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THE OFFICIAL GAZETTE 19TH JULY, 2023
LEGAL SUPPLEMENT — C

BILL No. 12 of 2023

Wednesday 19th July, 2023

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

19th July, 2023.

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

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

GUYANA

BILL NO. 12 OF 2023

GUYANA COMPLIANCE COMMISSION BILL 2023

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A BILL

Intituled

AN ACT to provide adequate supervision to reporting entities (Designated Non-Financial Business or Professions and Non-Bank Financial Institutions) for compliance with obligations under the Anti-Money Laundering and Countering the Financing of Terrorism Act; to enhance the compliance, guidance and training regime on money laundering, terrorism financing and proliferation financing in Guyana; to provide domestic and international cooperation; and to provide for other related matters.

A.D. 2023 Enacted by the Parliament of Guyana:-

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Guyana Compliance Commission Act 2023

Interpretation.

2. (1) In this Act –

"AML/CFT/CPF" means Anti-Money Laundering/Countering the Financing of Terrorism/Countering the Financing of Proliferation of Weapons of Mass Destruction;

"Attorney General" refers to the Minister with responsibility for Legal Affairs;

"auto dealers' means any person involved in the sale of motor vehicles or, both new and used, and shall include dealers in trucks, farm implements and all other types of motorized equipment that is moved by motor power on wheels or tracks;

"beneficial ownership" means ownership by a natural person or persons who ultimately exercise individually or jointly voting rights representing at least twenty-five per cent of the total shares, or otherwise have ownership rights of a legal entity; or ownership by a natural person or persons who ultimately owns or controls a customer or the person on whose behalf a transaction is being conducted and includes those persons who exercise ultimate effective control over a legal person or arrangement;

"Commission" means the Guyana Compliance Commission established under section 3 of this Act;

"competent authority" means the Director of Public Prosecutions, and includes any person authorised by them in that behalf;

"Court" means any court of competent jurisdiction applying mutatis mutandis;

"designated non-financial business or profession" include the businesses and professions listed in the First Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act;

First Schedule
Cap. 10:11

"Financial Action Task Force" means the task force established by the Group of Seven (G-7) Summit that was held in Paris in 1989, to develop and provide national and international policies to combat money laundering and terrorist financing;

"financial institution" means a bank or financial institution as defined in the Financial Institutions Act or other financial institution as specified in the First Schedule of the Anti-Money Laundering/Countering the Financing of Terrorism Act;

First Schedule
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"licence" means a licence issued under section 4 (2) (g);

"licencing authority' refers to the competent authority designated to grant licences, permits and authorisations for reporting entities to

operate according to the laws of Guyana, and includes the Court in relation to attorneys-at-law;

"licensee" means a person holding a licence under this Act;

"non-bank financial institution" means those institutions specified in the First Schedule of this Act that are not otherwise subject to regulation by the Bank of Guyana or the Guyana Securities Council;

First Schedule

"politically exposed persons" 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, any person who is or has been entrusted with a prominent function by an international organisation at the level of senior management, including directors, deputy directors and members of the board or equivalent functions, including family members or close associates of the politically exposed person whether that person is resident in Guyana or not;

"non-profit organisation" means a legal person or arrangement or organisation that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes, or for the carrying out of other types of "good works" and includes, where the context so applies, societies registered under the Friendly Societies Act, not-for profit companies, registered under the Companies Act and arrangements expressed under a trust deeds registered at the Deeds Registry;

Cap. 36:04
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"Minister" refers to the Minister with responsibility for Finance;

"Minister of Home Affairs" refers to the Minister with responsibility for mutual legal assistance in criminal matters;

"overseas regulatory authority" means an authority which in a country or territory outside of Guyana which exercises functions corresponding to any functions of the Commission;

"relevant Competent Authority" means a law enforcement agency which carries out investigation into money laundering, terrorist or proliferation financing, serious offences or proceeds of criminal activities, and includes the Special Organised Crime Unit (SOCU) of the Guyana Police Force;

"reporting entities" means designated non-financial businesses or professions, non-profit organisations and non-bank financial institutions as designated by the Minister with responsibility for Finance as reporting entities under the Commission and listed in the Second Schedule;

Second Schedule

"supervisory authority" means the authority appointed pursuant to section 22 (1) of the Anti-Money Laundering and Countering the Financing of Terrorism Act and as set out in column 2 of the Fourth Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act, who has compliance oversight over the reporting entities set out in column 1 of the Fourth Schedule of the Anti-Money Laundering and Countering the Financing of Terrorism Act, as well as an Authority designated by the Minister with responsibility for Finance as a supervisory authority under the Anti-Money Laundering and Countering the Financing of Terrorism Act;

"virtual asset" means any digital representation of value that can be digitally traded, transferred, or used for payment or investment purposes, including but not limited cryptocurrencies, stable-coins, non-fungible tokens (NFTs), and in-game currencies that can be cashed out or used outside of their source game, but does not include the digital representation of fiat currencies; and

"wallet services provider" means a person who provides digital wallet services by use of a computer software or program that interfaces with fiat and virtual currencies and assets, stores, private and public keys, and interacts with distributed ledger technology to enable users to send, receive, and monitor their digital assets.

PART II

ESTABLISHMENT OF THE GUYANA COMPLIANCE COMMISSION

Establishment of the Commission.

3. (1) A body to be known as the Guyana Compliance Commission shall be and is hereby established as an institution governed by the provisions of this Act.

(2) The Commission may exercise any of the functions entrusted to it by or in accordance with the provisions of this Act.

(3) The Commission shall be a body corporate having perpetual succession and a common seal and, subject to the provisions of this Act, shall have power to acquire, hold and dispose of movable and immovable property of whatever kind and to enter into contracts and do all things necessary for the attainment of its objectives.

(4) The Commission may sue and be sued in its corporate name and shall for all purposes be described by that name.

Powers and Functions of Commission.

4. (1) The Commission shall function as a supervisory authority as designated under the Anti-Money Laundering/Countering the Financing of Terrorism Act.

(2) The powers and functions of the Commission are —

(a) to maintain a general review of designated non-financial businesses or professions, non-profit organisations and non-bank financial institutions-

(i) in relation to the conduct of financial transactions; and

(ii) to ensure compliance with the provisions of the Anti-Money Laundering and Countering the Financing of Terrorism Act;

Cap. 10:11

(b) to conduct on-site and offsite examinations of the business of a reporting entity when deemed necessary by the Commission at the expense of the reporting entity, for the purpose of ensuring compliance with the provisions of this Act and the Anti-Money Laundering and Countering the Financing of Terrorism Act, and in such cases where the Commission is unable to conduct such examination, to appoint an auditor at the expense of the reporting entity, to conduct such examination and to report to the Commission;

(c) to ensure that its reporting entities-

(i) implement and update their anti-money laundering and countering the financing of terrorism policies and

(ii) that the policies are based on the anti-money laundering and countering the financing of terrorism legislation and best practice standards;

(d) to give effect to all supervisory functions and to monitor and ensure compliance by reporting entities of their obligations under section 15, 16,18,19,20 sections 68A, 68B, 68C, 68D, 68F, 68G, 68H and 68I, sections 75A and 75B, and all other reporting entity obligations under the Anti-Money Laundering and Countering the Financing of Terrorism Act and regulations made thereunder;

(e) collect, store, and disseminating, to interested parties, reliable and timely information on the growth and trends related to its reporting entities;

(f) in relation to its reporting entities, monitor and enforce all requirements under sections 22 and 23 of the Anti-Money Laundering/Countering the Financing of Terrorism Act and its regulations made thereunder;

(g) where specified by the Minister by order, issue licences, registration, permits or authorisations including terms, conditions and limitations;

(h) at the request of a domestic regulatory authority, exercise its powers under this Act to assist with the performance by the domestic regulatory authority of its functions;

(i) examine and investigate the affairs of a reporting entity in accordance with this Act;

(j) undertake any review necessary to ensure compliance with the Act; and

(k) any other function as the Minister may specify by order.

(3) For the purposes of discharging its functions, the Commission may establish ad-hoc or permanent committees to foster coordination among public entities or between public and private entities or for the purposes of collaboration and cooperation, as necessary, on anti-money laundering/countering the financing of terrorism/countering proliferation financing matters.

Delegation of powers or functions.

