

GUYANA

Bill No. 10 of 2018

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM (AMENDMENT) BILL 2018

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 7A of the Principal Act.
4. Amendment of section 7B of the Principal Act.
5. Amendment of section 7C of the Principal Act.
6. Insertion of new sections 7D, 7E, 7F and 7G in the Principal Act.
7. Amendment of section 9A of the Principal Act.
8. Amendment of section 9B of the Principal Act.
9. Repeal of sections 9C, 9D, 9E, 9F and 9G of the Principal Act.
10. Amendment of section 18 of the Principal Act.
11. Amendment of section 19 of the Principal Act.
12. Amendment of section 68A of the Principal Act.
13. Insertion of new sections 68E, 68F, 68G, 68H and 68I in the Principal Act.
14. 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 2018.

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 2018.

Amendment
of section 2 of
the Principal
Act.

2. Section 2 (1) of the Principal Act is amended by-

- (a) inserting after the definition of “collective investment scheme” the following definition-

““Committee” means the Anti-Money Laundering and Countering the Financing of Terrorism and Proliferation Financing National Co-ordination Committee established under section 7A of the Act;”;

- (b) inserting after the definition of “Identification record” the following definition-

““exporter and importer of valuable items” means any person, including a corporation or other business unit organised and operated principally for the purposes of importing or exporting goods and services, who facilitates the exchange of valuable items and related services or goods and services across national borders, international boundaries or territories and includes any

other person who for customs purposes signs any document relating to the importing or exporting of goods and services;” and

(c) inserting after the definition of “proceeds of crime” the following definition-

““proliferation financing” includes the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of the provisions of any law or, where applicable, international obligations;”.

Amendment
of section 7A
of the
Principal Act.

3. Section 7A of the Principal Act is amended by substituting for that section the following section-
- “Anti-Money Laundering and Countering the Financing of Terrorism and Proliferation Financing National Co-ordination Committee.
- 7A. (1) There is established a body to be known as the Anti-Money Laundering and Countering the Financing of Terrorism and Proliferation Financing National Co-ordination Committee.
- (2) The Committee shall comprise the following members-
- (a) the Attorney General and Minister of Legal Affairs, who shall be the Chairperson;
 - (b) the Director of Public Prosecutions;
 - (c) the Governor of the Bank of Guyana;
 - (d) the Commissioner General of the Revenue Authority;
 - (e) the Director of the Financial Intelligence Unit;
 - (f) the Head of the Special Organised Crime Unit;
 - (g) the General Manager of the Guyana Gold Board;
 - (h) the Commissioner of the Guyana Geology and Mines Commission;
 - (i) the Chairperson of the Guyana Securities Council;

- (j) the Chairperson of the Gaming Authority; and
- (k) the Chief Cooperatives and Development Officer.

(3) The Committee may appoint persons to assist the Committee in the performance of its functions.

(4) A member of the Committee may appoint a member of the member's staff of suitable seniority to act as the member's alternate and to attend meetings of the Committee on behalf of the member.

(5) The Committee may invite to any of its meetings persons from competent authorities, supervisory authorities or reporting entities to attend and participate in discussions of any of its meetings.

(6) The functions of the Committee shall be to-

- (a) develop national anti-money laundering and countering the financing of terrorism and proliferation financing policies informed by the risks identified;
- (b) co-ordinate a national action plan which includes recommendations on effective mechanisms to enable competent authorities in Guyana to co-operate and co-ordinate with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and proliferation financing;
- (c) co-ordinate Guyana's participation in the international effort against money laundering, terrorist financing and proliferation financing;
- (d) ensure effective mechanisms are in place which facilitate co-operation and where appropriate, co-ordination among policy makers, the Financial Intelligence Unit, law enforcement, supervisory authorities, reporting entities and other competent authorities, concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and proliferation financing;
- (e) engage with supervisory authorities, reporting entities and competent authorities on key anti-money laundering and countering the financing

of terrorism and proliferation financing issues and provide advice and guidance where necessary;

- (f) obtain feedback from supervisory authorities, reporting entities and competent authorities on the progress made with implementing anti-money laundering and countering the financing of terrorism and proliferation financing national policy directives which the Committee may issue;
- (g) review compliance by supervisory authorities, reporting entities and competent authorities with this Act, and related policies and measures;
- (h) determine the need for any new legislation or amendments to existing legislation to combat money laundering and the financing of terrorism and proliferation financing;
- (i) undertake outreach to the public on anti-money laundering and countering the financing of terrorism and proliferation financing issues and disseminate relevant information to the public to bring awareness regarding the pitfalls of money laundering, terrorist financing and proliferation financing, including the threats, risks and vulnerabilities in Guyana; and
- (j) any other functions as are necessary for the purposes of this Act.

