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SATURDAY 9TH OCTOBER, 2010

THE OFFICIAL GAZETTE **9TH OCTOBER, 2010**
LEGAL SUPPLEMENT — B

GUYANA

No. 4 of 2010

REGULATIONS

Made Under

**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING
OF TERRORISM ACT 2009**

(Act No. 13 of 2009)

**IN EXERCISE OF THE POWERS CONFERRED UPON ME BY SECTION 114 OF THE
ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF
TERRORISM ACT 2009, I MAKE THE FOLLOWING REGULATIONS:-**

ARRANGEMENT OF REGULATIONS

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Citation.

1. These Regulations may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism Regulations 2010.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires –

“Act” means the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009;

Act No. 13
of 2009.

“applicant for business” means a person seeking to form a business relationship or to carry out a one-off transaction with a reporting entity which is carrying on a relevant business in or out of Guyana;

“business relationship” means any arrangement between any person and a reporting entity, the purpose of which is to facilitate the carrying out of financial and other related transactions on a regular basis;

“CFATF” means the Caribbean Financial Action Task Force on money laundering;

“Compliance Officer” means a senior officer appointed under section 19 of the Act;

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

“FATF” means the Financial Action Task Force on money laundering;

“FSRB” means a FATF Styled Regional Body;

“Financial Intelligence Unit” means the Financial Intelligence Unit established by section 9 of the Act;

“Guidelines” means the Guidelines issued under regulation 21;

“one-off transaction” means a transaction other than a transaction carried out in the course of an established business relationship formed by a reporting entity;

“relevant business” means engaging by way of business in one or more of the businesses or transactions referred to in relation to a reporting entity;

“reporting entity” means a reporting entity carrying on a regulated business activity as defined under the Act.

(2) For the purposes of these Regulations –

- (a) a business relationship formed by any reporting entity is an established business relationship where that reporting entity has

- obtained, under procedures maintained in accordance with these Regulations, satisfactory evidence of the identity of a person who, in relation to the formation of that business relationship, was the applicant for business;
- (b) the question as to what constitutes satisfactory evidence of identity shall be determined by the Financial Intelligence Unit and includes –
- (i) the production of an official or identifying document, one of which shall be a national identification card or passport;
 - (ii) a reliable or independent source document such as a driver's licence or a birth certificate; and
 - (iii) proof of address; or
 - (iv) a business relationship developed over a period of time whereby the person with overall responsibility for the reporting entity is satisfied with the true identity of the person.
- c) key staff is a member of staff, who at any time in the course of the member's duties, has or may have, access to any information which may be relevant in determining and reporting suspicious transactions.

General
requirements.

3.(1) In conducting relevant business, a reporting entity shall not form a business relationship or carry out a one-off transaction with or for another person unless the reporting entity –

- (a) maintains –
 - (i) identification procedures in accordance with regulations 4 and 5;
 - (ii) record keeping procedures in accordance with regulations 6 to 10;
 - (iii) internal reporting procedures in accordance with regulation 11; and
 - (iv) internal controls and communication procedures which are appropriate for the purposes of forestalling and preventing money laundering or terrorist financing;
- (b) takes appropriate measures from time to time for the purpose of making employees aware of –
 - (i) the identification procedures, record keeping procedures, internal reporting procedures and internal controls and communication procedures maintained under paragraph (a); and
 - (ii) the provisions of the Act, any regulations made under it and any directives or Guidelines issued under these Regulations; and
- (c) provides training for employees to assist them –

- (i) in the recognition and handling of transactions carried out by, or on behalf of, any person who is, or appears to be, engaged in money laundering or terrorist financing;
- (ii) in dealing with customers where such transactions have been reported to the Financial Intelligence Unit in accordance with the provisions of the Act.

(2) For the avoidance of doubt, it is declared that the requirements of paragraph 1(a) shall apply in relation to a person with whom, prior to the coming into force of these Regulations, a business relationship or one-off transaction was formed or carried out and such relationship or transaction is subsisting or continues upon the coming into force of these Regulations and in such a case the reference in regulations 4 and 5 as to the period when contact is first made shall be construed as if contact was made upon the coming into force of these Regulations.

