

THE OFFICIAL GAZETTE 23RD JULY, 2008

LEGAL SUPPLEMENT – C

BILL No. 15 of 2008

Wednesday 23rd July, 2008

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

23rd July, 2008.

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

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



GUYANA

BILL No. 15 of 2008

MONEY TRANSFER AGENCIES (LICENSING) BILL 2008

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**A BILL
Intituled**

AN ACT to provide for the licensing of persons carrying on the business of money transfer agencies; to make provision for the registering of money transfer agents and for connected purposes.

A.D. 2008. Enacted by the Parliament of Guyana:-

Short title and commencement.

1. This Act may be cited as the Money Transfer Agencies (Licensing) Act 2008 and shall come into operation on a date appointed by the Minister by order.

Interpretation.

2. In this Act

No. 19 of 1998.

- (a) “Bank” means the Bank of Guyana established under the Bank of Guyana Act 1998;
- (b) “foreign currency” means any currency or claims to a currency other than Guyana dollars;
- (c) “licence” means a licence granted under this Act;
- (d) “licensed agency” means any agency where a licensee is authorised to carry on the business of money transfer;
- (e) “licensed premises” means the premises specified in a licence where the licensee carries on the licensed agency;
- (f) “licensee”, unless the context requires otherwise, means the holder of a licence granted under this Act and which has not

been suspended or revoked or the term of which has not expired;

- (g) “money transfer” means the making of any payment by a person in the scheduled territory to or for the credit of a person outside the scheduled territory, or to a person in the scheduled territory by order or on behalf of a person outside the scheduled territory;
- (h) “money transfer agent” means any person carrying on the business of money transfer on behalf of a licensee;
- (i) “scheduled territory” means Guyana.

Application for licence.

3. (1) Subject to subsection (2), a person who is desirous of operating a licensed agency shall apply to the Bank in the prescribed form for a licence for that purpose.

No. 19 of 1989.

(2) A licensee under the Dealers in Foreign Currency (Licensing) Act 1989 or any related party, holding company, subsidiary or other affiliate of such a licensee shall not be eligible for the grant of a licence under this Act.

(3) An applicant for a licence shall submit the prescribed fees along with his application.

(4) In the case of a person engaged in the business of money transfer prior to the commencement of this Act, that person shall within three months from the date of the coming into operation of this Act make an application to the Bank for a licence under this section.

No. 19 of 1989.

(5) In the case of a licensee under the Dealers in Foreign Currency (Licensing) Act 1989 or any related party, holding company, subsidiary or other affiliate of such a licensee who was

engaged in the business of money transfer prior to the commencement of this Act, that person shall within three months from the date of the coming into operation of this Act cease carrying on the business of money transfer.

(6) For the purposes of subsections (2) and (5), “related party” means

No. 19 of 1989.

- (a) any officer, official or director of the licensee under the Dealers in Foreign Currency (Licensing) Act 1989 (hereinafter in this subsection referred to as “the 1989 Act”);
- (b) any person affiliated with an officer, official or director of the licensee under the 1989 Act;
- (c) any officer, official or director of the licensee under the 1989 Act who owns equity capital or otherwise has a beneficial interest of ten percent or more in the licensee’s business;
- (d) any employee of the licensee under the 1989 Act;
- (e) any other person or class of persons specified by the Bank as related to the licensee under the 1989 Act.

Grant of licence.

4. (1) The Bank, after consultation with the Minister, may, having regard to

- (i) the experience in financial business of the applicant for a licence;
- (ii) the financial resources of the applicant;

- (iii) the character and the antecedents of the applicant;
- (iv) the soundness and feasibility of the applicant's business plan;
- (v) whether the applicant has competence and experience for operating the business of money transfer;
- (vi) whether the applicant will operate the business of money transfer responsibly;
- (vii) the best interests of the financial system in the scheduled territory; and
- (viii) the public interest,

grant or refuse to grant a licence.

