

THE OFFICIAL GAZETTE 15TH APRIL, 2016

LEGAL SUPPLEMENT — C

BILL No. 12 of 2016

Friday 15th April, 2016

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

15th April, 2016.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.



BILL No. 12 of 2016

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AMENDMENT) BILL 2016

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 15 of the Principal Act.
4. Amendment of section 19 of the Principal Act.
5. Amendment of section 20 of the Principal Act.
6. Amendment of section 22 of the Principal Act.
7. Amendment of section 23 of the Principal Act.
8. Amendment of section 68 of the Principal Act.
9. Amendment of section 68A of the Principal Act.
10. Amendment of section 68D of the Principal Act.
11. Amendments of other Acts.

SCHEDULE

**A Bill
Intituled**

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

A.D. 2016 Enacted by the Parliament of Guyana:-

Short title.
Cap. 10:11

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 2016.

Amendment of
section 2 of the
Principal Act.

2. Section 2 of the Principal Act is amended in subsections (2) (1) and (2) (1) A, by substituting for the word “may” the word “shall” wherever it appears.

Amendment of
section 15 of
the Principal
Act.

3. Section 15 (7A) of the Principal Act is amended as follows-

- (i) in paragraphs (a) and (b) by substituting for the words “financial institution” the words “reporting entity”; and
- (ii) in paragraph (a) by substituting for the word “specifications” the words “specific risks”.

Amendment of
section 19 of
the Principal
Act.

4. Section 19(1) of the Principal Act is amended as follows-

- (a) in paragraph (c)-
 - (i) by inserting immediately after the word “establish” the words “and maintain”;
 - (ii) by inserting after the word “test” the words “(including sample testing)”;
- (b) by substituting for paragraph (d) the following paragraph as paragraph(d)-

“(d) train on an on-going basis its officers, employees and agents to recognise suspicious transactions and establish ongoing employee training to ensure that employees are kept informed of new developments, including information on current money laundering and

financing of terrorism techniques, methods and trends and clearly explain to officers, employees and agents all aspects of anti-money laundering and countering the financing of terrorism laws and obligations, in particular those relating to customer due diligence and suspicious transaction reporting.”.

Amendment of section 20 of the Principal Act.

5. Section 20 of the Principal Act is amended by inserting immediately after subsection (5) the following subsections as subsections (6) and (7)-

“(6) All financial institutions shall adopt and implement effective risk-based procedures to identify and handle wire transfers which are not accompanied by complete originator information.

(7) Any director, manager, officer or employee of an institution or person that is licensed to do business in Guyana as a financial institution under the Financial Institutions Act or money transfer agency, who contravenes any provisions of this section shall be liable to a fine of not less than five million dollars nor more than fifteen million dollars and to imprisonment for a term not exceeding three years.”.

Cap. 85:03

Amendment of section 22 of the Principal Act.

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

(1) by inserting immediately after paragraph (b) the following paragraph as paragraph (b1)-

“(b1) ensure that their respective reporting entities update the current anti-money laundering and countering the financing of terrorism policies and that the updated versions are based on the anti-money laundering and countering the financing of terrorism legislation;” and

(2) in paragraph (eA)-

(a) by inserting immediately after the word “Act” the words “and the Financial Action Task Force Recommendations”;

- (b) by deleting in subparagraph (i) the word “and” where it occurs at the end thereof;
- (c) in subparagraph (ii), by substituting for the “full stop” a “semi colon”; and
- (d) by inserting after subparagraph (ii) the following subparagraph as subparagraph (iii)-

“(iii) where other countries do not or insufficiently apply the Financial Action Task Force Recommendations, a financial institution shall be required to strictly observe the principles specified in this subsection with respect to any branch or subsidiary of the financial institution.”.

Amendment of section 23 of the Principal Act.

7. Section 23 of the Principal Act is amended as follows-

- (a) in subsection (1)(f), by inserting immediately after the word “related” the words “and in addition to this sanction, supervisory authorities shall impose a fine of not less than five million dollars nor more than fifteen million dollars”;
- (b) in subsection (2), by substituting for the words “one million”, “five million”, “two million” and “twenty million” the words “five million”, “fifteen million”, “fifteen million” and “forty million”, respectively.

Amendment of section 68 of the Principal Act.

8. Section 68 (1) of the Principal Act is amended as follows-

- (a) in paragraph (d) by substituting for the “comma ” a “semi-colon”; and
- (b) by inserting after paragraph (d) the following paragraph as paragraph (e)-

“(e) to finance the travel of any person who travels to a country other than their country of residence or nationality for the purpose of perpetrating, planning, preparing or participating in terrorist acts, or providing or receiving terrorist training,”.