5. (1) The Commission may delegate any power or function conferred on it by this Act to any member, committee or senior officer of the Commission, except-

(a) the power to recommend the revocation of the licence of a reporting entity;

(b) to licence, register a reporting entity or cancel, suspend or revoke the licence or registration of a reporting entity; or

(c) the power to make regulations under this Act.

(2) A delegation under subsection (1)-

(a) may be subject to such conditions, qualifications and exceptions as maybe prescribed in the order; and

(b) shall not preclude the Commission from exercising that power or performing that duty.

PART III
ADMINISTRATION

Composition of the Commission.

6. (1) The Commission shall comprise of a number of not less than three but no more than five persons, who shall be appointed by the Minister by instrument in writing in accordance with subsection (2).

(2) The Minister shall appoint persons who appear to them to be qualified and experienced in matters relating to commerce, economics, real estate, insurance, pensions, securities, credit unions, law, accounting or such other areas as in their opinion, are required for the management of the Commission.

(3) The members of the Commission shall, subject to the provisions of this Act, hold office for such period, not exceeding three years, as the Minister may specify in the instrument of appointment, and each member shall be eligible for reappointment at the end of their tenure.

Chairperson and Deputy Chairperson.

7. The Minister shall appoint a member to be Chairperson of the Commission and another member to be Deputy Chairperson.

Resignation of Members.

8. (1) The Chairperson may at any time resign their office by instrument in writing addressed to the Minister, and such resignation

shall take effect as from the date of the receipt by the Minister of the instrument.

(2) Any member other than the Chairperson may at any time resign their office by instrument in writing addressed to the Chairperson, who shall forthwith forward it to the Minister; and that member shall cease to hold office as from the date of receipt of the instrument by the Minister.

Vacancy.

9. (1) A vacancy shall be deemed to arise in the membership of the Commission in the case of-

(a) the death or resignation of a member;

(b) the revocation by the Minister of the appointment of a member;

(c) absence from Guyana of a member without leave of the Minister for a period of more than two weeks; or

(d) failure of a member to attend 4 consecutive meetings of the Commission, unless such failure to attend was approved by the Minister.

(2)A person who is appointed to fill a vacancy created by the death, resignation or removal from office of a former member shall hold office only for the unexpired portion of the term of that former member.

Revocation of appointment.

10. The Minister shall terminate the appointment of any member if that member-

(a) fails to carry out any of the functions conferred or imposed on them under this Act;

(b) becomes of unsound mind or becomes permanently unable to perform their functions by reason of ill health;

(c) is convicted of an offence involving fraud or dishonesty or, in the case of any other offence, is sentenced to a term of imprisonment;

(d) is guilty of serious misconduct in relation to his duties under this Act;

(e) is bankrupt or compounds with or suspends payment to his creditors;

(f) fails comply with section 27 of this Act to declare their interest in any matter before the Commission.

Temporary appointment.

11.The Minister may in writing grant leave of absence to a member; and in the case of the inability of any member to act the Minister may appoint a person to act temporarily in the place of that member.

Official Gazette.

12.The appointment, removal or resignation of any member of the Commission shall be notified in the *Official Gazette*.

Seal of the Commission.

13.(1) The seal of the Commission shall be kept in the custody of the Chairperson, Deputy Chairperson or such officer of the Commission as the Commission may approve, and may be affixed to documents or instruments pursuant to a resolution of the Commission, in the presence of any two of the Chairperson or Deputy Chairperson and the Secretary to the Commission.

(2) The seal of the Commission shall be authenticated by the signature of the Chairperson or Deputy Chairperson as well as by the Secretary to the Commission.

(3) All documents or instruments made by the Commission, other than those required by law to be under seal, and all decisions of the Commission may be signified under the hand of the Chairperson or Deputy Chairperson.

Committees.

14.(1) The Commission may appoint committees of its members, or Committees of persons other than its members to assist with the proper discharge of its functions.

(2) Where a person who is not a member, employee or consultant of the Commission and is appointed to a committee, the Commission

may, with the approval of the Minister, determine the remuneration and allowances to be paid to that person.

Procedure and Meetings.

15.(1) The Commission shall meet as often as may be necessary or expedient for the transaction of its business; and such meetings shall be held at such places and times and on such days as the Commission may determine.

(2) The Chairperson, if they are for any reason whatsoever unable to act, the Deputy Chairperson may at any time call a special meeting of the Commission, and shall call a special meeting to be held within seven days of a written request for that purpose addressed to them by any two members of the Commission.

(3) The Chairperson or in their absence, the Deputy Chairperson shall preside at all meetings of the Commission.

(4) The quorum of the Commission shall be a majority of the membership thereof.

(5) The decisions of the Commission at any meeting shall be by a majority of votes, and in the event of an equality of votes, the Chairperson or Deputy Chairperson presiding at the meeting has a second or casting vote.

(6) Minutes in proper form of each meeting shall be kept by the Secretary or such officer as is appointed for the purpose, and shall be confirmed at the next meeting and signed by the Chairperson or Deputy Chairperson.

Attendance of non-members at meetings.

16.The Commission may invite any person to attend any of its meetings for the purpose of assisting or advising it with respect to any matter with which the Commission is dealing, but a person so invited does not have a right to vote.

Regulation of proceedings.

17.Subject to the provisions under this Part, the Commission may regulate its own proceedings.

PART IV

APPOINTMENT OF STAFF

Appointment of Chief Executive Officer.

18.(1) The Commission shall, with the approval of the Minister, appoint and employ a suitably qualified person, at such remuneration and subject to such terms and conditions as it thinks fit, as the Chief Executive Officer of the Commission.

(2) The Chief Executive Officer shall hold office for such period and upon such terms as may be specified in their instrument of appointment.

(3) The Chief Executive Officer shall perform and exercise such functions, duties, and powers as are conferred upon them by the Commission or this Act.

(4) The Chief Executive Officer is subject to the directions of the Commission and is responsible to the Commission for the execution of its policy and the management of its affairs.

(5) The Chief Executive Officer may, with the approval of the Commission, appoint a suitably qualified person as the Deputy Chief Executive Officer, and such person shall perform and exercise such functions and duties as are delegated to them by the Chief Executive Officer.

(6) The Chief Executive Officer may, by instrument in writing, delegate any of their functions and duties conferred upon them by the Commission or this Act to the Deputy Chief Executive Officer appointed under subsection (4) or to other senior staff of the Commission.

(7) Where the Deputy Chief Executive Officer or other senior staff is delegated, the Chief Executive Officer's functions and duties under this Act, the Deputy Chief Executive Officer or other senior staff shall have the relevant powers necessary to carry-out those functions and duties conferred in the instrument of delegation.

Termination of Chief Executive Officer.

19. The Commission may terminate the appointment of the Chief Executive Officer if the Commission is satisfied that the person–

(a) has become bankrupt;

(b) is incapacitated by physical or mental illness;

(c) has been, in Guyana or in any other jurisdiction, convicted of a criminal offence, or found liable in

a civil or regulatory action for activities involving fraud or dishonesty;

(d) commits an act of gross misconduct or

(e) is otherwise unable or unfit to discharge the functions of the position to which that person was appointed.

Chief Executive Officer to refer certain matters to the Commission.

20.In discharging duties or exercising powers imposed or conferred upon them by this Act, the Chief Executive Officer shall refer to the Commission–

(a) all matters coming to their notice or attention which fall to be dealt with by the Commission pursuant to this Act or any other law; and

(b) all matters which require a policy decision.

Appointment of Staff.

21.The Chief Executive Officer may, at such remuneration and general terms and conditions as set by the Commission, appoint and employ other suitably qualified persons as officers and employees of the Commission for the purpose of ensuring the proper performance of the functions and the attainment of the objectives of the Commission.

Divisional Heads and other staff

22.(1) The operations of the Commission may be separated into Divisional divisions and the Commission may appoint officers to manage each division, heads and other staff.

(2) The Commission may appoint such number of officers and other staff as it considers necessary for the proper carrying into effect of this Act.

Appointment of Experts.

23.The Commission may appoint, on such terms and conditions as the Minister approves, such experts as it considers necessary to assist it in such manner as it determines.

Salaries.

