

EXTRACTS DATED 10TH DECEMBER, 2015

BILL No. 15 of 2015

Thursday 10th December, 2015

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

10th December, 2015.

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

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



BILL No. 15 of 2015

ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF TERRORISM ARRANGEMENT OF SECTIONS

SECTION

- J. Short title.
2. Amendment of Section 2 of the Principal Act.
3. Amendment of Section 15 of the Principal Act.
4. Amendment of Section 68A of the Principal Act.
5. Amendment of Section 68B of the Principal Act.
6. Amendment of Section 71 of the Principal Act.
7. Amendment of the Second Schedule to the Principal Act.
8. Amendment of other Acts.

SCHEDULE

A-BJ,b
Intituled

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

A.J11215

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) (No. 2) Act 2015.

Amendment of
section 2 of the
Principal Act.

2. Section 2 (1) of the Principal Act is amended by substituting for the definition of "beneficial ownership" the following definition-

"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; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement;'

Amendment of
section 15 of the
Principal Act.

3. Section 15 (4) (c) of the Principal Act is amended by inserting before the word "if" the words "when establishing a business relationship,".

Amendment of
section 68 A of
the Principal
Act.

4. Section 68A of the Principal Act is amended as follows:

- (a) in subsection (1) by inserting after the word "Council" the words "Resolution 1267 .";
- (b) in subsection (6)
 - (i) by substituting for the word "seven" the word "five";
 - (ii) by inserting immediately after the word "apply" the words "ex psrte";
- (c) in subsection (5)(a) by substituting for the word "designated" the word "specified";
- (d) by inserting after subsection (6) the following subsections as subsections (6A) and (6B)

"(6A) Where the Court is satisfied on a balance of probabilities that the property is held by or on behalf of a terrorist or terrorist organisation, the Court shall immediately, pursuant to the application of the Director of Public Prosecutions under subsection (6), - . grant the froozing order.

(6B) 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."

Amendment of
section 68B of
the Principal
Act

5. -Section 68B (1)(a) of the Principal Act is amended by deleting the words "de-list and".

Amendment of
section 71 of the
Principal Act

6. Section 71 (1) of the Principal Act is amended by inserting before the word "application" the words "ex *partA:*".

Amendment of
the
Second
Schedule to the
Principal Act.

.7. The Second Schedule to the Principal Act is amended by substituting for the word "**Smuggling**" the words "Smuggling, including gold smuggling in contravention of the Guyana Gold Board Act or any other law."

Amendments of
other Acts.
Schedule

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

SCHEDULE
Amendments

s.8

Acts

The
Securities
Industry
Act,
Cap. 73:04

By substituting for section 47A the following section as section 47A:

"47A. (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 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) such other matters as the Council deems appropriate.

(2) In assessing the fit and proper criteria in subsection (1) (a) to (e) above, the Council may take into account all appropriate factors including but not limited to, whether the applicant-

- (a) has been declared bankrupt or has compounded with his creditors;
- (b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- (c) has been convicted of any offence including money laundering or terrorist financing, or is being subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction;

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

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

The
Co-operative
Societies
Act,
Cap. ss:01

By substituting for section 7A the following section as section 7A.

"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 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 Chief Co-operative Development Officer 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) such other matters as the Chief Co-operative Development Officer deems appropriate.

(2) In assessing the fit and proper criteria in paragraphs (a) to (e) above, the Chief Co-operative Development Officer

may take into account all appropriate factors including but not limited to, whether the applicant

- (a) has been declared bankrupt or compounded with his creditors;
- (b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- (c) has been convicted of any offence including money laundering or terrorist financing, or is being subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction;
- (d) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (e) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction; or
- (f) has engaged in or been associated with any other business practices" or otherwise conducted himself in such a way as to cast doubt on his competence or soundness of judgment.

(3) The criteria in subsection (1) (a) to (e) shall be evaluated by the Chief Co-operative Development Officer as often as necessary or whenever there is a change in ownership, management or control of the society."

The
Insurance
Act,
Cap. 91:02

By substituting for section 23A the following section as section 23A.

"23A. (1) 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 Commissioner shall have regard to

UV the honesty, integrity and reputation of-----ine

~~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) such other matters as the Commissioner deems appropriate.

(2) In assessing the fit and proper criteria in paragraphs (a) to (e) above, the Commissioner may take into account all appropriate factors including but not limited to, whether the applicant

- (a) has been declared bankrupt or has compounded with his creditors;
- (b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
- (c) has been convicted of any offence including money laundering or terrorist financing, or is being subject to any pending proceedings which may lead to such conviction, under any law in any jurisdiction;
- (d) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;
- (e) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction;
or
- (t) has engaged in or been associated with any other business practices or otherwise conducted himself in such a way as to cast doubt on his competence or soundness of judgment.

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

EXPLANTORY MEMORANDUM

Clause 2 of the Bill seeks to amend section 2(1) of the Anti-Money Laundering and Countering the Financing of Terrorism Act, Cap. 10:11, to redefine the term 'beneficial ownership'.

Clause 8 of the Bill seeks to amend section 15(4) (c) to require a reporting entity to identify and verify the identity of a customer, when establishing a business relationship.

Clause 4 of the Bill seeks to amend section 68A (6) to reduce the period from not later than seven days to not later than five days for the Director of Public Prosecutions to apply for a freezing order. The amendment also provides that an application for a freezing order may be made ex parte to a Judge in Chambers. The amendment also seeks to insert into section 68A a new subsection (6A) to provide that, a Judge when granting the freezing order, the standard of proof required shall be on the balance of probabilities. Clause 4 also seeks to insert a new subsection (6B) that requires the Director of Public Prosecutions to immediately serve on the reporting entity a copy of the freezing order.

Clause 6 of the Bill seeks to amend section 71(1) of the Principal Act to enable the Director of Public Prosecutions to make an ex parte application to the High Court for a freezing order.

Clause 7 of the Bill seeks to amend the Second Schedule of the Principal Act to make it clear that gold smuggling is a serious offence under the second schedule.

Clause 8 of the Bill provides for a Schedule to the Act with amendments to section 47A of the Securities Industry Act, Cap. 73:04, section 7A of the Co-operative Societies Act, Cap. 88:01 and 23A of the Insurance Act, Cap. 91:02. These proposed amendments seek to substitute for the sections mentioned above new sections that add to the existing provisions the appropriate factors that must be utilized for evaluation by the respective supervisory authorities. These provisions determine whether any applicant together with any partner, shareholder and director, beneficial owner of a significant or controlling interest or office holder of the applicant is fit and proper for registration. Additionally, the fit and proper criteria is to be utilized for evaluation by a supervisory authority where there is a change of ownership, management or control of the company.

A handwritten signature in black ink, appearing to read 'Basil Williams', written over a dotted line.

Hon. Basil Williams M.P.

Attorney General and

Minister of Legal Affairs