Amendment of section 68A of the Principal Act.

9. Section 68A of the Principal Act is amended as follows-

(1) in subsection (1)-

(a) by inserting after the words “section 2(2)” the words “by the Minister responsible for Finance pursuant to United Nations Security Council Resolution 1373 and its successor resolutions”;

(b) by substituting for the words “Resolution 1267” the words “pursuant to United Nations Security Council Resolution 1267 and its successor resolutions”;

(2) by substituting for subsections (5) and (6), the following subsections as subsections (5) and (6)-

“(5) Where the Director of the Financial Intelligence Unit verifies that the name reported by the person or entity is on the List published by the United Nations Security Council pursuant to United Nations Security Council Resolution 1267 and its successor resolutions or included in an order published by the Minister responsible for Finance under section 2 (2) pursuant to United Nations Security Council Resolution 1373 and its successor resolutions, the Director of the Financial Intelligence Unit shall immediately-

(a) direct the person or entity by telephone to be followed up in writing, not to deal with the funds or assets of the listed person or entity for a period as may be determined by the Director of the Financial Intelligence Unit which shall not be more than five days, in order to allow the Director of Public Prosecutions to apply to a Judge in Chambers for a freezing order; and

(b) notify the Director of Public Prosecutions and provide all information received from the person or entity of the number of persons,

contracts or accounts involved and the total value of the funds or other assets as well as a clear description of the funds or other assets.

(6) The Director of Public Prosecutions shall immediately upon notification by the Director of the Financial Intelligence Unit but not later than five days thereof, apply ex parte to a Judge in Chambers for a freezing order in respect of the funds or assets of the listed person or entity mentioned in subsection (5).”; and

(3) in subsection (6A), by substituting for subsection (6A) the following subsection as (6A)-

“(6A)The Court shall immediately, pursuant to the application of the Director of Public Prosecutions under subsection (6), grant the freezing order where a person or entity is-

(a) listed or designated in accordance with the United Nations Security Council Resolution 1267(1999) and its successor resolutions; or

(b) listed or specified by order by the Minister responsible for Finance under section 2(2) in accordance with the United Nations Security Council Resolution 1373(2001) and its successor resolutions.”.

Insertion of
new section
68D in the
Principal Act.

10. The Principal Act is amended by inserting immediately after section 68C the following new section as section 68D-

"Access to
funds and
other assets
frozen in
accordance
with United
Nations
Security
Council
Resolution
1373 and its
successor
resolutions.

68D (1) Where the funds or other assets of a listed person or entity specified by the Minister responsible for Finance under section 2 (2) pursuant to United Nations Security Council Resolution 1373 and its successor resolutions have been frozen, the listed person or entity may apply in writing to the Minister responsible for Legal Affairs for access to the frozen funds or other assets.

(2) The Minister responsible for Legal Affairs upon receipt of the written application referred to in subsection (1) may, by written notice permit funds or other assets specified in the notice to be used or dealt with in a specified way.

(3) Where the Minister responsible for Legal Affairs has permitted access to frozen funds or other assets, the Minister shall immediately -

- (a) notify the listed person or entity that the request has been granted; and
- (b) serve on the reporting entity holding the frozen funds or other assets of the listed person or entity a copy of the written notice referred to in subsection (2).

(4) Upon receipt of the notice referred to in subsection (2), the reporting entity shall immediately allow access to the frozen funds or other assets of a listed person or entity where it has been determined by the Minister responsible for Legal Affairs to be necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, and public utility charges, or exclusively for payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services, or fees or service charges for routine holding or

maintenance of frozen funds or other financial assets or economic resources, or for extraordinary expenses.”.

