

# ***EXTRACTS DATED 11<sup>TH</sup> AUGUST, 2015***

**GUYANA**

**No. 4 of 2015**

## **REGULATIONS**

**Made Under**

### **ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM ACT**

**(Cap. 10:11)**

**IN THE EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTION  
114 OF THE ANTI-MONEY LAUNDERING AND COUNTERING THE  
FINANCING OF TERRORISM ACT, I MAKE THE FOLLOWING  
REGULATIONS:-**

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##### **REGULATION**

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Citation. 1. These Regulations may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism Regulations 2015.

Interpretation. 2. In these Regulations –

“designation” means the designation of any natural or legal person or entity subject to targeted financial sanctions in accordance with a United Nations Security Council Resolution being referred to in section 2(2)(1)(A) and 68A(1) of the Act;

“designated person or entity” means any natural or legal person or entity designated as such within the meaning of the preceding definition.

Notice of designations made by the UNSCR Committee.

3. (1) The Director shall-

(a) publish on the Financial Intelligence Unit’s website, the List established and maintained by the United Nations Security Council with respect to any natural or legal person or entity, or any other List of a similar nature maintained by the United Nations Security Council; and

(b) notify Financial Institutions and Designated Non-Financial Businesses or Professions through their respective supervisory authority of the publication in paragraph (a) and of any change thereto.

(2) All persons or entities are required to consult the Lists regularly to determine whether they are holding funds or other assets for any natural or legal person or entity on the Lists and conform with the Act.

Notice to person or entity being specified by the Minister responsible for Finance.

4.(1) Where the Minister responsible for Finance has declared a person or entity to be a specified person or entity under section 2(2) of the Act, the Minister shall notify the specified person or entity in writing as soon as possible of -

(i) his being specified as well as the implications thereof;

(ii) the review procedure and information on the de-listing process, including the name of a person to address any question regarding the process;

(iii) publicly releasable information concerning the reason for listing; and

(iv) procedures to allow permissible access to funds or other assets, when frozen, for basic and extraordinary expenses.

(2) The Director shall –

(a) publish on the Financial Intelligence Unit's website, the names of persons or entities specified by order of the Minister responsible for Finance under section 2(2)(2) of the Act; and

(b) notify Financial Institutions and Designated Non-Financial Businesses or Professions through their respective supervisory authority of the publication in paragraph (a) and of any change thereto.

(3) Where a person or entity has been declared a specified person or entity, all other persons or entities shall determine whether they are holding funds or other assets for that specified person or entity, and shall immediately report to the Director of the holding of such funds or other assets.

Reporting obligation of person or entity concerning terrorist funds or other assets.

5.(1) After consulting the List referred to in regulation 3(1) or receiving notice of an Order referred to in regulation 4 (2) in the *Gazette* or on the website referred to in regulation 4(2), identifying or declaring a person or entity under section 2(2)(2) of the Act to be a specified person or entity, where a person or entity knows or has reasonable grounds to believe that a designated person or entity has funds or other assets in Guyana, the person or entity shall immediately report same to the Director.

(2) The person or entity shall also report to the Director on 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.

(3) Financial Institutions and Designated Non-Financial Businesses or Professions shall in addition to reports referred to in paragraphs (1) and (2), submit quarterly reports to the FIU on whether or not they have in their possession funds or other assets of a listed designated or specified person or entity.

Application of certain provisions of these Regulations.

6. (1) The Director shall verify that the name reported by the person or entity is on the Lists published by the UN or included in an order published by the Minister responsible for Finance.

(2) Where the name reported is included on the Lists published by the UN or included in an order published by the Minister responsible for Finance, the Director shall immediately -

(a) direct the person or entity by telephone to be followed up in writing, not to deal with the funds or other assets of the designated person or entity for a period as may be determined by the Director which may 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 in accordance with regulation 5(2).

Exceptions.

7. (1) The prohibitions in section 68(A) of the Act are not contravened by a person or entity crediting a frozen account with-

(a) interest or other earnings due on the account; or

(b) payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account.

(2) The prohibitions in the Act on making funds available do not prevent a person or entity from crediting a frozen account where it receives funds transferred to the account.

(3) A person or entity shall inform the Director without delay if it credits a frozen account.

(4) In this regulation "frozen account" refers to an account with a financial institution or reporting entity which is held or controlled, directly or indirectly, by a designated person or entity which has been frozen.

Unfreezing funds or other assets of designated persons or entities.

8.(1) Where the Director believes that a person or entity declared by Guyana in accordance with section 2(2) of the Act pursuant to UNSCR 1373(2001) or entity designated by the United Nations pursuant to the UNSCR 1267(1999), no longer meets the criteria for designation, the Director shall so inform the Minister responsible for Legal Affairs.

(2) Where the Minister responsible for Legal Affairs is informed pursuant to subregulation (1) he shall direct any person or entity who had reported that they are holding funds or other assets of a designated person or entity and were not dealing with such funds or other assets as required in regulation 6 to recommence dealing with such funds or other assets.

(3) Where funds or other assets of a designated person or entity were frozen by an Order of the Court, the Director shall direct the Director of Public Prosecutions to apply to the Court for a revocation Order and the Court if satisfied shall revoke the freezing Order.

(4) Where a person or entity affected by a freezing order applies to the Court for a revocation of the order in relation to his property, the Court shall revoke the freezing order in relation to the applicant if satisfied on evidence that the account or other property or the person's interest in it is not owned or held by or on behalf of a terrorist or terrorist organisation.

