

THE OFFICIAL GAZETTE 10TH JULY, 2015
LEGAL SUPPLEMENT — A



ACT NO. 1 OF 2015

**ANTI-MONEY LAUNDERING AND COUNTERING
THE FINANCING OF TERRORISM (AMENDMENT) ACT 2015**

I assent.



Brigadier David A. Granger, M.S.S.,
President.

July 10, 2015

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 3 of the Principal Act.
4. Insertion of new section 7A in the Principal Act.
5. Amendment of section 8 of the Principal Act.
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7. Insertion of new sections 9A to 9G in the Principal Act.
8. Amendment of section 11 of the Principal Act.
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10. Amendment of section 16 of the Principal Act.
11. Amendment of section 18 of the Principal Act.
12. Amendment of section 19 of the Principal Act.
13. Amendment of section 20 of the Principal Act.
14. Amendment of section 22 of the Principal Act.
15. Amendment of section 23 of the Principal Act.
16. Amendment of section 37 of the Principal Act.
17. Amendment of section 37A in the Principal Act.
18. Insertion of new sections 68A, 68B and 68C in the Principal Act.
19. Amendment of section 76 of the Principal Act.
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SCHEDULE

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*ANTI-MONEY LAUNDERING AND COUNTERING
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[NO. 1

AN ACT to amend the Anti-Money Laundering and Countering the Financing of
Terrorism Act.

A.D.2015 Enacted by the Parliament of Guyana:-

Short title.

Cap. 10:11

Amendment
of section 2 of
the Principal
Act.

1. This Act, which amends the Anti-Money Laundering and Countering the Financing of Terrorism Act, may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Act 2015.

2. Section 2 of the Principal Act is amended as follows –

(1) in subsection (1) -

(a) by inserting immediately after the definition of “authorised officer” the definition of “beneficial ownership” –

“beneficial ownership” means ownership by a natural person or persons who ultimately exercise individually or jointly voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity;”

(b) by substituting in the definition of “currency” for the words “negotiable instruments” the words “promissory notes or any other negotiable instruments including bearer negotiable instruments whether or not endorsed without restriction, or made out to a fictitious payee”;

(c) by inserting immediately after the definition of “money laundering” the following definitions of “originator” and “originator information”, respectively –

“originator” includes the account holder who allows the wire transfer from that account, or where there is no account, the natural or legal person that places the order

with an ordering financial institution to perform the wire transfer;

“originator information” means –

- (1) the name of the originator;
- (2) the originator’s account number where such an account is used to process the transaction;
and
- (3) the originator’s address and national identification number, or customer identification number and date and place of birth:

Provided that in the absence of an account, a unique transaction reference number shall be included which permits traceability of the transaction and is a different number to the customer identification number mentioned in this paragraph, which is a number that identifies the originator to the originating financial institution and the customer identification number must refer to a record held by an originating financial institution which contains at least one of the following: the customer’s address, the national identification number, and the date and place of birth;’;

- (d) in the definition of “proceeds of crime” by inserting immediately at the end thereof the following words “and indirect proceeds of crime including income, profits or other benefits from proceeds of crime and property held by any other person and assets of every kind whether tangible or intangible”;

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- (e) by substituting for the definition of “property” the following definition –

“property” includes money, investments, holdings, legal documents or instruments in any form, including electronic or digital, evidencing title to or interests in assets of every kind, all possessions, assets and all other property movable or immovable, tangible or intangible, including a chose in action and any other property wherever situated whether in Guyana or elsewhere and includes any interest in such property and includes indirect proceeds of crime including income, profits or other benefits from proceeds of crime and property held by any other person and assets of every kind, whether tangible or intangible;”

- (f) by inserting after the definition of “serious offence” the following definition –

“shell bank” means a bank that has no physical presence in the country in which it is incorporated and licensed and which is unaffiliated with a regulated financial group that is subject to effective consolidated supervision;”

- (g) by inserting in the definition of “terrorist financing” after the words “collecting funds” the words “, whether from a legitimate or an illegitimate source”;

- (h) by the substitution for subsection (2)(1) of the following subsection -

“(2)(1) For the purposes of this Act where the Director

has reasonable grounds to believe that –

- (a) a person or entity has knowingly –
 - (i) committed;
 - (ii) attempted to commit;
 - (iii) participated in committing; or
 - (iv) facilitated the commission of a terrorist act;
- (b) a person or entity is knowingly acting –
 - (i) on behalf of;
 - (ii) on the direction of;
 - (iii) in association with,
a person or entity referred to in paragraph (a);
- (c) a person or entity (hereinafter, a person) carrying out the actual or similar activities referred to in paragraph (a) or a person owned or controlled directly or indirectly by such person or a person acting on behalf of or at the direction of or in association with such person,

the Director may recommend to the Minister responsible for Finance that an order be made under paragraph (2) in respect of that person or entity.

(2)(1)A. Where the Director receives a request for designation from another country and is satisfied according to the applicable legal principles that the requested designation is supported on reasonable grounds or on a reasonable basis to

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suspect or believe that the proposed designee meets the criteria for designation as required by the United Nations Security Council Resolution 1373 the Director may recommend to the Minister responsible for Finance that an order be made under paragraph (2) in respect of the person or entity.”.

