

BILL No. 22 of 2013

Tuesday, 10th December, 2013

PARLIAMENT OFFICE
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Georgetown,
Guyana.

10th December, 2013.

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

SE. Isaacs,
Clerk of the National Assembly.



BILL NO: 22 OF 2013

ANTI-MONEY LAUNDERING AND COUNTERING

THE FINANCING OF TERRORISM (AMENDMENT) BILL 2013

ARRANGEMENT OF SECTIONS

SECTION

- I. Short title.
2. Amendment of section 2 of the Principal Act.
3. Amendment of section 3 of the Principal Act.
4. Amendment of section 9 of the Principal Act.

5. Amendment of section 11 of the Principal Act.
6. Amendment of section 15 of the Principal Act.
7. Amendment of section 16 of the Principal Act.
8. Amendment of section 18 of the Principal Act.
9. Amendment of section 19 of the Principal Act.
10. Amendment of section 20 of the Principal Act.
11. Amendment of section 22 of the Principal Act.
12. Amendment of section 23 of the Principal Act.
13. Amendment of section 36 of the Principal Act.
14. Insertion of new section 68A in the Principal Act.
15. Amendment to section 76 (2) of the Principal Act.
16. Amendment of the Second Schedule to the Principal Act.
17. Amendment of the Third Schedule to the Principal Act.
18. Amendment of other Acts.

SCHEDULE

A Bill

Intituled

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

A.D.2013

Enacted by the Parliament of Guyana:-

Short title.

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 2013.

Cap. 10:11

Amendment

of section 2 of
the Principal
Act

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

- (1) 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;'

- (2) by substituting in the definition of "cun-ency" 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";

(3) by inserting after the definition of "money laundering" the following definitions of "originator" and "originator information", respectively -

(a) "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;;

(b) "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;';

(4) 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";

(5) by substituting for the existing 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;'

(6) by inserting in the definition of "terrorist financing" after the words "collecting funds" the words ", whether from a legitimate or an illegitimate source,".

(7) 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;**'.

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) assist 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".

Amendment
of section 9 of
the Principal
Act.

4. Section 9(4) of the Principal Act is amended as follows-

(a) in paragraph (k), by inserting immediately after the words "law enforcement agency," the words "any telecommunication provider and";

(b) by substituting for paragraph (l) the following paragraph as paragraph (l)-

"(l) shall periodically provide feedback to supervisory authorities, financial institutions and Designated Non-financial Businesses or Professionals and other relevant agencies regarding outcomes relating to the reports or information

given under the Act having regard to

practices;"; and

(c) by inserting, after paragraph (f) the following

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."

Amendment
of section 11
of the
Principal Act.

5. (1) Section 11 of the Principal Act is amended -

(1) by inserting in subsection (1) at the end thereof, 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 thereof, 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

Amendment
of section 15
of the
Principal Act.

6. 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 pennit its accounts to be used by shell banks.";

(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 customers 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) (c) by substituting for paragraph (c) the following paragraph as paragraph (c)

"(c) satisfy itself that the third party or intermedi_{ary} 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 terrorist financing offence and customer due diligence and record keeping, and":

G) by inserting after subsection (I0) the following subsection as subsection **(11)** -

"(11) Where. <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.

7. 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

8. 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)(6), by inserting at the end thereof the words "**the competent authority and duly authorised authorities; 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.";

(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.

9. Section 19 of the Principal Act is amended as follows -

(a) in subsection (1)(c), by inserting after the word "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).

Amendment
of section 20
of the
Principal Act

10. 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 paragraph 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

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

of section 22
of the
Principal Act.

(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 amendments to the laws relating to money laundering, terrorist financing or proceeds of crime";

(b) by inserting after paragraph (b) the following paragraph as paragraph (bA)-

"(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;"

(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.

12. (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 sub-sections (2) and (3) as sub-sections (3) and (4), respectively and insert the following as sub-section (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 conviction to a fine of not less than one million dollars nor more than five million 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."

Insertion of
new section
68A in the
Principal Act.

13. The Principal Act is amended by inserting after section 68 the following sections as sections 68A and 68B -

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

68A. (1) In this section and section 688, 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 Securities 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 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) A natural person who contravenes this section commits an offence and shall be liable

on summary conviction to a fine or not more 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.

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

68B.(1)The Minister may issue directives under
regulation 20 establishing procedures -

(a)to de-list and unfreeze the funds or
other assets of persons and entities
which do not, or no longer, meet
the criteria for a declaration as a
specified entity under section 2(2)
of this Act;

(b) to submit de-listing requests to the
relevant 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) to 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) to 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 may issue further directives under regulation 20 establishing any other procedures for the carrying out of the United Nations Security Council Resolutions

relating to terrorism and the financing of terrorism and other matters connected therewith."