(2) A licence shall be in the prescribed form and the applicant shall pay the prescribed fees for the grant of the licence.

(3) Where a licence is granted, the licensee shall display the licence at a conspicuous place at the licensed premises.

*Terms of licence
and renewal.*

5. (1) A licence expires on the 31st day of December of the year in which it is granted.

(2) Where a person wishes to renew a licence, he shall, not later than the 15th day of January in every year, make an application in the prescribed form accompanied by the prescribed fees to the Bank to renew the licence:

Provided that the Bank may, after giving the applicant a reasonable opportunity of being heard, and after consultation with the Minister, refuse the renewal of a licence where a licensee has contravened any provision of this Act or any conditions of the licence or where the Bank considers it to be in the public interest.

Premises where licensed agency to be carried on.

6. (1) A licence shall specify the premises where the licensed agency may be carried on and, subject to subsection (2), the licensed agency shall not be carried on in any other premises.

(2) Where a licensee is desirous of moving the licensed agency to premises other than the premises specified in the licence he shall make an application in the prescribed form and submit the prescribed fees; and where the Bank grants the application, the licence shall be amended accordingly.

Money transfer agent.

7. A licensee may appoint a person by agreement in writing as its money transfer agent with the authority to provide money transfer services on behalf of the licensed agency.

Requirements of money transfer agents.

8. (1) No person shall act as a money transfer agent unless that person has first registered with the Bank.

(2) Every person who wishes to be registered as a money transfer agent shall

(a) make an application in the prescribed form and submit the prescribed fees; and

(b) supply the Bank with the following -

(i) the name of the applicant;

(ii) the address of the premises from which the money transfer agent will operate;

(iii) a copy of the written agreement between the licensee and the proposed money transfer agent; and

(iv) such other information and documents that the Bank may require.

(3) The Bank may grant a certificate of registration

subject to such terms and conditions, if any, as the Bank considers necessary.

(4) The Bank shall in determining whether to register any money transfer agent, take into account -

- (a) whether the proposed money transfer agent is a fit and proper person to provide money transfer services;
- (b) whether the proposed money transfer agent has entered into a suitable written agreement to provide money transfer services on behalf of the licensed agency;
- (c) the professional reputation and experience of the proposed money transfer agent;
- (d) the best interests of the financial system in the scheduled territory; and
- (e) the public interest.

(6) A certificate of registration shall be in the prescribed form and the applicant shall pay the prescribed fees for the grant of the certificate of registration.

(7) Where a certificate of registration is granted, the registered person shall display the certificate of registration at a conspicuous place at the premises from which the money transfer agent will operate.

*Terms of
certificate of
registration and
renewal.*

9. (1) A certificate of registration expires on the 31st day of December of the year in which it is granted.

(2) Where a person wishes to renew a certificate of registration, he shall, not later than the 15th day of January in every year, make an application in the prescribed form accompanied by the prescribed fees to the Bank to renew the certificate of registration:

Provided that the Bank may, after giving the applicant a

reasonable opportunity of being heard, refuse the renewal of a certificate of registration where the registered person has contravened any provision of this Act or any conditions of the certificate of registration or where the Bank considers it to be in the public interest.

*Conditions of
license and
certificate of
registration.*

10. (1) Every licensed agency and money transfer agent shall be subject to the provisions of this Act and the conditions as may, from time to time, be prescribed by regulations or specified in the licence or certificate of registration.

(2) The conditions of a licence or certificate of registration referred to in subsection (1) may include -

- (a) a condition as to the furnishing of surety by the licensee or money transfer agent;
- (b) the amount of and conditions under which the surety may be forfeited; and
- (c) the power of the Bank to vary the amount of surety from time to time.

(3) Every licensed agency and money transfer agent shall comply with the Money Laundering (Prevention) Act 2000 or any subsequent legislation replacing or amending that Act.

No. 1 of 2000.

