

**GUYANA**

**BILL No. of 2023**

**ANTI-MONEY LAUNDERING AND COUNTERING THE FINANCING OF  
TERRORISM (AMENDMENT) BILL 2023**

**ARRANGEMENT OF SECTIONS**

**Section**

1. Short title.
2. Amendment of section 2 of the Principal Act.
3. Insertion of new subsections (2)(1)B, (10) and (11) into section 2 of the Principal Act
4. Amendment of section 15 of the Principal Act
5. Insertion of a new section 20A into the Principal Act
6. Amendment of section 22 of the Principal Act.
7. Insertion of new sections 22A and 22B into the Principal Act
8. Amendment of section 23 of the Principal Act.
9. Amendment of section 24 of the Principal Act.
10. Amendment of section 29 of the Principal Act.
11. Amendment of section 37 of the Principal Act.
12. Insertion of new sections 37A and 37B into the Principal Act
13. Amendment of section 38 of the Principal Act.
14. Amendment of section 39 of the Principal Act.
15. Amendment of section 44 of the Principal Act
16. Amendment of section 45 of the Principal Act.
17. Insertion of a new section 45A into the Principal Act.
18. Amendment of section 46 of the Principal Act
19. Amendment of section 54 of the Principal Act
20. Amendment of section 55 of the Principal Act
21. Amendment to section 56 of the Principal Act
22. Insertion of new sections 57A and 57B into the Principal Act
23. Amendment to section 59 of the Principal Act
24. Insertion of a new sections 60A, 60B, 60C and 60D into the Principal Act
25. Amendment of section 66 of the Principal Act
26. Insertion of new sections 66A, 66B, 66C 66D and 66E into the Principal Act
27. Amendment of section 67 of the Principal Act
28. Amendment of section 68A of the Principal Act.
29. Amendment of section 68C of the Principal Act.
30. Amendment of section 68D of the Principal Act.



*implements and all other types of motorized equipment that is moved by motor power on wheels or tracks.*

‘**currency**’ by inserting immediately after the words ‘electronic form’, the words ‘virtual assets, digital assets and crypto-assets’

“**crypto-assets**” means virtual assets;

“**digital assets**” means digital representations of fiat currencies, securities and other financial assets as determined by the Financial Action Task Force but does not include virtual assets or crypto-assets;

‘**Expert Report**’ means a report of an expert under the Evidence Act, or an expert report under the Civil Procedure Rules;

“**Financial Inclusion**” means providing access to affordable financial products or services to meet the needs of individuals and business who, in the general course of business, are otherwise disadvantaged or excluded from access to the financial services or products through the regular financial system.

‘**Judge**’ means a Judge of the High Court ‘

**Money Lender**’ means a person or business who or that was granted a Magistrate’s Certificate by the Court or issued with a money lenders licence under the Money Lender’s Act Cap. 95:01.

“**politically exposed persons**” by inserting after the words ‘political party officials’, the words ‘and a 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;’

“ **nonprofit 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 where the context so applies, includes, societies registered under the Friendly Societies Act, companies with no share capital and not-for profit companies registered under the Companies Act, and arrangements expressed under a trust deed registered under the Deeds Registry Act.

“**precious metals**” include gold, silver, palladium or platinum whether in coins, bars, ingots, granules or in any other similar form;

‘**precious stones**’ include diamonds, emeralds, sapphires and rubies or in any other similar form;

‘**serious offence**’ by

(a) immediately inserting in subsection (c), after the word ‘Schedule’, the word ‘or’

(b) insertion of a new subsection (d ) as follows –

‘ (d) unlawful conduct’.

“**tainted property**” includes property used in connection with the commission of an offence under this Act or property constituting the proceeds of an offence.

“**unlawful conduct**” means

(a) conduct occurring in any part of Guyana if it is unlawful under any

law in Guyana or

(b) conduct which—

(i) occurs in a country outside of Guyana and is unlawful under the criminal law of that country, and

(ii) if it occurred in Guyana, it would be unlawful under any law in Guyana.

“**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 to 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;

“**without delay**” means within a matter of hours

### **3. Section 2 of the Principal Act is amended as follows –**

(a) immediately after subsection (2) (1)A, the insertion of a new subsection (2) (1) B as follows –

(2) (1)B – The Minister shall make a prompt determination of whether he or she is satisfied, based on the Director’s recommendation, that the proposed designee meets the criteria for designation in UNSCR 1373.

(b) amending subsection (2) by inserting after the words ‘paragraph (1), the words ‘or paragraph (1)A’.

(c) immediately after subsection (9), the insertion of new subsections (10) and (11) as follows -

(10) The review procedure referred to in subsection 9 with respect to revoking, unfreezing and delisting specified persons under UNSCR 1373 shall include, but are not limited to:

(a) Ensuring compliance with the applicable legal principles relating to the delisting and unfreezing under this Act, its Regulations and the FATF international standards;

(b) conducting research on, and seeking to gather information about the whereabouts, status and activities of the specified person or entity to determine whether the specified person or entity no longer meets the criteria for the designation as required by the UNSCR 1373;

(c) Where-

(i) it is found that there are substantial changes in the facts and circumstances, such as, the death of a specified person or entity;  
and

(ii) where the declaration against the person or entity has been made more than five years,

consideration should be given for a recommendation to revoke the specified order made against such person or entity and

(iii) the Director shall provide a statement to the Minister with responsibility for Finance, with reasonable grounds for believing the criteria for no longer exist, inclusive of the supporting evidence of findings; and

(iv) ensure that all measures are taken to protect the human rights of the specified persons as required by relevant FATF Recommendations.

(10) Without prejudice to subsection (6), a specified person or entity

(a) that considers that there have been substantial changes to the facts and circumstances surrounding its designation under UNSCR 1373 and

(b) there are no longer reasonable grounds to maintain targeted financial sanction against it,

may apply to count for a revocation of the specific made against it.

(c) The provisions of subsections (6), (7) and (8) shall apply mutatis mutandis.

**4. Section 15 of the Principal Act is amended by inserting immediately after subsection (11), the following subsections (12) and (13) –**

(12) Where a reporting entity suspects that a transaction relates to money laundering, terrorist financing, or proliferation financing and he or she believes that performing customer due diligence measures may tip-off the customer or potential customer to that suspicion, that relevant person shall not perform the customer due diligence measures.

(13) Where a reporting entity is unable to perform customer due diligence in accordance with paragraph (12) he or she shall, in lieu, file the necessary disclosure with the Financial Intelligence Unit.

**5. The Principal Act is amended, by inserting immediately after section 20, the following section 20A –**

20A (1) Where –

several individual cross-border electronic funds transfer from a single originator are bundled in a batch file for transmission to beneficiaries, the

batch file shall contain

(a) required and accurate originator information, and

(b) full beneficiary information,

that is fully traceable within the beneficiary country.

(2) In relation to subsection (1), financial institutions shall include the originator's account number or any unique transaction reference number.

20B (1) Financial institutions shall not execute an electronic funds transfer, if that financial institution is not in receipt of the required originator and beneficiary information under section 20 of this Act.

