



SPECIAL REPORT TO PARLIAMENT **ON THE STATUS OF STATUTORY DECLARATIONS**

(CORRECTED VERSION)

BACKGROUND

On October 14th 2021, a meeting was convened by the Chairman of the Integrity Commission Oversight Committee to discuss the Integrity Commission's 2018 and 2019 Annual Reports. The Integrity Commission was invited to attend the meeting.

During the meeting, several matters were raised with respect to Statutory Declarations, which the Commission wishes to clarify as it was evident that there may have been some misunderstandings.

The following represents the matters which the Commission wishes to advise the Parliament on:

- a) Status of Statutory Declaration Compliance;
- b) Amendments to the Third Schedule of the Integrity Commission Act, 2017 proposed by the Integrity Commission;
- c) Purpose of the Voluntary Declaration Form under Section 7 of the Voluntary Declarations Act and Section 39 of the Integrity Commission Act, 2017, which is appended to the proposed amendments to the Third Schedule of the Integrity Commission Act, 2017; and
- d) Initiation Letter sent to Declarants at the commencement of the Examination process, pursuant to Sections 32 and 42 of the Integrity Commission Act, 2017.

STATUS OF STATUTORY DECLARATION COMPLIANCE

Table 1 below shows that twenty seven thousand and fifty-six (27,056) 2020 Statutory Declarations have been received from Declarants as at September 30th, 2021. This amount represents a sixty-six point eight nine percent (66.89%) compliance rate, moving from a compliance rate of fifty-eight percent (58%) as at March 31, 2021.

Table 1 – Statutory Declaration Compliance

Number of Statutory Declarations required for 2020	Number of Outstanding Statutory Declarations as at September 2021	Total Statutory Declarations Received to Date
Parliamentarians 107	2	105
Public Officials 40,449	13,393	27,056

Notwithstanding the gradual increase in the compliance rate since March 31, 2021, the Commission remains concerned that thirteen thousand, three hundred and ninety-three (13,393) Statutory Declarations from Declarants remain outstanding for 2020.

In this regard, the Commission has commenced the process of preparing files for outstanding Declarants to be referred for Prosecution. Declarants are therefore encouraged to submit **all** outstanding Statutory Declarations to avoid being referred for Prosecution.

As the 2021 Statutory Declaration Intake draws near, the Commission makes a special appeal to Declarants to submit their 2021 Statutory Declaration early using the decentralized mechanism which will be established within their respective Public Body.

Going forward, commencing with the Statutory Declarations to be filed for the period as at December 31, 2021 once the submission date ends, Declarants will be automatically referred for Prosecution.

AMENDMENTS TO THE THIRD SCHEDULE OF THE INTEGRITY COMMISSION ACT, 2017 PROPOSED BY THE INTEGRITY COMMISSION

The primary objective of preparing the draft regulations for the Third Schedule is to strengthen the Commission's analysis process, clarify certain ambiguous sections and to incorporate feedback received from Declarants over the years.

The Third Schedule has also been amended to provide for the electronic submission of Statutory Declarations by Parliamentarians and Public Officials (Declarants).

The Third Schedule is the Commission's primary data collection tool which aids with the determination of a Declarant's Net Worth; to ensure that any growth in assets is sufficiently supported by legitimate income.

The legitimacy of the assets and income declared by Declarants must be validated by the Commission's research and Third Party verification processes, to ensure that there is no **concealment**.

In effect, the true and complete disclosures made by Declarants coupled with the Commission's research and Third Party verifications, will inform its analysis and consequent findings.

Succinctly put, the Commission must ensure, among other things, that there is no **Illicit Enrichment, prior to certifying a Statutory Declaration**.

The foregoing is in keeping with the Commission's lawful mandate, and further amplified by the Integrity Commission's budget of approximately One Billion Dollars, approved for the Financial Year 2021/2022, by The Parliament of Jamaica, for it to contribute towards the fight to reduce corruption, and consequently improve the Country's CPI ranking.

The Government and the People of Jamaica have signalled that they want to see results.

