

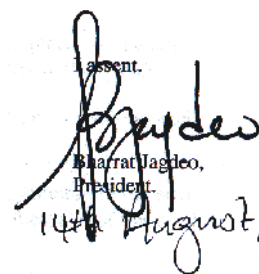


GUYANA

ACT No. 13 of 2009

ANTI-MONEY LAUNDERING AND COUNTERING

THE FINANCING OF TERRORISM ACT 2009

assent.

Bharrat Jagdeo,
President.
14th August, 2009

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FIRST SCHEDULE

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AN ACT to provide for the establishment and management of a Financial Intelligence Unit; to provide for unlawful proceeds of all serious offences to be identified, traced, frozen, seized and forfeited; to provide for comprehensive powers for the prosecution of money laundering, terrorist financing and other financial crimes; and the forfeiture of the proceeds of crime and terrorist property; to require reporting entities to take preventive measures to help combat money laundering and terrorist financing; to provide for civil forfeiture of assets and for matters connected therewith.

A.D. 2009 Enacted by the Parliament of Guyana:-

PART I PRELIMINARY

Short title and commencement.

1. This Act may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009 and shall come into operation on such date as the Minister may by order appoint.

Interpretation.

2. (1) In this Act, unless as otherwise provided in respect of a word or expression defined in PART VII -

“accused” means a person charged with a serious offence, whether or not that person has been convicted of the offence;

“authorised officer” means a person or class of persons designated as such by the Minister responsible for Finance;

“business transaction” includes any arrangement, opening an account, between two or more persons where the purpose of the arrangement is to facilitate a transaction between the persons concerned and any related transaction between any of the persons concerned and another person;

“collective investment scheme” means a scheme, in whatever form, in pursuance of which, members of the public are invited or permitted to invest money or other assets in a portfolio, and which scheme has the following characteristics-

- (a) two or more investors contribute money or other assets to hold a participatory interest in a portfolio of the scheme through shares, units or any other form of participatory interest; and
- (b) the investors share the risk and the benefit of investment in proportion to their participatory interest in a portfolio of a scheme or on any other basis determined in the deed;

“competent authority” means the Director of Public Prosecutions, and includes any person authorised by him in that behalf;

“Court” means the High Court;

“currency” means the coin and paper money of Guyana or of a foreign country that is designated as legal tender and which is customarily used and accepted as a medium of exchange in the country of issue; monetary instruments that may be exchanged for money (such as cheques, travellers cheques, money orders, negotiable instruments in a form in which title thereto passes on delivery), jewellery, precious metals and precious stones; where the context permits, currency includes currency in electronic form;

“Director” means the Director of the Financial Intelligence Unit appointed pursuant to section 8 of this Act;

"document" means any record of information and includes-

- (a) anything on which there is writing;
- (b) anything on which there are marks, figures, symbols, or perforations having meaning for persons qualified to interpret them;
- (c) anything from which sounds, images or writing can be produced, with or without the aid of anything else; or
- (d) a map, plan, drawing, photograph or similar thing;

“Financial Intelligence Unit” means the Financial Intelligence Unit established pursuant to section 9 of this Act;

“financial institution” means a bank or financial institution as defined in the Financial Institutions Act 1995 or other financial institutions as specified in the First Schedule;

“forfeiture” means the permanent deprivation of property by order of a court ;

“gift” includes any transfer of property by a person to another person directly or indirectly-

- (a) for a consideration the value of which is significantly less than the value of the consideration provided by the first person; and
- (b) to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

“Identification record” means any reliable and independent source documents, data or information or other evidence as is reasonably capable of establishing the true identity and verifying the identity of a person transacting business with a reporting entity, including, but not limited to, a driving licence, a national identification card, a passport and in the case of a body corporate, a certified copy of the Memorandum and Articles of Association, a certificate of incorporation, Articles of Incorporation and by-laws of the company together with the latest annual return to the Registrar of Companies;

“instrumentality” means something that is used in or intended for use in any manner in the commission of a money laundering offence, terrorist financing offence or proceeds of crime offence;

"interest" in relation to property, means-

- (a) a legal or equitable interest in the property; or
- (b) a right, power or privilege in connection with the property;

“magistrate” means any magistrate authorised by the Chief Magistrate;

“Minister” means the Minister responsible for Legal Affairs, unless specifically provided otherwise;

“money laundering” means conduct which constitutes an offence as described under section 3;

“person” includes any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organisation or group, capable of acquiring rights or entering into obligations;

“politically exposed person” means any individual who is or has been entrusted with prominent public functions on behalf of a state, including a Head of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials, including family members or close associates of the politically exposed person whether that person is resident in Guyana or not;

“proceeds of crime” means any property derived or realised directly or indirectly from a serious offence and includes, on a proportional basis, property into which any property derived or realised directly from the offence was later converted, transformed or intermingled, as well as income, capital or other economic gains derived or realised from such property at any time since the offence;

“property” includes money, investments, holdings, possessions, assets and all other property movable or immovable, including things in action and any other property wherever situated whether in Guyana or elsewhere and includes any interest in such property;

“reporting entity” means any person whose regular occupation or business is the carrying on of –

- First Schedule.
- (a) any activity listed in the First Schedule ; or
 - (b) any other activity defined by the Minister responsible for Finance as such by an order published in the *Gazette* amending the First Schedule ;

“serious offence” means a serious offence against a provision of-

- (a) any law in Guyana, for which the maximum penalty is death or imprisonment for life or other deprivation of liberty of not less than six months;
- Second Schedule. (b) any offence listed in Second Schedule ; or
- (c) a law of a foreign state, in relation to an act or omission, which had it occurred in Guyana, would have constituted an offence for which the maximum penalty is death, or imprisonment for life or other deprivation of liberty for a period of not less than six

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months and includes money laundering and terrorist financing or an offence listed in the Second Schedule;

Fourth Schedule. “supervisory authority” means the authority set out in column 2 of the Fourth Schedule who has compliance oversight over the reporting entity set out in column 1 of the Schedule.

“tainted property” means property-

- (a) used in or intended for use in connection with the commission of a serious offence; or
- (b) derived, obtained or realised as a result of or in connection with the commission of a serious offence;

“terrorist” means any natural person who-

- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in terrorist acts;
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

Cap. 8:01 “terrorist act” shall have the same meaning assigned to it as in the Criminal Law (Offences) Act and includes-

- (a) any act which constitutes an offence within the scope of, and as defined in any of the following treaties-
 - (i) the Convention for the Suppression of Unlawful Seizure of Aircraft (1970);
 - (ii) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation (1971);
 - (iii) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents (1973);

- (iv) the International Convention against the Taking of Hostages (1979);
 - (v) the Convention on the Physical Protection of Nuclear Material (1980);
 - (vi) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention For the Suppression of Unlawful Acts against the Safety of Civil Aviation (1988);
 - (vii) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (1988);
 - (viii) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); and
 - (ix) the International Convention for the Suppression of Terrorist Bombings (1997); and
- (b) any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organisation to do or to abstain from doing any act;

“terrorist financing” in sections 67 to 75 (inclusive) means wilfully providing or collecting funds, by any means, directly or indirectly, with the unlawful intention that they should be used or in the knowledge that they are to be used in full or in part-

- (a) to carry out terrorist acts;
- (b) by a terrorist organisation; or
- (c) by an individual terrorist;

"terrorist group" means –

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- (a) an entity that has as one of its activities and purposes, the committing of, or the facilitation of the commission of, terrorism; or
- (b) a specified entity declared under subsection (2);

“terrorist organisation” means any group of terrorists that-

- (a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and wilfully;
- (b) participates as an accomplice in terrorist acts;
- (c) organises or directs others to commit terrorist acts; or
- (d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;

“terrorist property” means

- (a) proceeds from the commission of terrorism;
- (b) money or other property which has been, or is likely to be used to commit terrorism; or
- (c) money or other property which has been, is being, or is likely to be used by a terrorist group.

(2)(1) For the purposes of this Act, where the Attorney General has reasonable grounds to believe that –

- (a) an entity has knowingly –
 - (i) committed;
 - (ii) attempted to commit;
 - (iii) participated in committing; or
 - (iv) facilitated the commission of,a terrorist act, or
- (b) an entity is knowingly acting –
 - (i) on behalf of;
 - (ii) at the direction of;
 - (iii) in association with,

an entity referred to in paragraph (a), the Attorney General may recommend to the Minister responsible for Finance that an order be made under paragraph(2) in respect of that entity.

(2) If the Minister responsible for Finance is satisfied that there is evidence to support a recommendation made under paragraph (1), the Minister responsible for Finance may, by order, declare the entity in respect of which the recommendation has been made, to be a specified entity.

(3) Within 60 days of publication in the *Gazette*, a specified entity may make an application in writing to the Minister responsible for Finance for the revocation of an order made under paragraph (2) in respect of that entity.

(4) Prior to deciding on an application made under paragraph (3) the Minister responsible for Finance shall consult with the Attorney General.

(5) If, on an application made under paragraph (3), the Minister responsible for Finance –

- (a) decides that there are reasonable grounds for revocation the Minister responsible for Finance shall revoke the order;
- (b) decides that there are no reasonable grounds for revocation, the Minister responsible for Finance shall refuse the application and shall, within 60 days of receiving the application inform the applicant of the decision.

(6) Within 60 days of receiving information of the decision referred to in paragraph (5), the applicant may apply, by notice to the Attorney General, to a Judge of the Court for a review of that decision.

(7) Upon an application being made under paragraph (6), the Judge shall –

- (a) examine in chambers, any security or intelligence reports considered in recommending or making an order under paragraph (2) in respect of the applicant and hear any other evidence or information that may be presented

by or on behalf of the Attorney General and may, at the request of the Attorney General, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;

- (b) provide the applicant with a statement summarizing the information available to the Judge, so as to enable the applicant to be reasonably informed of the reasons for the decision, without disclosing any information the disclosure of which would, in the Judge's opinion, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and
- (d) determine whether the decision is reasonable on the basis of the information available to the Judge and, if found not to be reasonable, make an order to that effect in which case the Minister responsible for Finance, unless he appeals the decision of the Judge, shall revoke the order made under paragraph (2) in respect of the applicant.

(8) The Judge may receive in evidence, anything (including information obtained from the government or institution or agency of a foreign state or an international organisation), that, in the opinion of the Judge, is reliable and relevant, even if the thing would not otherwise be admissible in law, and may base the Court's decision on that evidence.

(9) The Attorney General shall review all the orders made under the paragraph (2) every six months to determine whether there are still reasonable grounds, as set out in paragraph (1), for any such order to continue to apply to a specified entity, and if the Attorney General determines that there are no such reasonable grounds, shall recommend to the Minister responsible for Finance, the revocation of the order made under paragraph (2) in respect of that specified entity.

PART II
MONEY LAUNDERING PROHIBITED

Offence of
money
laundering.

3. (1) A person commits the offence of money laundering if he knowingly or having reasonable grounds to believe that any property in whole or in part directly or indirectly represents any person's proceeds of crime-

- (a) converts or transfers property knowing or having reason to believe that property is the proceeds of crime, with the aim of concealing or disguising the illicit origin of that property;
- (b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of that property knowing or having reason to believe that the property is the proceeds of crime;
- (c) acquires, possesses or uses that property, knowing or having reasonable grounds to believe that it is derived directly or indirectly from proceeds of crime; or
- (d) participates in, associates with or conspires to commit, attempts to commit or aids and abets, counsels or procures or facilitates the commission of any of the above acts.

(2) For the purposes of proving a money laundering offence under subsection (1), it is not necessary to prove which serious offence has been committed.

(3) Knowledge, intent or purpose required as an element of an offence in subsection (1) may be inferred from objective factual circumstances.

(4) For the purposes of this Act it is not necessary for any person to be convicted of a serious offence to prove that property is the proceeds of crime.

(5) For the purposes of this Act an offence under this section can be committed by a person who commits a serious offence.

(6) A natural person who contravenes this section commits an offence and shall be liable on summary conviction to a fine of not less than one million dollars nor more than one hundred million dollars and to imprisonment for seven years and in the case of a body corporate to a fine of not less than two hundred million dollars nor more than five hundred million dollars.

(7) In the case of a body corporate subject to criminal liability this shall not preclude the possibility of parallel criminal, civil or administrative liability.

Offence
committed
under section 3
by a body of
persons.

4. Where an offence under the provisions of section 3 is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence, unless he adduces evidence to show 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.

Tipping off.

5. (1) It is an offence for a person who knows or suspects that a suspicious transaction report or related information is reported to the Financial Intelligence Unit, or that an investigation into money laundering, terrorist financing or the proceeds of crime has been, is being or is about to be made, to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.

(2) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of one million dollars and to imprisonment for three years.

Falsification,
concealment,
etc. of
documents.

6. (1) It is an offence for a person knowingly to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering, terrorist financing or the proceeds of crime or to any order made in accordance with the provisions of this Act.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine of one million dollars and to imprisonment for three years.

Jurisdiction.

7. Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be tried, judged and sentenced by a court in Guyana regardless of whether or not the serious offence occurred in Guyana or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law.

PART III
ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF
TERRORISM SUPERVISION

Director of the
Financial
Intelligence

8. (1) The Minister responsible for Finance shall appoint a person with expertise and experience in legal, financial or administrative matters to be known as the Director of the Financial Intelligence Unit to carry out the functions of the Financial Intelligence Unit in accordance with this Act.

(2) The Director of the Financial Intelligence Unit may only be removed from office by the President of Guyana.

Establishment
and functions
of the Financial
Intelligence
Unit.

9. (1) The Financial Intelligence Unit is established by the Minister responsible for Finance as an agency responsible for requesting, receiving, analyzing and dissemination of suspicious transaction reports and other information relating to money laundering, terrorist financing or proceeds of crime.

(2) The Director shall be the chief executive officer.

(3) The Financial Intelligence Unit shall include-

- (a) an attorney-at-law appointed by the Minister responsible for Finance;
- (b) an accountant appointed by the Minister responsible for Finance; and
- (c) personnel trained in financial investigation or other employees as the Director considers necessary and appointed by the Director.

(4) The Financial Intelligence Unit-

- (a) shall request, receive, analyze and assess reports of suspicious transactions and other information issued by reporting entities pursuant to section 18;
- (b) shall compile a report and send it to the competent authority, if having conducted its analysis, the Financial Intelligence Unit has reasonable grounds to suspect that the transaction involves money laundering, proceeds of crime or terrorist financing;
- (c) may send to the appropriate law enforcement authorities, any information derived from an inspection carried out pursuant to section 22, if it gives the Financial Intelligence Unit reasonable grounds to suspect that a transaction involves money laundering, proceeds of crime or terrorist financing;

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- (d) may instruct any reporting entity to take such steps as may be appropriate to facilitate any investigation anticipated by the Financial Intelligence Unit;
- (e) (i) shall compile statistics and records;
- (ii) shall disseminate information within Guyana or elsewhere;
- (iii) shall make recommendations arising out of any information received;
- (iv) shall issue guidelines to reporting entities and advise the Minister accordingly;
- (f) may conduct research into trends and developments in the area of money laundering and terrorist financing and improved ways of detecting, preventing and deterring money laundering and terrorist financing; or may educate the public and create awareness on matters relating to money laundering or terrorist financing;
- (g) shall create training requirements and provide such training for any reporting entity with respect to its identification, record-keeping and reporting obligations provided for in sections 15, 16, 18, 19 and 20;
- (h) may consult with any relevant person, institution or organisation for the purpose of exercising its powers or duties under paragraphs (a), (b), (c), (d), (e), (f) or (g);
- (i) shall conduct investigations into money laundering, proceeds of crime or terrorist financing for official purposes only;
- (j) may extend legal assistance to foreign jurisdictions with respect to production orders, property tracking, monitoring, forfeiture or confiscation orders;
- (k) shall have the authority to request and receive information from any reporting entity, any supervisory agency and any law enforcement agency, any other competent authority in Guyana or elsewhere for purposes of this Act;

- (l) may periodically provide feedback to other supervisory authorities and other relevant agencies regarding outcomes relating to the reports or information given under the Act;
- (m) may disclose any report, any information derived from such report or any other information it receives pursuant to this section to an institution or agency of a foreign state or of an international organisation established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit as set out in this section and sections 13,14 and 15, if on the basis of its analysis, assessment and search of its files and databases, the Financial Intelligence Unit has reasonable grounds to suspect that a report or information would be relevant to investigating or prosecuting a money laundering offence or terrorist financing or an offence that is substantially similar to either offence.
- (n) may enter into any agreements or arrangements with any international or domestic government institution or agency regarding the exchange of information; or
- (o) shall, in respect of the entities for which it has been designated, exercise the powers set out in section 18 and in relation to this, may enter the premises of any reporting entity during ordinary business hours to inspect any record kept by the reporting entity, and ask any question relating to such record, make notes and take copies of whole or any part of the record.