(3) A reporting entity shall submit for the approval of the Financial Intelligence Unit the identification procedures, record keeping procedures, internal reporting procedures and internal controls and communication procedures required to be maintained under paragraph 1(a) and the Financial Intelligence Unit may keep, for its own use, copies of such documents.

4. (1) A reporting entity shall ensure that it knows the true identity of its customers.

(2) Customers shall include persons, whether natural, legal, or legal

arrangements, who are or who seek to be –

(a) in a business relationship with the reporting entity;

(b) engaged in one or more occasional transactions with the reporting entity when the total value of the transactions equals or exceeds one million dollars;

(c) engaged in carrying out wire transfers with the reporting entity as set out in section 20 of the Act; and

(d) engaged in any activity with the reporting entity in any instance where there is a suspicion by any employee, director, officer or agent of the reporting entity that the transaction may be linked to money laundering or terrorist financing.

(3) In order to ensure proper customer identification, the reporting entity shall identify and verify the identity of the customer when –

(a) establishing a business relationship;

(b) carrying out a threshold occasional transaction referred to in paragraph (2)(b);

(c) carrying out a wire transfer; or

(d) doubts have arisen as to the veracity or adequacy of previously obtained identification information on the person.

(4) For customers who are natural persons, the reporting entity shall verify the identity required using identification records or other reliable, independent source documents, data, or information; as may be defined by the Financial Intelligence Unit.

(5) For customers who are legal persons or legal arrangements, the

reporting entity shall obtain and verify –

- (a) the customer's name and legal form, including obtaining proof of incorporation or similar evidence of establishment or existence such as a certificate of incorporation or a trust instrument;
- (b) the names and addresses of members of the customer's controlling body such as for companies the directors, for trusts the trustees and for limited partnerships the general partners and senior management such as the chief executive officer;
- (c) the legal provisions that set out the power to bind the customer such as the memorandum and articles of association or trust instrument;
- (d) the legal provisions that authorise persons to act on behalf of the customer such as a resolution of the board of directors or statement of trustees on opening an account and conferring authority on those who may operate the account; and
- (e) the identity of the physical person purporting to act on behalf of the customer, using source documents as provided for in these Regulations.

Identification procedures in relation to introduced persons.

5. (1) A reporting entity may rely on certain third party intermediaries or other reporting entities to perform the customer identification requirements of these Regulations as provided for in this regulation.

(2) A reporting entity may rely on foreign financial institutions where the applicant maintains an account to perform customer identification requirements if the reporting entity is satisfied that the third party intermediary

is adequately regulated and supervised and has measures in place to comply with the customer identification requirements of these Regulations.

(3) In making this determination in paragraph (2), a reporting entity shall take into account the information available on application and adequacy of implementation of the FATF 40 + 9 recommendations to entities in individual countries, including by examining reports and reviews published by the FATF or any FSRB.

(4) In each instance of reliance on intermediaries, the reporting entity shall immediately obtain from the third party the customer identification information required in these Regulations and while it is not necessary to obtain copies of related documents, a reporting entity shall take adequate steps to satisfy itself that copies of identification data and other relevant documentation relating to the information shall be made available without delay.

Maintaining a record of verification of identity.

6. Where a reporting entity is required under these Regulations to verify the identity of a person, it shall establish and maintain a record which -

- (a) indicates the nature of the evidence obtained; and
- (b) comprises a copy of the evidence or, where this is not reasonably practicable, contains such information as would enable a copy of the evidence to be obtained.

Maintaining a record of transactions.

7. Where a reporting entity is required under these Regulations to verify the identity of a person, it shall maintain a record of all transactions carried out by

or on behalf of that person such as records sufficient to identify the source and recipient of payments from which investigating authorities will be able to compile an audit trail for suspected money laundering or terrorist financing.

Limitation period for retention of records.

8. (1) A reporting entity shall maintain the records required by regulations 6 and 7 for at least seven years from the date-

- (a) when all activities relating to one-off transactions or a series of linked transactions were completed;
- (b) when the business relationship was formally ended; or
- (c) where the business relationship was not formally ended, when the last transaction was carried out.

(2) Where a report has been made to the Financial Intelligence Unit in pursuance of regulation 11 (1) (f), or the reporting entity knows or believes that a matter is under investigation, that person shall without prejudice to paragraph (1), retain all relevant records for as long as may be required by the Financial Intelligence Unit.