- (2) in subsection (2), (4), (6), (7) and (9) by the substitution for the words “Attorney General” of the word “Director”;
- (3) in subsection (2), paragraphs (2) and (3) by inserting the words “person or” before the word “entity”, wherever that word occurs;
- (4) in subsection (2)(9) by inserting the words “person or” before the word “entity” in the two places where it occurs.

Amendment
of section 3 of
the Principal
Act.

3. Section 3 of the Principal Act is amended as follows-

- (a) in subsection (1), by deleting in paragraph (c) the word “or” where it appears for the fourth time;
- (b) in subsection (1), by inserting immediately after paragraph (c) the following paragraph as paragraph (cA) –
“(cA) assists any person who is involved in the commission of an offence in paragraphs (a), (b) or (c) to evade the legal consequences of his actions; or”;
- (c) in subsection (6), by substituting for the words “one million” the words “five million”.

Insertion of
new section 7A
in the Principal
Act.

4. The Principal Act is amended by the insertion immediately before section 8 of the following as section 7A –

“Anti-Money
Laundering and
Countering the
Financing of
Terrorism
Authority.

7A. (1) The National Assembly shall -

- (a) by a simple majority; and
- (b) on the recommendation of the Parliamentary Committee on Appointments after the Committee has consulted such bodies as the Committee may deem necessary to consult,

appoint a body comprising ten members to be known as the Anti-Money Laundering and Countering the Financing of Terrorism Authority (hereinafter, the Authority).

(2) In addition to the appointed members, the following persons shall be *ex officio* members of the Authority -

- (a) the Director of the Financial Intelligence Unit;
- (b) the Commissioner of Police;
- (c) the Head of the Serious Organised Crime Unit;
- (d) the Governor of the Bank of Guyana;
- (e) the Director of Public Prosecutions;
- (f) the Commissioner General of the Guyana Revenue Authority;
- (g) the Solicitor General;
- (h) the Head of the Customs Anti-Narcotics Unit;
- (i) the Chairman of the Governing Board of the Deeds and Commercial Registries Authority.

(3) In the unavoidable absence of an *ex officio* member from a meeting the member may be represented by his delegate.

(4) The *ex officio* members of the Authority shall participate in the deliberations of the Authority but shall not have the right to vote.

(5) The persons eligible for selection for appointment to the Authority shall be persons of good standing, integrity and character; knowledge of law, banking, industry or commerce being an advantage.

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(6) The Clerk of the National Assembly shall by letter inform each member of his appointment.

(7) The appointed members of the Authority shall at a meeting called for that purpose at which not less than nine members are present, elect from amongst their members, the Chairperson and Deputy Chairperson of the Authority.

(8) The office of an appointed member of the Authority shall become vacant at the expiration of three years from the date of his appointment or at such earlier time as may be specified in his letter of appointment and he may be eligible for reappointment.

(9) The quorum for a meeting shall be five appointed members.

(10) The Authority may regulate its own procedure.

(11) An appointed member of the Authority may be paid such emoluments as may be determined on the recommendation of the Public Accounts Committee to the Parliamentary Committee on Appointments.

(12) An appointed member of the Authority may, for cause, be removed from office by the Parliamentary Committee on Appointments with the concurrence of a simple majority of the National Assembly.

(13) Subject to subsection (14) an appointed member of the Authority may be removed from office if he –

- (a) becomes of unsound mind or incapable of carrying out his duties;
- (b) becomes bankrupt or compounds with or suspends any payment to his creditors;
- (c) is convicted and sentenced to a term of imprisonment;
- (d) is convicted of any offence involving

dishonesty;

(e) is guilty of misconduct in relation to his duties;

(f) contravenes any provision of any prescribed Code of Ethics in respect of which he is liable to termination of his appointment;

(g) fails to carry out any of the duties or functions conferred or imposed under this Act.”.

(14) Before any action is taken against a member of the Authority under subsection (12) he shall be given an opportunity to make representations on his behalf.

Powers of the Authority.

7B. (1) The Authority may under this section give to the Financial Intelligence Unit advice of a general nature as to the policy to be followed by the Financial Intelligence Unit in the exercise and performance of its functions.

(2) The Financial Intelligence Unit shall afford to the Authority or officer or other person authorised by the Authority facilities for obtaining information, not compromising the independence of the Financial Intelligence Unit, with respect to the affairs of the Financial Intelligence Unit and shall furnish annual estimates and such returns and other information as the Authority may direct the Financial Intelligence Unit to furnish.

(3) The Financial Intelligence Unit shall provide such facilities to the Authority as will enable the verification of any information furnished in pursuance of this section.

(4) The Authority shall have the power -

(a) to ensure that the work of the Financial Intelligence Unit is conducted in an efficient, fair, and cost effective manner in accordance

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- with policy guidelines determined by the National Assembly and the Minister;
- (b) to ensure, in the national interest, the performance of the Financial Intelligence Unit accords with our international obligations and commitments;
 - (c) to monitor and review compliance with all relevant legislation, policies and measures;
 - (d) to ascertain the need for any new legislation or amendments to existing legislation;
 - (e) to cause to be investigated any complaint, irregularity or mismanagement on the part of the Financial Intelligence Unit and propose remedial action;
 - (f) to assist in the dissemination of information relating to the work of the Financial Intelligence Unit and to enlighten the public of the need for cooperation with the Financial Intelligence Unit.