Amendment to section 76 of Principal Act

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

Amendment of Second Schedule to the Principal Act.

15. The Second Schedule to the Principal Act is amended by inserting after the item "insider trading and market manipulation" the item -
"Tax evasion"

Amendment of Third Schedule to the Principal Act.

16. The Third Schedule of 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

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

SCHEDULE

Acts

Amendments

The Gambling
Prevention Act, 9:02

- (a) By the inserting after section 29 the
section as section 29A-

"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."

- (b) In section 32(1), by the inserting after paragraph (e) the following paragraph as paragraph (eA)-

"(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;**".

The Mutual Assistance in Criminal
Matters Act, Cap. 15:05

(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)-

"(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
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 foifowing 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;"

Cap10:11

(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 history and 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."

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 license 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 (SA)-

"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

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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 (IA)

"(IA) 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 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 (I) 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 -

"470A. (I) 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 (I) 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 Commission 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) and background of the applicant; and
- (e) such other matters as the Commissioner deems appropriate.

(2) The integrity of the persons referred to 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.

Confiden-
tiality
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."

EXPLANATORY MEMORANDUM

The Anti-Money Laundering and Countering the Financing of Terrorism (Amendment) Bill 2013 seeks to amend the Anti-Money Laundering and Countering of the Financing for Terrorism Act, No. 13 of 2009 and related legislation by strengthening the regime for combatting money laundering, countering the financing of terrorism and specifically to meet the recommendations of the Financial Action Task Force.

Clause 2 of the Act defines the concept of beneficial ownership of legal entities and requires the identification of the natural persons who ultimately exercise ownership of legal entities. It expands the meaning of negotiable instruments in the definition of currency. The section removes driving licenses from the meaning of identification records. Originator and originator information are defined for wire transfers. The expression "proceeds of crime" is defined and the definition of property is refined. The definition of terrorist financing is expanded to include funds whether from a legal or illegal source.

Clause 3 of the Act amends section 3 to include among offences, assisting a person to escape to legal consequences of specified money laundering offences. Section 1(6) increases fines for certain money laundering offences from one million to five million dollars.

Clause 4 amends section 9 of the Principal Act by including telecommunication providers among the agencies from which the Financial Intelligence Unit may request information. It also authorizes the Financial Intelligence Unit to provide feedback to a greater number of reporting entities according to international best practices. It increases the FIU's research obligations to assess risks arising from new products, practices and technologies.

Clause 5 amends section 11 of the Act by providing that professionals who transmit information or submit suspicious transaction reports in good faith remain free of liability for breach of confidentiality or professional sanction even if they did not know what the underlying criminal activity was and regardless of whether the illegal activity actually occurred.

Clause 6 amends section 15 by requiring reporting entities not to open new accounts, commence business relationships or perform the intended or desired transaction and make a suspicious transaction report. It advances the requirements for reporting entities to make deliberate decisions in continuing relations with politically exposed persons. It expands the due diligence obligations of reporting entities.

Clause 7 amends section 16 by requiring the reporting entities to conduct enhanced due diligence measures for higher risk categories of customers or where the Financial Intelligence Unit is aware that another country does not apply or insufficiently applies the recommendations of the Financial Action Task Force.

Clause 8 amends section 18 of the Act to ensure that reporting entities also make records available to the competent authority and duly authorized auditors. It expands reporting entities obligations to report possible terrorist financing offences to include activities involving funds suspected of being linked, or related to or to be used for terrorism, terrorist acts or by terrorist organisations.

Clause 9 amends section 19 of the Act by requiring reporting entities to ensure that their Anti Money Laundering and Countering the Financing for Terrorism compliance offices are equipped with adequate resources and independent personnel and that training is conducted on an ongoing basis. It also requires reporting agencies to assess risks and manage them before launching new products, business practices and new technologies.

Clause 10 amends section 20 to clarify the circumstances under which credit cards or debit cards used for transfers must be accompanied by originator information and also clarifies the exemption in relation to bank to bank transfers.

Clause 11 expands the supervisory authority's responsibilities and their powers to obtain information. It also ensures that reporting entities and financial institutions which operate in other jurisdictions through branches or majority owned subsidiaries implement higher standards for anti-money laundering and countering the financing for terrorism where host country's standards are lower.

Clause 12 gives sanctioning powers to supervisory authorities for breach of obligations by reporting entities, including the power to impose administrative penalties.