(5) The Director shall advise the Minister responsible for Finance on matters relating to money laundering or terrorist financing that may affect public policy and national security.

(6) The funds and resources of the Financial Intelligence Unit shall consist of such sums as may be appropriated by Parliament.

(7) The Director shall be responsible for the control and use of the funds and resources of the Financial Intelligence Unit.

(8) The Director shall keep proper accounts and other records in relation to the Financial Intelligence Unit and prepare in relation to each financial year a statement of accounts within three months of the end of that financial year and the accounts of the Financial Intelligence Unit shall be audited by the Auditor General.

No liability.

10. No action shall lie against the Director, officers or personnel of the Financial Intelligence Unit or any person acting under the direction of the Director for any act or omission done in good faith, and in the discharge of any functions under this Act.

No criminal or civil liability for information.

11. (1) No proceedings for breach of professional confidentiality may be instituted against any person or against directors, officers or employees of a reporting entity who in good faith transmits or submits suspicious transactions or suspicious activity reports to the Financial Intelligence Unit in accordance with this Act.

(2) No civil or criminal liability action may be brought nor may any professional sanction be taken against any person or agent of any reporting entity for breach of any restriction on disclosure who in good faith transmits information or submits reports to the Financial Intelligence Unit.

Confidentiality.

12. (1) Any person who obtains information in any form as a result of his connection with the Financial Intelligence Unit shall not disclose that information to any person except so far as it is required or permitted under this Act or other written law.

(2) Any person who wilfully discloses information to any person in contravention of subsection (1) shall be subject to dismissal from the Financial Intelligence Unit and is liable on summary conviction to a fine not exceeding two million dollars and to imprisonment for a term not exceeding four years.

Disclosure to foreign institutions and agencies.

13. The Financial Intelligence Unit may disclose any report or information as set out under section 18 to an institution or agency of a foreign state or of an international organisation or body established by the governments of foreign states that has powers and duties similar to those of the Financial Intelligence Unit –

- (a) on the terms and conditions as set out in the agreement or arrangement between the Financial Intelligence Unit and the institution or agency of that foreign state or international organisation or body regarding the exchange of such information under section 14; or
- (b) where such an agreement or arrangement has not been entered into between the Financial Intelligence Unit and that international organisation or body, the Financial Intelligence Unit may disclose any

report or information to that international organisation or body on such terms and conditions as may be agreed upon, where such terms and conditions shall include the following –

- (i) restriction on the use of the report or information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence, a terrorist financing offence or an offence that is substantially similar to any of these offences; and
- (ii) the stipulation that the report or information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

Agreements and arrangements by the Financial Intelligence Unit.

14. (1) The Financial Intelligence Unit, may enter through the Attorney General on behalf of the Government into an agreement or arrangement, formally or informally, with the government of a foreign state, or may by itself enter into such agreement with an international organisation or body established by the governments of foreign states regarding the exchange of reports or information between the Financial Intelligence Unit and any institution or agency of that state or organisation that has powers and duties similar to those of the Financial Intelligence Unit.

(2) The information exchanged under subsection (1) shall be information that would be relevant to investigating or prosecuting a serious offence or a money laundering or terrorist financing offence, or an offence that is substantially similar to either offence.

(3) Agreements or arrangements entered into under subsection (1) or (2) shall include the following-

- (a) restrictions on the use of information to purposes relevant to investigating or prosecuting a serious offence, a money laundering offence, or a terrorist financing offence or an offence that is substantially similar to either offence; and
- (b) the stipulation that the information be treated in a confidential manner and not be further disclosed without the express consent of the Financial Intelligence Unit.

Reporting entities to identify and verify identity of customer.

15. (1) Financial institutions shall not establish or keep anonymous accounts or accounts in fictitious names.

(2) Reporting entities shall establish the identity and verify the identity of any customer of the reporting entity by requiring the applicant to produce an identification record or such other reliable, independent source documents as the Financial Intelligence Unit may request.

(3) The requirements of subsection (2) shall apply where-

- (a) a reporting entity establishes a business relationship;
- (b) in the absence of such a relationship, a reporting entity conducts-
 - (i) any transaction in an amount equal to or above the amount prescribed by the Minister, whether conducted as a single transaction or several transactions that appear to be linked and where the amount of the transaction is unknown at the time of the transaction, the identification and verification shall be undertaken as soon as the amount becomes known or the threshold is reached;
 - (ii) any wire transfer as set out in section 20;
- (c) there is a suspicion of money laundering or terrorist financing; or
- (d) the reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data.

(4) Without limiting the generality of subsection (2), a reporting entity shall-

- (a) when establishing a business relationship, obtain information on the purpose and nature of the business relationship;
- (b) if the transaction is conducted by a natural person, adequately identify and verify the person's identity including information relating to-
 - (i) the person's name, date of birth and address;
 - (ii) the national identification card, passport or other applicable official identifying document;
- (c) if the transaction is conducted by a legal entity, adequately identify the beneficial owner, take reasonable measures to identify and verify its beneficial ownership and control structure, including information relating to-

- (i) the customer's name, legal form, address and directors;
- (ii) the principal owners and beneficiaries and control structure;
- (iii) provisions regulating the power to bind the entity; and to verify that any person purporting to act on behalf of the customer is so authorised, and identify those persons;
- (d) if the customer or beneficial owner is a politically exposed person, a reporting entity shall-
 - (i) adequately identify and verify the person's identity as set out in this section;
 - (ii) have appropriate risk management systems to determine whether the customer is a politically exposed person;
 - (iii) obtain the approval of senior management before establishing a business relationship with the politically exposed person;
 - (iv) take reasonable measures to establish the source of wealth and source of property; and
 - (v) conduct regular enhanced monitoring of the business relationship.

(5) If it appears to a reporting entity that an applicant requesting it to enter into any business relationship or transaction, whether or not in the course of a continuing business relationship, is acting on behalf of another person, the reporting entity shall establish the true identity of any person on whose behalf or for whose ultimate benefit the applicant may be acting in the proposed transaction, whether as a trustee, nominee, agent or otherwise.

- (6) Nothing in this section shall require the production of any evidence of identity where-
- (a) the customer is itself a reporting entity to which this Act applies and which has been licensed or registered, and is supervised for anti-money laundering and countering of terrorist financing measures by a regulatory authority and the reporting entity has satisfied itself that as to the adequacy of the measures to prevent money laundering and terrorist financing; or
 - (b) there is a transaction or a series of transactions taking place in the course of a business relationship, in respect of which the applicant has already produced satisfactory evidence of identity.

(7) (a) A bank or a financial institution shall, in relation to its cross-border correspondent banking and other similar relationships-

- (i) adequately identify and verify the person or entity with whom it conducts such a business relationship;
 - (ii) gather sufficient information about the nature of the business of the person or entity;
 - (iii) determine from publicly available information the reputation of the person or entity and the quality of supervision to which the person or entity is subject to;
 - (iv) assess the person's or entity's anti-money laundering and terrorist financing controls;
 - (v) obtain approval from senior management before establishing a new correspondent relationship; and
 - (vi) document the responsibilities of the financial institution and the person or entity.
- (b) Where the relationship is a payable-through account, a financial institution shall ensure that the person or entity with whom it has established the relationship-
- (i) has verified the identity of and performed on-going due diligence on those of that person's customers that have direct access to accounts of the financial institution; and
 - (ii) is able to provide the relevant customer identification data upon request to the financial institution.
- (c) Banks or financial institutions shall not maintain any business relationship with other banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision.

(8) Where a reporting entity relies on an intermediary or third party to undertake its obligations under subsection (2), (3) or (4) or to introduce business to it, it shall-

- (a) immediately obtain the information and documents required by subsections (2), (3) and (4);

(b) take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to customer due diligence requirements will be made available from the third party upon request without delay;

(c) satisfy itself that the third party or intermediary is regulated and supervised, and has measures in place to comply with the requirements set out in section 16, and

in any event the ultimate responsibility for customer identification and verification shall remain with the reporting entity including where it seeks to rely on the third party.

(9) The Minister may, upon recommendation of the relevant supervisory authority, prescribe –

(a) the official or identifying documents, or the reliable and independent source documents, data or information or other evidence that is required for identification or verification of any class of customers or applicants; or

(b) the amount prescribed by the Minister for, or the circumstances in which, the provisions of this section shall apply in relation to any particular customer or applicant or class of customers or applicants.

(10) In the case of an existing customer at the time of this Act coming into force–

(a) a reporting entity shall verify the identity of the customer within six months from the date of commencement of this Act;

(b) the Minister may, if he thinks it expedient, by order extend the period of six months for a further period of up to three months; and

(c) where at the end of the six months or further period of up to three months, as the case may be, a reporting entity is unable to verify the identity of a customer, the reporting entity shall terminate the business relationship with such a customer.

Obligations of reporting entities.

16. (1) Reporting entities shall establish and maintain-

(a) records of all transactions in accordance with the requirements of subsection (3);

-
- (b) where evidence of a person's identity is obtained in accordance with section 15, a record that indicates the nature of the evidence obtained, and which comprises either a copy of the evidence or such information as would enable a copy of it to be obtained; and
- (c) records of account files and business correspondence in relation to paragraphs (a) and (b);
- (2) Customer accounts of a reporting entity shall be kept in the true name of the account holder.
- (3) Records required under subsection (1) (a) shall contain particulars sufficient to identify-
- (a) the name, date of birth, address and occupation or where appropriate, business or principal activity of each person-
- (i) conducting the transaction; or
- (ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the reporting entity to verify the identity of each person;
- (b) the nature and date of the transaction;
- (c) the type and amount of currency involved;
- (d) the type and identifying number of any account with the reporting entity involved in the transaction;
- (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and
- (f) the name and address of the reporting entity, and of the officer, employee or agent of the reporting entity who prepared the report.
- (4) Records required under subsection (1) shall be kept by the reporting entity for a period of at least seven years from the date the relevant transaction was completed, or termination of business relationship, which ever is the later.

(5) Reporting entities shall ensure that documents, data or information collected under the customer due diligence process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

Minister may reduce or simplify identification and verification.

17. (1) Based on an assessment of the risks represented by the type of customer, business relationship or transactions or authorities the Minister may, by regulations, prescribe circumstances in which the obligations of reporting entities established in section 15 shall be reduced or simplified with regard to the identification and verification of the identity of the customer or the beneficial owner.

(2) Reduced or simplified customer due diligence measures shall not be permitted by reporting entities whenever there is a suspicion of money laundering or terrorist financing or higher risk terrorist activities.

Reporting of suspicious business transactions by reporting entities.

18. (1) Reporting entities shall pay special attention to-

- (a) all complex, unusual large business transactions, unusual patterns of transactions, whether completed or not, that have no apparent economic or lawful purpose and inconsistent with the profiles of the persons carrying out such transactions;
- (b) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing; and
- (c) electronic funds transfer that do not contain complete originator information.

(2) In relation to subsection (1), a reporting entity shall-

- (a) verify the background and purpose of the transactions or business relations and record its findings in writing; and
- (b) upon request, shall make available such findings to the Financial Intelligence Unit .

(3) A reporting entity shall monitor its business relationships and the transactions undertaken throughout the course of the relationship to ensure that its obligations under section 15 are met and that the transactions conducted are consistent with the information that the reporting entity has of its customer, of the customer's business and risk profile and source of funds, where necessary.

(4) Whenever a reporting entity suspects or has reasonable grounds to suspect that funds, a transaction or attempted transaction are connected to the proceeds of criminal activity, money laundering or terrorist financing offences it shall as soon as possible but not later than three days after forming that suspicion and wherever possible before the transaction is carried out-

- (a) take reasonable measures to ascertain the purpose of the transaction, the origin and ultimate destination of the funds involved and the identity and address, of any ultimate beneficiary; and
- (b) prepare a report of the transaction in accordance with subsection (8) and send the report to the Financial Intelligence Unit in such other form as the Director, may approve.

(5) Dealers in precious metals and dealers in precious stones and other dealers in high value goods shall report suspicious transactions to the Financial Intelligence Unit in accordance with subsection (1) when they engage in any cash transaction equal to or above two million dollars.

(6) Real estate agents shall report suspicious transactions in accordance with subsection (1) to the Financial Intelligence Unit when involved in transactions for their clients concerning the buying or selling of real estate.

(7) Casinos shall report suspicious transactions in accordance with subsection (1).

(8) A report required under subsection (4) shall –

- (a) contain particulars of the matters specified in subsection (4) (a) and in section 16;
- (b) contain a statement of the grounds on which the reporting entity holds the suspicion; and
- (c) be signed or otherwise authenticated by the reporting entity.

(9) A reporting entity which has reported a suspicious transaction in accordance with this section shall, if requested to do so by the Financial Intelligence Unit, give such further information as requested by the Financial Intelligence Unit.

(10) (a) If the Financial Intelligence Unit, after consulting the entity that reported the transaction required to make a report under subsection (4), suspects or has reasonable grounds to suspect that a transaction or a proposed transaction may involve, the proceeds of crime or a money laundering or a terrorist financing offence, it may direct the reporting entity in writing,

electronically or by telephone to be followed up in writing, not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Financial Intelligence Unit which may not be more than five days, in order to allow the Financial Intelligence Unit –

- (i) to make necessary inquiries concerning the transaction; and
 - (ii) if the Financial Intelligence Unit deems it appropriate, to inform and advise a supervisory authority.
- (b) For the purposes of calculating the period of five days in paragraph (a), Saturdays and public holidays shall not be taken into account.

(11) The provisions of subsections (4), (9) and (10) are applicable to attorneys-at-law, notaries, other independent legal professionals and accountants when, on behalf of or for a client, they engage in a transaction in relation to the following activities-

- (a) buying and selling of real estate;
- (b) managing of client money, securities or other assets;
- (c) management of bank, savings or securities accounts;
- (d) organisation of contributions for the creation, operation or management of companies; or
- (e) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

(12) Nothing in this Act requires any attorney- at- law to disclose any privileged communication.

(13) For the purposes of this section, a communication is a privileged communication only if-

- (a) it is to a person who is a professional legal adviser and the disclosure falls within paragraph (b);
- (b) a disclosure falls within this subsection if it is a disclosure-
 - (i) to or to a representative of a client of the professional legal adviser in connection with the giving by the adviser of legal advice to the client, or
 - (ii) to any person in connection with legal proceedings or contemplated legal proceedings,

but a disclosure does not fall within this subsection if it is made with the intention of furthering a criminal purpose; or

- (c) trust and company service providers, when they engage in a transaction for or on behalf of a client, in relation to the following activities-
- (i) acting as a formation agent of legal persons;
 - (ii) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
 - (iii) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iv) acting as or arranging for another person to act as a trustee of an express trust; or
 - (v) acting as or arranging for another person to act as a nominee shareholder for another person.

(14) Any person who knows or suspects that a report under this section is being prepared or has been sent to the Financial Intelligence Unit or any additional information requested by the Financial Intelligence Unit has been prepared or sent shall not disclose to another person, other than a court, or other person authorised by law, any information or other matter in relation to the report.

(15) A natural person who contravenes this section commits an offence and shall on summary conviction be liable to a fine of not less than one million dollars nor more than two million dollars 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 three million dollars.

Requirements
of reporting
entity.