24.Notwithstanding the powers conferred on the Commission by section 4 above, the Commission shall not, without the prior approval of the Minister-

(a) assign to any post established by the Commission any salary in excess of such amount per annum as the Minister may determine and notify to the Commission in writing;

(b) appoint any person to a post established by the Commission to which a salary in excess of the amount determined by the Minister under paragraph (a) is assigned; or

(c) make provision for the payment of any pension, gratuities or similar benefit to the members of the Commission or its employees in respect of service to the Commission.

Saving of pension rights and secondment.

25.Where a public officer accepts employment with the Commission, that public officer shall retain any right to pension, gratuity or other allowance for his eligible public service prior to commencement of his employment with the Commission; and any such right is preserved.

Confidentiality.

26.(1) Subject to subsections (2) and (3), the Commission or any officer, employee, agent or adviser of the Commission who discloses any information relating to the affairs of —

(a) the Commission;

(b) a reporting entity; or

(c) a facility holder or client of a reporting entity,

that was acquired in the course of their duties, or in the exercise of the Commission's functions under this or any other law, commits an offence and is liable on summary conviction to a fine not exceeding ten million dollars or to imprisonment for a term not exceeding three years.

(2) Subsection (l) shall not apply to a disclosure —

(a) lawfully required or permitted by any court of competent jurisdiction within Guyana;

(b) for the purpose of assisting the Commission to exercise any functions conferred on it by this or any other Act, or by regulations made thereunder;

(c) in respect of the affairs of a reporting entity, facility holder or client of a reporting entity, with the consent of the reporting entity, facility holder or client, as the case may be, which consent has been voluntarily given;

(d) where the information disclosed is or has been available to the public from any other source;

(e) where the information disclosed is in a manner that does not enable the identity of a reporting entity, facility holder or client or a reporting entity which the information relates to be ascertained;

(f) to a person with a view to the institution of, or for the purpose of—

(i) criminal proceedings;

(ii) disciplinary proceedings, whether within or outside Guyana, relating to the exercise by an attorney-at-law, auditor, accountant, valuer, real estate agent or developer of their professional duties; or

(iii) disciplinary proceedings relating to the discharge by a public officer, or a member or employee of the Commission of their duties;

(g) in any legal proceedings in connection with —

(i) the winding-up or dissolution of a reporting entity; or

(ii) the appointment or duties of a receiver of a reporting entity;

(h) with respect to the filing of a Suspicious Transaction Report with the Financial Intelligence Unit.

Declaration of interest.

27.(1) A member of the Commission who is in any way, whether directly or indirectly, interested in a matter before the Commission shall declare their interest to the Commission.

(2) The Commission, excluding the member whose interest is being considered, shall determine whether this interest is sufficiently material as to constitute a conflict of interest.

(3) Where the Commission determines that the interest of a member of the Commission is such as to constitute a conflict of interest, that member shall not take part in any deliberations on that matter, and shall not be present during such deliberations.

(4) For the purposes of this section, a member of the Commission shall be deemed to have a direct interest in a matter if -

(a) that member or their nominee or an immediate relative is a shareholder or partner in; or

(b) that member or their nominee or an immediate relative is an officer of, a company or other body of persons having an interest in or being involved in a matter before the Commission.

(5) For the purposes of subsection (4), "immediate relative" means the spouse, child, step-child, parent, brother or sister of a member or employee of the Commission.

(6) Any person who fails to comply with subsection (1) is guilty of an offence and is liable on summary conviction to a fine of two million dollars, unless that person proves that they did not know that they had an interest in the matter which was the subject of consideration at the meeting.

(7) A person convicted of an offence under this section is no longer eligible to sit on the Commission, or be employed by the Commission.

PART V
FINANCIAL PROVISIONS

Funds and Resources of the Commission.

28. (1) The funds and resources of the Commission shall consist of –

(a) such sums as may be provided by Parliament;

(b) any money paid to the Commission by way of administrative fees, service charges, penalties or fines, and all other revenues which may be payable to the Commission;

(c) such sums or property as may be donated to the Commission by way of grants, gifts, donations by foreign States, International organisations, multilateral funding agencies, or other entities; and

(d) all other sums or property that may in any manner become payable to or vested in the Commission in respect of any matter incidental to its functions.

(2) No grant, gift, or donation shall be accepted by the Commission without the prior approval of the Minister.

(3) No borrowing shall be incurred by the Commission without the prior approval of the Minister responsible for finance.

Surplus generated by the Commission.

29.Any accumulated surpluses generated by the Commission shall be paid into the Consolidated Fund in periodic intervals, in accordance with such directions as may be given by the Minister responsible for finance.

Annual budget of the Commission.
Cap. 73:02

30.The Commission shall prepare, submit for approval, and execute an annual budget in accordance with section 79 of the Fiscal Management and Accountability Act.

Accounts and audit of the Commission.

31.(1) The financial year of the Commission shall be the period of twelve months ending on the 31st day of December in each year.

(2) The Commission shall keep proper accounts and other records in respect of its transactions and operations and such accounts and other records shall be audited by the Auditor General.

(3) The members, officers and employees of the Commission shall grant to the Auditor General access to all books, documents, cash and securities of the Commission and shall give to the Auditor General on request all such information as may be within their knowledge in relation to the operations of the Commission.

(4) The Auditor General shall have the power to summon and examine all persons whom the Auditor General shall think fit to-

(i) examine for the purpose of obtaining information in connection with the examination and audit of the accounts of the Commission; and

(ii) respecting all other matters and things, whatever action the Auditor General deems necessary for the due performance of the functions vested in the Auditor General in the Audit Act.

Cap 73:01

(5) If any person summoned-

(a) is not a public officer; or

(b) an employee of the Commission,

that person is entitled to payment for attendance as if the person were a witness attending a legal proceeding in obedience to a summons issued at the instance of the State.

(6) Any person summoned under subsections (4) or (5) who, without reasonable excuse, makes default in obeying the summons, is liable on summary conviction-

(a) in the case of a natural person, to a fine of not less than two hundred thousand dollars or to imprisonment for no more than five years; or
(b) in the case of a body corporate, a fine of not less than one million dollars nor more than five million dollars.

Ability to write off bad debts.

32. The Commission may write off bad debts.

Exemptions from corporation tax, land tax and stamp duty.

33.The Commission is exempt from the payment of income tax, corporation tax, stamp duty and land tax.

Report of the Commission.

34.(1) The Commission shall not later than six months after the end of each financial year submit a report to the Minister containing –

(a) an account of its transactions throughout the preceding financial year in such detail as the Minister may direct; and
(b) a statement of the accounts of the Commission audited in accordance with section 31.

(2) A copy of the report together with a copy of the Auditor General's report or that of the auditor shall be printed and laid before the National Assembly.

PART VI

REGISTRATION OF DESIGNATED REPORTING ENTITIES

Reporting Entities to register with the Commission.

35.(l) Every reporting entity designated to be supervised by the Commission shall register with the Commission in the form provided by the Commission and pay the prescribed registration fee.

(2) Every reporting entity -

(a) established before the coming into force of this Act which fails to register with the Commission within three months of the coming into force of this Act; or

(b) established after the coming into force of this Act, which fails to register within three months of commencement of business,

commits an offence.

(3) Any person who commits an offence under subsection (2), on conviction shall be liable to a fine of not less than ten million dollars nor more than twenty-five million dollars or to five years' imprisonment or to both.

(4) A registration form under subsection (1) shall be submitted to the Commission together with—

(a) a completed AML/CFT/CPF risk assessment questionnaire; and

(b) the relevant documents related to licensing and beneficial ownership, with adequate, accurate and up to date information.

(5) The questionnaire referred to in subsection (2)(a) shall be in such form as may be prescribed.

(6) The Commission shall conduct a risk profiling process of the entity to determine the nature of activities based.

(a) on any definition outlined in section 2 of this Act;

(b) the FATF Standards;

(c) international best practice and

(d) the size of the reporting entity in relation to its sector.

(7) If the Commission is satisfied that the reporting entity reaches the criteria for regulation, the Commission shall also refer the reporting entity to the Financial Intelligence Unit for registration.

(8) The Financial Intelligence Unit, following registration of the reporting entity, shall-

(i) provide an onboarding training session and

(ii) introduce Suspicious Transaction, Terrorist Financing and Proliferation Financing reporting obligations to the reporting entity.

Duration of registration.

36.All registration under this Act shall be valid for three years from the date of registration, unless it is cancelled, suspended or revoked, and may be renewed in accordance with section 38.