*Suspension and
revocation of
licence or
certificate of
registration.*

11. (1) The Bank may suspend or revoke a licence or certificate of registration where the licensee or money transfer agent

- (a) has ceased to carry on the business of money transfer for a period of not less than six months;
- (b) has been convicted of a felony or of any offence involving fraud, dishonesty or breach of trust;
- (c) is a discharged or an undischarged bankrupt;
- (d) has presented misleading information to

obtain the licence or certificate of registration;

No. 1 of 2000.

(e) has contravened or failed to comply with the provisions of the Money Laundering (Prevention) Act 2000 or any subsequent legislation replacing or amending that Act; or

(f) has contravened or failed to comply with any provision of this Act or any of the conditions subject to which the license or certificate of registration was granted or where the Bank considers it to be in the public interest.

(2) . The Bank shall not suspend or revoke a licence or certificate of registration unless the licensee or money transfer agent has been given a reasonable opportunity to make representation.

(3) The Bank may suspend a licence or certificate of registration pending any investigation into a complaint of any act or omission that threatens or can affect the integrity, stability or soundness of the financial system.

(4) Where the Bank suspends or revokes a licence or certificate of registration, it may give directions as regards the settlement of outstanding transactions.

(5) Any action taken by the Bank under this section, in relation to suspension or revocation of a licence, shall only be taken after consultation with the Minister.

Right of licensee and money transfer agent to conduct money transfer.

12. (1) Subject to the provisions of this Act and the conditions of the licence or certificate of registration, a licensee or money transfer agent shall be entitled to carry on the business of money transfer.

(2) Subject to regulations made under this Act, where payments to local recipients of money transferred are effected in

Guyana dollars, the licensee or money transfer agent shall display, at a prominent place on the licensed premises or premises from which the money transfer agent operates, the implicit conversion rates applied and any applicable charges in Guyana dollars.

(3) Subject to regulations made under this Act, where payments to a licensee or money transfer agent for money to be transferred from the scheduled territory are effected in Guyana dollars, the licensee or money transfer agent shall display, at a prominent place on the licensed premises or premises from which the money transfer agent operates, the implicit conversion rates and any applicable charges in Guyana dollars.

No. 19 of 1998.

(4) Subject to section 20 of the Bank of Guyana Act 1998, where payments to a licensee or money transfer agent for money to be transferred from the scheduled territory are effected in foreign currency, the licensee or money transfer agent shall display, at a prominent place on the licensed premises or premises from which the money transfer agent operates, any applicable charges in Guyana dollars.

No. 19 of 1998

(5) Subject to section 20 of the Bank of Guyana Act 1998, where payments to local recipients of money transferred are effected in foreign currency, the licensee or money transfer agent shall display, at a prominent place on the licensed premises or premises from which the money transfer agent operates, any applicable charges in Guyana dollars.

(6) A licensee or money transfer agent shall not carry on the business of lending or borrowing, or accepting deposits of, any foreign or local currency, except as implicit in the transfer arrangement and an obligation under this section shall be available for liquidation in no longer than one business day.

Receipts.

13. A licensee and a money transfer agent shall give to any

person sending or receiving money a receipt and keep a duplicate of the receipt.

Keeping of accounts and other records.

14. Every licensee and money transfer agent shall maintain a proper account in which shall be recorded any particulars prescribed by the Bank by regulations, notices or guidelines for a period of five years after the termination of the business transaction so recorded.

Returns.

15. Every licensee and money transfer agent shall deliver to the Bank, within such period as may be specified and in such form as the Bank may from time to time approve, any of the particulars prescribed by the Bank under section 14.

Production and examination of books.