Amendments of
other Acts.
Schedule

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

Acts	SCHEDULE Amendments	s. 11
The Gambling Prevention Act, Cap. 9:02	<p data-bbox="500 333 1373 407">By substituting for section 29A the following section as 29A-</p> <p data-bbox="500 411 1373 669">“29A. (1) Before issuing a licence under section 29, the Gaming Authority shall conduct an investigation and make inquiries as it deems necessary to determine whether the applicant is fit and proper to be granted a licence under this Act, and in conducting such investigation and inquiries, the Gaming Authority shall have regard to-</p> <ul style="list-style-type: none"><li data-bbox="548 709 1373 856">(a) the honesty, integrity and reputation of the applicant, partner, shareholder, director or beneficial owner of a significant or controlling interest or office holder of the applicant;<li data-bbox="548 861 1292 892">(b) the competence and capability of the applicant;<li data-bbox="548 896 1373 970">(c) the financial soundness and financial capability of the applicant;<li data-bbox="548 974 1138 1005">(d) the background of the applicant; and<li data-bbox="548 1010 1373 1083">(e) such other matters as the Authority deems appropriate. <p data-bbox="500 1087 1373 1234">(2) In assessing the fit and proper criteria in subsection (1) (a) to (e) above, the Gaming Authority may take into account all appropriate factors including but not limited to, whether the applicant-</p> <ul style="list-style-type: none"><li data-bbox="548 1276 1373 1350">(a) has been declared bankrupt or has compounded with his creditors;<li data-bbox="548 1354 1373 1533">(b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;<li data-bbox="548 1537 1373 1684">(c) has been convicted of any offence including money laundering or terrorist financing, or is being subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction;<li data-bbox="548 1688 1373 1795">(d) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against	

- the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (e) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction; or
- (f) has engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence or soundness of judgment.

(3) The criteria in subsection (1) (a) to (e) shall be evaluated by the Gaming Authority as often as necessary or whenever there is a change in ownership, management or control of the companies that fall under this Act.”.

The Mutual Assistance

in Criminal Matters Act,
Cap. 15:05

Section 5 is amended as follows-

- (a) by substituting for the “full-stop” a “colon”;
- (b) by inserting the following proviso-

“Provided that the provisions of this section shall not apply for less intrusive and non-compulsory measures that allow for extradition in the absence of dual criminality in relation to anti-money laundering and combatting the financing of terrorism offences.”.

The Money Transfer Agencies (Licensing) Act,
Cap 85:10

In section 17 (2) by substituting for the words “one million five hundred thousand” the words “ten million”.

The Companies Act,
Cap. 89:01

By substituting for section 470A(1) the following subsections as subsections (1) and (1A)-

“(1)The Registrar shall ascertain the beneficial ownership of any company and shall ensure in a timely manner that the information about beneficial ownership and the control of trusts or other legal arrangements in the Register is adequate, accurate

and current.

(1A)A registered company shall provide the relevant information of beneficial ownership to the Registrar on a regular basis or on demand from the Registrar and where a registered company contravenes the provisions of this subsection any of its directors shall be liable on summary conviction to a fine of not less than ten million dollars nor more than forty million dollars and to imprisonment for a term not exceeding three years.”.

EXPLANATORY MEMORANDUM

Clause 2 of the Bill seeks to amend in section 2 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, Cap. 10:11, subsections (2) (1) and (2) (1) A, by making it mandatory for the Director of the Financial Intelligence Unit to recommend to the Minister of Finance that an order shall be made where there is reasonable grounds to suspect or believe that a proposed designee meets the criteria for specification as required by United Nations Security Council Resolution 1373.

Clause 3 of the Bill seeks to amend section 15 (7A) of the Principal Act by substituting for the words “financial institutions” the words “reporting entity”, to require all Designated Non-Financial Businesses or Professions to comply with the provision of these subsections in addition to other financial institutions. This clause also amends section 15 (7A) by substituting for word “specifications” the words “specific risks” to provide that reporting entities should be required to have policies and procedures to address any specific risks associated with non-face to face business relationships or transactions.

Clause 4 of the Bill seeks to amend section 19 (1) (c) of the Principal Act to require a reporting entity to establish and maintain an independent audit function with adequate resources to test for compliance including the use of sample testing, with its anti-money laundering and combatting of terrorist financing procedures, policies and controls. This clause also seeks to amend section 19 (1) by substituting paragraph (d) for a new paragraph (d) to require reporting entities to provide ongoing employee training to ensure that their employees are kept informed of new developments, including information on current money laundering and financing of

terrorism techniques, methods and trends, and laws and obligations, in particular those relating to customer due diligence and suspicious transaction reporting.

Clause 5 of Bill seeks to amend section 20 of the Principal Act by inserting subsection (6) to stipulate that financial institutions conducting wire transfers should adopt and implement effective risk-based procedures to identify and handle wire transfers not accompanied by complete originator information. Additionally, this clause also inserts subsection (7) to ensure that any breaches of the provisions of section 20 which relates to wire transfers, shall be dissuasive and proportionate and applicable to directors and senior management.