Notification of change to particulars.

37. (1) Where there is any change in the particulars of a reporting entity registered under this Act, the reporting entity shall, within one month of the change, notify the Commission of the change in the prescribed form and pay the prescribed fee.

(2) Where a reporting entity fails to notify the Authority of a change in particulars within the period specified in subsection (1), the Commission shall be entitled to collect from that reporting a penalty of twenty-five thousand dollars for every month that the registrant fails to notify the Commission of the change in particulars.

(3) Where the Commission is notified of a change under this section, it shall cause the change to be reflected in the relevant register.

Application for renewal.

38. (1) A reporting entity who wishes to renew their registration shall apply to the Commission no later than three months prior to the expiration of the registration.

(2) A reporting entity, after failing to renew registration upon expiry, is liable to a fine of fifty thousand dollars per day, for each day that reporting entity remains unregistered.

(3) Notwithstanding subsection (2), the Commission may waive the fine or part thereof, if the reporting entity can show just cause, in writing, why it was unable to renew its registration prior to the expiration of the registration.

Certificate of Registration.

39. Where the Commission registers of a reporting entity, it shall within twenty-one days of its decision—

(a) inform the applicant;

(b) enter the applicant's name on the relevant register; and

(c) issue a certificate of registration in the prescribed form.

Commission's Register.

40.(1) The Commission shall keep and maintain a register setting out–

(a) the name and address of each reporting entity and registered agents, where applicable;

(b) the address of the registered office of the reporting entity;

(c) the name of the Chief Executive Officer or equivalent officer of the reporting entity where applicable;

(d) where applicable, the name of the Compliance Officer and the Money

Laundering Reporting Officer of the reporting entity;

(e) the type of profession or financial service for which the reporting entity is registered;

(f) the date on which the licence or registration was issued, varied, suspended, or revoked;

(g) the name and address of each reporting entity's agent; and

(h) any conditions imposed on, or any exemptions granted to the reporting entity by the Commission.

(2) Where in the opinion of the Commission, the inclusion on the register of a condition imposed on or an exemption granted to a reporting entity by the Commission would be detrimental to the interest of the reporting entity, the Commission may waive the inclusion of such condition or exemption.

(3) The register may be kept in such format as the Commission deems fit and shall be maintained to permit inspection by the public.

Right of applicant to be heard if refusal is under contemplation.

41. (1) Where the Commission is considering the refusal of-

(a) an application for registration;

(b) a licence;

(c) the grant of a licence subject to the attachment of a term, limitation or condition that is adverse to the applicant or is inconsistent with the terms of the application, the Commission shall inform the applicant accordingly.

(2) The Commission shall also inform the applicant-

(a) that the applicant has a right to be heard; or

(b) that the applicant may make written representations to the Commission, before

the Commission makes a decision on the application.

(3) Oral or written representations under this Act shall be made by the applicant within thirty days of the date of being informed under sub-section (1).

(4) The Commission shall have regard to any representations made by the applicant before making its decision.

Where registration or licencing is not approved.

42.(1) Where the Commission does not approve of an application for registration or a licence, it shall inform the applicant of its decision and give reasons in writing, within twenty-one days of the date of its decision.

(2) Registration of a reporting entity shall not be approved if-

(a) the reporting entity has been convicted of any offence under the Anti-Money Laundering/Countering the Financing of Terrorism Act or the Anti-Terrorism and Terrorist Related Activities Act;

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(b) the reporting entity has been convicted of any serious offence as listed in the Second Schedule of the Anti-money Laundering/Countering the Financing of Terrorism Act; or

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(c) if any director of a reporting entity does not satisfy the fit and proper criteria as provided by the Third Schedule of this Act.

(3) An applicant who is aggrieved by a decision of the Commission under subsection (2) may apply for judicial review to the High Court, under the Judicial Review Act.

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(4) Where an application for registration or a licence is refused, no further application may be made within the period of one year beginning with the date when the applicant is notified of the refusal.

Cancellation of registration.

43.(1) The Commission may by notice in writing cancel, suspend or revoke the registration of a reporting entity issued under this Act where

(a) the reporting entity surrenders their Certificate of Registration to the Commission;
(b) the reporting entity is a natural person, and that person dies;
(c) the reporting entity fails to register or renew registration with the licensing authority;
(d) the Commission has given notification that a licence has been revoked;
(e) the reporting entity no longer qualifies for registration;
(f) the reporting entity fails within a reasonable time to take remedial measures within the period specified; or
(g) the reporting entity fails within a period of suspension –
    (i) to desist from the conduct which resulted in the suspension; or
    (ii) to take any action required by the Commission.

(2) The Commission shall cause notice of the removal of the name of a reporting entity from its register and the cancellation of their certificate of registration or licence, where applicable, to be published in the *Official Gazette* and in at least two newspapers in daily circulation in Guyana.

Official Gazette

Recommendation to licensing authority to revoke licence or to professional body to expel member.

44.(1) After cancellation of the registration of a reporting entity, the Commission may also recommend-

(a) the revocation of the reporting entity's license to its licensing authority; or

(b) where applicable, the expulsion of a reporting entity from a professional body.

(2) The Commission may make this recommendation where, based on the findings of the Commission, that-

(a) the reporting entity is not maintaining high standards of financial probity or following sound business practices; or

(b) the reporting entity has committed a serious breach of this Act, the regulations, the guidelines or the specified enactments.

(3) A reporting entity that is aggrieved by any action taken under subsection (1) may, within fourteen days after it is notified of the decision, make representation in writing to the Commission as to why the Commission should not take the action intended.

(4) Where a reporting entity is dissatisfied with the decision of the Commission after representation is made under subsection (2), the reporting entity may, within thirty days after it is notified of the Commission's decision, apply for judicial review to the High Court under the Judicial Review Act.

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(5) Where the Commission cancels the registration and recommends-

(a) the revocation of the licence of a reporting entity; or

(b) expulsion of a member from a professional body,

under this section, and there is no appeal or the appeal is disallowed, notice of the cancellation and any subsequent revocation of licence or expulsion shall be published in the *Official Gazette* and in a daily newspaper published and circulating in Guyana.

Official Gazette

Offence for reporting entity to conduct prescribed activities without a certificate of registration.

45. (1) A reporting entity who –

(a) is not approved for registration under this Act;

(b) operates without a licence, permit or authorisation from the relevant supervisory authority or licensing authority; or

(c) has their registration cancelled, suspended or revoked and carries out any of the activities listed in the First Schedule or carries out any of the activities listed in section 72 commits an offence.

First Schedule

(2) Any person who commits an offence under subsection (1), on conviction shall be liable to a fine of not less than ten million dollars nor more than fifty million dollars or five years' imprisonment or to both.

Duty to keep registration and licencing information confidential.

46. The Commission shall not disclose information provided in an application for registration or a licence or in an AML/CFT/CPF risk assessment questionnaire referred to in section 35, except—

(a) to another supervisory authority;

(b) the Financial Intelligence Unit;

(c) to a relevant Competent Authority;

(d) for the purposes of law enforcement or court proceedings;

(e) pursuant to an order of the Court; or

(f) where required under any written law.

PART VII

AUDIT AND BENEFICIAL OWNERSHIP

Internal/Independent Audit.

47.(1) Unless otherwise exempted, the Commission may require a reporting entity to appoint an auditor who shall make an examination, inspection, or investigation, in accordance with generally accepted auditing standards, of the reporting entity's-

(i) annual financial statements and

(ii) its anti-money laundering/countering the financing of terrorism/countering proliferation financing functions.

(2) A reporting entity to whom sub-section (1) applies shall submit its audited financial statements and any other requested financial records annually to the Commission within three months after the close of its financial year.

(3) An auditor may not be appointed by a reporting entity for the purposes of this section, unless that auditor is approved by the Commission as-

(a) having the capacity and resources to satisfactorily audit that particular reporting entity; and

(b) as being a fit and proper person to audit the reporting entity.

(4) The Commission may, by evidence adduced in writing, exempt a reporting entity from the requirement to comply with subsection (1) where it is of the opinion that it would not be practical for that reporting entity to comply with that subsection.

Duties of Auditors.