(5) Subject to subsection (2), after consulting the senior officers of the Financial Intelligence Unit, the Director of the Financial Intelligence Unit shall respond expeditiously to communications from the Chairman of the Authority in matters pertaining to the Financial Intelligence Unit and those within the contemplation of this section.

(6) For the removal of doubt, nothing in this section shall be taken to mean that the Authority is authorised to undertake the day to day operations of the Financial Intelligence Unit.

Coordination.

7C. Acting in accordance with this Act and any policy

guidelines, the Authority and the Financial Intelligence Unit shall liaise with each other and work in collaboration in an effort to attain maximum coordination of their efforts to achieve the objectives of this Act.”.

Amendment of section 8 of the Principal Act.

5. The Principal Act is amended by the substitution for section 8 of the following section as section 8 –

8. (1) The National Assembly shall-

“Appointment of Director and Deputy Director.

- (a) by a simple majority; and
- (b) on the recommendation of the Parliamentary Committee on Appointments,

appoint the Director and the Deputy Director of the Financial Intelligence Unit.

(2) The persons appointed, Director and Deputy Director, shall have –

- (a) at least ten years’ experience in law, finance, economics, or accounting at the highest managerial level; and
- (b) formal training in, and sound knowledge of statistics, financial investigations or banking.

(3) The Director assisted by the Deputy Director shall carry out the functions of the Financial Intelligence Unit in accordance with this Act.

(4) The terms and conditions of the appointment of the Director and Deputy Director, including their term of office shall be such as shall be determined by the Parliamentary Committee on Appointments.

(5) The Clerk of the National Assembly shall by letter inform the Director or the Deputy Director of his

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appointment.

(6) The Director or the Deputy Director may for cause, including those mentioned in section 7A (13), be removed from office by the Parliamentary Committee on Appointments with the concurrence of a simple majority of the National Assembly.

(7) Before any action is taken against the Director or the Deputy Director under subsection (6) he shall be given an opportunity to make representations on his behalf.”.

Amendment
of section 9 of
the Principal
Act.

6. Section 9 of the Principal Act is amended as follows-

- (1) in subsection (1) by the substitution for the words “The Financial Intelligence Unit is established by the Minister responsible for Finance” of the words “The Financial Intelligence Unit is established”;
- (2) by the substitution for subsection (2) of the following subsection as subsection (2) -

“(2) The Director shall be the Chief Executive Officer and head of the Financial Intelligence Unit.”;
- (3) by the substitution for subsection (3) of the following subsection as subsection (3) -

“(3) There shall be a Committee of Management of the Financial Intelligence Unit which shall consist of the Director and Deputy Director and the managers of the Financial Intelligence Unit who shall have overall charge of the direction of the operations of the Financial Intelligence Unit.”;
- (4) by the insertion immediately after subsection (3) of the following as subsection (3A) -

“(3A) The Financial Intelligence Unit shall include

on its staff –

- (a) managers appointed by the Director from the heads of Sections of the Financial Intelligence Unit;
- (b) an attorney-at-law and an accountant appointed by the Parliamentary Committee on Appointments from a short list provided, based on applications in response to public advertisement;
- (c) Personnel trained in financial investigation or other employees as the Director considers necessary and appointed by the Director.”

(5) in subsection (4) as follows -

- (a) in paragraph (b), by substituting for the word “competent” the word “relevant”;
- (b) by inserting, after paragraph (f) the following paragraph as paragraph (fA) –
 - “(fA) shall carry out research to identify and assess the money laundering or terrorist financing risks that may arise in relation to-
 - (i) the development of new products and new business practices, including new delivery mechanisms; and
 - (ii) the use of new or developing technologies for both new and pre-existing products.”.
- (c) in paragraph (k), by inserting immediately after the words “law enforcement agency,” the words “any telecommunication provider and”; and
- (d) by substituting for paragraph (l) the following paragraph as

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paragraph (l) –

“(l) shall periodically provide feedback to supervisory authorities, financial institutions and Designated Non-financial Businesses or Professionals and relevant agencies relating to the reports or information given under the Act having regard to international best practices;”.

Insertion of
new sections
9A to 9G in the
Principal Act. :

7. The Principal Act is amended by the insertion immediately after section 9 of the following sections as sections 9A to 9G -

“Funds of
Authority.

9A. (1) The funds of the Authority shall consist of –

(a) such moneys as may -

(i) be appropriated by Parliament for the purpose of the Authority;

(ii) be paid to the Authority by way of grants or donations;

(iii) vest in or accrue to the Authority;

(b) all other moneys and other property which may in any manner become payable to or vested in the Authority in respect of any matter incidental to its functions.

(2) The Director shall pay from the funds of the Authority—

(a) the salaries and fees or allowances of the staff of the Authority; and

(b) any other expenses incurred by the Authority in the performance of its duties.

Financial year.

9B. The financial year of the Authority shall be the period of twelve months ending on 31st December in each year.

Accounts.