(2) Financial institutions shall only complete the electronic funds transfer when the required originator and beneficiary information referred to in subsection (1) is received.

20C (1) Where-

(a) an electronic funds transfer which is the subject of the equivalent of at least two hundred thousand dollars or more and

(b) the identity of the beneficiary had not been previously verified;

the beneficiary financial institution shall verify the identity of the beneficiary and shall, for a period of at least seven years, keep records of the information.



(a) In subsection (1) –

- (i) deletion of the word ‘and’ after the number 19;
- (ii) by immediately inserting after the number 20, the words –

‘sections 68A, 68B, 68C, 68D, 68F, 68G, 68H and 68I, sections 75A and 75B, and all other reporting entity obligations under this law.’

**7. The Principal Act is amended by inserting immediately after section 22, the following sections 22A and 22B**

*Power to require information by supervisory authorities of financial institutions*

22A (1) Where in accordance with section 76, a supervisory authority of a financial institution is satisfied that assistance should be provided pursuant to a request by a supervisory authority of a financial institution of another state, and that the request is in relation to information which is in the possession or under the control of a financial institution in Guyana, the supervisory authority, may by notice in writing served on such reporting entity—

(a) require the financial institution to furnish the supervisory authority with such information as the supervisory authority may require with respect to any matter relevant to the inquiries to which the request relates;

(b) require the financial institution to produce to it such document or

documents of such description as it may specify;

(c) require the financial institution or any of its officers, servants or agents

(i) to attend before the supervisory authority at a specified time and place, and

(ii) answer any questions on oath or otherwise furnish any information with respect to any matter relevant to the inquiries; or

(d) require the financial institution to otherwise give the supervisory authority such assistance in connection with those inquiries as the financial institution may reasonably be able to give.

(2) Where documents are produced pursuant to this section, the supervisory authority may take copies from them.

(3) Nothing in this section shall require the disclosure or production by a person of information or documents which he would be entitled to refuse to disclose or produce on the grounds of legal professional privilege in proceedings in Guyana.

(4) Where any person claims a lien on a document, its production under this section is without prejudice to that lien.

22B (1) A supervisory authority of a financial institution may authorise any of its officers or any other competent person to exercise on its behalf , any of the powers conferred by section 22A.

(2) No such authority shall be granted except for the purpose of investigating—

- (a) the affairs, or any aspect of the affairs, of a financial institution specified by the supervisory authority; or
- (b) a subject matter specified by the supervisory authority;

being a financial institution who, or a subject matter which, is the subject of the inquiries being carried out by or on behalf of the foreign supervisory authority.

#### **8. Section 23 of the Principal Act is amended as follows–**

(a) in subsection (1)

(i) deletion of the word ‘and’ after the number 19;

(ii) by immediately inserting after the number 20, the words –

‘sections 68A, 68B, 68C, 68D, 68F, 68G, 68H and 68I, sections 75A and 75B, and all other reporting entity obligations under this law.’

(b) immediately after subsection (1), the insertion of new subsections (1A), (1B), (1C), (1D) and (1E) -

(1A) In addition to subsection 1 (e), a supervisory authority may suspend, cancel or revoke any permit, registration, licensing or any other authorisation it has issued, or take any other administrative penalty.

(1B) Where the supervisory authority has grounds for suspending, cancelling or revoking a permit or other authorisation issued under its respective powers, the supervisory authority shall issue a written notice to the reporting entity, providing the reasons for the decision, and may include in the notice, an obligation to pay

- (a) a fine not exceeding three million dollars for natural persons, or
- (b) a fine not exceeding seven million dollars for body corporates.

(1C) Fines paid under section 1B shall be deposited into the Consolidated Fund.

(1D) If a person commits repeated violations of this Act, or the terms of any licence, registration, permit or other authorisation issued by the supervisory authority, the supervisory authority may recommend, to the Commercial Registry in writing with reasons, that the incorporation or business name of the reporting entity be revoked.

(1E) Upon receipt of such recommendation to revoke the incorporation or business name of the reporting entity, the Registrar of the Commercial Registry may suspend or revoke the incorporation or business name of the reporting entity within seven days.

Amendment of  
section 24 of the  
Principal Act.

**9. Section 24 of the Principal Act is amended as follows—**

(a) in subsection (2) –

(i) the substitution of ‘the colon (:)’ with a fullstop (.)’

(ii) deletion of the phrase ‘Provided that an order under this subsection may not require the production of banker’s books.’.

(b) after subsection (5), the insertion of subsections (6) and (7) as follows –

*Meaning of privileged material*

(6) For the purposes of this Part, “privileged material” means—

(a) communications between a professional legal adviser and his client or any person representing his client made in connection with the giving of legal advice to the client;

(b) communications between a professional legal adviser and his client or any person representing his client or between such an adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) material enclosed with or referred to in such communications and made—

(i) in connection with the giving of legal advice, or

(ii) in connection with or in contemplation of legal

proceedings and for the purposes of such proceedings;

when they are in the possession of a person who is entitled to possession of them.

(7) Material or communication with the intention of furthering a criminal purpose, or to knowingly conceal a criminal enterprise, shall not be considered privileged material.

**10. Section 29 of the Principal Act is amended as follows–**

(a) “by immediately inserting after the word ‘magistrate’, the words ‘justice of the peace’ –

**11. Section 37 of the Principal Act is amended as follows–**

(a) in subsection (2)-

(i) substitution of the words ‘seventy-two hours’ for the words ‘seven days’;

(b) in subsections (2)(3) (4) (5) and (7)

(i) “by immediately inserting after the words ‘Judge in Chambers’, the words ‘or magistrate’.

(c) in subsection (8)

(i) “by immediately inserting after the word ‘Judge’, the words ‘or magistrate’.

**12. The Principal Act is amended by inserting immediately after section 37, the following sections 37A and 37B**

37A (1) Subject to sections 37 or 37A, an application for the forfeiture of

the whole or any part of it may be made to the Magistrate's Court by a person authorized by the Director of Public Prosecutions or the relevant Competent Authority.

(2) The Magistrate's Court may order the forfeiture of the currency, or any part of it, if satisfied that the currency or part—

- (a) is obtained or derived from unlawful conduct; or
- (b) is intended by any person for use in unlawful conduct.

(3) In the case of recoverable currency which belongs to joint proprietors, one of whom is an excepted joint owner, the order may not apply to so much of it as the Magistrate's Court thinks is attributable to the excepted joint owner's share.

(4) Where an application for the forfeiture of any currency is made under this section, the currency is to be detained (and may not be released under any power conferred by this Part) until any proceedings pursuant to the application (including any proceedings on appeal) are concluded.

(5) Where an officer of a relevant Competent Authority seizes unattended currency under section 37 or 37A, that officer may apply for immediate forfeiture of that cash.

#### *Appeal against forfeiture*

37B (1) Any party to proceedings for an order for the forfeiture of currency under section 37A, who is aggrieved by an order under that section or by the decision of the court not to make such an order, may appeal to the Court.