(7) For the purposes of this section, “competent authorities” include all public authorities with designated responsibilities for combating money laundering and terrorist financing, in particular, this includes the Financial Intelligence Unit, the authorities that have the function of investigating or prosecuting money laundering, associated predicate offences and terrorist financing, and seizing or freezing and confiscating criminal assets; authorities receiving reports on cross-border transportation of currency, and authorities that have anti-money laundering and countering the financing of terrorism supervisory or monitoring responsibilities aimed at ensuring compliance by financial institutions and Designated Non-Financial Businesses or Professions with anti-money laundering and countering the financing of terrorism requirements.”.

Amendment
of section 7B
of the
Principal Act.

4. Section 7B of the Principal Act is amended by substituting for that section the following section-

“Funds of the
Committee.

7B. (1) The funds of the Committee shall consist of-

(a) such moneys as may-

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

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

(iii) vest in or accrue to the Committee;

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

(2) The Chairperson of the Committee shall pay from the funds of the Committee-

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

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

Amendment
of 7C of the
Principal Act.

5. Section 7C of the Principal Act is amended by substituting for that section the following section-

“Financial year
of the
Committee.

7C. The financial year of the Committee shall begin on 1st January of each year and end on 31st December of the said year.”.

Insertion of new sections 7D, 7E, 7F and 7G in the Principal Act.

6. The Principal Act is amended by inserting immediately after section 7C the following sections as sections 7D, 7E, 7F and 7G-

“Accounts of the Committee. 7D. (1) The Committee shall cause to be kept proper books of accounts and other records relating to the affairs of the Committee, and shall prepare annually a statement of accounts in a form satisfactory to the Minister responsible for Finance, being a form which shall conform to established accounting principles.

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

Annual report of the Committee to Parliament. 7E. (1) As soon as practicable, but not later than three months after the expiry of the financial year, the Committee shall submit to the Minister responsible for Finance a report concerning its activities during that financial year.

(2) The report shall include information on the financial affairs, operations and performance of the Committee and there shall be appended to the report-

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) any other information that the Minister responsible for Finance may require.

(3) The Minister responsible for Finance shall cause a copy of the report together with the annual statement of accounts and the Auditor General’s report to be laid before the National Assembly within one month after the Minister receives it.

Annual estimates. 7F. The Committee shall before the date specified by the Minister responsible for Finance in any year submit to the Minister for the Minister's approval, estimates of revenue and expenditure of the Committee for the ensuing financial year.

Exemption from tax, duty, etc. 7G. (1) The Committee, its assets, property, income and its operations and transactions authorised by this Act, shall be exempt from all taxation including customs duty, consumption tax, capital gains tax, corporation tax, income tax, property tax and purchase tax, and the Committee 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 Committee.”.

Amendment of section 9A of the Principal Act.

7. Section 9A of the Principal Act is amended by substituting for that section the following section—

“Moneys paid into the Consolidated Fund.

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

Amendment of section 9B of the Principal Act.

8. Section 9B of the Principal Act is amended by substituting for that section the following section -

“Annual report of the Financial Intelligence Unit to Parliament.

9B. (1) As soon as practicable, but not later than six months after the expiry of the financial year, the Director shall submit to the Minister responsible for Finance a report concerning the activities of the Financial Intelligence Unit during that financial year.

(2) The report shall comprise information on the financial affairs, operations and performance of the Financial Intelligence Unit, including the amounts paid into the Consolidated Fund under this Act.

(3) The report shall have appended to it, the audited annual statement of accounts of the Financial Intelligence Unit prepared pursuant to section 9 (8).

(4) The Minister responsible for Finance shall cause a copy of the report together with the annual statement of accounts and the Auditor General's report to be laid before the National Assembly within one month after the Minister receives it.”.

Repeal of sections 9C, 9D, 9E, 9F and 9G of the Principal Act.

9. The Principal Act is amended by repealing sections 9C, 9D, 9E, 9F and 9G.

Amendment of section 18 of the Principal Act.