9C. (1) The Authority shall cause to be kept proper books of account and other records relating to the affairs of the Authority, and shall prepare annually a statement of accounts in a form satisfactory to the Minister responsible for Finance, being a form which shall conform with established accounting principles.

(2) The accounts of the Authority shall be audited annually by the Auditor General.

Annual Report.

9D. (1) As soon as practicable, but not later than three months after the expiry of the financial year, the Authority shall submit to the Minister responsible for Finance a report concerning its activities during that financial year.

(2) The report referred to in subsection (1) shall include information on the financial affairs, operations and performance of the Authority and there shall be appended to the report -

- (a) an audited balance sheet;
- (b) an audited statement of income and expenditure;
- and
- (c) such other information as the Minister responsible for Finance may require.

(3) The Minister responsible for Finance shall cause a copy of the report together with the annual statements of account and the Auditor General's reports thereon or on the accounts to be laid before the National Assembly, and publish it as soon as reasonably practicable thereafter.

Annual estimates.

9E. The Authority shall before the date specified by the Minister responsible for Finance in any year submit to the Minister for his approval estimates of revenue and expenditure

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of the Authority for the ensuing financial year.

Moneys paid into
Consolidated
Fund.

9F. All moneys derived from the fulfilment of forfeiture or confiscation orders contemplated in this Act shall be paid into the Consolidated Fund.

Exemption
from taxation.

9G. (1) The Authority, its assets, property, income and its operations and transactions authorised by this Act, shall be exempt from all taxation including customs duties, consumption tax, capital gains tax, corporation tax, income tax, property tax and purchase tax and the Authority shall be exempt from payment of any tax or duty whatsoever.

(2) No taxation of any kind shall be levied on any obligations or security issued by the Authority.”.

Amendment of
section 11 of
the Principal
Act.

8. Section 11 of the Principal Act is amended –

- (1) by inserting in subsection (1) at the end before the full stop, the words “even if the person, director, officer or employee did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred”.
- (2) by inserting in subsection (2) at the end before the full stop, the words “even if the person or agent did not know precisely what the underlying criminal activity was, and regardless of whether the illegal activity actually occurred.”.

Amendment of
section 15 of
the Principal
Act.

9. Section 15 of the Principal Act is amended as follows –

- (a) by inserting after subsection (2) the following subsection as subsection (2A) –

“(2A) Where a reporting entity is unable to obtain satisfactory evidence of the identity of any natural or legal person, as required to be obtained under the Act, the reporting entity shall not open an account in favour of the intended customer, commence the business relationship or perform the intended or desired transaction and may consider making a suspicious transaction report in the manner provided under the Act.”;

- (b) in subsection (4), by inserting after paragraph (d) the following paragraph as paragraph (e) –

“(e) if a customer is subsequently found or becomes a politically exposed person, the reporting entity shall require its senior management to approve the continuation of a business relation with such a person.”;

- (c) in subsection (7), by inserting in paragraph (a)(iii) after the words “subject to” the words “including whether the person or entity has been subject to a money laundering or terrorist financing investigation or regulatory action”;

- (d) in subsection (7), by inserting in paragraph (a)(iv) after the word “controls” the words “and ascertain for themselves that such controls are adequate and effective”;

- (e) in subsection (7), by deleting in paragraph (a)(v) the word “and”;

- (f) in subsection (7), by inserting in paragraph (a)(vi) the word “and” at the end thereof;

- (g) in subsection (7), by inserting immediately after paragraph (a)(vi) the following paragraph as paragraph (vii) –

“(vii) satisfy itself that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.”;

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- (h) by inserting after subsection (7) the following subsection as subsection (7A) –
- “(7A) (a) A financial institution shall establish in writing and maintain policies and procedures to address the specifications associated with non-face-to-face business relationships or transactions, when establishing customer relationships and conducting on-going due diligence.
- (b) A financial institution shall also establish in writing and maintain measures to manage the specific risks including specific and effective customer due diligence procedures that apply to non-face-to-face customers.”;
- (i) in subsection (8) by substituting for paragraph (c) the following paragraph as paragraph (c) -
- “(c) satisfy itself that the third party or intermediary is regulated and supervised in accordance with international recommended best practices in relation to regulation and supervision, powers of supervisors and regulation and supervision of Designated Non-Financial Businesses and Professions and has measures in place to comply with customer due diligence requirements set out in international recommended best practices in relation to a terrorist financing offence and customer due diligence and record keeping, and ”;
- (j) by inserting after subsection (10) the following subsection as subsection (11) –
- “(11) Where a reporting entity is unable to obtain the information as required under this Act, the reporting entity shall terminate the business relationship and consider

making a suspicious transaction report.”.

Amendment
of section 16
of the
Principal Act.

10. Section 16 of the Principal Act is amended by inserting after subsection (5) the following subsections as subsections (6) and (7) –

“(6) Where there are higher risk categories of customers, reporting entities shall conduct enhanced customer due diligence measures, consistent with the risks identified and shall increase the degree and nature of monitoring of the customer or business relationship in order to determine whether those transactions or activities appear unusual or suspicious.