19. (1) A reporting entity shall-

- (a) appoint a compliance officer who shall be responsible for ensuring the reporting entity's compliance with the requirements of this Act;
- (b) establish and maintain internal policies, procedures, controls and systems to-
 - (i) implement the customer identification requirements;
 - (ii) implement record keeping and retention requirements;

- (iii) implement the monitoring requirements;
 - (iv) implement the reporting requirements under section 18;
 - (v) make its officers and employees aware of the law relating to combating money laundering and terrorist financing;
 - (vi) make its officers and employees aware of the procedures and policies adopted by it to deter money laundering and terrorist financing ; and
 - (vii) screen persons before hiring them as employees;
 - (c) establish an audit function to test its anti-money laundering and combating of terrorist financing procedures and systems; and
 - (d) train its officers, employees and agents to recognise suspicious transactions.
- (2) A reporting entity shall-
- (a) enable any person identified in accordance with subsection (1) (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 16; and
 - (b) require the identified person to report the matter, pursuant to section 16, in the event that he determines that sufficient basis exists.
- (3) The person identified in subsection (1) (a) shall be a compliance officer at management level responsible for establishing and maintaining compliance with the requirements of section 18.
- (4) Subsections (1) and (2) do not apply to an individual who, in the course of carrying on that person's business, does not employ or act in association with any other person or if all their staff and management consists of less than five persons.

20. (1) An institution or person that is licensed to do business in Guyana as a financial institution under the Financial Institutions Act 1995 or a money transfer agency shall include accurate originator information and other related messages on electronic funds transfers and that information shall remain with the transfer.

(2) The information shall be included in the message or payment form accompanying the transfer and if there is no account number, a unique reference number shall accompany the transfer.

(3) Subsection (1) shall not apply to an electronic funds transfer, other than a money transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card:

Provided that the credit or debit card number is included in the information accompanying such a transfer.

(4) Subsection (1) shall not apply to electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.

21. The Financial Intelligence Unit or a law enforcement agency may apply to a Judge of the Court and upon satisfying the Court that there are reasonable grounds that -

- (a) a reporting entity has failed to keep a business transaction record as provided by the provisions of section 16 (1), (2) and (3);
- (b) a reporting entity has failed to report any business transaction as provided by the provisions of section 18(4); or
- (c) an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence,

the Court may make an order authorising the Financial Intelligence Unit to enter any premises belonging to, or in the possession or under the control of the reporting entity or any officer or employee of such reporting entity and to search the premises and remove any document, material or other thing therein for the purposes of the Financial Intelligence Unit or law enforcement agency as ordered by the Judge and specified in the warrant.

22. (1) The supervisory authority responsible for supervising each reporting entity shall supervise compliance by the reporting entity with the requirements of sections 15, 16, 18, 19 and 20 , and -

Financial Intelligence Unit's power to obtain a search warrant.

Role of supervisory authority.

- Act No.19 of 1998. (a) the Governor of the Bank of Guyana appointed under section 9 of the Bank of Guyana Act 1998,
- Act No. 20 of 1998. (b) the Commissioner of Insurance appointed under section 3 of the Insurance Act 1998
- Act No.21 of1998. (c) the Guyana Securities Council established under section 4 of the Securities Industry Act 1998;
- (d) a supervisory authority whose member or members shall be appointed by the Minister responsible for Finance,
- shall be supervisory authorities for the purposes of this Act.

(2) In accordance with this Act, the supervisory authority shall-

- (a) examine and supervise the reporting entity, and regulate and oversee effective compliance with the obligations set out in sections 15, 16, 18, 19 and 20 and any other preventive measures in relation to combating money laundering and terrorist financing;
- (b) issue instructions, guidelines or recommendations;
- (c) cooperate and share information promptly with other domestic competent authorities, by requesting and providing assistance in investigations, prosecutions or proceedings relating to proceeds of crime, money laundering and terrorist financing;
- (d) develop standards and criteria applicable to the communication of suspicious activities that reflect other existing and future pertinent national and internationally accepted standards;
- (e) impose requirements that the reporting entity shall ensure that their foreign branches and subsidiaries adopt and enforce measures consistent with this Act to the extent that local laws and regulations so permit, and where the foreign branch or subsidiary is unable to adopt and observe these measures, to report the matter to the designated supervisory or regulatory authority or the competent disciplinary authority;
- (f) submit a report to the Financial Intelligence Unit, as soon as practicable but no later than three working days, after acquiring any information concerning suspicious transactions or activities that could be related to money laundering, terrorist financing or the proceeds of crime;
- (g) cooperate, request and exchange information with agencies performing similar functions in other countries and territories in investigations,

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proceedings or prosecutions relating to proceeds of crime, money laundering or terrorist financing, and to violations of the laws and administrative regulations dealing with reporting entities; and

- (h) maintain statistics concerning measures adopted and sanctions imposed under this Act.

Sanctions by
supervisory
authorities.

23. (1) The supervisory authority, any regulatory authority or competent disciplinary authority that discovers a breach of the obligations established under sections 15, 16, 18, 19 and 20 by a reporting entity it supervises may impose one or more of the following sanctions-

- (a) written warnings;
- (b) order to comply with specific instructions;
- (c) order regular reports from the reporting entity on the measures it is taking;
- (d) prohibit convicted persons from employment within the sector;
- (e) recommend to the appropriate licensing authority of the reporting entity that the reporting entity's licence be suspended, restricted or withdrawn.

(2) The supervisory authority shall inform the Financial Intelligence Unit as to the sanctions imposed and may order the publication of its decision.

(3) Any supervisory or regulatory authority or the competent disciplinary authority that discovers facts likely to constitute indication of money laundering or terrorist financing shall so inform the Financial Intelligence Unit.

Production
orders.

24. (1) Where a person is being investigated for a serious offence, money laundering or a terrorist financing offence or has been charged or convicted, and a police officer or an authorised officer of the Financial Intelligence Unit has reasonable grounds for suspecting that any person has possession or control of-

- (a) a document relevant to identifying, locating or quantifying property of the person or to identifying or locating a document necessary for the transfer of property of such person; or
- (b) a document relevant to identifying, locating or quantifying tainted property in relation to the offence or to identifying or locating a

document necessary for the transfer of tainted property in relation to the offence,

the police officer or an authorised officer of the Financial Intelligence Unit may apply *ex parte* to a Judge in Chambers for an order against the person suspected of having possession or control of a document of the kind referred to and the application shall be supported by an affidavit.

(2) The Judge may, if he considers there are reasonable grounds for so doing make an order that the person produce to a police officer or an authorised officer of the Financial Intelligence Unit, at a time and place specified in the order, any documents of the kind referred to in subsection (1):

Provided that an order under this subsection may not require the production of banker's books.

(3) A police officer or an authorised officer of the Financial Intelligence Unit to whom documents are produced may-

- (a) inspect the documents;
- (b) make copies of the documents; or
- (c) retain the documents for so long as is reasonably necessary for the purposes of this Act.

(4) Where a police officer or an authorised officer of the Financial Intelligence Unit retains documents produced to such person, that person shall make a copy of the documents available to the person who produced them.

(5) A person is not entitled to refuse to produce documents ordered to be produced under this section on the ground that-

- (a) the document might tend to incriminate the person or make him liable to a penalty; or
- (b) the production of the document would be in breach of an obligation (whether imposed by enactment or otherwise) of the person not to disclose the existence or contents of the document.

Evidential
value of
information.

25. (1) Where a person produces a document pursuant to an order under section 24, the production of the document, or any information, document or thing obtained as a direct or

indirect consequence of the production of the document is not admissible against the person in any criminal proceedings except proceedings under section 26.

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(2) For the purposes of subsection (1), proceedings on an application for a restraining order, a forfeiture order or a pecuniary penalty order are not criminal proceedings.

Failure to
comply with
a production
order.

26. Where a person is required by a production order to produce a document to a police officer or authorised officer, the person commits an offence against this section if he-

- (a) contravenes the order without reasonable cause; or
- (b) in purported compliance with the order, produces or makes available a document known to the person to be false or misleading in a material particular and does not so indicate to the police officer or authorised person and fails or neglects to provide to the police officer or authorised officer any correct information of which the person is in possession,

and on summary conviction shall be liable, in the case of a natural person to a fine of not less than one million dollars nor more than two million dollars or for a term not exceeding one year and in the case of a body corporate to a fine of not less than two million dollars nor more than three million dollars.

Production
orders in
relation to
foreign
offences.

27. Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 28 may apply with necessary modification.

Power to
search for and
seize
documents
relevant to
locating
property

28. A police officer may-

- (a) enter upon land or into premises;
- (b) search the land or premises for any document or property of the type described in section 29; and
- (c) seize any document or property found in the course of that search that the police officer believes, on reasonable grounds, to be a relevant document or property in relation to a serious offence, money laundering or terrorist financing,

on condition that the entry, search and seizure is made with the consent of the occupier of the land or the premises or under warrant issued under this Act.

Search warrant
for location of
documents
relevant to
locating
property.

29. (1) Where-

- (a) a person being investigated, has been charged or convicted of a serious offence; or
- (b) a police officer or an authorised officer of the Financial Intelligence Unit has reasonable grounds for suspecting that there is, or may be within the next seventy-two hours, upon any land or upon or in any premises, a document in relation to the offence,

the police officer or an authorised officer of the Financial Intelligence Unit may make an application to a magistrate for a search warrant in respect of that land or those premises.

(2) Where an application is made under subsection (1) for a warrant to search land or premises, the magistrate may, subject to subsection (4) issue a warrant authorising a police officer or an authorised officer of the Financial Intelligence Unit (whether or not named in the warrant), with the assistance and by the force as is necessary and reasonable-

- (a) to enter upon the land or in or upon any premises and to search the land or premises for property of that kind; and
- (b) to seize property found in the course of the search that the police officer believes on reasonable grounds to be property of that kind.

(3) A magistrate shall not issue a warrant under subsection (2) unless he is satisfied that-

- (a) a production order has been given in respect of the document and has not been complied with;
- (b) a production order in respect of the document would be unlikely to be effective;
- (c) the investigation for the purposes of which the search warrant is being sought might be seriously prejudiced if the police officer or an authorised officer of the Financial Intelligence Unit does not gain immediate access to the document without any notice to any person; or
- (d) the document involved cannot be identified or described with sufficient particularity to enable a production order to be obtained.

(4) A warrant issued under this section shall state-

- (a) the purpose for which it is issued, including a reference to the nature of the relevant offence;
- (b) a description of the kind of documents authorised to be seized;
- (c) a time at which the warrant ceases to be in force; and
- (d) whether entry is authorised to be made at any time of the day or night or during specified hours.

(5) If during the course of searching under a warrant issued under this section, a police officer or an authorised officer of the Financial Intelligence Unit finds -

- (a) a document that the police officer or an authorised officer of the Financial Intelligence Unit believes on reasonable grounds to relate to the relevant offence or to another indictable offence; or
- (b) any thing the police officer or an authorised officer of the Financial Intelligence Unit believes on reasonable grounds will afford evidence as to the commission of a serious offence, money laundering or terrorist financing,

the police officer or an authorised officer of the Financial Intelligence Unit may seize that property or thing and the warrant shall be deemed to authorise such seizure.

Search warrants in relation to foreign offences.

30. Where a foreign state requests assistance to locate or seize property suspected to be tainted property in respect of an offence within its jurisdiction, the provisions of section 29 may apply with necessary modification.

Monitoring orders.

31. (1) A police officer or an authorised officer of the Financial Intelligence Unit investigating a money laundering or terrorist financing offence may apply, *ex parte* and in writing to a Judge in Chambers for an order (in this section called a monitoring order) directing a reporting entity to give information to a police officer or an authorised officer of the Financial Intelligence Unit and an application under this subsection shall be supported by an affidavit.

(2) A monitoring order shall-

- (a) direct a reporting entity to disclose information obtained by the institution about transactions conducted through an account held by a particular person with the institution;
- (b) not have retrospective effect; and
- (c) only apply for a period of a maximum of three months from the date of the making of the order.

(3) A Judge shall not issue a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the order is sought-

- (a) has committed or was involved in the commission, or is about to commit or be involved in the commission of, a serious offence; or
- (b) has benefited directly or indirectly, or is about to benefit directly or indirectly from the commission of a serious offence.

(4) A monitoring order shall specify-

- (a) the name or names in which the account or relationship is believed to be held or the purpose and nature of the business relationship; and
- (b) the class of information that the institution is required to give.

(5) Where a reporting entity, which has been given notice of a monitoring order, knowingly-

- (a) contravenes the order; or
- (b) provides false or misleading information in purported compliance with the order,

the institution commits an offence against this subsection and shall be liable on summary conviction, in the case of a natural person to a fine of not less than one million dollars nor more than two million dollars and to imprisonment for a period not exceeding one year and in the case of a body corporate to a fine of not less than two million dollars nor more than three million dollars.

Monitoring orders not to be disclosed.

32. (1) A reporting entity that is, or has been, subject to a monitoring order shall not disclose the existence or operation of the order to any person except-

- (a) an officer or agent of the institution for the purpose of ensuring compliance with the order;
- (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or

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- (c) a police officer or an authorised officer of the Financial Intelligence Unit authorised in writing to receive the information.

(2) A person mentioned in subsection (1) shall not disclose the existence or operation of a monitoring order except to another person mentioned in that subsection and may do so only for the purposes of the performance of the person's duties or functions.

(3) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a Court:

Provided that nothing in this section shall be construed as requiring a legal adviser to disclose to any Court the existence or operation of a monitoring order.

Power to intercept communications and the admissibility of intercepted communications.

33. (1) Subject to subsection (2), the Director of Public Prosecutions or the Attorney General may, for the purpose of obtaining evidence of the commission of a money laundering offence, a terrorist financing offence and which includes any threat to national security in the furtherance of such offence or the proceeds of crime under this Act, apply, *ex parte*, to a Judge, for an interception of communications order.

(2) A police officer may make an application under subsection (1) only with the prior written consent of the Director of Public Prosecutions or the Attorney General.

(3) A Judge to whom an application is made under subsection (1) may make an order-

- (a) requiring a communications service provider to intercept and retain a specified communication or communications of a specified description received or transmitted, or about to be received or transmitted by that communication service provider; or
- (b) authorising the police to enter any premises and to install on the premises, any device for the interception and retention of a specified communication or communications of a specified description and to remove and retain such device, if the Judge is satisfied that the written consent of the Director of Public Prosecutions or the Attorney General has been obtained as required by subsection (2) and that there are reasonable grounds to believe that material information relating to-

- (i) the commission of an offence under this Act; or

(ii) the whereabouts of the person suspected by the police officer to have committed the offence is contained in that communication or communications of that description.

(4) Any information contained in a communication-

- (a) intercepted and retained pursuant to an order under subsection (3); or
- (b) intercepted and retained in a foreign state in accordance with the law of that foreign state and certified by a Judge of that foreign state to have been so intercepted and retained,

shall be admissible in proceedings for money laundering offences or terrorist financing offences or for proceedings in relation to the forfeiture of the proceeds of crime or terrorist property under this Act, as evidence of the truth of its contents.

Mandatory injunction to enforce compliance.

34. (1) The Financial Intelligence Unit may upon application to a Judge of the Court and upon satisfying him that a reporting entity has failed without reasonable excuse to comply in whole or in part with any obligation as provided under the provisions of section 16 and section 18(4) may obtain a mandatory injunction against any or all of the officers or employees of that reporting entity in such terms as the Court deems necessary to enforce compliance with such obligation.

(2) In granting an injunction pursuant to the provisions of subsection (1) the Court may order that should the reporting entity or any officer or employee of that reporting entity fail without reasonable excuse to comply with all or any of the provisions of that injunction such reporting entity, officer or employee shall pay a financial penalty of such sum and in such manner as directed by the Court.

Other measures to avoid money laundering.

35. A person who has been convicted of a serious offence whether in Guyana or elsewhere or of an offence under this Act shall not be eligible or licensed to carry on the business of a financial institution.

Currency reporting when entering or leaving Guyana. Third Schedule.

36. A person who enters or leaves Guyana with foreign currency amounting to more than ten thousand United States dollars or its equivalent in any other currency shall make a declaration to an authorised officer in the Form in the Third Schedule.

Seizure and detention of suspicious imports or exports of currency.

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37. (1) A police officer or customs officer may seize and, in accordance with this section, detain any currency which is being imported into, or exported from Guyana, if-

- (a) the amount is more than the sum specified in this Act or section 6 of the Foreign Exchange (Miscellaneous Provisions) Act 1996.; and
- (b) such person has reasonable grounds for suspecting that it is-
 - (i) currency derived from a serious offence;
 - (ii) intended by any person for use in a commission of a serious offence;
 - (iii) involved in money laundering or terrorist financing; or
 - (iv) being brought into or taken out of Guyana after a false declaration or disclosure or failure to disclose.