Clause 13 amends section 36 of the Act to include the requirement for international travelers to declare bearer negotiable instruments. It should be noted the definition of currency is already expanded. It also clarifies that the threshold for declarations is cumulative rather than disjunctive.

Clause 14 inserts a new section 68A to provide for the freezing the funds of terrorists, terrorist groups or terrorist organisations designated as such by the Security Council of the United Nations.

Clause 15 provides for amendments to section 76(2) of the Act.

Clause 16 amends the Second Schedule to the Act to include Tax Offences among the prescribed offences.

Clause 17 amends the Third Schedule to the Act by providing for numbering of forms to be issued by Customs and Immigration officials, dating of forms and clarifying that the "source of funds" declaration means the "person of entity foreign currency was purchased or acquired from".

Clause 18 provides for amendments to other legislation including the Gambling Prevention Act, Cap 9:01, the Companies Act, Cap 89:01, the Insurance Act, Cap 91:03, the Mutual Assistance in Criminal Act, Cap. 15:05, the Securities Industry Act, Cap.85:09, the Financial Institutions Act, Cap 85:01, the Money Transfer Agencies (Licensing) Act, Cap.85: 10, Foreign Exchange (Miscellaneous Provisions) Act, Cap.86:01, and the Co-operative Societies Act, Cap. 88:01. These amendments are set out in the Schedule hereto.

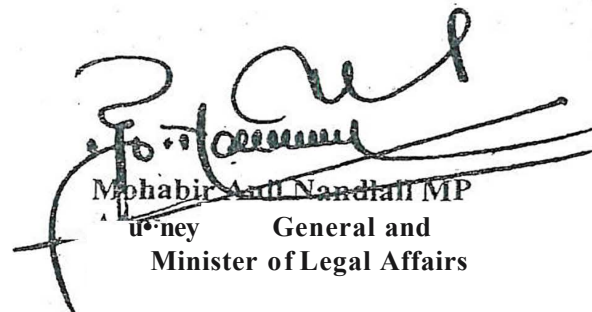
The Schedule to the Act includes amendments to other Acts -

- (a) The **Gambling Prevention Act, Cap 9:01** is amended to require the Gaming Authority to assess persons involved with an applicant for a license under the Act on the basis of "fit and proper" criteria and have them certified by the Bank of Guyana, following criteria under the Financial Institutions Act.
- (b) The **Mutual Assistance in Criminal Matters, Cap 15:05** is amended to provide for mutual legal assistance to be granted if the central authority considers it fit notwithstanding that there may be preconditions that the request be related to circumstances which would be offences in both Guyana and another country. In these circumstances it would be for matters which the Minister, by order deems less intrusive and non-compulsory. The amendment also removes any technical differences in the categorization or denomination of offences which may otherwise prove a barrier for providing mutual legal assistance.
- (c) The **Securities Industries Act, Cap 85:09** is amended to give explicit powers to the regulator under s. 23 of the Anti-Money Laundering and Countering the Financing of Terrorism Act, including expanded powers to prevent criminals and their associates from holding or being the beneficial owners of an interest in or holding management functions in companies regulated under the Act. The Regulator has clear authority to compel the production of records to ensure compliance in relation to money laundering, terrorist financing and proceeds of crime laws. The directors and senior management of entities regulated by the Securities Industries Act must be certified as fit and proper by the Bank of Guyana applying criteria similar to that under section 23 of the Financial Institutions Act.
- (d) The **Money Transfer Agencies (Licensing) Act, Cap 85:10** is amended to make dissuasive the penalties under section 17 for offences relating to failing to produce books for examination or obstructing an officer of the Bank of Guyana in carrying out his duties.
- (e) The **Foreign Exchange (Miscellaneous Provisions) Act, Cap.86:01** is amended to explicitly include bearer negotiable instruments among the financial instruments, which must be declared by travelers. The amendment also explicitly ascribes criminal sanction to the employers of travelers who, in the course of their employment carry foreign currency into or out of Guyana and fail to declare it.
- (f) " The **Co-operative Societies Act, Cap. 88:01** authorizes the Commissioner of Societies to prevent criminals or their associates from holding interests in financial institutions created under the Act.
- (g) The **Companies Act Cap, 89:01** is amended in section 470 to require the Registrar to ascertain the beneficial ownership of companies.

EXPLANATORY MEMORANDUM

This Bill seeks to enlarge the documents to which section 43 of the evidence Act applies to include a certificate or report signed by an analyst who has examined or analysed for instance, a firearm, a poisonous substance or human blood, bone or tissue and a certificate issued by police Forensic Laboratory.

The Bill also enlarges the category of analysts to include an analyst of the Guyana Police Force or other qualified person.



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Minister of Legal Affairs