(7) Where the Financial Intelligence Unit is aware that another country does not apply or insufficiently applies the recommendations in accordance with international best practices, and subject to directions of the Minister, the Financial Intelligence Unit shall direct reporting entities to apply enhanced due diligence or counter measures to that country and shall issue guidelines to reporting entities on the nature of effective and appropriate counter measures to be applied to that country proportionate to the risks.”.

Amendment of
section 18 of
the Principal
Act.

11. Section 18 of the Principal Act is amended as follows –

(a) in subsection (2)(a) by deleting the word “and” where it appears for the second time;

(b) in subsection (2)(b), by inserting at the end the words “, the competent authority and statutory auditors; and”;

(c) in subsection (2), by inserting after paragraph (b) the following paragraph as paragraph (c)-

“(c) keep records required under subsections (1) and (2) for a period of at least seven years from the date the relevant transaction was completed, or on the termination of a business relationship, whichever is later.”;

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- (d) in subsection (4) by substituting for the words “or terrorist financing offences” the words “, terrorist financing offences or funds suspected of being linked, or related to or to be used for terrorist acts or by terrorist organisations”.

Amendment
of section 19
of the
Principal Act.

12. Section 19 of the Principal Act is amended as follows –

- (a) in subsection (1)(c), by substituting for the words “audit function” the words “independent audit function with adequate resources,”;
- (b) in subsection (1)(d), by inserting after the word “train” the words “on an on-going basis”;
- (c) in subsection (1), by inserting after paragraph (d) the following paragraph as paragraph (e) -
- “(e) identify and assess the money laundering or terrorist financing risks and take appropriate measures to manage and mitigate those risks which may arise in relation to-
- (i) the development of new products and new business practices including new delivery mechanisms; and
- (ii) the use of new or developing technologies for both new and pre-existing products,
and this risk assessment shall take place prior to the launch of the new products, business practices or the use of new or developing technologies.”;
- (d) in subsection (2)(a), by inserting immediately after the words “subsection (1)(a)” the words “and any appropriate staff or auditor acting on the instructions or directions of the compliance officer”;
- (e) by the deletion of subsection (4).

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Amendment
of section 20
of the
Principal Act

13. Section 20 of the Principal Act is amended -

- (a) by substituting for subsections (3) and (4) the following subsections as subsections (3) and (4) -

“(3) Subsection (1) shall not apply to any transfer that flows from a transaction carried out using a credit or debit card so long as the credit or debit card number accompanies all transfers flowing from the transaction:

Provided that when a credit or debit card is used as a payment system to effect a money transfer, it is covered by subsections (1) and (2), and the necessary information should be included in the message.

(4) Subsection (1) shall not apply to financial institution-to-financial institution transfers and settlements where both the originator person and the beneficiary person are financial institutions acting on their own behalf.”;

- (b) by inserting after subsection (4) as amended the following subsection as subsection (5) -

“(5) A financial institution or money transfer agency, acting as a receiving intermediary financial institution shall for seven years keep a record of all information received from an ordering financial institution where technical difficulties prevent the full originator information accompanying a cross-border wire transfer from being transmitted along with a related domestic wire transfer.”.

Amendment
of section 22
of the
Principal Act.

14. Section 22(2) of the Principal Act is amended as follows -

- (a) by inserting in paragraph (b) immediately after the word “recommendations” the words “and provide training to reporting entities on their obligations and requirements under the Act and to make the reporting entities aware of any

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- amendments to the laws relating to money laundering, terrorist financing or proceeds of crime”;
- (b) by inserting after paragraph (b) the following paragraphs as paragraphs (bA) and (bB)-
- “(bA) in order to secure compliance with the requirements under this Act for monitoring purposes, the supervisory authority may take any of the following actions-
- (a) enter into the business premises of a reporting entity during ordinary working hours in order to-
- (i) inspect or take documents or make copies or extracts of information from such documents;
- (ii) inspect premises; and
- (iii) observe the manner in which certain functions are undertaken; and
- (b) require any person on the premises to provide an explanation on any such information;
- (bB) request and be given information relevant to money laundering and terrorist financing matters from its reporting entities ”;
- (c) by inserting after paragraph (e) the following paragraph as paragraph (eA) –
- “(eA) in the case of a reporting entity or financial institution require that the reporting entity or financial institution ensure that where requirements of the host country are less strict than those under this Act, that branches and majority owned subsidiaries abroad implement the higher standard to that of which the host country

laws permit and -

- (i) where the foreign country does not permit the proper implementation of the measures above, financial groups shall apply appropriate additional measures to manage the money laundering and terrorist financing risks, and report the matter to the designated or regulatory authority or the competent disciplinary authority; and
- (ii) where the additional measures are not sufficient, supervisory authorities shall consider additional supervisory actions, including placing additional controls on the financial group, including as appropriate, requesting the financial group to close down its operations in the foreign country;”.

Amendment
of section 23
of the
Principal Act.

15. (1) Section 23(1) of the Principal Act is amended in paragraph (e) by the substitution for the full stop at the end thereof of a semi-colon and by inserting immediately after paragraph (e) the following paragraph as paragraph (f) -

“(f) in the case of default attributable to directors and senior management of a reporting entity, direct the reporting entity to remove them from the Board or relieve them of their functions to which the default is related.”.

