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THE OFFICIAL GAZETTE 8TH AUGUST, 2023
LEGAL SUPPLEMENT — B

GUYANA **No. 12 of 2023**

REGULATIONS

Made Under

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

(Cap. 10:11)

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

ARRANGEMENT OF REGULATIONS

Regulation

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Citation and commencement.

1. These Regulations may be cited as the Anti-Money Laundering and Countering the Financing of Terrorism (Miscellaneous) Regulations 2023 and shall come into operation on the 18th day of August, 2023.

Interpretation.

2. In these Regulations-

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"Act" means the Anti-Money Laundering and Countering the Financing of Terrorism Act;

"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;

"body corporate" means a legal or juridical person or arrangement, including all legal persons and legal arrangements, under the Act or any other law;

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"Commercial Registrar" means the Registrar responsible for Companies under the Companies Act;

"Convention" means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances signed at Vienna on the 20th day of December, 1988;

"convention State" means a foreign state which is a party to the Convention;

"forfeited property" means any property which is the subject of a relevant agreement, being property, which falls within any of the following categories-

(a) any property which is forfeited property pursuant to a forfeiture order or a pecuniary penalty order made under the Act;

(b) any property which, pursuant to a request by a convention State is the subject of-

(i) foreign forfeiture order or a foreign pecuniary penalty order registered in the Supreme Court and having effect, pursuant to the Mutual Assistance in Criminal Matters Act; or

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(ii) a forfeiture order or a pecuniary penalty order made under the Act and enforced under the Mutual Assistance in Criminal Matters Act;

(c) any property located in a convention State-

(i) in relation to which a request is made to that state, under the Mutual Assistance in Criminal Matters Act, for the enforcement of a forfeiture order or pecuniary penalty order made under the Act; or

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(ii) which is forfeited in a convention State under the laws of that state;

"Minister" means the Minister with responsibility for Home Affairs;

"non-profit organisation" means a legal person or legal 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

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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 deed registered at the Deeds Registry;

"person" refers to any person and includes body corporates, legal persons and legal arrangements;

"prompt" means as soon as possible but no later than three to five days;

"Registrar" means the Guyana Compliance Commission, the Registrar of Friendly Societies, the Chief Cooperatives and Development Officer, the Commercial Registrar or the Deeds Registrar, applying *mutatis mutandis*;

"relevant agreement" means an agreement made between Guyana and a convention State, providing for the sharing of forfeited property;

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

Risk based approach to supervision for non-profit organisations.
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3. (1)Where a non-profit organisation is registered under the Companies Act, the Friendly Societies Act, the Deeds Registry Act or with the Guyana Compliance Commission, the relevant Registrar shall consult with the Guyana Compliance Commission.

(2) The Guyana Compliance Commission shall determine the level of supervision required, using-

(a) a risk-based approach; and

(b) the FATF Recommendations or any guidance issued by the FATF in relation to non-profit organisations.

Notification of change of particulars within 30 days.

4. (1) Every body corporate shall provide accurate and up to date beneficial ownership information to its respective Registrar.

(2) When a body corporate-

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

(b) has a change in beneficial ownership, director, or partner,

the body corporate shall within one month of such change, notify its respective Registrar.

(3) Where any person fails to notify its respective Registrar as required under subsection (1), that person is liable to-

(a) a fine of two hundred thousand dollars for each failure to notify in accordance with subsection (1); or

(b) be struck off the register of its respective Registrar.

Issuance of beneficial ownership guidelines.

5. The Commercial Registrar shall, issue guidelines on the application or interpretation of the term "beneficial ownership" and the identification of beneficial owners whether by reference to thresholds in respect of ownership or control or otherwise.

Prompt access to basic and beneficial ownership information.

6. The Registrars shall ensure that the Financial Intelligence Unit and relevant competent authorities under the Act have access to basic and beneficial ownership information on body corporates in a prompt manner.

Suspicious Transaction Reports to be filed in any country affected by a suspicious wire transfer.

7. Where a reporting entity controls both the originator and beneficiary side of a wire transfer, that reporting entity shall-

(a) take into account all the information from both originator and beneficiary sides in order to determine whether a suspicious transaction report has to be filed;

(b) file a suspicious transaction report in any country affected by the suspicious wire transfer; and

(c) make any or all relevant transaction information available to the Financial Intelligence Unit.

Confidentiality.

8. (1) Any person who obtains information in any form as a result of their connection with a relevant competent authority shall not disclose that information to any person except so far as it is required or permitted under the Act, any regulations made under the Act or other written law

(2) Any person who wilfully discloses information to any person in contravention of subsection (1) shall be subject to dismissal from the relevant competent authority and is liable on summary

conviction to a fine not exceeding two million dollars or to imprisonment for a term not exceeding four years.

Application to convention States.

9. (1) Where a relevant agreement has been made with a convention State, the Minister may, by order, declare that the provisions of these Regulations in relation to-

(a) section 34 of the Mutual Assistance in Criminal Matters Act; or

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(b) section 76 of the Act,

shall apply in respect of that state subject to such exceptions, adaptations or modifications as the Minister, having due regard to the terms of such agreement, may deem expedient to specify in the order for the purpose of implementing such terms.

Attorney General to certify property for sharing.

10. (1) Forfeited property may be shared with a convention State only if the Attorney-General certifies in writing that it is proper for the property to be so shared.

(2) The Attorney-General shall, in issuing a certificate under subsection (1), have regard to the provisions of the Mutual Assistance in Criminal Matters Act, the Act and any other relevant law.

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Payment into National Forfeiture Fund.

11. Forfeited property shall be paid into the National Forfeiture Fund and includes-

(a) any amount paid to the Government pursuant to the Act or any regulations made under the Act in relation to property which is the subject of a relevant agreement;

(b) the proceeds of the sale of any property to which a certificate under regulation 10 relates; and

(c) any amounts transmitted to Guyana pursuant to a relevant agreement.

Creation and organisation of thematic working groups.

12. (1) The Anti-money Laundering and Countering the Financing of Terrorism/ Proliferation Financing National Coordination Committee may create thematic working groups for the coordination of efforts, creation and development of policies important thematic areas based on risk and context.

(2) Such thematic working groups including-

(a) law enforcement, including intelligence gathering, investigative techniques, controlled delivery and cross border asset sharing;

(b) virtual assets and virtual asset service providers;

(c) beneficial ownership;

(d) terrorist financing sanctions;

(e) proliferation financing;

(f) extractive industries, including-

(i) precious metals such as gold;

(ii) precious minerals, precious stones and semi-precious stones; and

(iii)the oil and gas industry;

(g) international cooperation, including prompt conclusion of memoranda of understanding and treaties;

(h) supervision of financial institutions and designated non-financial business or profession;

(i) emerging threats;

(j) matters relating to cybercrime, money laundering, terrorism financing, proliferation financing and serious offences such as ransomware, computer fraud, Ponzi or pyramid schemes and artificial intelligence;

(k) design of strategies and polices in relation to combatting financial crime, terrorism and proliferation of weapons of mass destruction; and

(l) any other matters determined as necessary by the Committee.

Made this 8th day of August, 2023

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