(2) An appeal under subsection (1) shall be made within the period of thirty days commencing on the date on which the order is made.

(3) An appeal under subsection (1) shall be by way of a rehearing by the Court which may make any order that it considers appropriate.

If the Court upholds the appeal, it may order the release of the currency (and any interest accrued in the case of Cash) where the appeal is against an order for forfeiture.

**13. Section 38 of the Principal Act is amended as follows–**

(a) inserting immediately after subsection (1), the following subsection (1A) –

(1A) For the purposes of this section and sections 39 to 66, a reference to the Court means the Magistrate’s Court or the High Court.

(b) “by immediately inserting after the words ‘Director of Public Prosecutions’”, the words ‘or relevant Competent authority’.

**14. Section 39 of the Principal Act is amended as follows–**

(a) by subsections (1) and (1) (f)

(i) “by immediately inserting after the words ‘Director of Public Prosecutions’”, the words ‘or relevant Competent Authority’

(b) inserting immediately after subsection (5), the following new subsections (6) (7) and (8) –

(6) On the application of the Director of Public Prosecutions or the relevant Competent Authority, whether made as part of the application for

the restraint order or subsequent thereto, the Court may make such order as it considers appropriate for ensuring the restraint order is effective.

(7) Where the Court has made a restraint order, a police officer, including an officer of the relevant Competent Authority may seize and/or detain the property, for the purpose of preventing any property to which the order applies -

- (a) being removed from Guyana;
- (b) being concealed from the relevant Competent Authority or
- (c) destroyed.

(8) Property seized and/or detained under subsection (7) shall be dealt with in accordance with the Court's directions.

**15. Section 44 of the Principal Act is amended as follows –**

(a) by substituting for subsection (6), for the following subsection –

(6) An application to discharge or vary a restraint order, or an order made under section 39, may be made to the Court by the Director of Public Prosecutions, a relevant Competent Authority or by any person affected by the order, including innocent third parties.

**16. Section 45 of the Principal Act is amended as follows –**

(a) by subsections (1) and (2)

(i) “by immediately inserting after the words ‘Director of Public Prosecutions’’, the words ‘or relevant Competent Authority’

**17. The Principal Act is amended by inserting immediately after**



**section 45, the following section as 45A –**

*Hearsay evidence*

45A (1) Evidence shall not be excluded on the ground that it is hearsay, of whatever degree, in proceedings—

- (a) for a restraint order;
- (b) for a production order
- (c) for an application to discharge or vary a restraint order or production order;
- (d) on an appeal against a restraint order or production order, or
- (e) an order discharging or varying a restraint order or production order

(2) For the purposes of this section, “hearsay” is a statement which is made otherwise than by a person while giving oral evidence in the proceedings and which is tendered as evidence of the matters stated.

(3) This section does not affect the admissibility of evidence which is admissible apart from this section.

(4) Notwithstanding subsection (1), where such hearsay evidence becomes admissible pursuant to this section, the Court shall determine its relevance, weight or truthfulness when making a determination in the proceeding.

**18. Section 46 of the Principal Act is amended as follows –**

- (a) In subsection (1)
  - (i) by immediately inserting after the words ‘Director of Public

Prosecutions’, the words ‘or relevant Competent Authority’.

(b) in subsection 2 (b) –

(i) by substituting for the word ‘six’, the word ‘twenty’.

**19. Section 54 of the Principal Act is amended as follows –**

(a) in subsection (1)

(i) by immediately inserting after the words ‘Director of Public Prosecutions’, the words ‘or relevant Competent Authority’.

**20. Section 55 of the Principal Act is amended as follows –**

(a) in subsection 3 (b) (ii) –

(i) by substituting for the word ‘six’, the word ‘twenty’.

**21. Section 56 of the Principal Act is amended as follows –**

(a) in subsections (1) (a), (4) and (4) (b) -

(i) by immediately inserting after the words ‘Director of Public Prosecutions’, the words ‘or relevant Competent Authority’.

**22. The Principal Act is amended by inserting immediately after section 57, the following sections 57A and 57B**

57 A The Court shall determine any question arising under sections 54 -57 on a balance of probabilities.

*Provision of information by defendant*

57B (1) For the purpose of obtaining information to help it in carrying out its functions under sections 54-57, the Court may at any time, order the defendant to submit the information specified in the order.

(2) An order under this section may require all or a specified part of the information to be given in a specified manner and before a specified date.

(3) If the defendant fails without reasonable excuse to comply with an order under this section the Court may draw such inference as it believes is appropriate.

(4) Subsection (3) does not affect any power of the Court to deal with the defendant in respect of a failure to comply with an order under this section.

(5) If the Director of Public Prosecutions or relevant Competent Authority accepts to any extent an allegation made by the defendant—

- (a) in giving information required by an order under this section,  
or
- (b) in any other statement given to the Court in relation to any matter relevant to determining the amount available to him or her

the Court may treat the acceptance as conclusive of the matters to which it relates.

(6) For the purposes of this section, an allegation may be accepted in a manner ordered by the Court.

(7) The Court may, at any time, vary an order made under this

section.

(8) No information given under this section which amounts to an admission by the defendant that he or she has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

**23. Section 59 of the Principal Act is amended as follows –**

- (a) in subsections (3), (5) and (5) (a) -
  - (i) by immediately inserting after the words ‘Director of Public Prosecutions’, the words ‘or relevant Competent Authority’.

**24. The Principal Act is amended by inserting immediately after section 60 the following sections as 60A, 60B, 60C and 60D –**

*Time for payment*

60A (1) Unless subsection (2) applies, the full amount ordered to be paid under a confiscation order must be paid on the day on which the order is made.

- (2) If the court making the confiscation order is satisfied that the defendant is unable to pay the full amount on that day, it may make an order requiring the outstanding or unpaid amount to be paid –

- (a) in a specified period, or
- (b) in specified periods each of which relates to a specified amount.

- (3) A specified period –

- (a) must start with the day on which the confiscation is made, and
- (b) must not exceed three months.

(4) If –

- (a) within any specified period the defendant applies to the Court for that period to be extended, and
- (b) the Court is satisfied that, despite having made all reasonable efforts, the defendant is unable to pay the amount to which the specified period relates within that period,

the Court may make an order extending the period (for all or any part or parts of the amount in question)

(5) An extended period –

- (a) must start with day on which the confiscation order is made, and
- (b) must not exceed six months.

(6) An order under subsection (4) –

- (a) may be made after the end of the specified period to which it relates, but
- (b) must not be made after the end of the period of six months starting with the day on which the confiscation order is made

(7) Periods specified or extended under this section must be such that, where the Court believes that a defendant will by a particular day be able –

- (a) to pay the amount remaining to be paid, or

(b) to pay an amount towards what remains to be paid

that amount is required to be paid no later than that day

(8) The Court must not make an order under subsection (2) or (4) unless it gives the Director of Public Prosecutions or the relevant Competent Authority an opportunity to make representations.