(2) Renumber subsections (2) and (3) as subsections (3) and (4), respectively and insert the following as subsection (2) –

“(2) A reporting entity or in the case of a body corporate, any of its directors, managers, officers or employees that or who breaches its obligations under this Act where no penalty is provided, commits an offence and shall be liable on summary

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conviction to a fine of not less than one million dollars nor more than five million dollars and to imprisonment for a term not exceeding three years, and in the case of a body corporate to a fine of not less than two million dollars nor more than twenty million dollars.”.

Amendment of
section 37 of
the Principal
Act.

16. Section 37 of the Principal Act is amended in subsection (1) by the substitution for the words “A police officer or customs officer” of the words “A police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit”.

Insertion of
new section
37A in the
Principal Act.

17. The Principal Act is amended by the insertion immediately after section 37 of the following section as section 37A –

37A. (1) A police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit may seize and detain cash anywhere in Guyana if –

“Seizure of
cash anywhere
in Guyana.

- (a) the amount is more than ten million dollars; and
- (b) such person has reasonable grounds for suspecting that it is -
 - (i) currency derived from a serious offence;
 - (ii) intended by any person for use in a commission of a serious offence;
 - (iii) involved in money laundering or terrorist financing; or
 - (iv) being brought into or taken out of Guyana after a false declaration or disclosure or failure to disclose:

Provided that unless there is cogent evidence and not a mere suspicion this subsection shall not apply to-

- (i) currency relating to transactions with

financial institutions;

- (ii) business transactions;
- (iii) currency in the possession of a person for the purpose of lawful business, trade, industry or commerce; or
- (iv) currency lawfully imported into or exported from Guyana.

(2) In subsection (1) the word “cash” has the same meaning as in section 67.

(3) Section 37 (2) to (9) shall *mutatis mutandis* apply to subsection (1) and in particular the word “currency” shall have the same meaning as the word “cash” in section 67.”

Insertion of new sections 68A, 68B and 68C in the Principal Act.

18. The Principal Act is amended by inserting after section 68 the following sections as sections 68A, 68B and 68C –

“Freezing of funds or other assets related to a listed person or entity.

68A. (1) In this section, section 68B and section 68C, the term ‘listed person or entity’ means a person or entity specified in section 2(2) and a person or entity designated by the United Nations Security Council.

(2) No person or entity shall knowingly -

- (a) deal directly or indirectly with any property of a listed person or entity, including funds derived or generated from property owned or controlled directly or indirectly by the listed person or entity;
- (b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph (a);
- (c) provide any financial or other related service in respect of the property referred

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to in paragraph (a);

- (d) make any property or any financial or other related service available, directly or indirectly, for the benefit of a listed person or entity.

(3) A person or entity shall determine on a continuing basis if that person or entity is in possession or control of property owned or controlled by or on behalf of a listed person or entity.

(4) A person or entity referred to in subsection (2) shall report to the Director immediately if that person or entity is in possession or control of such property, in which case it shall also report the number of persons, contracts or accounts involved and the total value of the property.

(5) Notwithstanding anything in this Part, a police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit may, without delay and without prior notice to the person or entity mentioned in paragraphs (a) and (b), seize and detain property anywhere in Guyana of –

- (a) a person or entity that has been designated as a specified entity in section 2(2); or
- (b) a person or entity that is included on a list of entities designated as terrorist entities by the United Nations Security Council.

(6) The Director of Public Prosecutions shall as soon as reasonably practicable upon notification by a police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit, but not later than seven days thereof, apply to a Judge in Chambers for a

freezing order in respect of the property seized under subsection (5).

(7) The Director of Public Prosecutions shall immediately instruct the Registrar of Deeds and the Registrar of Lands not to deal for a period of seven days with any immovable property, in respect of which there is an application for a freezing order under subsection (6).

(8) Where upon an application under subsection (6) an order is made in respect of transported property, the order shall be registered with the Registrar of Deeds and in respect of registered land, the Registrar of Lands.

(9) In this section “customs officer” and “police officer” have the same meanings as in section 67(9).

(10) The provisions of sections 71(3) – (8), 72, 73, 74, and 75 shall *mutatis mutandis* be deemed to be provisions of this section.

(11) A natural person who contravenes the section commits an offence and shall be liable on summary conviction to a fine of not less than five million dollars nor more than one hundred million dollars or to imprisonment for up to seven years and in the case of a body corporate to a fine of not less than ten million dollars nor more than two hundred million dollars.

Powers of Minister regarding unfreezing of assets, access to frozen funds and for carrying out United Nations Security Council Resolutions. Reg. 4 of 2010.

68B.(1)The Minister may -

- (a) de-list and unfreeze the funds or other assets of a listed person or entity which does not, or no longer, meets the criteria for a declaration as a specified person or entity under section 2(2) of this Act;
- (b) submit de-listing requests to the relevant

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United Nations Sanctions Committee in the case of persons and entities designated pursuant to the United Nations Sanctions Regimes who may no longer meet the criteria for designation;

- (c) authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses, in accordance with the principles set out in the relevant United Nations Security Council Resolutions; and
- (d) communicate declarations made under section 2(2) and designations made by the United Nations Security Council to persons and entities that may be holding targeted funds or other assets.