The Justifications for the amendments are based on the following:

1) Clarify Ambiguities

Feedback received from Declarants during the Commission's Public Education Campaign revealed that there are some sections of the Statutory Declaration Form that require clarification. Ambiguity present in the document gives rise to:

- The request for the Declarant to provide additional information to the Integrity Commission;
- Inadvertent misinformation provided by the Declarant; and
- Omission of pertinent information by the Declarant.

The above-mentioned nuances have impacted on the timely and efficient achievement of the Commission's objectives.

2) Asset Concealment Schemes

Research conducted on Asset Concealment Schemes points to the need for amendments to the Statutory Declaration Form to address changes in the local and international environments regarding the advanced and sophisticated ways in which the formal Financial Sector and the Designated Non-Financial Businesses and Professions are used to acquire illicit assets and also engage in asset concealment schemes.

There are numerous ways in which liquid and non-liquid assets generated from illegal sources may be concealed from the tax regulators and anti-corruption authorities. The following list is by no means exhaustive and points to the necessity for changes in legislation to uncover and address the threats and gains from corrupt activities in the public sector and collusion with parties operating in the private sector.

Examples of asset concealment schemes identified are as follows:

Nominees in Property Transactions - Property registered in the name of a nominee, for the agreed duration of the agreement; the nominee can only carry-out transactions authorized by the owner.

Multiple parties may be involved in obscuring the sources of funds and the identity of the true owners. Some parties involved in asset protection for those persons concealing illicit funds in property transactions may be brokers, appraisers and agents (Accountants and Lawyers).

The following can also facilitate asset concealment:

Tax Havens - These countries offer favourable tax treatment to investors and may be legal or illegal, depending on certain requirements:

- Cayman Islands
- Bermuda
- Bahamas
- British Virgin Islands
- Panama
- Turks and Caicos Islands
- St. Lucia

Offshore Financial Centers - Assets may be held offshore in countries that provide financial secrecy. These countries' domestic financial regulations provide protection by preventing access to assets and information located in the host country. This mechanism is one which may not be in contention in the near future.

Businesses - Individuals can use various schemes to conceal funds by filtering them through a legitimate business. Some businesses that are commonly used for this purpose are:

- Retail Stores
- Construction Companies
- Car Dealerships
- Law Firms
- Gas Stations
- Accountants
- Foundations

Types of Legal Persons:

- Proprietary Companies
- Public Non-Listed Companies
- Public Listed Companies
- Incorporated and Limited Partnerships
- Incorporated Associations
- Cooperatives
- Foundations
- Joint Ventures
- Foreign Companies
- Express Trusts (created on purpose, not imposed by the court)
- Nominees

3) International Best Practices

Guidance is taken from the under-mentioned legislations as well as binding and non-binding international standards.

Guidance and Legislations:

- Integrity Commission Act, 2017 (Jamaica)
- Corruption Prevention Act (Jamaica)
- Financial Action Task Force (FATF) 40 Recommendations.
- International Financial Reporting Standards
- Companies Act (Jamaica)
- United Nations Convention against Corruption (UNCAC)
- OECD Recommendation on Combating Bribery in International Business
- The Prevention of Corruption Act (Trinidad and Tobago)
- Integrity In Public Life Act (Trinidad and Tobago)
- Income, Assets and Liabilities –Form A (Trinidad and Tobago)
- Statement of Registrable Interest –Form B (Trinidad and Tobago)

- Integrity Commission Ordinance 2008 (amended 2012) Turks and Caicos Islands
- Prevention of Corruption Act (Singapore)
- State of New York – Joint Commission on Public Ethics (Annual Statement of Financial Disclosure)

Proposed Amendments to the Third Schedule:

Based on the foregoing justifications outlined, the Commission proposes the following amendments to the Third Schedule of the Integrity Commission Act:

Particulars of Declarant and Spouse

- a) Maiden Name*
- b) Spouse's Employer*
- c) Spouse's Position*

- Maiden Name is included for both declarant and spouse to provide for gender neutrality;
- The above is being requested to ascertain whether the declarant's spouse is also a Public Official or Parliamentarian who is required to file a Statutory Declaration;
- To identify any possible conflict of interest with the declarant's duties as a public official and spouse's employment in the public or private sector; and
- Support information provided in Section 12 (Gross Annual Income and Net Annual Income).