Act No.8 of 1996.

(2) Currency detained under subsection (1) shall not be detained for more than seventy-two hours after seizure, excluding weekends and public holidays unless a Judge in Chambers orders its continued detention for a period not exceeding three months from the date of seizure, upon being satisfied that-

- (a) there are reasonable grounds for the suspicion referred to in subsection (1) (b); and
- (b) its continued detention is justified while-
 - (i) its origin or derivation is further investigated; or
 - (ii) consideration is given to the institution in Guyana or elsewhere of criminal proceedings against any person for an offence with which the currency is connected.

(3) A police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit shall, as soon as is reasonably practicable, but not later than seven days, apply to a Judge in Chambers for a detention order with respect to the currency seized under subsection (1).

(4) The Judge in Chambers shall not make an order for detention of the currency unless he is satisfied that there are reasonable grounds for suspecting that the currency is currency referred to in subsection (1).

(5) Subject to subsection (7), any order made under subsection (4) shall remain valid for a period of ninety days, and may be renewed for further periods of ninety days by the Judge in Chambers, until production of the currency before the Court in proceedings against any person for an offence with which the currency is connected.

(6) Any currency detained under this section shall be deposited in an interest bearing account wherever possible.

(7) The currency, with the interest, may be released by the order of the Judge in Chambers –

- (a) where the conditions under subsection (4) are no longer met: or
- (b) where no proceedings are being brought in connection with the currency detained.

(8) On being satisfied that that the currency represents the proceeds of crime, money laundering or terrorist financing offence or property to be used in the commission of a serious offence, the Judge shall make a forfeiture order.

(9) For the purposes of this section –

“customs officer” means a customs officer not below the rank of Supervisor;

“police officer” means a police officer not below the rank of Superintendent of Police.

PART IV

FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

Freezing of
property.

38. (1) The Director of Public Prosecutions may apply to the Court for a restraining order against any realisable property held by the accused or specified realisable property held by a person other than the accused.

(2) An application for a restraining order may be made *ex parte* and shall be in writing and be accompanied by an affidavit stating-

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- (a) where the accused has been convicted of a serious offence, the serious offence for which the accused was convicted, the date of the conviction, the court before which the conviction was obtained and whether an appeal has been lodged against the conviction;
- (b) where the accused has not been convicted of a serious offence for which the accused is charged or about to be charged, or is being investigated for, the grounds for believing that the defendant committed the offence;
- (c) a description of the property in respect of which the restraining order is sought;
- (d) the name and address of the person who is believed to be in possession of the property;
- (e) the grounds for the belief that the property is tainted property in relation to the offence; or
- (f) the grounds for the belief that the accused derived a benefit directly or indirectly from the commission of the offence;
- (g) where the application seeks a restraining order against property of a person other than the defendant, the grounds for the belief that the property is tainted property in relation to the offence or realisable property that is subject to the effective control of the accused or is a gift caught by this Act;
- (h) the grounds for the belief that a forfeiture order or a pecuniary penalty order may be or is likely to be made under this Part in respect of the property.

Restraining
orders.

39. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a restraining order against property and the Court is satisfied that-

- (a) the accused has been convicted of a serious offence or has been charged or is about to be charged with or is being investigated for a serious offence;
- (b) where the accused has not been convicted of a serious offence, there is reasonable cause to believe that the property is tainted property in

relation to a serious offence or that the accused derived a benefit directly or indirectly from the commission of the offence;

- (c) where the application seeks a restraining order against property of a person other than the accused, there are reasonable grounds for believing that the property is tainted property in relation to a serious offence and that the property is subject to the effective control of the accused or is property held by the defendant or a gift caught by this Act; and
- (d) there are reasonable grounds for believing that a forfeiture order or a pecuniary penalty order is likely to be made under this Part in respect of the property,

the Court may make an order-

- (e) prohibiting the defendant or any person from disposing of, or otherwise dealing with, the property or such part thereof or interest therein as is specified in the order, except in such manner as may be specified in the order; and
- (f) at the request of the Director of Public Prosecutions, where the Court is satisfied that the circumstances so require-
 - (i) directing the Registrar of Deeds, Public Trustee, Official Receiver, a receiver or such other person as the Court may appoint to take custody of the property or such part of it as is specified in the order and to manage or otherwise deal with all or any part of the property in accordance with the directions of the Court; and
 - (ii) requiring any person having possession of the property to give possession of it to the Registrar of Deeds or to the person appointed under sub-paragraph (i) to take custody and control of the property.

(2) An order under subsection (1) may be made subject to such conditions as the Court thinks fit and, without limiting the generality of this subsection, may make provision for setting aside out of the property or a specified part of the property, any or all of the following-

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any) and reasonable business expenses;

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- (b) the person's reasonable expenses in defending the criminal charge and any proceedings under this Part; and
- (c) a specified debt incurred by the person in good faith.

(3) Where the Registrar of Deeds, Public Trustee, Official Receiver, receiver or other person appointed under subsection (1)(f)(i) is given a direction in relation to any property, such person may apply to the Court for directions on any question respecting the management or preservation of the property under the person's control.

(4) An application shall be served on all persons interested in the application or such of them as the Court thinks expedient and all such persons shall have the right to appear at the hearing and be heard.

(5) When the application is made on the basis that a person is being investigated or to be charged, any order made by the Court shall lapse if the person is not charged-

- (a) where the offence is an offence against the laws of Guyana, within fifty-six days; or
- (b) where the offence is an offence against the laws of a foreign state, within fifty-six days.

Service of
restraining
order.

40. A copy of a restraining order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

Registration
of restraining
order.

41. (1) A copy of a restraining order which affects transported land shall be registered with the Registrar of Deeds and where the restraining order affects registered land, the order shall be lodged with the Registrar of Lands who shall make the appropriate entry in the Register kept for that purpose in the Land Registry.

Cap.5:01.
Cap.5:02

(2) A restraining order is of no effect with respect to land unless it is registered as a charge under the Deeds Registry Act or the Land Registry Act, as the case may be.

(3) Where particulars of a restraining order are registered under the Deeds Registry Act or the Land Registry Act, as the case may be, a person who subsequently deals with the property shall, for the purposes of this section be deemed to have notice of the order at the time of the dealing.

Contravention
of restraining
order

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42. (1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property that is subject to the restraining order commits a serious offence punishable upon summary conviction by-

- (a) a fine of not less than one million dollars nor more than two million dollars and imprisonment for a term of two years, in the case of a natural person; or
- (b) a fine of not less than two million dollars nor more than three million dollars in the case of a body corporate.

(2) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, and the disposition or dealing was not for sufficient consideration or not in favour of a person who acted in good faith and without notice, the Director of Public Prosecutions may apply to the Court that made the restraining order for an order that the disposition or dealing be set aside.

(3) Where the Director of Public Prosecutions makes an application under subsection (2) in relation to a disposition or dealing, the Court may-

- (a) set aside the disposition or dealing as from the day on which the disposition or dealing took place; or
- (b) set aside the disposition or dealing as from the day of the order under this subsection and declare the respective rights of any persons who acquired interests in the property on, or after the day on which the disposition or dealing took place, and before the day of the order under this subsection.

Duration of
restraining
order.

43. A restraining order remains in force until-

- (a) it is discharged, revoked or varied; or
- (b) a forfeiture order or a pecuniary order, as the case may be, is made in respect of property which is the subject of the order.

Review of
restraining
order.

44. (1) A person who has an interest in property in respect of which a restraining order was made may, at any time, apply to the Court for an order under subsection (4).

(2) An application under subsection (1) shall not be heard by the Court unless the applicant has given to the Director of Public Prosecutions at least three clear days notice in writing of the application.

(3) The Court may require notice of the application to be given to, and may hear, any person who in the opinion of the Court appears to have an interest in the property.

(4) On an application under subsection (1) the Court may revoke or vary the order or make the order subject to such conditions as the Court think fit and for the purposes of this subsection the Court may-

- (a) require the applicant to enter into recognisances;
- (b) vary the order to permit the payment of reasonable living expenses of the applicant, including his dependants, if any, and reasonable legal or business expenses of the applicant.

(5) An order under subsection (4) may only be made if the Court is satisfied that-

- (a) the applicant is the lawful owner of the property or is entitled to lawful possession thereof and appears to be innocent of any complicity in the commission of a serious offence or of any collusion in relation to such offence; and
- (b) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings

(6) An application may be made by the Director of Public Prosecutions to discharge a restraint order.

Extension of
restraining
order.

45. (1) The Director of Public Prosecutions may apply to the Court that made a restraining order for an extension of the period of the operation of the order.

- (2) Where the Director of Public Prosecutions makes an application under subsection (1), the Court may extend the operation of a restraining order for a specified period if it is satisfied that a forfeiture order may be made in respect of the property or part thereof or that a pecuniary penalty order may be made against the person.

Forfeiture
order on
conviction.

46. (1) Where, upon application by the Director of Public Prosecutions, the Court that heard the criminal case, is satisfied that property is tainted property in respect of a serious offence of which a person has been convicted, the Court may order that specified property be forfeited.

(2) In determining whether property is tainted property the Court may infer, in the absence of evidence to the contrary-

- (a) that the property was used in or in connection with the commission of a serious offence if it was in the person's possession at the time of, or immediately after the commission of the serious offence for which the person was convicted;
- (b) that the property was derived, obtained or realised as a result of the commission of the serious offence if it was acquired by the person before, during or within six years after the period of the commission of the serious offence of which the person was convicted, and the Court is satisfied that the income of that person from sources unrelated to criminal activity of that person cannot reasonably account for the acquisition of that property.

(3) Where the Court orders that property, other than money, be forfeited, the Court shall specify in the order the amount that it considers to be the value of the property at the time when the order is made.

(4) In considering whether a forfeiture order should be made under subsection (1), the Court shall have regard to-

- (a) the rights and interests, if any, of third parties in the property;
- (b) the gravity of the serious offence concerned;
- (c) any hardship that may reasonably be expected to be caused to any person by the operation of the order; and
- (d) the use that is ordinarily made of the property, or the use to which the property was intended to be put.

(5) Where the Court makes a forfeiture order, the Court may give directions that are necessary or convenient for giving effect to the order.

Effect of
forfeiture order
on conviction.

47. (1) Subject to subsection (2), where a Court makes a forfeiture order against any property, the property vests absolutely in the State by virtue of the order.

(2) Where property ordered to be forfeited is registrable property –

- (a) the property vests with the State in equity but does not vest with the State at law until the applicable registration requirements have been complied with;
- (b) the State is entitled to be registered as owner of the property; and

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- (c) the Director of Public Prosecutions has power on behalf of the State to do or authorise the doing of anything necessary or convenient to obtain the registration of the State as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.
- (3) Where the Court makes a forfeiture order against property-
- (a) the property shall not, except with the leave of the Court and in accordance with any directions of the Court, be disposed of, or otherwise dealt with, by or on behalf of the State before the relevant appeal date; and
- (b) if after the relevant appeal date, the order has not been discharged, the property may be disposed of and the proceeds applied or otherwise dealt with in accordance with the directions of the Director of Public Prosecutions.
- (4) In this section-
- "registrable property" means property the title to which is passed by registration in accordance with the provisions of the Land Registry Act or the Deeds Registry Act;
- "relevant appeal date" used in relation to a forfeiture order made in consequence of a person's conviction of a serious offence means-
- (a) the date on which the period allowed by rules of court for the lodging of an appeal against a person's conviction or for the lodging of an appeal against the making of a forfeiture order expires without an appeal having been lodged, whichever is the latter; or
- (b) where an appeal against a person's conviction or against the making of a forfeiture order is lodged, the date on which the appeal lapses in accordance with the rules of court or is finally determined, whichever is the latter.
- Cap.5:02
Cap.5:01.
- Voidable transfers.
48. The Court may -
- (a) before making a forfeiture order; and
- (b) in the case of property in respect of which a restraining order was made, where the order was served,

set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

Protection of
third parties.

49. (1) Where an application is made for a forfeiture order against property, a person who claims an interest in the property may apply to the Court, before the forfeiture order is made, for an order under subsection (2).

(2) If a person applies to the Court for an order under this section in respect of property and the Court is satisfied on a balance of probabilities-

- (a) the person was not in any way involved in the commission of the serious offence; and
- (b) where the person acquired the interest during or after the commission of the serious offence, that the person acquired the interest-
 - (i) for sufficient consideration; and
 - (ii) without knowing, and in circumstance not giving rise to a reasonable suspicion that the property was, at the time the person acquired it, property that was tainted property,

the Court shall make an order declaring the nature, extent and value at the time the order is made of the person's interest.

(3) Subject to subsection (4), where a forfeiture order has already been made directing the forfeiture of property, a person who claims an interest in the property may, before the end of the period of six months commencing on the day on which the forfeiture order is made, apply under this subsection to the Court for an order under subsection (2).

(4) A person who-

- (a) had knowledge of the application for the forfeiture order before the order was made; or
- (b) appeared at the hearing of that application,

shall not be permitted to make an application under subsection (3) except with leave of the Court.

(5) A person who makes an application under subsection (1) or (3) shall give no less than fourteen days written notice of the making of the application to the Director of Public Prosecutions who shall be a party to any proceedings in the application.

(6) An applicant or the Director of Public Prosecutions may in accordance with the rules of court, appeal against an order made under subsection (2).

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(7) Any person appointed by the Court shall, on application by any person who has obtained an order under subsection (2), and where the period allowed by the rules of court with respect to the making of appeals has expired and any appeal from that order has been determined-

- (a) direct that the property or part of it to which the interest of the applicant relates, be returned to the applicant; or
- (b) direct that an amount equal to the value of the interest of the applicant, as declared in the order, be paid to the applicant.

Discharge of
forfeiture order
on appeal and
quashing of
conviction.

50. (1) Where the Court makes a forfeiture order against property in reliance on a person's conviction of a serious offence and the conviction is subsequently quashed, the quashing of the conviction discharges the order.

(2) Where a forfeiture order against property is discharged as provided for in subsection (1) or by the Court hearing an appeal against the making of the order, any person who claims to have an interest in the property immediately before the making of the forfeiture order may apply to the Registrar of Deeds in writing for the transfer of the interest to the person.

(3) On receipt of an application under subsection (2) the Registrar of Deeds shall-

- (a) if the interest is vested in Guyana, give directions that the property or part thereof to which the interest of the applicant relates be transferred to the person; or
- (b) in any other case, direct that there be payable to the person an amount equal to the interest as at the time the order is made.

(4) In the exercise of his powers under this section, the Registrar of Deeds shall have the power to do or authorise the doing of any thing necessary or convenient to effect the transfer or return of the property, including the execution of any instrument and the making of any application for the registration of an interest in the property on any appropriate register.

Payment
instead of a
forfeiture order.

51. Where the Court is satisfied that a forfeiture order should be made in respect of the property of a person convicted of a serious offence but that the property or any part of it or interest in it cannot be made subject to the order and, in particular-

- (a) cannot, on the exercise of due diligence, be located;

- (b) has been transferred to a third party in circumstances which do not give rise to a reasonable inference that the title or interest was transferred for the purpose of avoiding the forfeiture of the property;
- (c) is located outside Guyana;
- (d) has been substantially diminished in value or rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Court may, instead of ordering the property or part of it or interest in it to be forfeited, order the person to pay to the State an amount equal to the value of the property, part or interest.

Application of
procedure for
enforcing
fines.

52. Where the Court orders a person to pay an amount under section 51, that amount shall be treated as if it were a fine imposed upon the person in respect of a conviction for a serious offence, and the Court shall-

- (a) notwithstanding any other law, impose in default of the payment of that amount, a term of imprisonment-
 - (i) of twenty days, where the amount does not exceed ten thousand dollars;
 - (ii) of forty-two days, where the amount exceeds ten thousand dollars but does not exceed one hundred and fifty thousand dollars;
 - (iii) of twelve weeks, where the amount exceeds one hundred and fifty thousand dollars but does not exceed three hundred thousand dollars;
 - (iv) of six months where the amount exceeds three hundred thousand dollars but does not exceed five hundred thousand dollars;
 - (v) of ten months where the amount exceeds five hundred thousand dollars but does not exceed seven hundred thousand dollars;
 - (vi) of eighteen months where the amount exceeds seven hundred thousand dollars.
- (b) direct that the term of imprisonment imposed pursuant to paragraph (a) be served consecutively with any other form of imprisonment imposed on that person or that the person is then serving;

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- (c) direct that the rules regarding the remission of sentences of prisoners serving a term of imprisonment shall not apply in relation to a term of imprisonment imposed on a person pursuant to paragraph (a).