*Interest on sums unpaid under pecuniary penalty order*

60B (1) If the amount required to be paid by a person under a pecuniary penalty order under section 54 is not paid when it is required to be paid, he or she shall pay interest on the amount unpaid for the period for which it remains unpaid at the rate for the time being applying to a civil judgment debt.

(2) The amount of interest payable under this section shall be treated as part of the amount to be paid under the confiscation order.

*Application of procedure for enforcing payment under sections 54 -60*

60C (1) Where the Court or the Magistrate's Court orders the defendant to pay any amount under sections 54-60 of this Act, the order shall have effect as if that amount was a fine imposed on the defendant by the Court.

(2) Where the whole or any part of the sum ordered to be paid is not paid when required by the Court or the Magistrate's Court as the case may be, the Court or the Magistrate's Court may in respect of default, impose a term of imprisonment of no less than one year or no more than ten years.

(2) Where—

(a) a warrant of commitment is issued for a default in payment of an amount ordered to be paid under this Act in respect of any offence

or offences; and

- (b) at the time the warrant is issued, the defendant is liable to serve a term of custody in respect of the offence or offences;

the term of imprisonment to be served in default of payment of the amount shall not begin to run until after the term mentioned in paragraph (b) has been served.

(3) If, under a power granted by this Act, the Court or the Magistrate's Court varies a pecuniary penalty order and the effect is to reduce the maximum period of imprisonment specified in this section—

- (a) if, as a result, the maximum period of imprisonment is less than the term of imprisonment imposed by the Court or the Magistrate's Court as the case may be, the Court or Magistrate's Court shall impose a reduced term of imprisonment; or

- (b) if paragraph (a) does not apply, the Court or Magistrate's Court may amend the term of imprisonment imposed.

(4) If, under a power granted by this Act, the Court or Magistrate's Court varies a pecuniary penalty order and the effect is to increase the maximum period of imprisonment specified in this section, the Court or magistrate's Court may on the application of the Director of Public Prosecutions or the relevant Competent Authority, amend the term of imprisonment imposed.

(5) Where the defendant serves a term of imprisonment in default of paying any amount due under a pecuniary penalty order, his serving that term does not prevent the pecuniary penalty order

from continuing to have effect, so far as any other method of enforcement is concerned.

- (6) This section applies in relation to pecuniary penalty order orders made by the Court of Appeal, in its appellate jurisdiction, as it applies in relation to confiscation orders made by the Court or the Magistrate's Court.

*Court may order payment by a financial institution*

60D (1) This section applies to money which -

(a) is held by a person; and

(b) is held in an account maintained by a person with a financial institution.

(2) This section applies if the following conditions are satisfied –

(a) a pecuniary penalty order is made against the person by whom the money is held; and

(b) a receiver has not been appointed under section 62;

(3) In such a case, the Court may order the financial institution to pay the money to the Court on account of the amount payable under the pecuniary penalty order.

(4) If a financial institution fails to comply with an order under subsection (3) it commits an offence against this section.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine not exceeding five million dollars.



(6) Where by this section, a financial institution 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 Court is satisfied that the financial institution has failed to do so, the Court may impose on the institution, in addition to the fine specified in subsection (5), an additional penalty of \$500 000 for every day or part of a day that the institution failed to take the measure or action or cease the particular activity, behaviour or practice.

(7) The penalty referred to in subsection (6)

(a) may be imposed from the day following the day by which the financial institution was supposed to have taken the measure or action or ceased the particular activity, behaviour or practice; and

(b) shall not be imposed in respect of a period of more than 30 days.

**25. Section 66 of the Principal Act is amended by substituting that section for the following section -**

66. The provisions of sections 38 to 64 (inclusive) apply to any property determined by the Court to be tainted property or the proceeds of crime.

**26. The Principal Act is amended by inserting immediately after section 66, the following sections 66A, 66B 66C, 66D and 66E.**

66A (1)- For the purposes of determining whether property was recoverable at any time, including times before the commencement date of

this Act, this Part is deemed to have been in force at that time and at any other relevant time.

(2) 'Court' under this Part refers to a High Court or Magistrate Court of competent jurisdiction applying *mutatis mutandis*.

### ***National Forfeiture Fund***

66B (1) The Minister shall, by order, establish a fund to be known as the National Forfeiture Fund.

(2) There shall be paid into the Forfeiture Fund—

- (a) all money recovered under a criminal forfeiture order or confiscation order or under a forfeiture order made under this Act or any other law in Guyana;
- (b) all money recovered under a recovery order;
- (c) all cash forfeited under section 37 or under section 6 of the Foreign Exchange (Miscellaneous Provisions) Act;
- (d) all money paid to the Government by a foreign jurisdiction in respect of confiscated or forfeited assets;
- (e) money forfeited or delivered as result of a confiscation or forfeiture order under any other law of Guyana; and
- (f) such other monies as may be specified in the Anti-Money Laundering/Countering the Financing of Terrorism Regulations.

(3) The Minister shall, on the recommendation of the Committee,

authorise payments to be made out of the Fund—

- (a) to meet the costs and expenses of the Committee
- (b) to satisfy any obligation of the Government to a foreign Government or with respect to confiscated asset;
- (c) to meet the costs and expenses of a receiver appointed under this Act;
- (d) to meet the costs of special investigations into the misuse of the financial system for money laundering, terrorist financing, proliferation financing or other financial crime; and
- (f) to pay costs or compensation awarded under this Act.

(4) From the amount remaining in the Forfeiture Fund after the satisfaction of the payments prescribed by subsection (3), the Minister shall order such amount to be allocated to the Consolidated Fund, by such intervals to be determined by the Minister.

#### *Administration of the Fund*

66C (1) The Forfeiture Fund shall be held and administered by the Committee.

(2) The Committee shall open and maintain an account with a bank authorised by the Attorney General in Guyana, into which all monies payable to the Forfeiture Fund shall be paid.

#### *Preparation of financial statements*

66D (1) The financial year of the Forfeiture Fund ends on December 31<sup>st</sup> in each year.

(2) The Committee shall

(a) keep proper records of the money paid into and out of the Fund and of investments made pursuant to section 66B (3); and

(b) ensure that—

(i) all money received is properly brought to account;

(ii) all payments are correctly made and properly authorised; and

(iii) adequate control is maintained over the assets of the Forfeiture Fund.

(3) The financial records kept under subsection (2) shall—

(a) be sufficient to show and explain all transactions relating to the Forfeiture Fund;

(b) enable the financial position of the Forfeiture Fund to be determined with reasonable accuracy at any time; and

(c) be sufficient to enable financial statements to be prepared and audited in accordance with this section.

(4) Within two months after the end of each financial year, the Committee shall prepare—

(a) financial statements containing—

- (i) a statement of the assets of the Forfeiture Fund at the end of the financial year; and
  - (ii) a statement of the money received into the Forfeiture Fund and the payments made out of the Forfeiture Fund during the financial year;
- (b) such other financial statements for the financial year as may be specified by the Minister; and
- (c) proper and adequate explanatory notes to the financial statements prepared under paragraphs (a) and (b).