48.(1) Where, during an audit, an auditor of a reporting entity becomes aware of any matter which gives the auditor reasonable grounds to believe that–

(a) there has been a material adverse change in the risks inherent in the business of the reporting entity with the potential to jeopardise the ability

of the reporting entity to continue as a growing concern;

(b) the reporting entity may be in contravention of this Act, any regulations made under this Act, any guidelines or directions issued by the Commission;

(c) a financial crime has been, is being or is likely to be committed;

(d) serious irregularities have occurred; or

(e) there has been non-compliance with the laws of Guyana, the auditor shall report such matter in writing to the Commission.

(2) Notwithstanding any other enactment, no duty to which an auditor of a reporting entity may be subject shall be regarded as breached by reason of his communicating in good faith to the Commission any information under subsection (1).

Obstruction of audit or examination.

49. Any person who-

(a) obstructs the carrying out by an auditor or an examiner of the auditor's or the examiner's proper function under this Act; or

(b) in anyway obstructs the examination or investigation of a reporting entity under this Act, is guilty of an offence and is liable on conviction on indictment to a fine of twenty million dollars or imprisonment for five years, or to both.

Compliance function.

50. (1) A reporting entity shall establish and maintain adequate systems and controls for ensuring its compliance with the requirements of, and its obligations under–

(a) this Act and any other relevant enactment applicable to a reporting entity; and

(b) rules, guidelines, orders, directives, notices, and bulletins issued by the Commission from time to time.

(2) Without limiting subsection (1), a reporting entity shall establish and maintain a compliance procedures manual complying with such requirements as may be specified by the Commission.

(3) A reporting entity shall appoint an individual approved by the Commission as its compliance officer to have responsibility for overseeing the reporting entity's compliance function, as specified in sub-section (1), and for–

(a) reporting to the Commission in such manner and with such frequency as may be specified in the Regulations;

(b) reporting to the directors of the reporting entity; and

(c) acting as the liaison between the reporting entity and the Commission, with respect to the reporting entity's compliance function.

(4) In instances where the reporting entity is a natural person, the Commission may allow that natural person of such reporting entity, to also perform the requisite duties as its compliance function.

(5) The Commission shall not approve an individual as a reporting entity's compliance officer unless it is satisfied that the individual satisfies the Commission's fit and proper criteria.

(6) Without limiting subsection (3), the compliance officer of a reporting entity shall have responsibility for–

(a) establishing and maintaining a program for training the staff and other officers of the reporting entity concerning the reporting entity's compliance function, and their individual responsibilities with respect thereto; and

(b) overseeing the implementation of the compliance procedures manual.

(7) The Commission may set out provisions with respect to the compliance function and with respect to the responsibilities of compliance officers.

(8) Subject to this section, the Commission may, upon receipt of an application in writing, approve a body corporate to undertake the duty of providing compliance function services for and on behalf of a reporting entity, provided no conflict of interest exists.

Beneficial ownership.

51. (1) Every reporting entity is required to provide accurate and up to date beneficial ownership information to the Commission.

(2) When a reporting entity —

(a) has a change in registered office or principal place of business; or

(b) has a change in beneficial ownership, director, partner, compliance officer or money laundering reporting officer,

the reporting entity shall within one month of such change, notify the Commission.

(3) Where a reporting entity fails to notify the Commission as required under subsection (1), the reporting entity commits an offence and is be liable to a penalty of two hundred thousand dollars for each failure to notify in accordance with subsection (1).

PART VIII

COMMISSION'S POWER TO RESTRAIN ENTER INSPECT ETC.

Power of entry.

52.(1) The Commission, or a person authorised by the Commission, may enter the premises of any reporting entity at a reasonable time for the purpose of conducting any examination, inspection, or investigation into the activities of a reporting entity.

(2) Where the Commission or an agent appointed by the Commission is conducting an examination, inspection or investigation, the Commission or its agent shall be entitled to–

(a) search the premises and take possession of any documents or material appearing to be such documents or material relevant to the inspection or investigation;
(b) take any necessary steps for the preservation of the relevant documents or material; and
(c) take copies or extracts from the relevant documents or material.

(3) A person authorised by the Commission to conduct an examination, inspection, or investigation into the activities of a licensee shall produce, upon demand, identification duly issued by the Commission.

Power of inspection.

53.(1) The Commission, or a person authorised by the Commission, shall carry out examinations, inspections, or investigations for the purposes of ascertaining whether any person–

(a) is carrying-on any activity requiring a Certificate of Registration or licence under this Act or any other Act that the Commission administers;

(b) is representing or has represented that the person is in the business of providing or holding oneself out as providing all or any of the services, listed in the First Schedule in breach of this Act;

First Schedule

(c) is complying with the provisions of this Act, any other Act that the Commission administers, the Anti-Money Laundering/Countering the Financing of Terrorism Act and Regulations made thereunder, or any other relevant Act;

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(d) is qualified or has been qualified to be licensed or registered in accordance with this Act;

(e) has made a false or misleading representation or omission with respect to an application made pursuant to this Act; or

(f) has breached any order made or directive issued, or condition imposed by the Commission.

(2) With respect to subsection (1), the Commission or a person authorised by the Commission shall be entitled at any time to conduct on-site examinations or inspections or off-site surveillance of the business of a reporting entity.

(3) During the course of an examination, inspection, or investigation, the Commission or a person authorised by the Commission may require a reporting entity to–

(a) produce any books, records, and other documents that the licensee is required to maintain;

(b) supply such information or explanation as may be reasonably required by the Commission; and

(c) produce relevant documents within the person's possession or control for the purpose of ascertaining whether any information provided by such person is correct.

(4) Where the Commission deems it necessary, it may appoint an agent at the expense of the reporting entity to conduct an inspection or investigation.

Power to require provision of information.

54. (1) The Commission may, by written notice served on a licensee or reporting entity, require such licensee or reporting entity to produce, within such time and at such place as may be specified in the notice, information or documents of such description, being such information or documents as the Commission may require for the performance of its functions and exercise of its powers under this Act.

(2) The power to require the production of specified documents from a licensee or reporting entity shall include the power to require the licensee or reporting entity to–

(a) produce documents; or

(b) to state who has custody or control of documents, and where such documents are not produced, to certify where the documents are or

who has custody or control of the documents to the best of his knowledge, information, and belief.

(3) A notice under subsection (1) shall have effect notwithstanding any obligation as to confidentiality or non-disclosure imposed by any law or any requirement as imposed thereunder, any rule of law, any contract, or any rule of professional conduct.

(4) Notwithstanding subsection (3), a licensee or reporting entity shall not be required to disclose information or to produce a document which they would be entitled to refuse to disclose or to produce on the grounds of legal professional privilege in court proceedings, where such privilege arises from–

(a) the giving of legal advice to a client, or the client's representative by a legal advisor;
(b) communications between a person, or a representative of such person, seeking legal advice from the legal advisor; or
(c) communications from any person in contemplation of, or in connection with, legal proceedings for the purpose of those proceedings.

(5) A licensee or reporting entity required to provide any information or explanation, or to produce any document with respect to a notice under subsection (1) who–

(a) without reasonable excuse fails to comply with a notice issued under this section by the Commission;

(b) provides any information or explanation or produces any document which that licensee or reporting entity knows to be false, does not believe to be true, or is negligent as to whether the information, explanation or document is false; or

(c) intentionally suppresses any fact material to such information, explanation, or document, commits an offence and is liable on indictment to a fine not exceeding ten million dollars or to imprisonment for three years, or to both, or to a fine not exceeding one hundred thousand dollars for each day or part thereof that the offence continues after conviction.

(6) The provisions of this section shall apply mutatis mutandis to the exercise of the Commission's powers of examination, inspection, and investigation.

Powers of Commission to require production of records.

55. (1) In the performance of its functions under this Act, the Commission may at all reasonable times require a reporting entity -

(a) to produce for examination, such records that are required to be kept pursuant to section 16 of the Anti-Money Laundering and Countering the Financing of Terrorism Act; or as otherwise required by order of a court or relevant competent authority;

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(b) to supply such information or explanation, as the Commission may reasonably require for the purpose of enabling the Commission to perform its functions under this Act and

(c) any other information, records or documents the Commission considers necessary for the purpose of carrying out its functions under this Act.

(2) Any person failing or refusing to produce any record or to supply any information or explanation as is required by subsection (1), commits an offence and is liable on summary conviction to a fine not less than one hundred thousand dollars to no more than fifty million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment.

Power to determine fees.