10. Section 18 of the Principal Act is amended as follows-

(1) in subsection (6), by inserting after the words “Real estate agents” the words “, real estate brokers and real estate developers”;

(2) in subsection (11), by-

(a) inserting after the words “notaries,” the words “Commissioners of Oaths to Affidavits,”;

(b) substituting for the words “and accountants” the words “, accountants and auditors”; and

(3) in subsection (13), by-

(a) substituting in paragraph (b) (ii), for the words “; or” of a “full stop”;

and

(b) renumbering paragraph (c) as subsection (13A); and

(4) in subsection (13A) as renumbered, by inserting before the word “trust” the words “The provisions of subsections (4), (9) and (10) apply to”.

Amendment
of section 19
of the
Principal Act.

11. Section 19 of the Principal Act is amended by inserting after subsection (3) the following subsection -

“(4) For the purpose of monitoring compliance with the provisions of this Act, reporting entities shall register with the Financial Intelligence Unit in the manner and form as the Director may determine.”.

Amendment
of section 68A
of the
Principal Act.

12. Section 68A of the Principal Act is amended by deleting subsection (9).

Insertion of
new sections
68E, 68F, 68G,
68H and 68I in
the Principal
Act.

13. The Principal Act is amended by inserting immediately after section 68D the following sections as 68E, 68F, 68G, 68H and 68I-

“Freezing
the funds or
other assets
related to a
listed
person or
entity-
proliferation
financing.

68E. (1) In this section, sections 68F, 68G, 68H and 68I the term “listed person or entity” means a person or entity published on a list of designated persons or entities by the United Nations Security Council pursuant to United Nations Security Council Resolution 1718 (2006) and its successor resolutions and United Nations Security Council Resolution 2231 (2015) and its successor resolutions.

(2) No person or entity shall knowingly-

(a) deal directly or indirectly with any property of a listed person or entity, including-

(i) funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by a listed person or entity;

(ii) funds or other assets derived or generated from property owned or controlled directly or indirectly by a listed person or entity; or

(iii) funds or other assets of a person or entity acting on behalf of or at the direction of a 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 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 subsections (2) and (3) shall report to the Director immediately if that person or entity is in possession or control of any property, in which case it shall also report the number of persons, contracts or accounts involved and the total value of the property.

(5) Where the Director 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 1718 (2006) and its successor resolutions or United Nations Security Council Resolution 2231(2015) and its successor resolutions, 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 assets of the listed person or entity for a

period specified by the Director 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 on notification by the Director but not later than five days after the notice, 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).

(7) 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 listed in accordance with the United Nations Security Council Resolution 1718 (2006) and its successor resolutions or United Nations Security Council Resolution 2231(2015) and its successor resolutions.

(8) After obtaining the freezing order the Director of Public Prosecutions shall immediately serve on the reporting entity holding the property of a listed person or entity a copy of the freezing order.

(9) The Director of Public Prosecution 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).

(10) Where on 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.

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

(12) A natural person who contravenes this 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.

Exemptions.

68F. (1) The prohibitions in section 68E are not contravened by a person or entity crediting a frozen account with interest or other earnings due on the account or payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or where the person or entity receives funds transferred to the account.

(2) Freezing action taken in accordance with section 68E, shall not prevent a listed person or entity from making any payment due under a contract entered into prior to the listing of the person or entity:

Provided that-

- (a) the person or entity has determined that the contract is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in United Nations Security Council Resolution 2231 (2015) and any successor resolutions;
- (b) the person or entity has determined that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 Annex B to United Nations Security Council Resolution 2231 (2015); and
- (c) the person or entity has submitted prior notification to the Security Council of the intention to make or receive the payments or to authorise, where appropriate the funds or other assets for this purpose ten working days prior to the authorisation.

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

De-listing and unfreezing-United Nations Security Council Resolutions 1718 and 2231.

68G. (1) Where a listed person or entity designated by the United Nations Security Council Committee pursuant to United Nations Security Council Resolutions 1718(2006) and 2231(2015) and their successor resolutions does not or no longer meets the criteria for designation-

- (a) the listed person or entity; or
- (b) the Director,

may submit a de-listing request, in writing or electronically, directly to the United Nations Focal Point established pursuant to United Nations Security Council Resolution 1730.

(2) Where a listed person or entity has been de-listed by the United Nations Security Council Committee, the Director shall inform the Minister.