*Audit of financial statements and annual report*

66E (1) The Committee shall cause the financial statements prepared under section 66D to be audited and certified by an auditor, to be appointed annually by the Minister, after consultation with the Committee within three months after the end of the financial year.

(2) The auditor appointed under subsection (1) may be the Auditor General or such other suitably qualified person.

(3) The auditor shall prepare a report of his or her audit of the financial statements of the Forfeiture Fund which shall include statements as to whether, in his or her opinion—

- (a) he or she has obtained all the information and explanations necessary for the purposes of the audit; and
- (b) to the best of his or her information and according to the explanations given to him, the financial statements give a true and fair view of—
  - (i) the assets of the Forfeiture Fund as at the end of the

financial year; and

- (ii) the money received into the Forfeiture Fund and the payments made out of the Forfeiture Fund during the financial year.

(4) Within 6 months after the end of each financial year, the Committee shall prepare and submit to the Minister a copy of the audited financial statements, which shall include the report of the auditor on the financial statements.

(5) The Minister shall, as soon as reasonably practicable after their receipt, lay a copy of the audited financial statements, together with the auditor's report, before the Parliament.

**27. Section 67 of the Principal Act is amended as follows–**

(a) in subsection (4)

- (i) “by immediately inserting after the words ‘Judge in Chambers’, the words ‘or magistrate’

**28. Section 68A of the Principal Act is amended as follows –**

(a) in subsection (2) (d)–

- (i) immediately after the word ‘entity;’, the insertion of the word ‘or’.

(b) inserting immediately after subsection (2) (d), a new subsection (e) –

- (e) make any property, funds and other assets that are wholly or jointly

owned or controlled, directly or indirectly, by designated persons or entities, available for the benefit of a designated, specified or listed person or entity.

(c) inserting immediately after subsection (3), the following subsections (3)A and (3)B-

(3)A – Property referred to in subsection (3) shall also include

(a) all property, funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat;

(b) those funds, property or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and

(c) the funds, property or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as

(d) property, funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

(3)B – Where a person or entity has determined that they are in possession or control of property, funds or other assets referred to in subsections (3) and (3)A, that person or entity shall, without prior notice and without delay, freeze all the property held by it in relation to the listed person or entity.

(d) in subsection (5) (a) –

(i) by substituting the words ‘by telephone’ with the words ‘by any means necessary,’.

**29. Section 68C of the Principal Act is amended as follows–**

(a) “By immediately inserting after the word determined –

(i) by order of the Court

**30. Section 68D of the Principal Act is amended as follows–**

(a) in subsections (1) (2) (3) and (4) -

(i) by substituting the words ‘Minister responsible for Legal Affairs’ with ‘Court’;

(b) in subsection (3),

(i) immediately after the word ‘assets’, substitute the word ‘Minister’ for ‘Court’.

**31. Section 68E of the Principal Act is amended as follows –**

(a) in subsection (2) (d)–

(i) immediately after the word ‘entity;’, the insertion of the word ‘or’.

(b) inserting immediately after subsection (2) (d), a new subsection (e) –

(e) make any property, funds and other assets that are wholly or jointly



owned or controlled, directly or indirectly, by designated persons or entities, available for the benefit of a designated, specified or listed person or entity.

(c) inserting immediately after subsection (3), the following subsections (3)A and (3)B-

(3)A – Property referred to in subsection (3) shall also include

(a) all property, funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular terrorist act, plot or threat;

(b) those funds, property or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities; and

(c) the funds, property or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities, as well as

(d) property, funds or other assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities.

(3)B – Where a person or entity has determined that they are in possession or control of property, funds or other assets referred to in subsections (3) and (3)A, that person or entity shall, without prior notice and without delay, freeze all the property held by it in relation to the listed person or entity.

(d) in subsection (5) (a) –

(i) by substituting the words ‘by telephone’ with the words ‘by any means necessary,’.

**32. Section 68H of the Principal Act is amended as follows—**

(a) in subsections (1) (2), (2)(a), (2) (b), (2) (c) and (3) –

(i) by substituting the word ‘Minister’ with ‘Court’;

(b) in subsection (2) (b)

(i) by substituting the word ‘Minister’s’ with ‘Court’s’.

**33. The Principal Act is amended by inserting immediately after section 75 the following section as sections 75A and 75B –**

**PROLIFERATION FINANCING**

75A(1) Proliferation financing takes place when a person –

- (a) makes available an asset,
- (b) provides a financial service, or
- (c) conducts a financial transaction, and

the person knows that, or is reckless as to whether, the asset, financial service or financial transaction is intended, in whole or in part, to facilitate any of the activities specified in subsection (2), regardless of whether the specified activity occurs or is attempted.

(2) The activities referred to in subsection (1) are –

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transshipment or use of –

(i) nuclear weapons;

(ii) chemical weapons;

(iii) biological weapons; or

(iv) materials related to nuclear weapons, chemical weapons, biological weapons or radiological weapons that are prescribed by regulations or restricted or prohibited under any enactment relating to export or import controlled measures; and

(b) the provision of technical training, advice, service, brokering or assistance related to any of the activities mentioned in paragraph (a).

75(B) (1) Any person who commits proliferation financing commits an offence.

(2) Any person who

(i) facilitates ;

(i) conspires to commit;

(iii) aids and abets

proliferation financing commits an offence.

(2) A person who contravenes subsection (1) is liable to a fine of no less than one hundred million dollars or no more than five hundred million dollars or to imprisonment for life or to both.

(3) A person who contravenes subsection (2) is liable for a fine of no less than fifty million dollars or no more than five hundred million dollars or to imprisonment for life or to both.

**34. Section 76 of the Principal Act is amended as follows–**

(a) in subsection (1)

(i) inserting immediately after the word ‘provide’, the word ‘timely’.

(b) in subsections (1) (2) and (3)

(i) by immediately inserting after the words ‘money laundering offences’, the words ‘, proliferation financing offences’.

(c) by inserting immediately after subsection (6), new subsections (7), (8), (9), (10), (11), (12) (13) -

(7) Competent authorities shall have clear and secure mechanism, gateways and channels for the transmission of information, which include

(a) the use of sealed envelopes;

(b) dedicated secured electronic communication gateways and

(c) any other administrative method that preserves the confidentiality and integrity of the information.

(8) No person who receives a request; or obtains information directly or

indirectly, shall disclose the request or the information to another person, except in accordance with this Act.

(9) Notwithstanding subsection (6), competent authorities may share information with competent authorities of another state spontaneously or upon request, provided that the requesting competent authority has provided an undertaking that

(a) the confidentiality of the information requested will be protected;

(b) that the information will be utilised for the purpose for which it was provided and

(c) unless provided by prior consent,

(i) there will be no dissemination of the information to other competent authorities or third parties and

(ii) the use of the information shall not be used beyond that originally approved.