56. The Commission may determine fees to be imposed in the performance of its functions or powers.

Disqualification of directors and officers.

57. (1) A director or officer of a reporting entity may be removed from office by the Commission –

(a) if they become the auditor of a reporting entity which is registered under this Act; or
(b) in the opinion of the Commission, they are not a fit and proper person to hold that office.

(2) A person who has been a director or officer of a reporting entity whose registration has been cancelled or whose licence has been revoked under any law in Guyana shall not, without the prior approval of the Commission, act or continue to act as a director or officer of any other reporting entity registered under this Act.

(3) Where a reporting entity permits a person referred to in subsection (1) to act as a director or officer of that institution; or any person contravenes subsection (2), that reporting entity or person is guilty of an offence.

(4) A reporting entity or person guilty of an offence under subsection (3), is liable on conviction, in the case of an individual, to a fine of five million dollars or to imprisonment for five months or to both; and in the case of a person other than an individual, to a fine of not less than ten million dollars.

PART IX
OFFENCES AND PENALTIES

General offences

58.(1) Any person who, for the purpose of obtaining a Certificate of Registration or licence under this Act, gives false, untrue, or misleading information or fails to disclose material facts or circumstances commits an offence and shall be liable on indictment to the penalty of–

(a) in the case of a company or body corporate, a fine of fifty million dollars;
(b) in the case of a natural person, a fine of ten million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and
(c) the Certificate of Registration or licence, where applicable, granted to such person may be revoked by the Commission.

(2) Any person who, for any other purpose, gives false, untrue, or misleading information to the Commission commits an offence and is liable on indictment to a fine not exceeding five million dollars.

(3) Where the commission by any person of an offence under this section is due to the act or default of some other person, the other persons commit an offence and may be charged with, and convicted of the offence whether or not proceedings are taken against the first-mentioned person.

(4) If a company commits an offence under this Act and it is proved that the offence occurred with the consent or connivance of or was attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body, or any person who was purporting to act in any such capacity, that person, as well as the company, commits the offence.

Obstructing an authorised person.

59.(1) A person commits an offence if, without reasonable excuse, the person–

(a) obstructs an authorised person in the exercise of the authorised person's powers under this Act; or

(b) fails to provide such reasonable assistance as an authorised person may require when the authorised person is exercising his powers under this Act.

(2) A person who intentionally alters, suppresses or destroys any document that has been specified in a notice of the Commission commits an offence.

(3) A person who contravenes subsection (1) is liable on indictment to a term of six months imprisonment or to a fine of three million dollars or to both.

(4) A person who contravenes subsection (2) is liable on indictment to a term of two years imprisonment or to a fine of ten million dollars or to both.

(5) Where it is established that a person, to which this section applies, acted upon the instruction or direction, or with the complicity of

a director, partner, officer, or other person concerned with the management of the company or partnership, such director, partner officer or other person is also liable to be convicted for the relevant offence.

Criminal compliant.

60. Where the Commission reasonably suspects that an offence has been committed under this or any other Act, the Commission may refer the matter to the relevant authority in Guyana responsible for the investigation or prosecution of criminal matters.

Administrative penalties.

61. (1) Where the Commission is satisfied that a reporting entity has breached this Act or regulations, terms, conditions or limitations, the Commission may, by written notice, impose on reporting entity, a prescribed penalty which shall not exceed ten million dollars.

(2) Whereby this Act, or regulations, directive or guideline given, a reporting entity is required, by a specified time–

(a) to take a certain measure or action; or

(b) to cease a particular activity, behaviour, or practice, and the Commission is satisfied that the reporting entity, as the case may be, has failed to do so, the Commission may impose on the reporting entity an additional penalty of one hundred thousand dollars for every day or part of a day that the reporting entity fails to take such measure or cease the particular activity, behaviour, or practice.

(3) A penalty under this section shall not be imposed on a reporting entity unless such person is first given an opportunity to be heard and to show cause as to why the action must not be taken.

(4) Notwithstanding sub-section (1) or any other provision of this Act, the Commission may impose any of the following administrative sanctions on a reporting entity if satisfied that it has breached this Act, regulations, terms, conditions, or limitations–

(a) issuing a public reprimand;

(b) prohibiting a reporting entity from carrying on certain activities or operations;

(c) temporarily suspending a director or manager;

(d) where applicable, imposing conditions or restrictions on a licence or recommending such to a licensing authority;

(e) an order–

(i) requiring that a reporting entity comply with a directive issued by the Commission;

(ii) withdrawing an exemption or waiver;

(iii) prohibiting a person from acting as a director, partner, or officer of another person;

(iv) prohibiting a person from being appointed as an auditor;

(v) requiring a reporting entity to make changes to its practices and procedures;

(vi) requiring the removal of a director, officer or other senior manager or general partner;

(vii) for restitution;

(viii) for disgorgement of profits or unjust enrichment;

(f) applying to the court for an order to take such action as the Commission considers necessary to protect the interest of clients or creditors of a reporting entity; or

(g) imposing any other penalties, sanctions, or remedies as the circumstances of the matter may require.

(5) Where the Commission imposes a sanction pursuant to subsection (4)–

(a) the order shall be in writing;

(b) the order shall specify the breach committed by the licensee and the sanction imposed by the Commission;

(c) a copy of the order shall be given to the reporting entity; and

(d) the order may be enforced in the same manner as an order of the court.

(6) A person who is aggrieved by a decision of the Commission under this section may appeal to a Judge of the High Court against the decision.

PART X

INTERNATIONAL COOPERATION AND MUTUAL LEGAL ASSISTANCE

International Cooperation and

62.(1) Subject to subsection (4), the Commission may disclose to an overseas regulatory authority or overseas relevant competent authority

Mutual Legal Assistance.

information necessary to enable that authority to exercise regulatory functions including the conduct of civil or administrative investigations and proceedings to enforce laws, regulations and rules administered by that authority, and includes international cooperation and exchange of information in relation to virtual assets, crypto assets, Virtual Asset Services Providers and any related matters.

(2) In deciding whether or not to exercise its power under subsection (1), the Commission may take into account to the provisions of the Mutual Legal Assistance in Criminal Matters Act, including-

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(a) whether the inquiries relate to the possible breach of a law or other requirement which has no close parallel in Guyana or involve the assertion of a jurisdiction not recognised by Guyana; and

(b) the seriousness of the matter to which the inquiries relate and the importance to the inquiries of the information sought in Guyana.

(3) The Commission may decline to exercise its power under subsection (1) if the overseas regulatory authority fails to undertake to make such contribution towards the cost of the exercise as the Commission considers appropriate.

(4) Nothing in subsection (1) authorises a disclosure by the Commission unless the Commission —

(a) has satisfied itself that the intended recipient authority is subject to adequate legal restrictions on further disclosures which shall include the provision of an undertaking of confidentiality;

(b) has been given an undertaking by the recipient authority not to disclose the information provided without the consent of the Commission;

(c) is satisfied that the assistance requested by the overseas regulatory authority is required for the purposes of the overseas regulatory authority's regulatory functions including the conduct of civil or administrative investigations or proceedings to enforce laws, regulations and rules administered by that authority; and

(d) is satisfied that information provided following the exercise of its power under subsection (3) will not be used in criminal proceedings against the person providing the information.

(5) Where in the opinion of the Commission, it appears necessary in relation to any request for assistance received from an overseas regulatory authority, to invoke the jurisdiction of any court in obtaining information requested by the overseas regulatory authority, the Commission shall —

(a) immediately notify the Attorney-General and the Minister of Home Affairs with particulars of the request; and

(b) send the Attorney-General copies or all documents relating to the request, and the Attorney-General shall be entitled, in a manner analogous to amicus curiae, to appear or take part in any proceedings in

Guyana, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(6)The Commission may cooperate with any other supervisory authority, regulatory authority, Financial Intelligence Unit, competent authority, Ministry, Agency, or relevant competent authority in Guyana, including the sharing of information that it has acquired in the course of its duties or in the exercise of its functions under this or any other law where it considers such cooperation or information may be relevant to the function of such other regulatory authority or as a necessary part of a framework tor consolidated supervision, oversight or regulation its reporting entities, and includes international cooperation and exchange of information in relation to virtual assets, crypto assets, Virtual Asset Services Providers and any related matters.

(7) 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.