(2) The Minister shall implement the United Nations Security Council Resolutions relating to terrorism and the financing of terrorism and other matters connected therewith.

Access to frozen funds.

68C. A reporting entity may allow access to frozen funds or other assets of a listed person where it has been determined to be necessary for –

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependents, if any) and reasonable business expenses;
- (b) the person's reasonable expenses in

defending a criminal charge and any proceedings under this Act;

(c) a specified debt incurred by the person in good faith;

(d) any other expenses the Director of Public Prosecutions may deem necessary.”.

Amendment of section 76 of the Principal Act.

19. Section 76(2) of the Principal Act is amended by the insertion immediately after the word “property” of the words “or assets of corresponding value”.

Amendment of section 109 of the Principal Act.

20. Section 109 of the Principal Act is amended by its deletion from under the heading “Miscellaneous” and by its renumbering as section 9F.

Repeal of section 110 of the Principal Act.

21. Section 110 of the Principal Act is repealed.

Amendment of section 114 of the Principal Act.

22. Section 114 of the Principal Act is amended by inserting immediately after subsection (1) the following subsection as subsection (1A)–

“(1A) A person who contravenes any of the regulations shall on summary conviction be liable to a fine of not less than one million dollars nor more than five million dollars or to imprisonment for a term of not exceeding three years, and in the case of a body corporate, a fine of not less than two million dollars nor more than twenty million dollars.”.

Amendment of Second Schedule to the Principal Act.

23. The Second Schedule to the Principal Act is amended by inserting after the item “Insider trading and market manipulation” the item- “Tax evasion”.

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Amendment of
Third Schedule
to the Principal
Act.

24. The Third Schedule to the Principal Act is amended by -

- (a) inserting at the top left hand corner, the words “No.”;
- (b) substituting for the words “SOURCE OF FUNDS” the words
“PERSON OR ENTITY FOREIGN CURRENCY
PURCHASED OR ACQUIRED FROM”;
- (c) inserting immediately below the words “Signature of
traveller.” the words “Date:”.

Amendment of
other Acts.
Schedule

25. The Acts mentioned in the Schedule shall be amended in the
manner and to the extent described in that Schedule.

SCHEDULE

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Acts	Amendments
The Gambling Prevention Act, Cap. 9:02	<p>(a) By inserting after section 29 the following section as section 29A-</p> <p>“29A. The Gaming Authority shall assess the integrity of an applicant, partner, shareholder, office holder of an applicant and beneficial owner on the basis of fit and proper criteria on a regular basis and whenever there is a change in ownership or management.”</p> <p>(b) In section 32(1), by inserting after paragraph (e) the following paragraph as paragraph (eA)-</p> <p>“(eA) to prescribe the criteria to be considered in assessing the integrity of any person or firm who applies for a licence or a holder of a licence on a regular basis and whenever there is a change in ownership or management;”.</p>
The Mutual Assistance in Criminal Matters Act, Cap. 15:05	<p>(a) In section 6, by renumbering it as subsection (1) and by inserting after subsection (1) as so renumbered the following subsections as subsections (2) and (3)-</p> <p>“(2) Notwithstanding the provisions of section 23(3)(a) and (b) of the Act or any other provision of a requirement that as a precondition to the granting of mutual assistance that the</p>

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request being considered be related to circumstances which would be offences in both Guyana and another country, the central authority of Guyana may certify that mutual assistance be sought or granted by the central authority.

(3) When mutual assistance is being offered or sought in relation to circumstances which would not be offences in both Guyana and another country such assistance shall be for provisions with this Act that are deemed by an order made by the Minister to be such that are less intrusive and non-compulsory measures.”;

(b) in section 23(3) in paragraph (k), by substituting for the full stop of a colon and by inserting the following proviso-

“Provided that technical differences in the categorisation and denomination of offences in the laws of other countries shall not, without more, be a good reason to refuse a request.”.

The Securities Industry Act,
Cap.85:09

(a) In section 6, by inserting after paragraph (b) the following paragraph as paragraph (bA) –

“(bA) exercise the powers of a supervisory authority under section 23 of the Anti-Money Laundering and Countering the Financing of Terrorism Act in relation to entities and individuals regulated by this Act;”

Cap 10:11

(b) By inserting immediately after section 47 the following as section 47A-

“Fit and proper criteria.

47 A (1). Upon acceptance of an application for registration under section 47, the Council shall conduct an investigation and make inquiries as it deems necessary to determine whether the applicant is fit and proper to be granted registration under this Act, and in conducting such investigation and inquiries, the Council shall have regard to-

(a) the integrity of the applicant, partner, shareholder, director, or beneficial owner of a significant or controlling interest or office holder of the applicant;

(b) the competence of the applicant;

(c) the financial capability of the applicant;

(d) the background of the applicant; and

(e) such other matters as the Council deems appropriate.

(2). The integrity of the persons referred to in subsection (1) above shall be evaluated by the Council on the basis of the fit and proper criteria on a regular basis and whenever there is a change in ownership, management or control of the companies that falls under this Act.”.