(10) Where the written consent is obtained to disclose to a third party, any information which is shared pursuant to this section, the competent authority requesting to do so, shall ensure that

(a) adequate warning and notice is given to the third party;

(b) the third party is informed of the restrictions surrounding its use and dissemination of the information and

(c) the third party provides an undertaking to abide by these restrictions.

(11) Where the requesting competent authority of another state is unable to protect the information effectively, competent authorities shall refuse to provide the information requested, until it is satisfied, on reasonable basis,

that the requesting competent authority of that state can protect the information effectively.

(12) Competent authorities shall monitor the quality of assistance they receive from other countries in response to requests for

(a) basic and beneficial ownership information or

(b) assistance in locating beneficial owners residing abroad.

(13) For the purpose of this section, 'competent authorities' include all public authorities referred to in section 7A (7) of this Act, and also includes

(a) the Ministry with responsibility for Legal Affairs

(b) the Ministry with responsibility for National Security or Home Affairs

(c) the Commercial and Deeds Registry;

(d) the Wildlife Conservation and Management Commission;

(e) the Integrity Commission

(f) the Committee and

(g) any other authority or institution as designated by the Minister by order.

**35. Section 108 of the Principal Act is amended as follows–**

(a) by immediately inserting after the words 'money laundering ', the words ', proliferation financing'.

**36. The Principal Act is amended by inserting immediately after section 108, the following sections 109A and 110A -**

*Role of the Special Organised Crime Unit*

109A (1) The Special Organised Crime Unit shall be a semi-autonomous unit within the Guyana Police Force, with the specialist functions of, inter alia

(a) investigating money laundering, terrorism financing and proliferation financing offences;

(b) prosecuting money laundering, terrorism financing and proliferation financing offences;

(c) the restraining, confiscating, seizure, detention and forfeiting of tainted property and proceeds of crime;

(d) cooperating, collaborating and engaging with information gathering, sharing and exchange with any supervisory authority, competent authority, relevant competent authority, Ministry, Agency and any other authorized person or body in Guyana;

(e ) collaborating with the Guyana Police Force, the Guyana Defence Force, the Customs Anti-Narcotics Unit, the Financial Intelligence Unit, the Director of Public Prosecutions and any other relevant Competent Authority or agency with regards to the investigation and prosecution of unlawful conduct under the Anti-Terrorism and Terrorist Related Activities Act;

(f) forming joint investigative teams to conduct cooperative investigations, including with relevant competent authorities of another state;

(g) establishing bilateral or multilateral arrangements to enable joint investigations or any necessary operations in cooperation with relevant

competent authorities of another state when required;

(h) performing any required functions under section 76 of this Act;

(i) establishing Standard Operating Procedures

(j) management of seized and detained assets; and

(k) any other function as required to effectively perform its mandate as directed by the Commissioner of Police.

(2) Officers of the Guyana Police Force who are employed within the Special Organised Crime Unit shall retain all police powers as prescribed under the Police Act.

(3) The Head of the Special Organised Crime Unit shall be a senior police officer who would have at least achieved the rank of Superintendent.

*Establishment of the Guyana Compliance Commission*

110A. (1) There is established a Commission to be known as the Guyana Compliance Commission, which shall be the designated supervisor for select designated non-financial businesses and professions, and other reporting entities as determined by the Minister for antimoney laundering/countering the financing of terrorism/countering proliferation financing compliance purposes.

(2) The functions and responsibilities of the Guyana Compliance Commission are provided in the Guyana Compliance Commission Act.

**37. The Principal Act is amended by inserting immediately after section 112, the following section 112A**

*Ability to accept Forensic Accountant or Financial Analyst Reports as*



*Expert Reports*

112A. The Court may accept the report of a Forensic Accountant or Financial Analyst as an Expert Report in relation to any proceeding under this Act.

**38. The First Schedule to the Principal Act is amended as follows –**

(a) By substituting the words ‘Used car dealers or car parts dealers’ with the words ‘Auto dealers’

(b) by immediately inserting after the item ‘Cooperatives’, the item ‘Commissioners of Oaths to Affidavits’.

(c) by inserting immediately after (m), letter (n) with the words “engaging in the activity or business of providing access to financial inclusion products.

(d) renumbering paragraph (n) as paragraph (o).

(e) by inserting immediately after the word ‘pawn-broking’ the words ‘and Money Lenders’.

**39. The Second Schedule to the Principal Act is amended by immediately inserting after the item ‘Piracy’, the item ‘Proliferation Financing’.**

**40. The Fourth Schedule to the Principal Act is amended as follows –**

(a) Immediately inserting under the item ‘Cooperatives’, the following columns -

<b>First Column</b>	<b>Second Column</b>

Auto Dealers	Supervisory Authority appointed by the Minister responsible for Finance
Attorneys-at-Law	Guyana Compliance Commission
Accountants	Guyana Compliance Commission
Auditors	Guyana Compliance Commission
Commissioners of Oaths to Affidavits'	Guyana Compliance Commission
Real Estate Agents, Brokers, Dealers, Valuers and Housing Developers	Supervisory Authority appointed by the Minister responsible for Finance
Non-Financial Trust and Company Service Providers	Guyana Compliance Commission
Money Lenders	Supervisory Authority appointed by the Minister responsible for Finance
Virtual Assets and Virtual Assets Service Providers	Supervisory Authority appointed by the Minister responsible for Finance

**47. The Principal Act is amended by the insertion of a Fifth Schedule as follows -**

**FIFTH SCHEDULE**

(section 4)

**1. REPORTING THRESHOLD APPLICABLE TO [GAMING] SECTOR (lotteries, casinos, betting shops, including a person who carries on such a business through the internet)**

All persons licensed to conduct casinos under the Gambling Prevention Act, and lotteries, shall report all transactions of its customers equal to or above \$500,000 Guyana Dollars or more as may be determined by the Minister responsible for Finance.

All persons licenced to conduct betting shops under the Tax Act shall report all transactions of its customers equal to or above \$500,000 Guyana Dollars or more as may be determined by the Minister responsible for Finance.

**2. REPORTING THRESHOLD APPLICABLE TO PAWNBROKERS**

Every Pawnbroker and Money Lender shall report all transactions of its customers involving \$300,000 Guyana Dollars or more.

**3. REPORTING THRESHOLD APPLICABLE TO CREDIT UNIONS**

All Credit Unions shall report all transactions of its customers involving \$500,000 Guyana Dollars or more.

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

## **SCHEDULE- Amendments to other Acts**

### **TRAFFICKING IN PERSONS ACT 2005**

**Section 2** is amended by inserting immediately after the item ‘practices similar to slavery’ the following –

‘migrant’ refers to a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons

‘migrant smuggling’ or ‘smuggling of migrants’ means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into

(i) Guyana or

(ii) any State party to the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

of which the person is not a national or a permanent resident’ and shall mean all conduct criminalised under section 12A of this Act;

**By inserting after section 12, the following sections as section 12A and 12B**

**12A (1)** -Any person who arranges for an unauthorised migrant to enter Guyana or any other country, commits an offence if he or she

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorised migrant.