Forfeiture
where a
person dies
or absconds.

53. (1) Where an application is made to the Court for a forfeiture order against any tainted property in consequence of a person having died or absconded in connection with a serious offence and the Court is satisfied that-

- (a) any property is tainted property in respect of the serious offence;
- (b) proceedings in respect of a serious offence committed in relation to that property were commenced; and
- (c) the accused charged with the offence referred to in paragraph (b) has died or absconded,

the Court may order that the property or such property as is specified by the Court in the order be forfeited.

(2) These provisions shall apply with modifications that are necessary to give effect to this section.

Pecuniary
penalty order
on conviction.

54. (1) Subject to this section, where the Director of Public Prosecutions applies to the Court for a pecuniary penalty order against a person in respect of that person's offence the Court shall, if it is satisfied that the person has benefited from that offence, order him to pay to the State an amount equal to the value of his benefit from the offence or a lesser amount that the Court certifies in accordance with section 57(2) to be the amount that might be realised at the time the pecuniary penalty order is made.

(2) The Court shall assess the value of the benefits derived by a person from the commission of an offence in accordance with sections 55, 56, 57, and 58.

(3) The Court shall not make a pecuniary penalty order under this section-

- (a) until the period allowed by the rules of court for the lodging of an appeal against conviction has expired without such appeal having been lodged;
- or

- (b) where an appeal against conviction has been lodged until the appeal lapses in accordance with the rules of court or is finally determined, whichever is the later date.

Rules of determining benefit and assessing value.

55. (1) Where a person obtains property directly or indirectly as the result of, or in connection with the commission of a serious offence, his benefit is the value of the property so obtained including income, profits or other benefits.

(2) Where a person derived an advantage as a result of or in connection with the commission of a serious offence, his advantage shall be deemed to be a sum of money equal to the value of the advantage so derived.

(3) The Court, in determining whether a person has benefited from the commission of a serious offence or from the offence taken together with other serious offences shall, unless the contrary is proved, deem-

- (a) all property appearing to the Court to be held by the person on the day on which the application is made; and
- (b) all property appearing to the Court to be held by the person at any time-
- (i) within the period between the day the serious offence, or the earliest serious offence, was committed and the day on which the application is made; or
- (ii) within the period of six years immediately before the day on which the application is made, whichever is the longer,

to be property that came into the possession or under the control of the person by the reason of the commission of that serious offence or those serious offences for which the person was convicted;

- (c) any expenditure by the person since the beginning of that period to be expenditure met out of payments received by the person as a result of, or in connection with, the commission of that serious offence or those serious offences; and
- (d) any property received or deemed to have been received by the person at any time as a result of, or in connection with the commission by the person of that serious offence or those serious offences as property received by the person free of any interest therein.

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(4) Where a pecuniary penalty order has been previously made against a person, in assessing the value of any benefit derived by the person from the commission of the serious offence, the Court shall leave out of account any of the benefits that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(5) If evidence is given at the hearing of the application that the value of the person's property at any time after the commission of the serious offence exceeded the value of the person's property before the commission of the offence, then the Court shall, subject to subsection (6), treat the value of the benefit as being not less than the amount of that excess.

(6) If, after evidence of the kind referred to in subsection (5) is given, the person satisfies the Court that the whole or part of the excess was due to causes unrelated to the commission of the serious offence, subsection (5) does not apply to the excess or, as the case may be, that part.

Statements relating to benefit from commission of serious offences.

56. (1) Where-

(a) a person has been convicted of a serious offence and the Director of Public Prosecutions tenders to the Court a statement as to any matters relevant to-

- (i) determining whether the person has benefited from the offence or from any other serious offence of which the person is convicted in the same proceedings or which is taken into account in determining the person's sentence; or
- (ii) an assessment of the value of the person's benefit from the offence or any other serious offence of which the person is convicted in the same proceedings or which is taken into account; and

(b) the person accepts to any extent an allegation in the statement, the Court may, for the purposes of so determining or making that assessment, treat the person's acceptance as conclusive of the matters to which it relates.

(2) Where -

(a) a statement is tendered under subsection (1)(a); and

- (b) the Court is satisfied that a copy of that statement has been served on the person,

the Court may require the person to indicate to what extent the person accepts each allegation in the statement and so far as the person does not accept any allegation, to indicate any matters the person proposes to reply on.

(3) Where the person fails in any respect to comply with a requirement under subsection (2), the person may be treated for the purposes of this section as having accepted every allegation in the statement other than-

- (a) an allegation in respect of which he complied with the requirement; and
 (b) an allegation that he has benefited from the serious offence or that any property or advantage was obtained by him as a result of or in connection with the commission of the offence.

(4) Where-

- (a) the person tenders to the Court a statement as to any matters relevant to determining the amount that might be realised at the time the pecuniary penalty order is made; and
 (b) the Director of Public Prosecutions accepts to any extent any allegation in the statement,

the Court may, for the purposes of that determination, treat the acceptance of the Director of Public Prosecutions as conclusive of the matters to which it relates.

(5) An allegation may be accepted or a matter indicated for the purposes of this section either-

- (a) orally before the Court; or
 (b) in writing in accordance with rules of court.

(6) An acceptance by a person under this section that he received any benefits from the commission of a serious offence is admissible in any proceedings for any offence.

57. (1) Subject to subsection (2), the amount to be recovered in the person's case under a pecuniary penalty order shall be the amount which the Court assesses to be the value of the person's benefit from the serious offence or if more than one, all the offences in respect of which the order may be made.

Amount
 recovered
 under
 pecuniary
 penalty order.

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(2) Where the Court is satisfied as to any matter relevant for determining the amount which might be realised at the time the pecuniary penalty order is made, whether by acceptance under section 56 or otherwise, the Court may issue a certificate giving its opinion as to the matters concerned, and shall do so if satisfied that the amount that might be realised at the time the pecuniary penalty order is made is less than the amount it assesses to be the value of the person's benefit from the offence, or if more than one, all the offences in respect of which the pecuniary penalty order may be made.

Variation of
pecuniary
penalty
order.

58. Where-

- (a) the Court makes a pecuniary penalty order against a person in relation to a serious offence;
- (b) in calculating the amount of the pecuniary penalty order, the Court took into account a forfeiture order or a proposed forfeiture order in respect of property; and
- (c) an appeal against forfeiture or a forfeiture order is allowed or the proceedings from the proposed forfeiture order terminate without the proposed forfeiture order being made,

the Director of Public Prosecutions may apply to the Court for a variation of the pecuniary penalty order to increase the amount of the order by the value of the property not so forfeited or the value of the assets not taken into account at the time of the making of the forfeiture order and the Court may, if it considers it appropriate to do so, vary the order accordingly.

Lifting the
corporate veil.

59. (1) In assessing the value of benefits derived by a person from the commission of a serious offence, the Court may treat as property of the person any property that, in the opinion of the Court, is subject to the effective control of the person whether or not the person has-

- (a) any legal or equitable interest in the property; or
- (b) any right, power or privilege in connection with the property.

(2) Without prejudice to the generality of subsection (1), the Court may have regard to -

No. 13] (a) ~~shareholdings in, debentures, or directorships in any company that has an~~ LAW OF GUYANA [A.D. 2009]

interest, whether direct or indirect, in the property, and for this purpose the Court may order the investigation and inspection of the books of a named company;

(b) any trust that has any relationship to the property;

(c) any relationship whatsoever between the persons having an interest in the property or in companies of the kind referred to in paragraph (a) or trust of the kind referred to in paragraph (b), and any other persons.

(3) Where the Court, for the purposes of making a pecuniary order against a person, treats particular property as the person's property pursuant to subsection (1), the Court may, on application by the Director of Public Prosecutions make an order declaring that the property is available to satisfy the order.

(4) Where the Court declares that property is available to satisfy a pecuniary penalty order-

(a) the order may be enforced against the property as if the property were the property of the person against whom the order is made; and

(b) a restraining order may be made in respect of the property as if the property were property of the person against whom the order is made.

(5) Where the Director of Public Prosecutions makes an application for an order under subsection (3) that property is available to satisfy a pecuniary penalty order against a person-

(a) the Director of Public Prosecutions shall give written notice of the application to the person and to any person who the Director of Public Prosecutions has reason to believe may have an interest in the property; and

(b) the person and any person who claims an interest in the property may appear and adduce evidence at the hearing.

Enforcement of
pecuniary
penalty order.

60. Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 52 shall apply with such modifications as the Court may determine for the purpose of empowering the Court to impose a term of imprisonment on a person in default of compliance by the person with a pecuniary penalty order.

Discharge
of pecuniary
penalty
order.

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61. A pecuniary penalty order is discharged-

- (a) if the conviction of the serious offences or offences in reliance on which the order was made is or is taken to be quashed and no conviction for the offence or offences is substituted;
- (b) if the order is quashed on appeal; or
- (c) on the satisfaction of the order by payment of the amount due under the order.

Appointment
of receivers.

62. (1) This section applies if-

- (a) a pecuniary penalty order is made;
- (b) it is not satisfied; and
- (c) it is not subject to appeal.

(2) On the application of the Director of Public Prosecutions, the Court may by order appoint a receiver in respect of realisable property.

Powers of
receivers.

63. (1) If the Court appoints a receiver under section 62, it may act under this section on the application of the Director of Public Prosecutions.

(2) The Court may by order confer on the receiver the following powers in relation to the realisable property-

- (a) power to take possession of the property;
- (b) power to manage or otherwise deal with the property;
- (c) power to realise the property, in such manner as the Court may specify;
- (d) power to start, carry on or defend any legal proceedings in respect of the property.

(3) The Court may by order confer on the receiver power to enter any premises in Guyana and to do any of the following-

- (a) search for or inspect anything authorised by the Court;
- (b) make or obtain a copy, photograph or other record of anything so authorised;
- (c) remove anything which the receiver is required or authorised to take possession of in pursuance of an order of the Court.

(4) The Court may by order authorise the receiver to do any of the following for the purpose of the exercise of his functions-

- (a) hold property;
- (b) enter into contracts;
- (c) sue and be sued;
- (d) employ agents;
- (e) execute powers of attorney, deeds or other instruments;
- (f) take any other steps the Court thinks appropriate.

(5) The Court may order any person who has possession of realisable property to give possession of it to the receiver.

(6) The Court-

- (a) may order a person holding an interest in realisable property to make to the receiver such payment as the Court specifies in respect of a beneficial interest held by the defendant or the recipient of a tainted gift;
- (b) may, on the payment being made, by order transfer, grant or extinguish any interest in the property.

(7) Subsections (2), (5) and (6) do not apply to property for the time being subject to a charge under any provision of any other written law that provides for the charging of property for the purposes of any pre-existing scheme for the forfeiture of the proceeds of crime or drug trafficking.

(8) The Court shall not-

- (a) confer the power mentioned in subsection (2)(b) or (c) in respect of property, or
- (b) exercise the power conferred on it by subsection (6) in respect of property, unless it gives persons holding interests in the property, a reasonable opportunity to make representations to it.

(9) The Court may order that a power conferred by an order under this section is subject to such conditions and exceptions as it specifies.

(10) Managing or otherwise dealing with property includes-

- (a) selling the property or any part of it or interest in it;
- (b) carrying on or arranging for another person to carry on any trade or business the assets of which are or are part of the property;

(c) incurring capital expenditure in respect of the property.

(11) No distress may be levied against the property except with the leave of the Court and subject to any terms the Court may impose.

(12) If the receiver is appointed in respect of a tenancy of any premises, no landlord or other person to whom rent is payable may exercise a right within subsection (13) except with the leave of the Court and subject to any terms the Court may impose.

(13) A right is within this subsection if it is a right of forfeiture by peaceable re-entry in relation to the premises in respect of any failure by the tenant to comply with any term or condition of the tenancy.

(14) If a Court in which proceedings are pending in respect of any property is satisfied that an order under section 64 appointing a receiver in respect of the property has been applied for or made, the Court may either stay the proceedings or allow them to continue on any terms it thinks fit.

(15) Before exercising any power conferred by subsection (14), the Court shall give an opportunity to be heard to-

- (a) the prosecutor, and
- (b) the receiver if the order under section 63 has been made.

Application
of sums by
receivers.

64. (1) This section applies to sums which are in the hands of a receiver appointed under section 62 if they are-

- (a) the proceeds of the realisation of property under section 63;
- (b) sums (other than those mentioned in paragraph (a)) in which the defendant holds an interest.

(2) The sums shall be applied as follows-

- (a) first, they shall be applied in payment of such expenses incurred by a person acting as a receiver;
- (b) second, they shall be applied in making any payments directed by the Court;
- (c) third, they shall be applied on the defendant's behalf towards satisfaction of the pecuniary penalty order.

(3) If the amount payable under the pecuniary penalty order has been fully paid and any sums remain in the receiver's hands he shall distribute them-

- (a) among such persons who held or hold interests in the property concerned as the Court directs, and
- (b) in such proportions as it directs.

(4) Before making a direction under subsection (3) the Court shall give persons who held or hold interests in the property concerned a reasonable opportunity to make representations to it.

(5) For the purposes of subsections (3) and (4) the property concerned is-

- (a) the property represented by the proceeds mentioned in subsection (1)(a);
- (b) the sums mentioned in subsection (1)(b).

(6) The receiver applies sums as mentioned in subsection (2)(c) by paying them to the Court for enforcing the pecuniary penalty order as if the amount ordered to be paid were a fine on account of the amount payable under the order.

Rights of
bona fide
third parties.

65. (1) The measures and sanctions referred to in sections 38 to 64 (inclusive) shall apply without prejudice to the rights of *bona fide* third parties.

(2) Proper notifications shall be made so that all those claiming legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims.

(3) A third party's lack of good faith may be inferred, at the discretion of the Court or the competent authority, from the objective circumstances of the case.

(4) The Court or the competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that -

- (a) the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
- (b) no participation, collusion or involvement with respect to money laundering offence which is the subject of the proceedings can be imputed to the claimant;
- (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities or if he had knowledge, did not freely consent to its illegal use;
- (d) the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for

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the purpose of avoiding the eventual subsequent forfeiture of the property, proceeds or instrumentalities, and;

- (e) the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.

Limitations on freezing or forfeiture of property.

66. The provisions of sections 38 to 64 (inclusive) shall only apply to property coming into the possession or under the control of a person after the coming into force of this Act.

**PART V
COMBATING THE FINANCING OF TERRORISM**

Seizure and detention of terrorist cash.

67. (1) Where a police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit has reasonable grounds to suspect that any cash-

- (a) is intended to be used for the purposes of terrorism;
- (b) belongs to, or is held in trust for, a terrorist organisation; or
- (c) is or represents property obtained through acts of terrorism,
- he may seize the cash.

(2) A police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit may seize cash, even if he reasonably suspects part only of the cash to be terrorist cash, where it is not reasonably practicable to seize that part only of the cash.

(3) The police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit may exercise his powers under subsection (1), whether or not any proceedings have been brought for an offence in connection with the terrorist cash.

(4) The police officer, customs officer or a person authorised by the Director of the Financial Intelligence Unit shall, as soon as is reasonably practicable but not later than seven days, apply to a Judge in Chambers for a detention order with respect to the cash seized under subsection (1).

(5) The Judge in Chambers shall not make an order for detention of the cash unless he is satisfied that there are reasonable grounds for suspecting that the cash –

- (a) is intended to be used for the purposes of terrorism;
- (b) consists of resources of a terrorist organisation; or

(c) is or represents property obtained through terrorist activities.

(6) Subject to subsection (8), any order made under subsection (5) shall remain valid for a period of ninety days, and may be renewed for further periods of ninety days by the Judge in Chambers, until production of the cash before the Court in proceedings against any person for an offence with which the cash is connected.

(7) Any cash detained under this section shall be deposited in an interest-bearing account wherever possible.