(3) Where the Minister is informed pursuant to subsection (2), the Minister shall immediately direct any person or entity who had reported that they are holding funds or other assets of a listed person or entity and were not dealing with the funds and other assets as required in section 68E to recommence dealing with the funds and other assets.

(4) Where a person or entity affected by a freezing order applies to the Court for a revocation of the order in relation to the person's or entity's 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 or entity's interest in it is not owned or held by or on behalf of a terrorist, terrorist organisation or someone involved in proliferation financing.

(5) Where a person or entity with the same or similar name as the listed person or entity, is inadvertently affected by the freezing action pursuant to section 68E, the person or entity may apply to the Court for a revocation order to unfreeze the funds or other assets of the person or entity and upon verification that the person or entity involved is not a listed person or entity the Court shall immediately revoke the freezing order.

Access to frozen funds pursuant to UNSCRs 1718 and 2231 and their successor resolutions.

68H. (1) Where the funds or other assets of a listed person or entity is frozen pursuant to United Nations Security Council Resolution 1718 and its successor resolutions and United Nations Security Council Resolution 2231 and its successor resolutions, the listed person or entity may apply in writing to the Minister for access to the frozen funds or assets.

(2) The Minister upon receipt of the written application referred to in subsection (1) may by written notice grant access to frozen funds or other assets specified in the notice to be used or dealt with in a specified way where it is determined by the Minister-

- (a) to be necessary for basic expenses, including payment for foodstuffs, rent or mortgage, medicines and 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, in accordance with national laws, for routine holding or maintenance of frozen funds, other financial assets and economic resources, after notification by the Minister to the relevant United Nations Security Council Sanctions Committee of the Minister's intention to authorise, where appropriate the funds, other financial assets and economic resources and in the absence of a negative decision by the Sanctions Committee within five working days of such notification;
- (b) to be necessary for extraordinary expenses, provided that the Minister has notified the relevant United Nations Security Council Sanctions Committee of such determination and the Sanctions Committee has approved access to the frozen funds or assets; or
- (c) to be the subject of a judicial, administrative or arbitral lien or judgment, in which case the funds, other financial assets and economic resources may be used to satisfy that lien or judgment provided that the lien or judgment was entered prior to the date of the present resolution, is not for the benefit of a listed person or entity, and the Minister has notified the relevant United Nations Security Council Sanctions Committee.

(3) Where the Minister 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 (3) (b), the reporting entity shall immediately allow access to the frozen funds or other assets of a listed person or entity.

Proposing names to the 1718 Sanctions Committee and the Security Council Committee.

68I. In addition to the responsibility at section 2(2)(1) the Director shall be responsible for-

- (a) proposing to the 1718 Sanctions Committee for designations as appropriate, persons or entities that meet the specific criteria for designation under United Nations Security Council Resolution 1718(2006) and its successor resolutions, if the Director has reasonable grounds to believe that there is sufficient evidence to support the designation criteria; and
- (b) proposing to the Security Council, for designation as appropriate, persons or entities that meet the criteria for designation under United Nations Security Council Resolution 2231(2015) and its successor resolutions, if the Director has reasonable grounds to believe that there is sufficient evidence to support the designation criteria. ”.

Amendments of other Acts. Schedule.

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

SCHEDULE

s 13

Acts

Amendments

Gold Board
Act, Cap
66:01

“Fit and
proper
criteria.

By inserting after section 9, the following section as
section 9A-

9A. (1) Upon acceptance of an application to possess,
sell or export gold under this Act, the Board shall
conduct an investigation and make inquiries as it deems necessary
to determine whether the applicant is fit and proper to possess, sell
or export gold under this Act, and in conducting the investigation
and inquiries, the Board shall have regard to-

- (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;
- (b) the competence and capability of the applicant;
- (c) the financial soundness and financial capability of
the applicant;
- (d) the background of the applicant; and
- (e) any other matters as the Board considers necessary.

(2) In assessing the criteria in subsection (1) (a) to (e), the Board
may take into account whether the applicant-

- (a) 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;

(b) has been convicted of any offence including money laundering, terrorist financing or bankruptcy, or is being subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction;

(c) has had any judgment in particular, that is 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;

(d) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
or

(e) has engaged in or been associated with any other business practices or otherwise conducted himself or herself in such a way as to cast doubt on his or her competence or soundness of judgment.