(2) Any person who arranges for an unauthorized migrant to be brought to

Guyana or any other country, commits an offence if he or she

(a) does so for a material benefit; and

(b) either knows that the person is, or is reckless as to whether the person is, an unauthorized migrant; and

(c) either —

(i) knows that the person intends to try to enter Guyana or any other country; or

(ii) is reckless as to whether the person intends to try to enter the Guyana or any other country.

(3) Any person who intentionally, in order to obtain directly or indirectly a financial or other material benefit, produces, procures, provides or - possesses a fraudulent travel or identity document for the purpose of - enabling the smuggling of migrants, commits an offence.

(4) Any person who intentionally, in order to obtain directly or indirectly a financial or material benefit, uses illegal means to enable a person who is not a national or a permanent resident to remain in the Guyana or another country without complying with the necessary requirements for legally remaining in the Guyana or another country, commits an offence.

(5) Any person who attempts to commit an offence under this section commits an offence.

(6) Any person who participates as an accomplice to an offence under subsections (1) –(5) above where this involves producing a fraudulent travel or identity document, commits an offence.

(7) Any person who organises or directs another person or persons to commit an offence under this section, commits an offence.

(8) (a) A natural person who contravenes this section commits an offence and shall be liable on conviction -

(i) to a fine of not less than two million dollars nor more than fifty million dollars and to imprisonment for five years; or to both.

(b) A body corporate which contravenes this section commits an offence and shall be liable on conviction

a fine of not less than ten million dollars nor more than [two hundred million dollars;

9) Proceedings may be brought under the section even if the unauthorised migrant did not in fact enter Guyana, or the country concerned.

(10) Proceedings may be brought under this section even if the unauthorised migrant was not in fact brought to the State concerned.

**Offence by a body corporate**

**12B.** Where an offence under the provisions of section 12A is committed by a body of persons, whether corporate or unincorporated, every person who, at the time of the commission of the offence, acted in an official capacity for or on behalf of such body of persons, whether as director, manager, secretary or other similar officer, or was purporting to act in such capacity, is guilty of that offence, unless that person adduces evidence to show that the offence was committed without his knowledge, consent or connivance and that they exercised all due diligence to prevent the commission of the offence.

**EVIDENCE ACT Cap 503**

**(a) By substituting for section 11, the following section as section 11 –**

11. In any cause or matter in which a bank is not a party, that bank or an officer of that bank, is not compellable to produce any banker's book or appear as a witness to prove the matters, transaction and accounts therein recorded, except-

(a) by order of a Court made for special cause;

(b) pursuant to a summons issued by the Integrity Commission established by the Integrity Commission Act; or

(c ) by order of the Court under section 24 of the Antimoney Laundering/Countering the Financing of Terrorism Act.

**(b) Section 16 is amended by immediately after subsection (6), the insertion of a new subsection (7) –**

(7) The Court may accept the report of a Forensic Accountant or Financial Analyst as an Expert Report in relation to any proceeding under this Act, the Antimoney Laundering/Countering the Financing of Terrorism Act and the Anti Terrorism and Terrorist Related Activities Act.

### **EXPLANATORY MEMORANDUM**

This Bill seeks to amend the Anti-Money Laundering and Countering the Financing of Terrorism Act, Cap 10:11, to update the Act to ensure the Financial Intelligence Unit (FIU) meets the necessary requirements for membership to the Egmont Group.

**Section 2** provides critical updates in the interpretation section, by providing updated definitions for auto dealers.. It outlines the meaning for the words 'without delay' based on discussions at previous CFATF Plenaries. As a result, the definition for politically exposed

person (PEP) was also upgraded based on the current FATF Standard to include international organisation PEPs.

This Act also now contains a FATF Best practice definition for nonprofit organisations, as well as definitions for precious metals and precious stones. Currency has also been updated to include virtual, digital and crypto assets and currencies.

Serious offences has also been updated to involve unlawful conduct, thus also providing an all crimes approach to the listed approach which is currently available in the Schedule.

An insertion has been made by **section (2)(1)B** in order to provide clarity with regard to the Minister making a prompt determination with regard to designation under the UNSCR 1373 regime.

The amendment to **section 15** now provides that a reporting entity will not perform CDD if it is likely to tip off a person, and the reporting entity will submit an STR in lieu of conducting CDD.

The insertion of a new **section 20A** deals with electronic funds transfer with regard to batch transfers and including the keeping of records of beneficiary information for those electronic funds transfers of two hundred thousand Guyana dollars and over if the beneficiary financial institution does not already possess that beneficiary information

**Sections 22 and 23** have been updated to place an obligation on reporting entities to file any suspicious reports that may be linked to proliferation financing. Section 23 has also been further updated to now provide administrative pecuniary penalty regimes for supervisors for those breaches which may not merit the situation going before a criminal law-based regime, but to be dealt with with the supervisor in addition to their powers of sanctions. As a result, a supervisory authority may suspend, cancel or revoke any permit, registration, licensing or any other authorization it has issued, or take any other administrative penalty.

The insertion of a new **section 22A and 22B** also ensure provide the power for supervisors of financial institutions to conduct enquiries on behalf of their international counterparts.



**Section 24** has now removed the proviso that excluded bankers' books from production orders. It also has ensured that matters can also be heard, not only by a high court judge, but also a magistrate, thus enabling greater efficiency in the operation of the granting and execution of production orders.

This section also provides a meaning for 'privileged material' as outlined in the Regional Security System Asset Recover Unit (RSS) Model Proceeds of Crime Bill (POCA-B), and specifies an exception to privileged material that namely, material held with the intention of furthering a criminal purpose is not privileged material .

**Section 29** provides that, in addition to magistrates, search warrants may also now be granted by a Justice of the Peace in order to facilitate hot pursuit and hot tip situations, to enable swift action and prevent a person from quickly dissipating their assets or instrumentalities of the crime.

**Section 37** indicates that applications for seizure may now be made before either a High Court Judge or a magistrate. Section 37A and 37B are also included to ensure that the cash seizure regime is further bolstered with more efficient processes. This is further supported by **section 38** which indicates that for all of the provisions in relation to asset recovery and confiscation, Court generally with regard to sections **39 to 66**, as well as **section 67**, will refer to either the Magistrate Court or High Court, applying mutatis mutandis. In specific sections under this part, a deficiency has been clarified to enable not only the DPP, but other relevant prosecutorial authorities to make relevant applications under the AML/CFT Regime, consistent with sections 38 and 39 below/

The period for detention of cash for investigative purposes has also been increased from 72 hours to 7 days.

**Section 38 and 39** also state that applications can be made by the DPP or 'other relevant competent authority,, which was recently defined in the 2022 Amendment to the AML/CFT Act as 'a law enforcement agency which carries out investigation into many 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', thus making it clear that

police prosecutors and designated staff of SOCU can bring actions, although this is currently being done. This is also present in **sections 44, 46, 54 55, 56 and 59.**

**Section 39** is also important in the restraint order regime, as new subsections (6) to (8) ensures that not only can the Court make whatever necessary orders to make restraint orders effective, but it also enables a law enforcement officer to seize the property, seize the property. for the purpose of preventing any property being removed from Guyana or concealed or destroyed domestically.

