup> before conducting a prohibited transaction. A person does not commit a money laundering offence<sup>5</sup> if the person has made an authorized disclosure and has the appropriate consent to act.

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<sup>2</sup> Businesses that are not regulated under POCA are not required to file Suspicious Transaction Reports ("STRs")

<sup>3</sup> An authorized officer refers to either an Officer of the FID, a Customs Officer or a Constable

<sup>4</sup> Sections 91 and 99 of POCA

<sup>5</sup> Sections 92 and 93 of POCA

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Any general insurance business seeking to submit an Authorized Disclosure to the Financial Investigations Division (FID) should do so through the FID's goAML reporting portal at [www.fid.gov.jm](http://www.fid.gov.jm).

### **Internal Control Systems<sup>6</sup>**

Businesses in the general insurance sector are required to implement effective internal control systems to reduce the likelihood of the sector being used for fraudulent purposes by having the following measures instituted:

- 1) Policies and Procedures for the handling of illicit financial transactions conducted by customers and employees;
- 2) Adequate systems for the detection of fraudulent transactions (inclusive of internal and external audits);
- 3) Investigation procedures for investigating possible fraudulent claims;
- 4) Defined processes to refer matters to law enforcement; and
- 5) Viable procedures to terminate business relationships.

*For Further Information*

*Please contact the Financial Services Commission at Telephone  
Numbers: 876-906-3010-2 or by Email to [amlunit@fscjamaica.org](mailto:amlunit@fscjamaica.org)*

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<sup>6</sup> These measures are supplemental to those outlined in the Commission's Revised Guidelines IR-GUID-19/02-0018 on Market Conduct for Insurance Companies and Intermediaries (February 2019)