(8) The cash, with the interest, may be released by order of the Judge in Chambers –

- (a) where the conditions under subsection (5) are no longer met; or
- (b) where no proceedings are brought in connection with the cash detained.

(9) For the purposes of this section-

“cash” means –

- (a) coins and notes in any currency;
- (b) postal orders;
- (c) traveller’s cheques;
- (d) banker’s drafts;
- (e) bearer bonds and bearer shares; or
- (f) such other monetary instruments as the Minister may, by notice published in the *Gazette*, specify;

“customs officer” means a customs officer not below the rank of Supervisor; “police officer” means a police officer not below the rank of Superintendent of Police.

Terrorist
financing.

68. (1) Any person who by any means directly or indirectly, wilfully provides or collects funds or other property, with the intention that they should be used or in the knowledge that they are to be used in whole or in part -

- (a) to commit an act constituting an offence in regard to and in accordance with the definition of one of the treaties listed in the appendix to the International Convention for the Suppression of the Financing of Terrorism to which Guyana is a party; or
- (b) to commit any act intended to cause the death of or serious bodily injury to any civilian or any other person not directly involved in a situation of armed conflict if, by virtue of its nature or context, such act is intended to

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intimidate a population or compel a government or international organisation to perform or refrain from performing an act of any kind;

- (c) by a terrorist;
- (d) by a terrorist organisation,

commits an indictable offence and shall -

- (i) if such act resulted in the death of any person, be punishable with a fine of not less than one million five hundred thousand dollars together with death;
- (ii) in any other case, be punishable with a fine of not less than five hundred thousand dollars together with imprisonment for not less than ten years nor more than fifteen years.

(2) An offence under this section is committed whether or not the funds were actually used to carry out or attempt a terrorist act or linked to a specific terrorist act.

(3) Every person who –

- (a) organises or directs others to commit;
- (b) attempts to commit;
- (c) conspires to commit; or
- (d) participates as an accomplice to a person committing, or attempting to commit an offence under subsection (1),

commits an indictable offence under this Act.

(4) Knowledge, intent or purpose required as an element of the activities mentioned in subsections (1) and (3) may be inferred from objective factual circumstances.

(5) A natural person who contravenes this section commits an indictable offence and shall-

- (a) if such act resulted in the death of any person, be punishable with a fine of not less than one million five hundred thousand dollars together with death;
- (b) in any other case, be punishable with a fine of not less than five hundred thousand dollars together with imprisonment for not less than ten years nor more than fifteen years, and in the case of a body corporate, a fine of not less than one million five hundred thousand dollars.

(6) The Minister may, by notice published in the *Gazette*, publish a list of terrorists or terrorist organisations as defined in the International Conventions on terrorism.

Related offences in relation to terrorist financing.

69. Any person who -

- (a) solicits, receives, provides or possesses money or other property;
- (b) enters into, or becomes concerned in, an arrangement as a result of which money or other property is made available or is to be made available,

for the purposes of terrorism, or for a terrorist organisation, commits an indictable offence and shall-

- (i) if such act resulted in the death of any person, be punishable with a fine of not less than one million five hundred thousand dollars together with death;
- (j) in any other case, be punishable with a fine of not less than five hundred thousand dollars together with imprisonment for not less than ten years nor more than fifteen years.

Dealing in terrorist property.

70. (1) Any person who enters into, or becomes concerned in, an arrangement which facilitates the retention or control by, or on behalf of another person, of terrorist property, in any manner, including -

- (a) concealment;
- (b) removal from the jurisdiction; or
- (c) transfer to any other person,

commits an indictable offence and is liable to a fine of not less than five hundred thousand dollars together with imprisonment for not less than ten years nor more than fifteen years.

(2) It shall be a defence for a person charged under subsection (1) to prove that the person did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

Freezing of terrorist assets.

71. (1) Where the Director of Public Prosecutions has reasonable grounds to believe that any property is terrorist property or is held on behalf of a terrorist or a terrorist organisation, the Director of Public Prosecutions may make an application to the High Court to freeze any account or other property held by any person on behalf of a terrorist or a terrorist organisation.

(2) The Court may, upon the application of the Director of Public Prosecutions, order the extension of restraint or freeze direction issued pursuant to subsection (1):

Provided the Court is satisfied on the balance of probabilities that the account or other property is held by or on behalf of a terrorist or terrorist organisation.

(3) Where the Director of Public Prosecutions decides to revoke an order which has been made by the Court under subsection (1), he shall notify the Court accordingly and the Court shall, if satisfied, revoke the freezing order.

(4) Revocation of a freezing order under subsection (3) shall not affect the validity of any action taken on the basis of the direction of the order prior to revocation.

(5) A person affected by a freezing order issued under subsection (1) may apply to the Court for a revocation of the order in relation to his property.

(6) The Court shall revoke the freezing order in relation to the applicant under subsection (7) if satisfied that the account or other property or the person's interest in it is not owned or held by or on behalf of a terrorist or terrorist organisation.

(7) It shall be a defence against any action brought against the Director of Public Prosecutions or any person who complies with a direction issued under subsection (1) that the issuance of the direction or the compliance with it was in accordance with the provisions of this section.

(8) No person shall be held liable in any Court for or with respect to anything done or omitted to be done in good faith in accordance with this section.

Application for
forfeiture order.

72. The Director of Public Prosecutions may apply to the Court for a forfeiture order against terrorist property.

Notice of
application.

73. Where the Director of Public Prosecutions applies under section 72 for a forfeiture order -

- (a) the Director of Public Prosecutions shall give no less than thirty days written notice of the application only to any person who is known to own or control directly or indirectly, wholly or jointly or have an interest in the terrorist property in respect of which the application is being made;
- (b) the person and any other person who claims an interest in the property may appear and produce evidence at the hearing of the application; and

- (c) the Court may, at any time before the final determination of the application, direct the Director of Public Prosecutions to-
- (i) give notice of the application to any person who, in the opinion of the Court, appears to have an interest in the property; or
 - (ii) publish in the *Gazette* or a daily newspaper published and circulating in Guyana, a notice of the application.

Forfeiture order
for terrorist
property.

74. (1) Where, upon application by the Director of Public Prosecutions, the Court is satisfied, on a balance of probabilities, that property to which the application relates is terrorist property, the Court shall order that specified property be forfeited.

(2) Despite subsection (1), if a person claiming an interest in property to which an application relates satisfies the Court that he-

- (a) has an interest in the property;
- (b) has, in the circumstances, exercised reasonable care to ensure that the property is not terrorist property; and
- (c) is not a member of a terrorist group,

the Court shall order that the interest shall not be affected by the forfeiture order, and the Court shall declare the nature and extent of the interest in question.

(3) If a person obtains an interest in property after it becomes terrorist property, an order shall only be made under subsection (2) in respect of that interest if the person is a *bona fide* purchaser for value, without reason to suspect that the property is terrorist property.

(4) Where the Court makes a forfeiture order, the Court may give such directions as are necessary or convenient for giving effect to the order.

Effect of
forfeiture order
in respect of
terrorist
property.

75. (1) Subject to subsection (2), where a Court makes forfeiture orders against any terrorist property, the property vests absolutely in the State by virtue of the order.

(2) Where property ordered to be forfeited is registrable property -

- (a) the property vests in the State until the applicable registration requirements have been complied with;
- (b) the State is entitled to be registered as owner of the property;
- (c) the Director of Public Prosecutions has power on behalf of the Government to do or authorise the doing of anything necessary or

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convenient to obtain the registration of the State as owner, including the execution of any instrument to be executed by a person transferring an interest in property of that kind.

Cap.5:02. (3) In this section, "registrable property" means property the title to which is passed by registration in accordance with the provisions of the Land Registry Act.

**PART VI
INTERNATIONAL COOPERATION**

Assistance to
foreign
countries.

76. (1) The Court or the competent authority shall cooperate with the Court or other competent authority of another state, taking the appropriate measures to provide assistance in matters concerning money laundering offences and terrorist financing offences, in accordance with this Act, and within the limits of their respective legal systems.

(2) The Court or the competent authority may receive a request from the Court or other competent authority of another state to identify, trace, produce, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, terrorist financing offences and serious offences, and may take appropriate actions, including those contained in sections 38 to 64(inclusive).

(3) The Court or the competent authority may receive and take appropriate measures with respect to a request from a Court or other competent authority from another state, for assistance related to a civil, criminal, or administrative investigation, prosecution or proceedings, as the case may be, involving money laundering offences and terrorist financing offences or the proceeds of crime, or violations of any provision of this Act.

(4) Assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, obtaining testimony in the requested states, facilitating the voluntary presence or availability in the requesting state of persons, including those in custody, to give testimony, locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items, and provisional measures.

(5) Any provisions referring to secrecy or confidentiality shall not be an impediment to compliance with this section, when the information is requested by or shared with the Court or other competent authority.

(6) Assistance referred to in this section shall be provided only to those countries with whom Guyana has entered into mutual legal assistance treaties on a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such treaties.

Registration of external confiscation or forfeiture orders.

77. (1) On an application made by or on behalf of the government of a designated country referred to in section 76 (6) and only when a mutual legal assistance treaty is in force between Guyana and that country, the Court may register and enforce an external confiscation or forfeiture order made there if-

- (a) it is satisfied that at the time of registration the order is in force and not subject to appeal;
- (b) it is satisfied, where the person affected by the order did not appear in the proceedings, that he received notice of the proceedings in sufficient time to enable him to defend them; and
- (c) it is of the opinion that enforcing the order in Guyana would not be contrary to the interest of justice.

(2) In subsection (1) (a), "appeal" includes-

- (a) any proceedings by way of discharging or setting aside a judgment; and
- (b) an application for a new trial or a stay of execution.

(3) The Court shall cancel the registration of an external confiscation or forfeiture order if it appears to the Court that the order has been satisfied by payment of the amount due under it.

Evidence of corresponding law.

78. (1) A document purporting to be issued by or on behalf of the Government of a country or territory and purporting to state the terms of a corresponding law in force in that country or territory shall be admitted in evidence, in proceedings under this Act, on its production by the prosecution without further proof, and such document shall be conclusive evidence that-

- (a) it is issued by or on behalf of the government of that country or territory;
- (b) the terms of such law are as stated in the document;
- (c) any facts stated in the document to constitute an offence under such law do constitute such offence.

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(2) "Corresponding law",

- (a) in relation to proceedings relating to drug trafficking has the meaning given in section 2 of the Narcotic Drugs and Psychotropic Substances (Control) Act 1988 and;
- (b) in any other case, means a law which corresponds with a provision of Guyana law which creates a relevant offence.

Act No. 2 of 1988.

**PART VII
CIVIL FORFEITURE**

Interpretation.

79. In this Part save where the context otherwise requires-

"the applicant" means an officer who has applied to the Court for the making of an interim order or a restraint order and, in relation to such an order that is in force, means any or, as appropriate, any officer;

"dealing", in relation to property in the possession or control of a person, includes -

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt,
- (b) removing the property from the State, and
- (c) in the case of money or other property held for the person by another person, paying or releasing or transferring it to the person or to any other person;

"civil forfeiture order" means an order under section 82;

"restraint order" means an order under section 81;

"officer" means a police officer not below the rank of Superintendent of Police or a person authorised by the Director of the Financial Intelligence Unit ;

"proceeds of crime" means any property obtained or received at any time (whether before or after the passing of this Act) by or as a result of or in connection with the commission of a serious offence whether that offence has been committed in Guyana or elsewhere provided that if the

serious offence has been committed abroad it would be a serious offence if the same offence was committed within this jurisdiction.

“specified property” means any property of whatever description which forms the basis of any application under this Act as being the proceeds of a serious offence;

“respondent” means a person in respect of whom an application for an interim order or a restraint order has been made or in respect of whom such an order has been made and includes any person who, but for this Act, would become entitled, on the death of the first-mentioned person, to any property to which such an order relates being an order that is in force and is in respect of that person.

Interim order.

80. (1) Where it is shown to the satisfaction of the Court on the balance of probabilities upon application to it *ex parte* by an officer that -

- (a) a person is in possession or control of -
 - (i) specified property and that the said property constitutes, directly or indirectly, proceeds of crime; or
 - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime; and
- (b) that the value of the property or, as the case may be, the total value of the specified property referred to in both subparagraphs (i) and (ii), of paragraph (a) is not less than two million dollars,

the Court may make an interim order prohibiting the person or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value during the period of fifty-six days from the date of the making of the order.

(2) An interim order -

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient; and

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- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his or their whereabouts.

(3) Where an interim order is in force, the Court, on application to it in that behalf by the respondent or any other person claiming ownership of any of the property concerned may, if it is shown to the satisfaction of the Court that -

- (a) the property concerned or a part of it is not property to which subparagraph (i) or (ii) of subsection (1) (a) applies; or
- (b) the value of the property to which those subparagraphs apply is less than two million dollars,

discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time during the period of fifty-six days by the applicant, discharge an interim order.

(5) Subject to subsections (3) and (4), an interim order shall continue in force until the expiration of the period of fifty-six days from the date of its making and shall then lapse unless an application for a restraint order in respect of any of the specified property concerned is brought during the fifty-six day period even if it has not been disposed of and, if such an application is brought, the interim order shall remain in force until -

- (a) the determination of the application for a restraint order;
- (b) the expiration of the ordinary time for bringing an appeal from such a determination;
- (c) if such an appeal is brought, the determination or abandonment of it or of any further appeal or the expiration of the ordinary time for bringing any further appeal,

whichever is the latest.

(6) Notice of an application under this section shall be given -

- (a) in the case where the application is under subsection (3) to the applicant by the respondent or other person, making the application;
- (b) in the case where the application is under subsection (4), by the applicant to the respondent or any person reasonably perceived to be an interested person unless the Court is satisfied that it is not reasonably possible to

ascertain the whereabouts of any person interested or affected by the application.

Restraint
order.

81. (1) Where, on an application to it by the applicant, it appears to the Court, on evidence tendered by the applicant, consisting of or including evidence admissible by virtue of section 86 -

- (a) that a person is in possession or control of -
 - (i) specified property and that the property constitutes, directly or indirectly, proceeds of crime; or
 - (ii) specified property that was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime; and
- (b) that the value of the property or, as the case may be, the total value of the property referred to in both subparagraphs (i) and (ii) of paragraph (a) is not less than two million dollars,

the Court shall make a restraint order prohibiting the respondent or any other specified person or any other person having notice of the order from disposing of or otherwise dealing with the whole or, if appropriate, a specified part of the property or diminishing its value, unless, it is shown to the satisfaction of the Court, on evidence tendered by the respondent or any other person -

- (i) that that particular property does not constitute, directly or indirectly, proceeds of crime and was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime; or
- (ii) that the value of all the property to which the order would relate is less than two million dollars:

Provided, however, that the Court shall not make the order if it is satisfied that there would be a serious risk of injustice.

(2) A restraint order -

- (a) may contain such provisions, conditions and restrictions as the Court considers necessary or expedient; and
- (b) shall provide for notice of it to be given to the respondent and any other person who appears to be or is affected by it unless the Court is satisfied that it is not reasonably possible to ascertain his or their whereabouts.

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(3) Where a restraint order is in force, the Court, on application to it in that behalf at any time by the respondent or any other person claiming ownership of any of the property concerned, may, if it is shown to the satisfaction of the Court that the property or a specified part of it is property to which paragraph (i) of subsection (1) applies, or that the order causes any other injustice, discharge or, as may be appropriate, vary the order.

(4) The Court shall, on application to it in that behalf at any time by the applicant, discharge a restraint order.

(5) Subject to subsections (3) and (4), a restraint order shall continue in force until -

- (a) the determination of an application for a civil forfeiture order in relation to the property concerned; and
- (b) the expiration of the ordinary time for bringing an appeal from that determination;
- (c) if such an appeal is brought, it or any further appeal is determined or abandoned or the ordinary time for bringing any further appeal has expired,

whichever is the latest, and shall then lapse.

(6) Notice of an application under this section shall be given -

- (a) in case the application is under subsection (1) or (4), by the applicant to the respondent, unless the Court is satisfied that it is not reasonably possible to ascertain his whereabouts;
- (b) in case the application is under subsection (3), by the respondent or other person making the application to the applicant,

and, in either case, to any other person in relation to whom the Court directs that notice of the application be given to him .