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

PART XI

MISCELLANEOUS

Minister may designate other body to carry out

63. Upon the recommendation of the Commission, the Minister may by order designate any professional body, association, or entity which represents a sector of the reporting entities as defined in this Act, with statutory authority-

regulatory functions under this Act.

(a) to regulate the activities of its members; and

(b) to ensure compliance with the provisions of this Act upon such terms stipulated by the Commission.

Guidelines.

64.(1) The Commission shall issue guidelines or codes of practice for reporting entities under its supervision and may from time to time consult with-

(a) the Financial Intelligence Unit;

(b) the Bar Association of Guyana;

(c) the Institute of Chartered Accountants in Guyana;

(d) other supervisory authorities or competent authorities; or

(e) such other bodies, organisation representatives, or such reporting entities as are required to be regulated under this Act, issue such Guidelines as the Commission thinks necessary —

(i) for the purpose of providing guidance as to the duties, requirements and standards to be complied with and the procedures (whether as to verification, record-keeping, reporting of suspicious transactions or otherwise) and best practices to be observed by reporting entities; and

(ii) generally for the purposes of this Act.

(2) Where a reporting entity fails to comply with any guidelines or code of practice issued pursuant to this section, the reporting entity shall be subject to-

(a) any sanctioning powers that its supervisory authority may possess to deal with the violation or non-compliance; and

(b) prosecution pursuant to any regulations made hereunder, the Anti-Money Laundering and Countering the Financing of Terrorism Act, or under any other law in order to enforce the codes of practice.

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Actions in good faith.

65. No action or other proceedings for damages shall be instituted against a member of the Commission or an employee or agent of the Commission in the discharge or purported discharge of his respective functions under this Act, unless it is shown that the act or omission was in bad faith.

General Duty of Reporting Entities to the Commission to comply and cooperate.

66. (1) Reporting entities shall comply with the provisions of this Act concerning the conduct of its business and shall–

(a) deal openly, honestly, and cooperatively with the Commission;

(b) provide to the Commission, as duly required, information relevant to its operations;

(c) submit to on-site or off-site examinations, inspection, or investigation, as required by the Commission, in the exercise of its functions; and

(d) every reporting entity shall, in the conduct of its business, comply with any rules, guidelines or directives made and issued by the Commission and such compliance shall be considered as a part of the minimum criteria for registration.

(2) Any reporting entity, or any of its employees, managers, officers, or other connected person, who–

(a) fails to cooperate with; or
(b) obstructs or assaults any person appointed by or acting on behalf of the Commission in the conduct of an examination, inspection, or investigation of the licensee,

commits an offence and shall be liable to the penalty prescribed by section 59(3) of this Act.

(3) For the purposes of sub-section (3), it shall not be relevant whether the employee, manager, officer or connected person was acting on the specific instruction of any individual having control of or responsibility for the management or operation of the reporting entity.

Duty to maintain professional conduct.

67.In addition to complying with any prescribed requirements, every reporting entity shall in conducting its business activities–

(a) act honestly and fairly;
(b) act with due skill, care, and diligence;
(c) observe and maintain a high standard of professional conduct; and
(d) refrain from engaging in any improper or illegal conduct.

Certificate of good standing.

68. The Commission shall, upon request by any person, issue a certificate of good standing under its hand and seal certifying that a reporting entity registered under this Act is of good standing if the Commission is satisfied that the reporting entity–

(a) is in possession of a valid licence, permit or authorisation to operate;
(b) has a Certificate of Registration under this Act; and
(c) has paid all fees, licence fees and penalties due and payable.

Issuance or submission of documents.

69.Any certificate or other document required to be issued by or submitted to the Commission under this Act shall be in the form approved by the Commission, which may be in electronic format or such other format as approved by the Commission.

Electronic Acceptance of Documents.

70.The Commission may accept any document signed, notarized, apostilled, or sealed electronically and such documents shall have the same force and effect as if the signature or seal is affixed to a paper copy of the document.

Publication of registration and licences on Commission website.

71.The Commission shall publish on the Commission's website, a notice of–

(a) every registration completed and every licence issued under this Act; and
(b) every registration or licence that has been suspended, cancelled or revoked.

Restriction on virtual assets and virtual assets service providers.

72.(1) Subject to sub-section (4)(b), except where licenced under this Act, no person shall, as a business, conduct on behalf of any other person–

(a) negotiation, brokerage, or exchange, between virtual assets and fiat currencies

whether such currency is the legal tender of Guyana or any other country;

(b) negotiation, brokerage, or exchange between one or more forms of virtual assets;

(c) transfer of virtual assets;

(d) loan, deposit, custody, safekeeping, management, or administration of–

(i) virtual assets; or

(ii) instruments enabling control over virtual assets; or

(e) participation in and provision of financial services related to the issuance or an issuer's offer or sale of a virtual asset.

First Schedule

(2) Nothing in this section shall entitle any person to apply for or be granted a licence or Certificate of Registration under this Act to provide any service not set out in the First Schedule.

(3) Notwithstanding anything contained in this Act or any other enactment, the Commission shall not issue a license or Certificate of Registration in accordance with this Act, to any person in respect of–

(a) trading virtual assets;

(b) operating as a wallet service provider; or

(c) any activity or operation set out in subsection (1) which does not fall within the scope of subsection (3)(a) and (b),

on or before the 31st day of December, 2025 or by such date fixed by order of the Minister.

(4) Any person who prior to the commencement of this Act was carrying on an activity or operation referred to in subsection (3) shall–

(a) within one month of the commencement of this Act, notify the Commission in writing that it is carrying on such activity or operation; and

(b) within three months of the commencement of this Act, cease such activity or operation.

(5) A person who fails to comply with subsection (4) (a) commits an offence and is liable on indictment to a fine not exceeding twenty-five million dollars or to five years imprisonment or to both.

(6) A person who fails to comply with subsection (4)(b) commits an offence and is liable on indictment to a fine of fifty million dollars or five years imprisonment or to both.

Subsidiary legislation.

73.(1) The Minister may make regulations for the better carrying out of the provisions of this Act for prescribing anything that needs to be prescribed.

(2) The Minister may, by order, designate specific reporting entities to be licenced, permitted or authorised by the Commission for operation in accordance with section 4 (2) (g).

(3) The Commission may, with the approval of the Minister, make Rules prescribing forms, fees and other matters relating to registration under this Act.

Schedule.

74. (1) The Minister may by order amend the Schedules of this Act.

First Schedule

(2) The First Schedule lists the relevant reporting entities of the Commission.

Second Schedule

(3) The Second Schedule provides Guidelines for registration of non-profit organisations.

Third Schedule

(4) The Third Schedule provides guidelines for considerations regarding fit and proper person criteria.

(5) Any regulations made under subsection (1) or an order made under subsection (2) shall be subject to negative resolution of the National Assembly.

FIRST SCHEDULE **sections 2, 45,53,72 &74**

Reporting Entities of the Commission

1. Accountants
2. Attorneys-at-Law
3. Auditors
4. Commissioner of Oaths and Affidavits and
5. Notaries

When on 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.

6. Non-Financial Trust and Company Service Providers not otherwise covered by this definition, which as a business, provides any of the following services to third parties:

(a) formation agent of legal persons;
(b) 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;
(c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
(d) acting as or arranging for another person to act as a trustee of an express trust; or

(e) acting as or arranging for another person to act as a nominee shareholder for another person.

7. Such other non-bank financial institutions, nonprofit organisations, businesses or professions as may be prescribed by the Minister.

SECOND SCHEDULE **sections. 2 & 74**

GENERAL RULES RELATING TO NON-PROFIT ORGANISATIONS

1. The Commission, in collaboration with the Registrar of Friendly Societies and the Commercial Registrar, shall be responsible for conducting outreach and training to the non profit organisation (NPO) sector as a whole.

2. The Commission shall be guided by Recommendation 8 of the Financial Action Task Force standards with respect to monitoring the non-profit organisation sector.

3. The Commission shall include the following four elements in its supervision:

(a) Ongoing outreach to the sector;
(b) Proportionate, risk-based supervision or monitoring;
(c) Effective investigation and information gathering; and
(d) Effective mechanisms for international cooperation.

4. The Commission shall from time to time conduct a risk assessment of the non-profit organisation sector in Guyana.

5. Upon registration of a non-prófit organisation under the Friendly Societies Act, Companies Act or the registration of a Deed, the respective Registrar shall refer the non-profit organisation to the Commission for registration.