(3) For the purposes of this regulation, the question as to what records may be relevant in the investigation process may be determined by the Financial Intelligence Unit.

Format and retrieval of records.

9. (1) A reporting entity shall ensure that any records required to be maintained under these Regulations are capable of retrieval in legible form without undue delay.

(2) A reporting entity may rely on the records of a third party in respect of the

details of payments and transactions by customers, provided that it is satisfied that the third party is willing and able to retain and, if asked, to produce in legible form, copies of the records required.

Maintaining a register of money laundering and terrorist financing enquiries.

10. (1) A reporting entity shall maintain a register of all enquires made to it by the Financial Intelligence Unit and other law enforcement authorities acting under powers provided by the Act or any other law relating to money laundering, terrorist financing and proceeds of crime.

(2) The register maintained under paragraph (1) shall be kept separate from other records and shall contain as a minimum, the date and nature of the enquiry, the name and agency of the inquiring officer, the powers being exercised, and details of the accounts or transactions involved.

Establishment of procedure for recognising and reporting suspicious transactions.

11. (1) A reporting entity shall establish written internal reporting procedures which, in relation to its relevant business, will-

(a) enable all its directors or, as the case may be, partners, all other persons involved in its management, and all key staff to know to whom they should report any knowledge or suspicion of money laundering, proceeds of crime or terrorist financing activity;

(b) ensure that there is a clear reporting chain under which suspicions of money laundering, proceeds of crime or terrorist financing activity will be reported to the Compliance Officer;

- (c) identify a Compliance Officer to whom a report is to be made of any information or other matter which comes to the attention of the person handling that business and which in that person's opinion gives rise to knowledge or suspicion that another person is engaged in money laundering, proceeds of crime or terrorist financing;
- (d) require the Compliance Officer to consider any report in the light of all other relevant information available to that Compliance Officer for the purpose of determining whether or not it gives rise to knowledge or suspicion of money laundering, proceeds crime or terrorist financing;
- (e) ensure that the Compliance Officer has reasonable access to any other information which may be of assistance to that Compliance Officer and which is available to the reporting entity; and
- (f) require that the information or other matter contained in a report is disclosed promptly to the Financial Intelligence Unit where the Compliance Officer knows or suspects that another person is engaged in any complex, unusual or large business transaction, whether completed or not, and to all unusual patterns of transactions and to insignificant but

periodic transactions, which have no apparent economic or lawful purpose.

(2) A reporting entity shall maintain a register of all reports made to the Compliance Officer in pursuance of paragraph (1) (f).

(3) The register maintained under paragraph (2) shall contain details of the date on which the report is made, the person who makes the report and information sufficient to identify the relevant documents.

Reporting of
suspicious
business
transactions by
reporting entity.

12. (1) A reporting entity shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to insignificant but periodic transactions, which have no apparent economic or lawful purpose.

(2) Upon reasonable suspicion that the transaction described in paragraph (1) may constitute or relate to money laundering, proceeds of crime or terrorist financing, a reporting entity shall promptly report the suspicious transaction to the Financial Intelligence Unit.

(3) Without prejudice to the generality of the foregoing provisions, a reporting entity shall report to the Financial Intelligence Unit as soon as practicable -

(a) where the reporting entity is a money transfer agency, any money transfer over two hundred thousand dollars;

(b) where the reporting entity is a cambio, a purchase over four hundred thousand dollars and a sale over one million dollars; and

(c) any cash transaction over two million dollars.

Supervisory
authority to
supervise each
reporting entity.

13. A supervisory authority shall examine, supervise, regulate and issue Guidelines to each reporting entity for compliance with the obligations set out in sections 15, 16, 18, 19 and 20 of the Act and the applicable provisions of these Regulations.

Duty to appoint
Compliance
Officer.

14. (1) A reporting entity shall appoint a Compliance Officer at the management level with appropriate and adequate authority and responsibility to implement these Regulations.