16. Any person authorised by the Bank may enter a licensed premises or premises from which a money transfer agent operates at all reasonable times and -

(a) request the licensee, money transfer agent or any of the employees to produce any accounts, books, records, documents, electronic data and any other relevant information -

(i) relating to the licensed agency or the money transfer agent's business of money transfer that are found therein or that are in the possession or control of any director, manager, officer or employee; or

(ii) likely to contain, in the opinion of the person, evidence of the contravention of any provision of this Act, the Money Laundering (Prevention) Act 2000 or any subsequent law replacing or amending that Act or any condition of the licence or the certificate of

No. 1 of 2000.

registration granted to the licensee or money transfer agent;

(b) question -

- (i) the licensee, the money transfer agent or any of the employees; or
- (ii) any other person found on the licensed premises or the premises from which the money transfer agent operates.

Penalties.

17. (1) A licensee, money transfer agent or any of their employees who

- (a) fails or refuses to comply with section 16; or
- (b) obstructs any person authorised by the Bank from carrying out his function under section 16,

commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for six months.

(2) Any person who contravenes any provision of this Act, any regulation, notice, guideline, or any condition of a licence or certificate of registration, for which no penalty has been specified in any other provision of this Act commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for six months.

Power to make regulations.

18. (1) The Bank may make regulations and issue notices or guidelines for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provisions of subsection (1), the regulations, notices and guidelines may in particular, provide for all or any of the following matters -

- (a) the form of an application for a licence and

- of a licence;
- (b) the fees payable along with the application for a licence and for the grant of a licence;
- (c) the form of an application for renewal of a licence and the fees payable for the renewal;
- (d) the form of an application for change of a licensed premises and the fees payable for the change;
- (e) the form of an application for registration and of a certificate of registration;
- (f) the fees payable along with the application for registration and for the grant of the certificate of registration;
- (g) the particulars that an account and other records to be kept by licensee and money transfer agent shall contain;
- (h) the display of exchange rates and applicable charges;
- (i) financial penalties for breach of regulations, notices or guidelines;
- (j) any other matter that is required to be or may be prescribed by or under this Act.

*Non-application
of Act.
No. 1 of 1995.*

19. This Act does not apply to a licensed financial institution under the Financial Institutions Act 1995.

EXPLANATORY MEMORANDUM

This Bill seeks to provide an effective administrative, operational and legal framework for the conduct of the business of money transfers.

Clauses 3 and 4 of the Bill provide that the applications for licences must be submitted to the Bank, which may grant or refuse to grant a licence. A licensee under the Dealers in Foreign Currency (Licensing) Act 1989 or any related party, holding company subsidiary or other affiliate of the licensee is ineligible for the grant of a licence under this Act.

Clause 5 states that a licence expires on the 31st December every year and if a person wishes to renew that licence, that person must do so before the 15th January of the following year.

Clause 6 provides that a licensee can only conduct the business of money transfers on the premises named in the application for the licence, that is, the licensed premises.

Clauses 7 and 8 make provision for a person, who after obtaining a written agreement from a licensed agency, to make application to be registered with the Bank as a money transfer agent,

Clauses 9, 10 and 11 confer on the Bank the principal regulatory responsibility on licensing conditions, suspensions and revocations and rights.

Clause 12 gives the licensee and the money transfer agent the right to conduct the business of money transfer.

Clause 13 provides that all persons dealing with money transfer agencies or a money transfer agent must be provided with receipts of any transaction conducted between that person and the licensed agency or the money transfer agent.

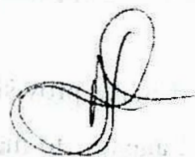
Clauses 14 and 15 provide for the licensee and money transfer agent to maintain proper accounts and to furnish any information required by the Bank.

Clause 16 confers on the Bank the right to inspect the operations of licensed agencies and money transfer agents and require the production of books, records and other information.

Clause 17 provides for violations of the provisions of the Act.

Clause 18 gives the Bank power to make regulations and to issue guidelines or notices for the carrying out of the provisions of the Act.

The proposed Bill comes at a time when the number of money transfer agencies and money transfer agents are increasing.



Minister of Finance