(3) The criteria in subsection (1) (a) to (e) shall be evaluated by the Board as often as necessary or whenever there is a change in ownership, management or control of the company.”.

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

By substituting for section 17 (2) the following-

17. (2) The penalty on summary conviction for the contravention of 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 is as follows-

- (a) for a natural person, a fine of ten million dollars and to imprisonment for one year, and
- (b) for a body corporate, a fine of fifty million dollars.

Companies
Act,
Cap. 89:01

In section 470A, by inserting immediately after subsection (1A), the following-

“(1B) The Registrar shall keep, update and maintain beneficial ownership information and the control of companies, trusts and other legal arrangements obtained in accordance with this section in the Register.”.

EXPLANATORY MEMORANDUM

The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill 2018 seeks to amend the Anti-Money Laundering and Countering the Financing of Terrorism Act, Cap 10:11, and related legislation to strengthen the regime for combatting money laundering, terrorist financing and proliferation financing.

Clause 2 of the Bill seeks to amend section 2 (1) of the Principal Act, by inserting the definitions of “Committee”, “exporter and importer of valuable items” and “proliferation financing”.

Clause 3 of the Bill amends section 7A of the Principal Act by substituting for the current 7A a new 7A to satisfy Recommendation 2 of the FATF 40 Recommendations. Recommendation 2 states that countries should designate an authority to have a co-ordination or other mechanism that is responsible for national anti-money laundering and countering the financing of terrorism and proliferation financing (AML/CFT/PF) policies. The effect of this substitution is the repeal of the AML/CFT Authority. This new section establishes the Anti-Money Laundering and Countering the Financing of Terrorism and Proliferation Financing National Co-ordination Committee. The Committee will comprise the Attorney General and Minister of Legal Affairs, who will be the Chairperson, the Director of Public Prosecutions, the Governor of the Bank of Guyana, the Commissioner General of Revenue Authority, the Director of the Financial Intelligence Unit (FIU), the Head of Special Organised Crime Unit, the General Manager of the Guyana Gold Board, the Commissioner of the Guyana Geology and Mines Commission, the Chairperson of the Guyana Securities Council, the Chairperson of the Gaming Authority and the Chief Cooperatives and Development Officer. Some of the functions of the Committee include developing national AML/CFT/PF policies informed by the risks identified by the recently completed National Risk Assessment (NRA) and to develop a national action plan which includes recommendations on effective mechanisms to enable the competent authorities in Guyana to co-operate and co-ordinate with each other concerning the development and implementation of policies and activities to combat money laundering, terrorist financing and proliferation financing.

Clause 4 of the Bill seeks to amend section 7B of the Principal Act by substituting section 7B with a new section 7B to make provision for the funds of the Committee.

Clause 5 of the Bill seeks to amend section 7C of the Principal Act by substituting section 7C with a new section 7C to deal with the financial year of the Committee.

Clause 6 inserts four new sections in the Principal Act. These sections are sections 7D, 7E, 7F and 7G that deals with the finance of the Committee. Particularly, section 7G exempts the Committee from all taxation.

Clause 7 of Bill seeks to amend section 9A of the Principal Act by substituting section 9A with a new section 9A to provide that all moneys derived from the fulfilment of forfeiture or confiscation orders contemplated in this Act shall be paid into the Consolidated Fund.

Clause 8 of the Bill seeks to amend section 9B of the Principal Act by substituting for section 9B a new section 9B to provide that the Director of the FIU shall submit to the Minister of Finance a report concerning the activities of the Financial Intelligence Unit. Also, this amendment provides that the Minister of Finance shall cause a copy of the report together with the annual statement of accounts and the Auditor General's report to be laid before the National Assembly.

Clause 9 of the Bill seeks to repeal sections 9C, 9D, 9E, 9F and 9G as these provisions deal with the accounts of the Authority. Although section 9F has been deleted its provisions can now be found in new section 9A which deals with moneys paid into the Consolidated Fund.

Clause 10 of the Bill seeks to amend section 18 of the Principal Act by inserting “real estate brokers”, “real estate developers”, “auditors” and “Commissioners of Oaths to Affidavits” among the list of professionals who are required to report any suspicious business transaction. Section 18 is also amended by inserting a new subsection (13A) to clarify that the requirements to take appropriate action, as outlined by the Act, with respect to suspicious transactions reports also apply to trust and company service providers when they engage in a transaction for or on behalf of a client in relation to specific activities.