(2) The Compliance Officer shall -

- (a) be a senior officer with relevant qualifications and experience to enable him to respond sufficiently well to enquiries relating to the reporting entity and the conduct of its business;
- (b) be responsible for establishing and maintaining a manual of compliance procedures in relation to the business of the reporting entity;
- (c) be responsible for ensuring compliance by staff of the reporting entity with –
 - (i) the provisions of these Regulations and any other laws relating to money laundering or terrorist financing;
 - (ii) the provisions of any manual of compliance

- procedures established under paragraph (b); and
- (iii) the internal reporting procedures established under regulation 11;
- (d) act as the liaison between the reporting entity and the Financial Intelligence Unit in matters relating to compliance with the provisions of these Regulations and any other law, directive or guideline with respect to money laundering or terrorist financing; and
- (e) prepare and submit to the Financial Intelligence Unit written reports on the reporting entity's compliance with the provisions of these Regulations and any other law, directive or guideline relating to money laundering or terrorist financing and the reports shall be prepared in such form and submitted at such times as the Financial Intelligence Unit may determine.

(3) The Compliance Officer shall have the authority to act independently and to report to senior management above the Compliance Officer's next reporting level and the board of directors or equivalent body.

Due diligence
audit.

15. Without prejudice to regulation 14 or any law relating to the conduct of inspections to verify compliance, the Financial Intelligence Unit may conduct an inspection of any reporting entity to determine compliance by that reporting entity with the requirements of these Regulations and any other law, directive

or guideline relating to money laundering or terrorist financing.

Staff training. 16.(1) A reporting entity shall provide education and training for all directors or, as the case may be, partners, all other persons involved in its management, and all key staff to ensure that they are aware of -

- (a) the provisions of the Act and any regulations made under it;
- (b) their personal obligations under those enactments;
- (c) the manual of compliance procedures established under regulation 14(2)(b) and the internal reporting procedures established under regulation 11;
- (d) the procedure maintained by the reporting entity in compliance with the duties imposed under these Regulations, and their personal liability for failure to report information or suspicions in accordance with internal procedures.

(2) A reporting entity shall, in addition, provide training in accordance with the requirements of this regulation to all new key staff as soon as practicable after their appointment.

Training for senior and specialist staff.

17. A reporting entity shall also provide education and training appropriate to particular categories of staff in-

- (a) its policies and procedures to prevent money laundering or terrorist financing;
- (b) its customer identification, record-keeping and other

procedures; and

- (c) the recognition and handling of suspicious transactions.

Requirement for
refresher training.

18. A reporting entity shall, at least once in every year, make arrangements for refresher training to remind key staff of their responsibilities and to make them aware of any changes in the laws relating to money laundering or terrorist financing and the internal procedures of the reporting entity.

Offences.

19. (1) A person who fails to comply with the requirements of these Regulations, any directive issued under regulation 20 or Guidelines issued under regulation 21 commits a summary offence.

(2) In determining whether a person has complied with the requirements of these Regulations, any directive issued under regulation 20 or Guidelines issued under regulation 21, a court may take account-

- (a) of any provision in the Guidelines which may apply to that person;
- (b) in a case where paragraph (a) does not apply, any other relevant guidance issued by a body that regulates, or is representative of, any trade, business, profession or employment carried on by that person.

(3) In proceedings against a person for an offence under these Regulations, it

shall be a defence for the person to prove that the person took all reasonable steps and exercised due diligence to comply with the requirements of these Regulations, any directive issued under regulation 20 or Guidelines issued under regulation 21 in respect of which the person is charged.

(4) Where an offence under these Regulations has been committed by a body corporate the directors as well as the corporate body shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by its members, paragraph (3) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(6) Where an offence under these Regulations committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to the failure to exercise due diligence by, a partner in the partnership or, as the case may be, a person concerned in the management or control of the association, the person, as well as the partnership or association, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

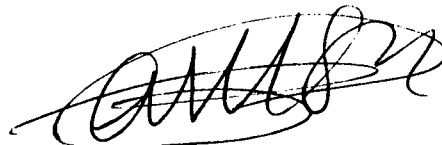
Directive:

20. The Minister may, for the purposes of these Regulations, issue directives as he considers necessary and the directives, when issued, shall be published in the *Gazette* and at least one daily newspaper circulating in Guyana or in

electronic form on an official website.

Guidelines. 21. In the preparation of procedures required to be maintained in accordance with the provisions of these Regulations, a reporting entity may adopt or have regard to the provisions of the Guidelines issued from time to time by a supervisory authority and published in the *Gazette* and at least one daily newspaper circulating in Guyana or in electronic form on an official website.

Made this 2nd day of Sept., 2010.



Attorney General and Minister of Legal Affairs.