(7) Where a forfeiture order, or a confiscation order, relates to any specified property that is the subject of an interim order, or a restraint order made under this Act that is in force, the interim order or, as the case may be, the restraint order shall -

- (a) if it relates only to the specified property, stand discharged; and
- (b) if it relates also to other property, stand varied by the exclusion from it of the specified property.

82. (1) Subject to subsection (2), the Court, on application to it by the applicant, may make a civil forfeiture order directing that the whole or, if appropriate, a specified part of the property be transferred, subject to such terms and conditions as the Court may specify, to a receiver or to such other person as the Court may determine.

(2) Subject to subsections (6) and (8), the Court shall not make a civil forfeiture order in relation to any property the subject of an application under subsection (1) unless it is shown to its satisfaction that particular property subject to the application does constitute, directly or indirectly, proceeds of crime or was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime.

(3) The applicant shall give notice to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his whereabouts, and to such other person if any as the Court may direct of an application under this section.

(4) A civil forfeiture order shall operate to deprive the respondent of his rights if any in or to the property to which it relates and, upon the making of the order, the property shall stand transferred to the Court appointed receiver or other person to whom it relates.

(5) The receiver may sell or otherwise dispose of any property transferred to him under this section, at the direction of the Court, and any proceeds of such a disposition and any moneys transferred to him under this section shall be paid into the Consolidated Fund.

(6) In proceedings under subsection (1), before deciding whether to make a civil forfeiture order, the Court shall give an opportunity to be heard by the Court and to show cause why the order should not be made to any person claiming ownership of any of the property concerned.

(7) The Court, if it considers it appropriate to do so in the interest of justice, on the application of the respondent or, if the whereabouts of the respondent cannot be ascertained, on its own initiative, may adjourn the hearing of an application under subsection (1) for such period not exceeding two years as it considers reasonable.

(8) The Court shall not make a civil forfeiture order if it is satisfied that there would be a serious risk of injustice.

83. (1) At any time while an interim order or a restraint order is in force, the Court may, on application to it in that behalf by the applicant, make such orders as it considers necessary or expedient to enable the order aforesaid to have full effect.

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(2) Notice of an application under this section shall be given by the applicant to the respondent unless the Court is satisfied that it is not reasonably possible to ascertain his whereabouts and to any other person in relation to whom the Court directs that notice of the application be given to him .

(3) An interim order, a restraint order or a civil forfeiture order may be expressed to apply to any profit or gain or interest, dividend or other payment or any other property payable or arising, after the making of the order, in connection with any other property to which the order relates.

Order in
relation to
property the
subject of
interim order
or restraint
order.

84. (1) At any time while an interim order or a restraint order is in force, the Court may, on application to it in that behalf by the respondent or any other person affected by the order, make such orders as it considers appropriate in relation to any of the property concerned if it considers it essential to do so for the purpose of enabling -

- (a) the respondent to discharge the reasonable living and other necessary expenses including legal expenses in or in relation to proceedings under this Part incurred or to be incurred by or in respect of the respondent and his dependants; or
- (b) the respondent or that other person to carry on a business, trade, profession or other occupation to which any of that property relates,

but the Court shall not make an order under this section unless it is satisfied that there is no other means by which the living and other necessary expenses will be paid.

(2) An order under this section may contain such conditions and restrictions as the Court considers necessary or expedient for the purpose of protecting the value of the property concerned and avoiding any unnecessary diminution thereof.

(3) Notice of an application under this section shall be given by the person making the application to the applicant and any other person in relation to whom the Court directs that notice of the application be given to him.

Receiver.

85. (1) Where an interim order or a restraint order is in force, the Court may at any time appoint a receiver -

- (a) to take possession of any property to which the order relates;

- (b) in accordance with the Court's directions, to manage, keep possession or dispose of or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions if any as may be specified by the Court, and may require any person having possession or control of property in respect of which the receiver is appointed to give possession of it to the receiver.

(2) Where a receiver takes any action under this section -

- (a) in relation to property which is not property the subject of an interim order or a restraint order, being action which he would be entitled to take if it were such property; and
- (b) believing, and having reasonable grounds for believing, that he is entitled to take that action in relation to that property,

the receiver shall not be liable to any person in respect of any loss or damage resulting from such action except in so far as the loss or damage is caused by his negligence.

Provisions in relation to evidence and proceedings under this Part.

86. (1) Where an officer states -

- (a) in proceedings under section 82, on affidavit or, if the Court so directs, in oral evidence; or
- (b) in proceedings under section 83, in oral evidence,

that the officer believes either or both of the following, that is to say-

- (i) that the respondent is in possession or control of specified property and that the property constitutes, directly or indirectly, proceeds of crime;
- (ii) that the respondent is in possession of or control of specified property and that the property was acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

and that the value of the property or, as the case may be, the total value of the property referred to in both paragraphs (i) and (ii) is not less than two million dollars then, if the Court is satisfied that there are reasonable grounds for the belief aforesaid, the statement shall be evidence of the matter referred to in paragraph (i) or in paragraph (ii) or in both, as may be appropriate, and of the value of the property.

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(2) The standard of proof required to determine any question arising under this Part shall be on the balance of probabilities.

(3) Proceedings under this Part in relation to an interim order shall be heard otherwise than in public and any other proceedings under this Part may, if the respondent or any other party to the proceedings (other than the applicant) so requests and the Court considers it proper, be heard otherwise than in public.

(4) The Court may, if it considers it appropriate to do so, prohibit the publication of such information as it may determine in relation to proceedings under this Part, including information in relation to applications for, the making or refusal of and the contents of orders under this Part and the persons to whom they relate.

(5) Production to the Court in proceedings under this Part of a document purporting to authorise a person, who is described therein as an officer of the Financial Intelligence Unit, required to perform the functions conferred on an officer under this Part and signed by the Director shall be evidence that the person is an officer so authorised.

Affidavit
specifying
property and
income of
respondent.

87. At any time during proceedings under sections 80 or 81 or while an interim order or a restraint order is in force, the Court or, as appropriate, in the case of an appeal in such proceedings, the Court of Appeal may by order direct the respondent to file an affidavit specifying -

- (a) the property of which the respondent is in possession or control; or
- (b) the income, and the sources of the income, of the respondent during such period not exceeding ten years ending on the date of the application for the order as the Court concerned may specify,
or both.

Registration
of interim
orders and
restraint
orders.

88. (1) Where an interim order or an restraint order is made, the Registrar of the Supreme Court shall, in the case of registered land, furnish the Land Registry with notice of the order and the Registrar of Lands shall thereupon cause an entry to be made in the appropriate register inhibiting, until such time as the order lapses, is discharged or is varied so as to exclude the registered land or any charge thereon from the application of the order, any dealing with any registered land or charge which appears to be affected by the order.

(2) Where notice of an order has been given under subsection (1) and the order is varied in relation to registered land, the Registrar of the Supreme Court shall furnish the Registrar of Lands with notice to that effect and the Registrar of Lands shall thereupon cause the entry made under subsection (1) of this section to be varied to that effect.

(3) Where notice of an order has been given under subsection (1) and the order is discharged or lapses, the Registrar of the Supreme Court shall furnish the Registrar of Lands with notice to that effect and the Registrar of Lands shall cancel the entry made under subsection (1).

(4) Where an interim order or a restraint order is made, the Registrar of the Supreme Court shall, in the case of transported land, furnish the Registrar of Deeds with notice of the order and the Registrar of Deeds shall thereupon cause the notice to be registered in the Deeds Registry.

(5) Where notice of an order has been given under subsection (4) and the order is varied, the Registrar of the Supreme Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cause the notice registered under subsection (4) to be varied to that effect.

(6) Where notice of an order has been given under subsection (4) and the order is discharged or lapses, the Registrar of the Supreme Court shall furnish the Registrar of Deeds with notice to that effect and the Registrar of Deeds shall thereupon cancel the registration made under subsection (4).

(7) Where an interim order or an restraint order is made which applies to an interest in a company or to the property of a company, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice of the order and the Registrar of Companies shall thereupon cause the notice to be entered in the Register of Companies maintained under the Companies Act 1991.

(8) Where notice of an order has been given under subsection (7) and the order is varied, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cause the notice entered under subsection (7) to be varied to that effect.

(9) Where notice of an order has been given under subsection (7) and the order is discharged or lapses, the Registrar of the Supreme Court shall furnish the Registrar of Companies with notice to that effect and the Registrar of Companies shall thereupon cancel the entry made under subsection (7).

Bankruptcy of respondent, etc.

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89. (1) Where a person who is in possession or control of property is adjudicated bankrupt, property subject to an interim order, a restraint order, or a civil forfeiture order, made before the order adjudicating the person bankrupt, is excluded from the property of the bankrupt.

(2) Where a person has been adjudicated bankrupt, the powers conferred on the Court by section 80 or 81 shall not be exercised in relation to property of the bankrupt.

Property subject to interim order, restraint order or disposal dealt with by the trustees in bankruptcy.

90. (1) Without prejudice to the generality of any provision of any other law, where-

- (a) a trustee in bankruptcy, seizes or disposes of any property in relation to which his functions are not exercisable because it is subject to an interim order, a restraint order or a civil forfeiture order; and
- (b) at the time of the seizure or disposal he believes, and has reasonable grounds for believing, that he is entitled (whether in pursuance of an order of a Court or otherwise) to seize or dispose of that property,

he shall not be liable to any person in respect of any loss or damage resulting from the seizure or disposal except in so far as the loss or damage is caused by his negligence in so acting, and he shall have a lien on the property, or the proceeds of its sale, for his expenses incurred in connection with the bankruptcy or other proceedings in relation to which the seizure or disposal purported to take place and for so much of his remuneration as may reasonably be assigned for his acting in connection with those proceedings.

(2) Where the trustee appointed as aforesaid incurs expenses in respect of such property as is mentioned in subsection (1) (a) and in so doing does not know and has no reasonable grounds to believe that the property is for the time being subject to an order under this Part, he shall be entitled whether or not he has seized or disposed of that property so as to have a lien to payment of those expenses.

Winding up of company in possession or control of property the subject of interim order, restraint order or civil forfeiture order.

91. (1) Where property, the subject of an interim order, a restraint order or a civil forfeiture order made before the relevant time, is in the possession or control of a company and an order for the winding up of the company has been made or a resolution has been passed by the company for a voluntary winding up, the functions of the liquidator or any provisional liquidator shall not be exercisable in relation to the property.

(2) Where, in the case of a company, an order for its winding up has been made or such a resolution has been passed, the powers conferred by section 80 or 81 on the Court shall not

be exercised in relation to any property held by the company in relation to which the functions of the liquidator are exercisable -

- (a) so as to inhibit him from exercising those functions for the purpose of distributing any property held by the company to the company's creditors; or
- (b) so as to prevent the payment out of any property of expenses including the remuneration of the liquidator or any provisional liquidator properly incurred in the winding up in respect of the property.

(3) In this section -

"company" means any company which may be wound up;

"relevant time" means -

- (a) where no order for the winding up of the company has been made, the time of the passing of the resolution for voluntary winding up;
- (b) where such an order has been made and, before the presentation of the petition for the winding up of the company by the Court, such a resolution had been passed by the company, the time of the passing of the resolution; and
- (c) in any other case where such an order has been made, the time of the making of the order.

Immunity
from
proceedings.

92. No action or proceedings of any kind shall lie against a bank, building society or other financial institution or any other person in any Court in respect of any act or omission done or made in compliance with an order under this Part.

Seizure of
certain
property.

93. (1) Where an order under this Part is in force, an officer may, for the purpose of preventing any property the subject of the order being removed from the State, seize the property.

(2) Property seized under this section shall be dealt with in accordance with the directions of the Court.

Compensation.

94. (1) Where -

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- (a) an interim order is discharged or lapses and a restraint order in relation to the matter is not made or, if made, is discharged otherwise than pursuant to section 81(7);
- (b) a restraint order is discharged otherwise than pursuant to section 81(7) or lapses and a civil forfeiture order in relation to the matter is not made or, if made, is discharged;
- (c) an interim order or a restraint order is varied (otherwise than pursuant to section 81(7)) or a civil forfeiture order is varied on appeal,

the Court may, on application to it in that behalf by a person who shows to the satisfaction of the Court that -

- (i) he is the owner of any property to which -
- (I) an order referred to in paragraphs (a) or (b) related; or
- (II) an order referred to in paragraph (c) had related but, by reason of its being varied by a Court, has ceased to relate; and
- (ii) the property does not constitute, directly or indirectly, proceeds of crime or was not acquired, in whole or in part, with or in connection with property that, directly or indirectly, constitutes proceeds of crime,

award to the person if any such compensation payable by the Minister as it considers just in the circumstances in respect of any loss incurred by the person by reason of the order concerned.

(2) The Attorney General shall be given notice of, and be entitled to be heard in, any proceedings under this section.

Investigative
Powers.

95. (1) Where an officer has obtained an interim order and for the purposes of an investigation to enable a Court to determine whether property subject to an interim order should be made subject of a restraint order or be made subject to a civil forfeiture order the Court may make one or more of the following orders, upon the application of an officer who acts with the authority of the Director of Public Prosecutions-

- (a) a customer information order; or
- (b) a disclosure order.

96. (1) A customer information order, in relation to a person, financial institution or a reporting entity, is information whether the person holds, or has held, an account or accounts at the financial institution or reporting entity whether solely or jointly with another and if so, information as to-

- (a) the matters specified in subsection (2) if the person is an individual; or
- (b) the matters specified in subsection (3) if the person is a company or limited liability partnership or a similar body incorporated or otherwise established outside Guyana.

(2) The matters referred to in subsection (1) (a) are-

- (a) the account number or numbers;
- (b) the person's full name;
- (c) his date of birth;
- (d) his most recent address and any previous addresses;
- (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
- (f) such evidence of his identity as was obtained by the financial institution or reporting entity under or for the purposes of any provisions of this Act relating to money laundering or terrorist financing;
- (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution or reporting entity jointly with him; and
- (h) the account number or numbers of any other account or accounts held at the financial institution or reporting entity to which he is a signatory and details of the other person holding the other account or accounts.

(3) The matters referred to in subsection (1) (b) are-

- (a) the account number or numbers;
- (b) the person's full name;
- (c) a description of any business which the person carries on;
- (d) the country or territory in which it is incorporated or otherwise established and any number allocated to it under the Companies Act 1991 or corresponding legislation of any country or territory outside Guyana;

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- (e) any number assigned to it for the purposes of value added tax or other tax in Guyana;
- (f) its registered office, and any previous registered offices, under the Companies Act 1991 or anything similar under corresponding legislation of any country or territory outside Guyana;
- (g) its registered office, and any previous registered offices, under the Partnership Act or anything similar under corresponding legislation of any country or territory outside Guyana;
- (h) the date or dates on which it began to hold the account or accounts and, if it has ceased to hold the account or any of the accounts, the date or dates on which it did so;
- (i) such evidence of its identity as was obtained by the financial institution or reporting entity under or for the purposes of any provisions of this Act relating to money laundering or terrorist financing; and
- (j) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts.

(4) The Minister may by order provide for information of a description specified in the order-

- (a) to be customer information; or
- (b) no longer to be customer information.

Requirements
for making of
customer
information
order.

97. The requirements for the making of a customer information order shall be-

- (a) reasonable grounds for suspecting that the property specified in the application for the order is the proceeds of crime;
- (b) reasonable grounds for believing that the person specified in the order holds all or some of the proceeds of crime;
- (c) reasonable grounds for believing that customer information which may be provided in compliance with the order is likely to be of substantial value (whether or not by itself) for the purposes of which the order is sought; or

- (d) in the case of any investigation, reasonable grounds for believing that it is in the public interest for the customer information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

98. (1) A reporting entity commits an offence if without reasonable excuse it fails to comply with a requirement imposed on it under a customer information order.

(2) A reporting entity guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one million dollars.

(3) A reporting entity commits an offence if, in purported compliance with a customer information order, it-

- (a) makes a statement which it knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular.

(4) A reporting entity guilty of an offence under subsection (3) is liable-

- (a) on summary conviction, to a fine not exceeding one million dollars; or
- (b) on conviction on indictment, to a fine not exceeding two million dollars.

Statements.