Particulars of All the Declarant's Children (to include children over 18 years old)

- To identify possible conflict of interest and asset concealment; and
- The possible commingling of assets, liabilities and income.

Section 1

Accounts held at Commercial Banks, Building Societies and Credit Unions

The adjustments are to explicitly include Credit Unions and Building Societies in this section, as deposit-taking institutions.

Section 2

Bonds, Stocks, Shares and Similar Investments

- Adjustment to explicitly require the disclosure of investments held in equity securities and similar investments held locally and overseas; and
- Declarants are now asked to provide cost of acquisition and market value to derive a more realistic value of the investment.

Section 3

Other Financial Assets

To facilitate the disclosure of financial assets held locally and overseas that are not captured in Section 1 or 2 (cryptocurrency, bearer bonds/bearer instruments, cash held at home or by other individuals).

Section 4 & 6

Provide Audited Financial Statements for the company if such is required by any legislation (of local or foreign jurisdiction), or such information regarding the operations of the company and its assets, liabilities, income and expenditures for the declaration period.

- To reconcile the information provided on Statutory Declaration with information provided by an independent source (Audited Financial Statement);
- To arrive at the declarant's actual Net Worth for the purpose of certifying a Statutory Declaration;
- To ascertain the extent of the declarants interest (controlling or otherwise) in the particular business venture and to identify any potential or actual conflict of interest;
- To identify companies for which the declarant, spouse and children are not the legal owner(s) but are the beneficial owner(s);
- To identify implicit or explicit associations/relationships between the declarant and other parties associated with the business/company; and
- To identify initial and subsequent financial investment(s) in business venture(s) or loan(s) to individuals.

Section 5

Immovable Property

- To address the *omission of cost of improvement in property* during the declaration period;
- To remove the ambiguity that is present in the basis for the increase in the *Estimated Current Market Value* of property during the declaration period; and
- To provide an accurate representation of the declarant's immovable assets, held locally and overseas.

Section 9

The addition of Investment Unit Value/Accumulated Value

- To account for the cash value of investments (i.e. retirement, investment and insurance) held by declarant, spouse and children with insurance companies during declaration period; and
- To independently verify the balances on investment held with insurance companies.

Section 11

Other Property Beneficially Owned

To include properties for which the declarant, spouse and children are not the legal owner(s), but are the beneficial owner(s) with ultimate ownership/control of the property.

Section 12

Particulars of Income

To aid with a more precise calculation of a Declarant's Net Worth, and consequently the comparison of Income and growth in Net Worth.

Section 13

Particulars of Loans and other Liabilities

- To independently confirm liabilities owed by the declarant, spouse and children at the Statutory Declaration due date; and
- To remove the inconsistency where liabilities at the declaration due date are interchanged with initial loan or mortgage amount.

Section 16

Trust Property and Blind Trust held by declarant, spouse and children (locally and abroad)

To allow for the declarant to disclose assets in his/her possession owned by a third party.

Section 18

Government Contracts or Subcontracts

- To identify all business ventures/income undertaken/received, whether as the primary or sub-contractor, by the declarant during the declaration period, and to ascertain whether there is any conflict of interest by virtue to his/her office as a public official; and
- To enable the Commission to make an inextricable link between a Government Contract and any potential undue influence exercised by a public official.

Section 19

Board Membership

- To identify any conflict of interest or perceived conflict of interest between the declarant's official duties as an employee of the Government of Jamaica and his/her Board appointment; and
- To identify any conflict of interest or perceived conflict of interest between the declarant being a member of a Government of Jamaica Board and any business(es)/company(ies) that he/she, his/her spouse and children may have directorship, shareholdings or beneficial ownership in, locally or overseas.

Section 20

Politically Exposed Persons (PEP)

- To identify any possible conflict of interest or acts of corruption based on autonomy vested in the public official, or their connection/proximity to persons who have political influence/power; and
- To align the requirements of the Integrity Commission Act with the due diligence requirements of our financial sector, as well as our international partners, such as the United Nations (UN), World Bank, International Monetary Fund (IMF) and Financial Action Task Force (FATF).

