

Reporting entities to identify and verify identity of customer.

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

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

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

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

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

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

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

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

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

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

- (i) adequately identify and verify the person or entity with whom it conducts such a business relationship;
- (ii) gather sufficient information about the nature of the business of the person or entity;
- (iii) determine from publicly available information the reputation of the person or entity and the quality of supervision to which the person or entity is subject to;
- (iv) assess the person's or entity's anti-money laundering and terrorist financing controls;
- (v) obtain approval from senior management before establishing a new correspondent relationship; and
- (vi) document the responsibilities of the financial institution and the person or entity.

(b) Where the relationship is a payable-through account, a financial institution shall ensure that the person or entity with whom it has established the relationship-

- (i) has verified the identity of and performed on-going due diligence on those of that person's customers that have direct access to accounts of the financial institution; and
- (ii) is able to provide the relevant customer identification data upon request to the financial institution.

(c) Banks or financial institutions shall not maintain any business relationship with other banks that do not maintain a physical presence under the laws of which they were established, unless they are part of a financial group subject to effective consolidated supervision.

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

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

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

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

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

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

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

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

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

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

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

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

Obligations of reporting entities.

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

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

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

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

Minister may reduce or simplify identification and verification.

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

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

Reporting of suspicious business transactions by reporting entities.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

requirements
reporting
entity.

19. (1) A reporting entity shall-

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

- (iii) implement the monitoring requirements;
 - (iv) implement the reporting requirements under section 18;
 - (v) make its officers and employees aware of the law relating to combating money laundering and terrorist financing;
 - (vi) make its officers and employees aware of the procedures and policies adopted by it to deter money laundering and terrorist financing ; and
 - (vii) screen persons before hiring them as employees;
- (c) establish an audit function to test its anti-money laundering and combating of terrorist financing procedures and systems; and
- (d) train its officers, employees and agents to recognise suspicious transactions.
- (2) A reporting entity shall-
- (a) enable any person identified in accordance with subsection (1) (a) to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to section 16; and
 - (b) require the identified person to report the matter, pursuant to section 16, in the event that he determines that sufficient basis exists.

(3) The person identified in subsection (1) (a) shall be a compliance officer at management level responsible for establishing and maintaining compliance with the requirements of section 18.

(4) Subsections (1) and (2) do not apply to an individual who, in the course of carrying on that person's business, does not employ or act in association with any other person or if all their staff and management consists of less than five persons.

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

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

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

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

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

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

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

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

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

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

Role of
Supervisory
Authority.

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

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

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

- (g) cooperate, request and exchange information with agencies performing similar functions in other countries and territories in investigations, *proceedings or prosecutions* relating to proceeds of crime, money laundering or terrorist financing, and to violations of the laws and administrative regulations dealing with reporting entities; and
- (h) maintain statistics concerning measures adopted and sanctions imposed under this Act.

Sanctions by
supervisory
authorities.

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

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

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

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

roduction
ders.

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

- (a) a document relevant to identifying, locating or quantifying property of the person or to identifying or locating a document necessary for the *transfer of property of such person; or*