99. (1) A statement made by a reporting entity in response to a customer information order may not be used in evidence against it in criminal proceedings.

(2) But subsection (1) shall not apply-

- (a) on a prosecution for an offence of perjury under section 99 of the Evidence Act; or
- (b) on a prosecution for some other offence where, in giving evidence, the reporting entity makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (2) (b) against a reporting entity unless-

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by or on behalf of the reporting entity in the proceedings arising out of the prosecution.

Disclosure of
information.

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100. A customer information order has effect in spite of any restriction on the disclosure of information (however imposed).

Supplementary
for customer
information
order.

101. (1) An application for a customer information order may be made *ex parte* to a Judge in Chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to customer information orders.

(3) An application to discharge or vary a customer information order may be made to the Court by-

(a) the person who applied for the order;

(b) any person affected by the order.

(4) The Court-

(a) may discharge the order; or

(b) may vary the order.

(5) If a police officer or a customs officer applies for a customer information order, an application to discharge or vary the order need not be by the same constable or customs officer.

(6) References to a person who applied for a customer information order shall be construed accordingly.

(7) A police officer or a customs officer may not make an application for a customer information order or an application to vary such an order unless he is a senior appropriate officer or he is authorised to do so by a senior appropriate officer.

(8) A senior appropriate officer is a-

(a) a police officer who is not below the rank of Superintendent; or

(b) a customs officer who is not below the grade of Supervisor of the Revenue Authority .

Disclosure
order.

102. (1) A Judge may, on an application made to him by the Director of Public Prosecutions, make a disclosure order if he is satisfied that each of the requirements for the making of the order is fulfilled.

(2) The application for a disclosure order shall state that a person specified in the application is subject to a civil forfeiture claim which is being carried out by the police or customs officers and the order is sought for the purposes of the investigation.

(3) A disclosure order is an order authorising the Director of Public Prosecutions to give to any person the Director of Public Prosecutions considers has relevant information notice in writing requiring him to do, with respect to any matter relevant to the investigation for the purposes of which the order is sought, any or all of the following-

- (a) answer questions, either at a time specified in the notice or at once, at a place so specified;
- (b) provide information specified in the notice, by a time and in a manner so specified;
- (c) produce documents, or documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(4) Relevant information is information whether or not contained in a document which the Director of Public Prosecutions considers to be relevant to the investigation.

(5) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

Requirements
for making of
disclosure order.

103. The requirements for the making of a disclosure order shall be-

- (a) reasonable grounds for suspecting that a person specified in the application for the order holds the proceeds of crime;
- (b) reasonable grounds for believing that information which may be provided in compliance with a requirement imposed under the order is likely to be of substantial value whether or not by itself to the investigation for the purposes of which the order is sought; or
- (c) reasonable grounds for believing that it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

Offences.

104. (1) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed on him under a disclosure order.

(2) A person guilty of an offence under subsection (1) is liable on summary conviction to a fine not exceeding one million dollars and imprisonment for a term not exceeding six months.

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(3) A person commits an offence if, in purported compliance with a requirement imposed on him under a disclosure order, he makes a statement which he knows to be false or misleading in a material particular.

(4) A person guilty of an offence under subsection (3) is liable-

- (a) on summary conviction, to imprisonment for a term not exceeding six months and to a fine not exceeding one million dollars ; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years and to two million dollars .

Statements.

105. (1) A statement made by a person in response to a requirement imposed on him under a disclosure order may not be used in evidence against him in criminal proceedings that are not forfeiture proceedings.

(2) But subsection (1) shall not apply-

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- (a) on a prosecution for an offence of perjury under section 99 of the Evidence Act; or
- (b) on a prosecution for some other offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (1).

(3) A statement may not be used by virtue of subsection (1) unless-

- (a) evidence relating to it is adduced; or
- (b) a question relating to it is asked,

by that person or on his behalf in the proceedings arising out of the prosecution.

Further provisions.

106. (1) A disclosure order shall not confer the right to require a person to answer any privileged question, provide any privileged information or produce any privileged document, except that an attorney- at- law may be required to provide the name and address of a client of his.

(2) A privileged question is a question which the person would be entitled to refuse to answer on grounds of legal professional privilege in proceedings in the High Court.

(3) Privileged information is any information which the person would be entitled to refuse to provide on grounds of legal professional privilege in proceedings in the High Court.

(4) Privileged material is any material which the person would be entitled to refuse to produce on grounds of legal professional privilege in proceedings in the High Court.

(5) A disclosure order does not confer the right to require a person to produce privileged material.

(6) A disclosure order has effect in spite of any restriction on the disclosure of information (however imposed).

(7) The Director of Public Prosecutions may take copies of any documents produced in compliance with a requirement to produce them which is imposed under a disclosure order.

(8) Documents so produced may be retained for so long as it is necessary to retain them (as opposed to a copy of them) in connection with the investigation for the purposes of which the order was made.

(9) But if the Director of Public Prosecutions has reasonable grounds for believing that-

(a) the documents may need to be produced for the purposes of any legal proceedings; and

(b) they might otherwise be unavailable for those purposes, they may be retained until the proceedings are concluded.

Supplementary
for disclosure
order.

107. (1) An application for a disclosure order may be made *ex parte* to a Judge in Chambers.

(2) Rules of court may make provision as to the practice and procedure to be followed in connection with proceedings relating to disclosure orders.

(3) An application to discharge or vary a disclosure order may be made to the Court by-

(a) the Director of Public Prosecutions;

(b) any person affected by the order.

(4) The Court-

(a) may discharge the order;

(b) may vary the order.

**PART VIII
MISCELLANEOUS**

Money laundering
an offence for
extradition
purposes.

108. Money laundering and terrorist financing are offences for the purpose of any law relating to extradition or the rendition of fugitive offenders.

Moneys paid into
Consolidated
Fund.

109. All moneys derived from the fulfillment of forfeiture or confiscation orders contemplated in this Act shall be paid into the Consolidated Fund.

Annual report
to Parliament.

110. (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 statements 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 thereon to be laid before the National Assembly within one month after he receives it.

Secrecy
obligations
overridden.

111. Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise.

Disclosure
protected.

112. It shall not be unlawful for any person to make any disclosure in compliance with this Act.

Prosecution of
offences.

113. No prosecution in respect of any offence committed under this Act or the regulations made hereunder shall be instituted except by, or with the consent in writing of the Director of Public Prosecutions.

Subsidiary
legislation.

114. (1) The Minister may make regulations for the better carrying out of the provisions of this Act and, subject to subsection (2) for prescribing anything that needs to be prescribed.

- (2) The Minister may by order amend the Schedules.
- (3) Any regulations made under subsection (1) or an order made under subsection (2) shall be subject to negative resolution of the National Assembly.

Repeal.
Act No. 1 of 2000.

115. The Money Laundering (Prevention) Act 2000 is repealed.

Consequential
amendments to
the Foreign
Exchange
(Miscellaneous
Provisions) Act
1996.
No. 8 of 1996

116. The Foreign Exchange (Miscellaneous Provisions) Act 1996 is amended as follows –

- (a) in section 6 by the substitution for the words “Second Schedule” wherever they occur of the words “Third Schedule to the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009”;
- (b) by the repeal of the Second Schedule.

“Financial Institution” means any company or business that engages in any of the following activities-

- (a) acceptance of deposits and other repayable funds from the public, including, but not limited to, private banking;
- (b) lending, including, but not limited to, consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfaiting;
- (c) financial leasing other than with respect to arrangements relating to consumer products;
- (d) the transfer of money or value;
- (e) issuing and managing means of payment, including, but not limited to, credit cards, travellers’ cheques, money orders and bankers’ drafts, and electronic money;
- (f) issuing financial guarantees and commitments;
- (g) trading in-
 - (i) money market instruments, including, but not limited to, cheques, bills, certificates of deposit and derivatives;
 - (ii) foreign exchange;
 - (iii) exchange, interest rate and index instruments;
 - (iv) transferable securities; and
 - (v) commodity futures trading;
- (h) participating in and underwriting securities issues and the provision of financial services related to such issues;
- (i) individual and collective portfolio management;
- (j) safekeeping and administration of cash or liquid securities on behalf of other persons ;
- (k) investing, administering or managing funds or money on behalf of other persons;
- (l) underwriting and placement of life insurance and other investment-related insurance, as well as insurance intermediation by agents and brokers;
- (m) money and currency changing; and

- (n) such other activity, business or operation as may be prescribed by the Minister responsible for Finance.

“Designated Non-financial Business or Profession” means any of the following-

- (a) casinos, betting shops or lotteries, including a person who carries on such a business through the internet, when their customers engage in financial transactions equal to or above five hundred thousand dollars or such lower amount as may be prescribed by the Minister responsible for Finance;
- (b) real estate agents, when they are involved in transactions for their client relating to the buying and selling of real estate and real estate brokers;
- (c) dealers in precious metals and dealers in precious and semi-precious stones, including, but not limited to those covered when they engage in any cash transaction with a customer equal to or above two million dollars or such lower amount as may be prescribed by the Minister responsible for Finance;
- (d) Attorneys-at-law, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client relating to the following activities-
- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies; or
- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities;
- (e) a trust or company service provider not otherwise covered by this definition, which as a business, provide any of the following services to third parties-
- (i) formation or management of legal persons;
- (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;

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-
- (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
 - (iv) acting as (or arranging for another person to act as) a trustee of an express trust; or
 - (v) acting as (or arranging for another person to act as) a nominee shareholder for another person; and
 - (f) such other business or profession as may be prescribed by the Minister responsible for Finance.

Activities and businesses subject to the Act**s. 2**

Acceptance of deposits and other repayable funds from the public.

Lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions.

Financial leasing.

Money transfer agencies or services, including money exchanges.

Cambios.

Pawn-broking.

Issuing and administering means of payment (such as credit cards, traveller's cheques and bankers' drafts).

Guarantee and commitments.

Trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities.

Credit unions.

Underwriting share issues and participation in such issues.

Advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings.

Money-broking.

Portfolio management and advice.

Safekeeping and administration of securities.

Safe custody services.

Betting shops.

Casinos.

Internet casinos

Lotteries.

Exporters and importers of valuable items.

Used car dealers or car parts dealers.

Buying or selling of gold bullion.

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Insurance business.

Venture risk capital.

Unit trusts.

A trust or company service provider not otherwise covered by this definition, which as a business, provide any of the following services to third parties as covered under the law relating to Trusts under the Civil Law of Guyana Act-

Cap.6:01

- (i) acting as a formation agent of legal persons;
- (ii) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- (iii) providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- (iv) acting as (or arranging for another person to act as) a trustee of an express trust;
- (v) acting as (or arranging for another person to act as) a nominee shareholder for another person.

Attorneys-at-law, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities-

- (i) buying and selling of real estate;
- (ii) managing of client money, securities or other assets;
- (iii) management of bank, savings or securities accounts;
- (iv) organisation of contributions for the creation, operation or management of companies;
- (v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

Dealing in real estate when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate.

Dealing in precious metals or stones - when the persons dealing engages in any cash transaction with a customer equal to or above a threshold as may be prescribed by order of the Minister responsible for Finance.

Registered Charities.

Cooperatives.

SECOND SCHEDULE

s. 2

SERIOUS OFFENCES

Participation in an organised criminal group and racketeering;
Terrorism, including terrorist financing;
Trafficking in human beings and migrant smuggling;
Sexual exploitation, including sexual exploitation of children;
Illicit trafficking in narcotic drugs and psychotropic substances;
Illicit arms and ammunition trafficking;
Corruption and bribery;
Fraud;
Counterfeiting currency;
Counterfeiting and piracy of products;
Environmental crime;
Murder, grievous bodily harm;
Kidnapping, illegal restraint and hostage-taking;
Robbery or theft;
Smuggling;
Extortion;
Forgery
Piracy; and
Insider trading and market manipulation.

THIRD SCHEDULE

s. 36

GUYANA

DECLARATION OF INTERNATIONAL TRANSPORTATION OF CURRENCY

Declaration to be made by a traveller under section 36 of the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009.

NAME: (first, middle, last)

DATE OF BIRTH. **PASSPORT NUMBER.**.....

COUNTRY OF ISSUE.

ADDRESS IN GUYANA.

I hereby declare that I am taking* out of Guyana/bringing* into Guyana foreign currency amounting to more than ten thousand United States dollars or its equivalent in any other currency.

AMOUNT DECLARED.

SOURCE OF FUNDS.

INTENDED USE OF FUNDS. PersonalBusiness.....

Explain intended use of funds.

.....

Signature of traveller.

[*Make appropriate deletion.]

.....

OFFICIAL USE

Reviewed by: Name and rank:

Signature:

Original: Guyana Revenue Authority

Copy: Financial Intelligence Unit

FOURTH SCHEDULE**s.2**

Reporting Entity that carries on the following activity or business	Supervisory Authority
Acceptance of deposits and other repayable funds from the public.	Governor of the Bank of Guyana
Lending, including consumer credit, mortgage credit, factoring (with or without recourse) and financing of commercial transactions.	Governor of the Bank of Guyana
Financial leasing.	Supervisory Authority appointed by the Minister responsible for Finance
Money transfer agencies.	Supervisory Authority appointed by the Minister responsible for Finance
Dealers in foreign currency , money exchangers e.g. cambios.	Governor of the Bank of Guyana
Pawn brokers.	Supervisory Authority appointed by the Minister responsible for Finance
Issuing and administering means of payment (such as credit cards, travellers cheques and bankers' drafts).	Governor of the Bank of Guyana
Guarantees and commitments.	Governor of the Bank of Guyana
Trading for own account or for account of customers in money market instruments (such as cheques, bills, certificates of deposit), foreign exchange, financial futures and options, exchange and interest rate instruments, and transferable securities.	Guyana Securities Council

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Underwriting share issues and participation in such issues.	Guyana Securities Council
Advice to undertakings on capital structure, industrial strategy and related questions, and advice and services relating to mergers and the purchase of undertakings.	Guyana Securities Council
Money-broking.	Guyana Securities Council
Credit union	Supervisory Authority appointed by the Minister responsible for Finance
Portfolio management and advice.	Guyana Securities Council
Safekeeping and administration of securities.	Guyana Securities Council
Casinos, betting shops and lotteries.	Supervisory Authority appointed by the Minister responsible for Finance
Buying or selling of gold bullion	Supervisory Authority appointed by the Minister responsible for Finance
Insurance business, domestic and international	Commissioner of Insurance
Venture risk capital.	Guyana Securities Council
Unit trusts.	Guyana Securities Council
A trust or company service provider which as a business, provide any of the following services to third parties as covered under the Civil Law of Guyana Act, Cap 6:01: i) acting as a formation, registration or management agent of legal persons, acting as, or arranging for another person to act as, as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; ii) providing a registered office; business address or accommodation, correspondence or administrative	Supervisory Authority appointed by the Minister responsible for Finance

<p>address for a company, a partnership or any other legal person or arrangement;</p> <p>iii) acting as, or arranging for another person to act as, a trustee of an express trust;</p> <p>iv) acting as, or arranging for another person to act as, a nominee shareholder for another person.</p>	
<p>Attorneys-at-law, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for their client concerning the following activities:</p> <p>i) buying and selling of real estate,</p> <p>ii) managing of client money, securities or other assets,</p> <p>iii) management of bank, savings or securities accounts,</p> <p>iv) organisation of contributions for the creation, operation or management of companies, or</p> <p>v) creation, operation or management of legal persons or arrangements, and buying and selling of business entities.</p>	<p>Supervisory Authority appointed by the Minister responsible for Finance</p>
<p>Dealing in real estate when the persons dealing are involved in transactions for their client concerning the buying and selling of real estate.</p>	<p>Supervisory Authority appointed by the Minister responsible for Finance</p>
<p>Dealing in precious metals stones - when the persons dealing engage in any cash transaction with a customer equal to or above the applicable designated threshold</p>	<p>Supervisory Authority appointed by the Minister responsible for Finance</p>
<p>Registered Charities</p>	<p>Supervisory Authority appointed by the Minister responsible for Finance</p>

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Cooperatives	Supervisory Authority appointed by the Minister responsible for Finance
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Passed by the National Assembly on 30th April, 2009.


S.E. Isaacs,
Clerk of the National Assembly

(Bill No. 18 of 2007)