6. A person shall not operate a non-profit organisation in Guyana unless the non-profit organisation is registered under this Act.

7. A person who contravenes Guideline 6 commits an offence and is liable to a penalty as prescribed in section 23 (2) of the Antimoney Laundering/Countering the Financing of Terrorism Act.

8. An application for registration as a non-profit organisation under Guideline 6 shall include the following-

(a) a form containing—
(i) the name, address, telephone number and e-mail address of the non-profit organisation;
(ii) the declared purposes and activities of the non-profit organisation; and

(iii)the name, occupation, address, telephone number and e-mail address of each person who is a controller of the non-profit organisation;

(b) copies of the constituent documents of the non-profit organisation;

(c) a copy of photo identification of the controller or controllers making the application of the non-profit organisation in the form of a valid national identification card or passport;

(d) a completed AML/CFT/CPF risk assessment questionnaire;

(e) a fee prescribed by Rules; and

(f) such other information as may be prescribed by Rules.

9. The Commission shall conduct a risk profiling process of the entity to determine the nature of activities based on definition outlined in section 2 of the Act and the size of the non-profit organisation.

10. Once the Commission is satisfied that the non-profit organisation reaches the criteria for regulation, the Commission shall refer the non-profit organisation (targeted non-profit organisation) to the Financial Intelligence Unit for registration for Terrorist Financing reporting purposes.

11. The Financial Intelligence Unit, following registration of the non-profit organisation shall provide an onboarding training and introduce Suspicious Transaction, Terrorist Financing and Proliferation Financing reporting obligations to the NPO.

12. The Commission shall seek to ensure that non-profit organisations (who are identified as being a greater terrorist financing risk) implement the following specific measures:

(a) maintain information on their activities and those who own, control or direct their activities;

(b) provide annual financial statements of their activities;

(c) have controls in place to ensure that funds are fully accounted for and spent in a manner consistent with the non-profit organisation's stated activities;

(d) follow a "know your beneficiaries and associate non-profit organisations " rule;

(e) keep records; and

(f) be subject to monitoring by the appropriate authorities, including the application of effective, proportionate and dissuasive sanctions for violating these requirements; and

(g) comply with guidelines or code of practice (which should be in line with the Financial Action Task Force Standards) from time to time by the Commission or Financial Intelligence Unit.

13. A register of non-profit organisations registered under this Act shall be established and maintained by the Chief Executive Officer and shared with equal access to the Registrar of Friendly Societies and the Commercial and Deeds Registry.

14. The register shall include the following information with respect to a non-profit organisation-

(a) its name, address, telephone number and e-mail address;

(b) its purpose and activities;

(c) the name, occupation and address of each person who is a controller of the non-profit organisation;

(d) the date of its registration as a non-profit organisation, the date of its renewal of registration, and if applicable, the date on which its registration was cancelled; and

(e) such other information prescribed by Rules.

15. The Commission shall recommend to the relevant Registrar, the cancellation of the registration of a non-profit organisation if—

(a) the non-profit organisation failed, without reasonable cause—

(b) it is proven in Court that the non-profit organisation breached a duty owed to itself or any of its contributors;

(c) it is proven in Court that the non-profit organisation committed a criminal offence which carries a penalty of a term of imprisonment of three years or more;

(d) the non-profit organisation is found guilty of an offence under the Antimoney Laundering/Countering the Financing of Terrorism Act, the Anti-Terrorism and Terrorist Related Activities Act, or any

other written law by which the recommendations of the Financial Action Task Force are implemented;

(e) the non-profit organisation is a designated, listed or specified individual or entity; or

(f) the non-profit organisation is struck off the list by the relevant Registrar.

16. Where the registration of a non-profit organisation is cancelled, the Attorney General or relevant Competent Authority may make an application to a Judge of the High Court for an order of forfeiture in respect of the property of a non-profit organisation.

17. A non-profit organisation that solicits or causes to be solicited contributions from the public or the State, whether locally or internationally, whilst not registered under this Act, commits an offence.

18. A controller of a non-profit organisation who without reasonable cause contravenes this Act or these Guidelines commits an offence and will be subject to a penalty as prescribed under section 23 (2) of the Antimoney Laundering/Countering the Financing of Terrorism Act.

19. This section shall not apply to a person or group of persons who carry out a single event to raise funds for charitable purposes.

20. Non profit organisations shall-

(a) create and implement clear policies and procedures to prevent the misuse of their organisations for money laundering and terrorism financing purposes, and

(b) that business is transacted by way of regulated channels.

THIRD SCHEDULE sections. 42 & 74

FIT AND PROPER CRITERIA

1. Upon acceptance of an application for registration under section 37, and in conjunction with the relevant licensing or professional body, the Commission shall conduct an investigation and make inquiries as it deems necessary to determine whether the applicant is fit and proper to be granted registration under this Act.

In conducting such investigation and inquiries, the Commission shall have regard to-

(a) the honesty, integrity and reputation of the applicant, partner, shareholder, director or beneficial owner of a significant or controlling interest or office holder of the applicant;
(b) the competence and capability of the applicant;
(c) the financial soundness and financial capability of the applicant;
(d) the background of the applicant; and
(e) such other matters as the Commission deems appropriate.

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

(a) has been declared bankrupt or compounded with their creditors;
(b) has been the subject of any proceedings of a disciplinary or criminal nature or has been notified of any potential proceedings or of any investigation which might lead to those proceedings, under any law in any jurisdiction;
(c) has been convicted of any offence including money laundering, terrorist financing, or proliferation financing;
(d) is being subject to any pending proceedings which may lead to a conviction, under any law in any jurisdiction;
(e) has had any judgment (in particular, that associated with a finding of fraud, misrepresentation or dishonesty) entered against the relevant person in any civil proceedings or is a party to any pending proceedings which may lead to such a judgment, under any law in any jurisdiction;

(f) has accepted civil liability for fraud or misrepresentation under any law in any jurisdiction; or

(g) has engaged in or been associated with any other business practices or otherwise conducted themself in such a way as to cast doubt on their competence or soundness of judgment.

3. The criteria in Guideline (1) (a) to (e) shall be evaluated by the Commission as often as necessary or whenever there is a change in ownership, management or control of the reporting entity.

EXPLANATORY MEMORANDUM

This Bill establishes the Guyana Compliance Commission, and indicates its structure, powers and functions. Part I of the Bill is the Preliminary Part.

Part II of the Bill provides for the establishment, functions and powers of the Commission.

Part III of the Bill deals with the requisite administrative aspects of the Board of the Commission.

Part IV of the Bill addresses the appointment of staff.

Part V deals with the funding of the Commission, through a Compliance Commission Fund, which is elaborated through sections 28-34.

Part VI deals with registration, and provides a number of powers the Commission has. The Commission can also cancel, suspend or revoke a registration, and recommend the revocation of a licence or membership of a professional body. It would therefore be an offence to not become registered, and to perform the functions listed in the First Schedule if unregistered. This is elaborated in sections 35-45.

Part VII deals with audit, compliance function and beneficial ownership compliance function for reporting entities, but will also take into account those entities which may be sole traders or partnership, or have very little staff based on risk and context.

Part VIII sets out the Commission's powers to restrain, enter inspect, disqualify directors etc.

Part X provides for International Cooperation, and **clause 62** provides measures for international cooperation that synergise with the AML/CFT Act.

Part XI provides a number of important miscellaneous provisions such as giving the Minister the power to delegate another body to carry out regulatory functions under the Act.

Clause 72 is of critical importance; based on the need for an adequate infrastructure to administer a virtual assets regime, there is a restriction placed on the use of virtual assets, or operating as a virtual asset provider in Guyana; there is a moratorium in which upon notification, any person operating in such has three months to cease operations upon notifying the Commission, or they face the requisite penalty under this section.

Clause 73 gives the power to the Minister to make regulations for any matter under this Act. Any regulation or order shall be subject to negative resolution of the National Assembly.

The First Schedule provides the list of reporting entities who are now under supervision of the Commission. **The Second Schedule** provides guidelines for the Commission in terms of NPOs, whilst the Third Schedule provides fit and proper criteria Guidelines for the Commission.



Hon. Mohabir Anil Nandlall, SC, MP
Attorney General and Minister of Legal Affairs