Submitting de-  
listing requests  
to the Security  
Council.

9. Where it is determined by the Minister that a person or entity designated by the United Nations Security Council's 1267 Committee does not or no longer meets the criteria for designation, a de-listing request in writing or electronically shall be submitted directly to the Office of the Ombudsperson of the said Committee by the designated person or entity on his own behalf or by the Director on behalf of the designated person or entity.

Authorising  
access to  
frozen funds.

10. (1) The owner or holder of funds or other assets frozen in accordance with section 68(A) of the Act may apply in writing to the Minister responsible for Legal Affairs for personal access or access to the frozen funds or other assets for basic expenses, for the payment of certain types of fees, expenses and service charges, or for extraordinary expenses.

(2) Where frozen funds or other assets relate to a person or entity designated by the United Nations Security Council under Chapter VII of the Charter of the United Nations, as required by the UNSCR 1267, the Director shall notify the Committee established pursuant to Resolution 1267 (1999) of Guyana's intention to authorise, where appropriate, access to such funds, assets or resources to a designated person or entity.

(3) In the absence of a negative decision by the Committee after three days of such notification the Minister responsible for Legal Affairs may by written notice permit funds or other assets specified in the notice to be used or dealt with in a specified way;

(4) Access to frozen funds or other assets necessary for extraordinary expenses, shall only be authorised after the approval of the Committee.

(5) Where frozen funds or other assets relate to a person or entity designated by the Minister responsible for Finance, the Minister responsible for Legal Affairs may, by written notice permit funds or other assets specified in the notice to be used or dealt with in a specified way.

(6) The Minister responsible for Legal Affairs may issue such a notice on his own initiative or upon application under subregulation (1).

(7) The notice shall be given to the owner or holder of the frozen funds or other assets as soon as practicable after an application is made.

(8) A dealing constituted by -

(a) a payment to -

- (i) a designated person;
- (ii) a person or entity acting on behalf of, or at the direction of, a designated person or entity; or
- (iii) an entity owned or controlled by a designated person or entity; or

(b) a use or dealing with a controlled asset;

is a basic expense dealing where it is necessary for basic expenses, including the following -

- (a) foodstuffs;
- (b) rent or mortgage;
- (c) medicines or medical treatment;
- (d) taxes;
- (e) insurance premiums;
- (f) public utility charges;
- (g) reasonable professional fees;
- (h) reimbursement of expenses associated with the provision of legal services; or
- (i) fees or service charges that are in accordance with national laws for the routine holding or maintenance of frozen assets.

**(9) A dealing constituted by -**

- (a) a payment to -
  - (i) a designated person;
  - (ii) a person or entity acting on behalf of, or at the direction of, a designated person or entity; or
  - (iii) an entity owned or controlled by a designated person or entity; or
- (b) a use or dealing with a controlled asset;

**is a legally required dealing where -**

- (i) it is necessary to satisfy a judicial, administrative or arbitral lien or judgment that was made prior to the date on which the person or entity became a designated person or entity; and
- (ii) it is not for the benefit of a designated person or entity.

**(10) A dealing constituted by -**

- (a) a payment to -
  - (i) a designated person;
  - (ii) a person or entity acting on behalf of, or at the direction of, a designated person or entity; or
  - (iii) an entity owned or controlled by a designated person or entity; or
- (b) a use or dealing with a controlled asset;

**is a contractual dealing where it is a payment -**

- (i) to apply interest or other earnings due on accounts holding controlled assets; or
- (ii) required under contracts, agreements or obligations made before the date on which those accounts became accounts holding controlled assets.

**(11) A dealing constituted by -**

- (a) a payment by -
  - (i) a designated person;
  - (ii) a person or entity acting on behalf of, or at the direction of, a designated person or entity; or
  - (iii) an entity owned or controlled by a designated person or entity;

**is a required payment dealing where -**

- (i) the payment is required under a contract made before the person or entity became a designated person or entity; and
- (ii) the payment is not directly or indirectly being received by a designated person or entity.

(12) Any other dealing constituted by -

(a) a payment to -

- (i) a designated person;
- (ii) a person or entity acting on behalf of, or at the direction of, a designated person or entity; or
- (iii) an entity owned or controlled by a designated person or entity; or

(b) a use or dealing with a controlled asset;

is an extraordinary expense dealing where it is necessary for extraordinary expenses.

Proposing names  
to the 1267  
Committee.

11. In addition to the responsibility under section 2(2)(1) of the Act, the Director shall also be responsible for -

- (a) proposing to the 1267 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in the Security Council Resolution 1989 (2011) and related resolutions, if the Minister responsible for Legal Affairs decides to do so and believes that he has sufficient evidence to support the designation criteria;
- (b) proposing to the 1988 Committee, for designation as appropriate, persons or entities that meet the specific criteria for designation, as set forth in the Security Council Resolution 1988 (2011) and related resolutions, if the Director decides to do so and believes that he has sufficient evidence to support the designation criteria; and
- (c) The Director shall also be responsible for requesting another country to give effect to any action initiated under the freezing mechanisms that have been implemented pursuant to Resolution 1373 (2001).

Made this 7<sup>th</sup> day of August, 2015.



Hon. Basil Williams M.P.

Attorney General and Minister of Legal Affairs.