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The Money Transfer**Agencies (Licensing) Act,
Cap.85:10****In section 17 as follows –**

- (a) in subsection (1), by substituting for the words “two hundred and fifty” and “six months” the words “five million” and “three years”, respectively;
- (b) Substitute the following as subsection (2) -
“A licensee, money transfer agent or any of their directors, managers, officers or employees who contravenes any provision of this Act, any regulation, notice, guideline, or any condition of a licence or certificate of registration, for which no penalty has been specified in any other provision of this Act commits an offence and is liable on summary conviction to a fine of five million dollars and to imprisonment for three years and in the case of a body corporate to a fine of not less than one million five hundred thousand dollars nor more than twenty million dollars.”.

The Foreign Exchange**(Miscellaneous Provisions)
Act, Cap.86:01****In section 6 –**

- (i) by inserting in subsections (1),(2),(3) and (4) after the words “foreign currency” wherever the words occur the words “or bearer negotiable instruments”;
- (ii) by inserting immediately after subsection (5) the following subsection as subsection (5A)-
“5(A) Where a traveller is carrying currency out of Guyana or bringing currency

into Guyana on behalf and with the knowledge of a person and he fails to make a declaration as required under section 5 of the Act, the natural person or the directors and senior management of the body corporate who employs the traveller commits an offence and is liable on summary conviction to a fine of ten million dollars and six months imprisonment:

Provided that it shall be a defence for the director or senior management of the traveller's employee to adduce evidence that the offence was committed without his knowledge, consent or connivance and that he exercised all due diligence to prevent the commission of the offence.”.

The Co-operative
Societies Act,
Cap. 88:01

(a) in section 7, by inserting after subsection (1) the following subsection as subsection (1A) -

“(1A) The Chief Co-operative Development Officer shall exercise the powers of a supervisory authority under section 23 of the Anti- Money Laundering and Countering the Financing of Terrorism Act in relation to Co-operatives operating under this Act.”;

Cap. 10:11

(b) by inserting immediately after section 7 the following section as section 7A-

“Fit and
proper
criteria.

7A. (1) Upon acceptance of an application for registration under section 6, the Chief Co-operative Development Officer shall conduct an investigation

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and make inquiries as he deems necessary to determine whether the applicant is fit and proper to be granted registration under this Act, and in conducting such investigation and inquiries, the Chief Co-operative Development Officer shall have regard to-

- (a) the integrity of the applicant, partner, shareholder, director, beneficial owner of a significant or controlling interest or office holder of the applicant;
- (b) the competence of the applicant;
- (c) the financial capability of the applicant;
- (d) the background of the applicant; and
- (e) such other matters as the Chief Co-operative Development Officer deems appropriate.

(2) The integrity of the persons referred to in subsection (1) above shall be evaluated by the Chief Co-operative Development Officer on the basis of fit and proper criteria or on a regular basis whenever there is a change in ownership, management or control of the society.”.

The Companies Act,
Cap.89:01

by inserting after section 470 the following section as section 470A –

“Ascertain-
ment of
beneficial
ownership.

470A. (1) The Registrar shall ascertain the beneficial ownership of any company and shall ensure that the information about beneficial ownership in the Register is adequate, accurate and current.

(2) The particulars of all nominee shareholders shall be disclosed to the Registrar in the manner and

with the full particulars that primary shareholders are required to disclose.

(3) In this section –

“beneficial ownership” shall have the same meaning assigned to it under the Anti-Money Laundering and Countering the Financing of Terrorism Act.”.

Cap. 10:11

The Insurance Act,
Cap. 91:02

By inserting immediately after section 23 the following sections as sections 23A and 23 B-

“Fit and proper
criteria.

23A (1) Upon acceptance of an application for registration under section 23(2) the Commissioner shall conduct an investigation and make inquiries as it deems necessary to determine whether the applicant is fit and proper to be granted registration under this Act, and in conducting such investigation and inquiries, the Commissioner shall have regard to-

- (a) the integrity of the applicant, partner, shareholder, directors beneficial owner of a significant or controlling interest or office holder of the applicant;
- (b) the competence of the applicant;
- (c) the financial capability of the applicant;
- (d) the background of the applicant; and
- (e) such other matters as the Commissioner deems appropriate.

(2) The integrity of the persons referred to

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in subsection (1) above shall be evaluated by the Commissioner on the basis of fit and proper criteria or on a regular basis whenever there is a change in ownership, management or control of the company.

Confidentiality
obligations.

23B. Any information received by the Commissioner or member of staff of the Commissioner concerning the affairs of an insurance company, any holding company, subsidiary or other affiliate thereof or those of any customers of the insurance company, in the performance of the duties shall only be disclosed by the Commissioner to the following persons or entities -

- (a) such officers of the insurance company as the chief executive officer may designate to receive such information;
- (b) the supervisors in a foreign country for their lawful supervisory or regulatory purposes;
- (c) the insurance auditors in the performance of their duties; or
- (d) in the case of information on a customer's affairs, for any purpose other than the purposes of this Act or when lawfully required to do so by any court or under any law:

Provided that the Commissioner shall have the authority to publish, in such manner and at such intervals as he may specify, aggregate or comparative data relating to the assets and liabilities of insurance companies.”.

Passed by the National Assembly on 26th June, 2015.



S.E. Isaacs,

Clerk of the National Assembly.

(Bill No. 4/2015)