Clause 6 of the Bill seeks to amend section 22 (2) of the Principal Act by inserting after subsection (b) a new subsection as (b1) to provide that supervisory authorities shall ensure that their respective reporting entities update their current anti-money laundering and countering the financing of terrorism policies and that the updated versions are based on the anti-money laundering and countering the financing of terrorism legislation. This clause also seeks to amend subsection (2) (eA) to ensure that in addition to complying with the requirements under the Act, the branches and majority owned subsidiaries abroad shall comply with FATF Recommendations. This clause further amends subsection (2) (eA) by inserting new subparagraph (iii) to provide that foreign branches and subsidiaries in other countries which do not or insufficiently apply the FATF Recommendations to strictly observe the local laws and regulations and FATF Recommendations.

Clause 7 of the Bill seeks to amend section 23 of the Principal Act to increase the range of sanctions available to supervisory authorities and it also increases fines to allow them to be effective, dissuasive and proportionate.

Clause 8 of the Bill seeks to amend section 68 (1) of the Principal Act, in order to conform with United Nations Security Council Resolution 2178 by including a new paragraph (e) to criminalise the offence of financing the travel of any person who travels to a country other than their own country of residence or nationality for the purpose of perpetrating, planning, preparing or participating in terrorist acts, or providing or receiving terrorist training.

Clause 9 of the Bill seeks to amend section 68A (1) of the Principal Act by clarifying that the Minister's order is made in accordance with United Nations Security Council Resolution 1373 and its successor resolutions. This amendment also proposes to clarify that resolutions connected to United Nations Security Council Resolution 1267 are also applicable, by substituting for the words "Resolution 1267" the words "pursuant to Resolution 1267 and its successor resolutions".

This clause additionally seeks to amend section 68A by substituting subsections (5) and (6) for new subsections (5) and (6). These new subsections set out that the Director of the Financial Intelligence Unit upon verifying that the name reported by the person or entity is on the Lists published by the United Nations Security Council pursuant to United Nations Security Council Resolution 1267 and its successor resolutions or by the Minister responsible for Finance under section 2 (2) pursuant to United Nations Security Council Resolution 1378 and its successor

resolutions shall immediately direct the person or entity not to deal with the funds or assets of a listed person or entity for not more than five days. This is needed to allow the Director of Public Prosecutions to apply *ex parte* to a Judge in Chambers for a freezing order.

This clause further amends 68A by substituting subsection (6A) for a new (6A) to provide that where the Court is satisfied that a person or entity is listed as a designated person or entity by United Nations Security Council Resolution 1267 and its successor resolutions or listed as specified person or entity by order by the Minister of Finance pursuant to United Nations Security Council Resolution 1373 and its successor resolutions, the Judge shall immediately grant the Director of Public Prosecutions' request for a freezing order.

Clause 10 of the Bill inserts into the Principal Act a new section 68D to provide a mechanism whereby a person or entity specified by the Minister responsible for Finance under section 2 (2) pursuant to United Nations Security Council Resolution 1373 and its successor resolutions can have access to frozen funds or other assets.

Clause 11 of the Bill provides for a Schedule to the Act with amendments to section 29A of the Gambling Prevention Act, Cap. 9:02 which proposes to substitute for the section mentioned above with a new section that add to the existing provisions the appropriate factors that must be utilized for evaluation by the respective supervisory authorities. These provisions determine whether any applicant together with any partner, shareholder and director, beneficial owner of a significant or controlling interest or office holder of the applicant is fit and proper for a licence. Additionally, the fit and proper criteria shall be utilized for evaluation by a supervisory

authority where there is a change of ownership, management or control of the company.

This clause also seeks to amend in the Schedule, section 5 of the Mutual Assistance in Criminal Matters Act, Cap. 15:05, to provide an exception to the provisions of section 5. It allows for extradition in the absence of dual criminality for less intrusive and non-compulsory measures in relation to anti-money laundering and the combatting of the financing of terrorism offences.

This clause also seeks to amend in the Schedule, section 17(2) of the Money Transfer Agencies (Licensing) Act, Cap. 86:01, to increase the minimum fine from one million five hundred thousand dollars to ten million dollars, in the case of a body corporate, for a breach of any provision under the Act or subsidiary legislation or any condition of a licence or certification of registration for which no penalty is specified in the Act.

This clause also seeks to amend in the Schedule, section 470A subsection (1) of the Companies Act, Cap 89:01, to provide that the competent authorities should be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. It also inserts a new subsection (1A) to provide for appropriate sanctions for failure to comply with the requirement that a registered company shall provide the relevant information of beneficial ownership to the Registrar on a regular basis or on demand from the Registrar.



Hon. Basil Williams M.P.

Attorney General and

Minister of Legal Affairs