Clause 11 of the Bill seeks to amend section 19 of the Principal Act by inserting a new subsection (4) to provide for the further monitoring and compliance of reporting entities by requiring all reporting entities to register with the FIU.

Clause 12 of the Bill seeks to amend section 68A by deleting subsection (9) as the words “customs officer” and “police officers” are not used in the section.

Clause 13 of the Bill seeks to amend the Principal Act by inserting after section 68D new sections, namely 68E, 68F, 68G, 68H and 68I to satisfy recommendation 7 which calls on countries to implement targeted financial sanctions related to proliferation against a person or entity who has been listed pursuant to United Nations Security Council Resolutions 1718 and 2231 and their successor resolutions. New section 68E deals with the freezing of funds or other assets of a listed person or entity pursuant to UNSCRs 1718 and 2231 and their successor resolutions. It mainly provides that- no person or entity shall deal with the property of any listed person or entity, the Director of the FIU shall notify the DPP when a listed person or entity has assets in Guyana, the DPP shall immediately upon being notified (not later than five days) to apply to a Judge in Chambers for a freezing order in respect of the funds or other assets of a listed person or entity and the Judge shall immediately grant the freezing order.

New section 68F sets out that freezing action shall not prevent a person or entity from crediting the frozen account of a listed person or entity with interest or other earnings due on the frozen

account or payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account, or where the person or entity receives funds transferred to the account. However, this is subject to the contract not being related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in United Nations Security Council Resolution 2231 (2015). Additionally, the person or entity must determine that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 Annex B to United Nations Security Council Resolution 2231 (2015). Further, the person or entity must submit prior notification to the Security Council of the intention to make or receive such payments or to authorise, where appropriate the funds or other assets for this purpose ten working days prior to such authorisation.

New section 68G provides the procedure for the listed person or entity to be delisted and for unfreezing of frozen accounts. With respect to de-listing, the listed person or entity or the Director of the FIU may submit a de-listing request directly to the United Nations Focal Point established pursuant to UNSCR 1730. Where a person has been de-listed the Minister of Legal Affairs must inform the persons or entities holding funds or other assets of a listed person or entity to recommence dealing with the funds and other assets. Additionally, this new section provides that a person or entity affected by a freezing order can apply to the Court for a revocation of the order and the Court shall revoke the freezing order if satisfied on evidence that the account or other property or the person's or entity's interest in it is not owned or held by or on behalf of a terrorist, terrorist organisation or someone involved in proliferation financing. Further, where a person or entity with the same or similar name as the listed person or entity, is inadvertently affected by the freezing action the person or entity may apply for a revocation order to unfreeze the funds or other assets of such persons or entities.

New section 68H provides for a listed person or entity to have access to frozen funds where the Minister of Legal Affairs has determined that it is for basic expenses including payment for foodstuffs, rent or mortgage, medical treatment and legal services; extraordinary expenses or the funds or other assets are subject to judicial, administrative or arbitral lien or judgment. However, before giving access to the frozen funds or other assets the Minister must notify the relevant United Nations Security Council Sanctions Committee.

New section 68I empowers the Director of the FIU to propose persons or entities to the 1718 Sanctions Committee and the Security Council for designation where the persons or entities meet the criteria for designation under the respective resolutions.

Clause 14 of the Bill provides for amendments to other legislation namely the Gold Board Act, Cap 66:01, the Money Transfer Agencies (Licensing) Act, Cap 85:10 and the Companies Act, Cap. 89:01.

This clause seeks to insert a new section 9A into the Gold Board Act to provide for fit and proper criteria to 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 to possess, sell or export gold. 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.

Also, this clause seeks to amend section 17(2) of the Money Transfer Agencies (Licensing) Act, Cap. 85:10, to clearly set out different penalties for a natural person and a legal person. To this end the penalty for contravening the provisions of this Act, any regulation, notice, guideline or any condition of a licence or certificate of registration with respect to a natural person is ten million dollars and one year imprisonment and for a legal person the penalty is fifty million dollars. This offence is summary.

Further, this clause seeks to amend section 470A of the Companies Act by inserting new subsection (1B), which provides that beneficial ownership information and the control of companies, trusts and other legal arrangements shall be kept, updated and maintained in the Companies Register.

**Hon. Basil Williams, SC, MP
Attorney General and
Minister of Legal Affairs**