PURPOSE OF THE VOLUNTARY DECLARATION FORM UNDER SECTION 7 OF THE VOLUNTARY DECLARATIONS ACT AND SECTION 39 OF THE INTEGRITY COMMISSION ACT, 2017, WHICH IS APPENDED TO THE PROPOSED AMENDMENTS TO THE THIRD SCHEDULE OF THE INTEGRITY COMMISSION ACT, 2017

The Integrity Commission is in the process of implementing an Electronic Declaration System (eDS) which will facilitate the submission of Statutory Declarations by Declarants using an electronic portal. The eDS will be the flagship system for the Information and Complaints Division and will enable the Division to more efficiently process Statutory Declaration Information.

To ensure that the System is fully operationalized seamlessly, Regulations will have to be enacted to provide for the electronic submission of Statutory Declarations within the existing legal framework, including the Electronic Transaction Act.

Further, the System will require an **Electronic Key**, which will form the digital signature of each Declarant. **Once the Electronic Key is implemented, there will be no need for the Jurat's attestation and witnessing by a Justice of the Peace.**

As an intermediary, the Voluntary Declaration Form was included as part of the proposed amendments to the Third Schedule, in the event that the Electronic Key is not implemented prior to the launch of the System. After the Statutory Declaration is submitted electronically there will be no requirement for the Declarant to print the Statutory Declaration Form from the System, but instead, the Declarant will only be required to print the Voluntary Declaration Form for their signing and to be witnessed by a Justice of the Peace for submission to the Integrity Commission

The foregoing represents the only reason a Voluntary Declaration Form was proposed, along with the amendments to the Third Schedule.

It is important to note that the Integrity Commission has not, either in full or in part, implemented any of the proposed amendments to the Third Schedule, as was suggested at the meeting of the Integrity Commission Oversight Committee.

**INITIATION LETTER SENT TO DECLARANTS AT THE COMMENCEMENT OF
THE EXAMINATION PROCESS, PURSUANT TO SECTIONS 32 AND 42 OF THE
INTEGRITY COMMISSION ACT, 2017**

The Director of Information and Complaints, pursuant to Section 32(1)(a) and (b) of the Integrity Commission Act, shall, *inter alia*, “...receive, keep on record and examine all statutory declarations filed with the Commission,” and “**make such enquiries as he considers necessary in order to certify or determine the accuracy of a statutory declaration...**” (Our emphasis)

Further, Section 42(1)(2)(3) and (4) states;

“42.-*(1) The Director of Information and Complaints shall **examine, or cause to be examined, every statutory declaration that is submitted, in order to ensure that it complies with the requirements of this Act.***” (Our emphasis)

42.-“*(2) Where, upon examination of a statutory declaration, the Director of Information and Complaints is of the opinion that further information is required in respect of the statutory declaration, he may, by notice in writing, request the declarant to submit such other information at such time as may be specified in the notice, and the declarant shall submit such information within the specified period.*”

42.-“*(3) Where, upon examination of a statutory declaration, the Director of Information and Complaints is satisfied that the statutory declaration has been duly completed, he shall so inform the Commission and the Commission shall-*

(a) cause to be issued to the public official or parliamentarian, as the case may be, confirmation thereof in writing:...”

42.-“*(4) Where the Director of Information and Complaints is of the opinion that an investigation in relation to a statutory declaration is necessary for the purposes of this Act, he shall refer the matter to the Commission for further and necessary action.*

The foregoing sets out certain functions ascribed to the Director of Information and Complaints for which he must faithfully discharge.

During the discharge of his functions, the Director has discovered that there are many Declarants who have assets, including property(ies) that they have not declared. When informed of the Commission’s findings, some of these Declarants have indicated loss of memory, and/or lack of intention to conceal. **Some of the assets, including properties, are overseas.**

It is on the above basis that the Commission has requested, by way of letter, that Declarants review their last Statutory Declaration to ensure they have not omitted any information, and to submit any additional information they would have omitted, or sign the letter to state that they have not omitted any information.

The letter is the starting point of the Commission’s Examination and Enquiry process. The intent of the letter is to determine the accuracy of the information so that a proper assessment can be undertaken to Certify the Statutory Declaration.