An amendment to **section 44** allows persons with an interest, to apply for a revocation or dismissal of a restraint order, including persons who are bona fide or innocent third parties.

This Bill inserts a **new section 45 A**, which is taken from the POCA-B, which does not exclude hearsay in matters relating to restraint orders. It indicates that it may be used as evidence, but does not fetter the judicial authority to consider it.

**Sections 46 and 55** provide a greater time period with regard to going after property of criminals for confiscation for forfeiture, amending the period in question from six years to twenty years.

The Bill also inserts new sections **57 A, 57 B, 60A, 60B, 60C and 60D.** These additions are from the RSS POCA-B, and provide the following considerations –

**Section 57A** - The Court shall determine any question arising under sections 54 -57 (confiscation/pecuniary penalty orders) on a balance of probabilities, thus indicating a more reasonable threshold than the required beyond reasonable doubt threshold which apply to matters of innocence and guilt in criminal charges;

**Section 57B** – The Court can order defendant to provide information, and if they refuse, the Court may draw inference from such; this is in order to facilitate such matters without affecting the issue of the trial at large if any, as subsection (8) indicates that no information given under this section which amounts to an admission by the defendant that he or she has benefited from criminal conduct is admissible in evidence in proceedings for an offence.

**Section 60A** indicates that the payment of a confiscation order is due the day it is made, but it allows the Court to also set time frames for payment. **Section 60B** provides that the court may order interest on unpaid sums. **Section 60C** provides a procedure for enforcing payments for orders made with regards to confiscation, whilst **section 60D** indicates measures by which a court may order payment of the persons' funds from a financial institution, with penalties to the financial institution for non-compliance and continued noncompliance.

**Section 66** of the Bill has been substituted, as it previously precluded assets gained before the passage of the Act from confiscation. The new provision repeal now provides the opportunity for the relevant competent authorities to go after any assets suspected to be tainted property, or having been assessed as proceeds of crime. **This is supported by section 66A.**

The new **sections 66B to 66E** deal with the creation of the National Forfeiture Fund, where the value of all items forfeited shall be placed in the fund and used for the benefit of fighting ML/TF/PF and its predicate offences. Upon establishment of the Fund, section 9A will have to be repealed as it currently directs all confiscated and forfeited proceeds go to the Consolidated Fund (CF). Article 216 of the Constitution indicates all public funds go into the CF. Best practice is to establish a separate fund for dealing with forfeiture and confiscation. As a result, section 9A cannot be repealed until the NFF is officially established. Based on Article 216 of the Constitution, it is likely that these provisions will have to be replicated in another Act, prior to the repeal of section 9A.

It may be possible that this provision may end up having to become a separate piece of legislation, but for the assessment purposes, it is a critical aspect

**Sections 68A and 68E** have been amended to ensure that terrorist financing sanctions are applied without delay.

**Sections 68C, 68D and 68H** ensures a fair regime, similar to the practice in most other jurisdiction, where matters related to persons listed or designated under the relevant United Security Council Resolutions, that person may apply to the Court, can apply to have some access to their funds provided to deal with basic expenses and pay for legal representation.

This power was previously in the hands of the Minister with responsibility for Legal Affairs, and would not have provided an equitable separation of powers regime, with the Court granting the freezing order, it is legally prudent that the Court also be enshrined with the power to make variations or concessions to that order.

The Bill also inserts new sections **75A and 75B**, which criminalise proliferation financing, one of the recommendations of the 2021 NRA, as well as one of the targets of the National AML/CFT Policy and Strategy. Proliferation Financing has also been placed as a predicate offence in the **Second Schedule**.

Consequent amendments would be to sections **76 and 108**, which now also list proliferation financing along with money laundering and terrorism financing as offences (including serious offence and unlawful conduct) as matters for international cooperation and extradition.

The amendments to **section 76** also bolster the international corporation ability of Guyana and its competent authorities.

This Bill provides a new **section 109A**, which recognizes the Special Organised Crime Unit (SOCU) as the primary body within the Guyana Police Force dealing with the matters relating to money laundering, terrorist financing and proliferation financing.

It is also given the mandate to cooperate both with domestic agencies, as well as internationally. SOCU can also collaborate with other agencies and law enforcement bodies to prevent and counter terrorism, with regard to the Anti-Terrorism and Terrorist Related Activities Act.

The Guyana Compliance Commission is established under this Bill by a **new section 110A**, with its functions to be fully elaborated under the Guyana Compliance Commission Bill 2023.

This Commission will act as the AML/CFT/CPF supervisory authority for selected designated non-financial business professionals such as Attorneys-at-Law and Accountants/Auditors, as well as plans to also supervise the AML/CFT/CPF regime with regard

to persons involved in real estate, Commissioners of Oaths to Affidavits, Notary Publics and Non-Financial Trust and Company Service Providers. It is also proposed that the Commission will also eventually become the supervisor for non-bank financial institutions such as credit unions, investment advisors and particular categories of insurance, as well as non profit organisations that fall within the FATF definition.

It is expected that eventually, some of the other DNFBPs who have other supervisors, may eventually come under the Commission when it has the capacity to effectively carrying out its mandate on additional reporting entities, thus easing the burden for some supervisory authorities.

Additionally, a new **section 112A** indicates that the Court may accept the report of a [Forensic Accountant] [Financial Analyst] as an Expert Report in relation to any proceeding under this Act.

The **First Schedule to the Act** is amended by the Bill, by replacing used car dealers or car part dealers with auto dealers, which has a definition to capture all categories as previously discussed. Commissioner of Oaths to Affidavits are also now included as a reporting entity in the AML/CFT Supervisory regime. The Fourth Schedule is also amended accordingly to include these two.

The Bill inserts a **Fifth Schedule**, which deals with threshold reporting, which is provided under section 4 of the Principal Act. It provides threshold reporting for betting shops (\$500 000), pawnbrokers and money lenders (\$300 000) and Credit Unions (\$500 000), of which anything below these thresholds are of low risk, and therefore would ease the burden on collection and analysis by the relevant supervisory authorities of these reporting entities.

Finally, based on a recommendation from the 2021 and a target within the National AML/CFT/CPF Policy and Strategy, ‘migrant smuggling’ has now been criminalized under the Trafficking in Persons Act 2005, as this is a predicate offence based on the Second Schedule.

This addition was done based on international best practice, coming from the International Organisation for Migration, the United Nations Protocol, and the resulting Model Law on Migrant Smuggling.

The Evidence Act also contains consequential amendments; section 11 of the Evidence Act has been updated to mirror the amendment made to section 24 of this Act, with regard to the deletion of the proviso in relation to banker's books; the synergy now enables banker's books to be a subject of a production order if required.

Section 16 of the Evidence Act is also amended to allow of Forensic Accounts [Financial Analysts] reports to allow the possibility of reports from such persons to be considered Expert reports, mirroring the new section 112A of this Amendment Act.

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