

CHAPTER 85:09

MONEY LAUNDERING (Prevention)

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A.D.2000 **An Act to provide for the prevention of money laundering and for matters connected therewith r incidental thereto**

Short title **ENACTED by the Parliament of Guyana**

PART 1

PRELIMINARY

1. This Act may be cited as the Money Laundering (Prevention) Act 2000

Interpretation

2. (1) In this Act-

 (a) “business transaction” includes any arrangement, opening an account, between two or more persons where the purpose of the arrangements is to facilitate a transaction between the persons concerned and any related transaction between any of the persons concerned and another person;

 (b) “business transaction record” includes-

- (i) the identification of all the persons party to that transaction;
- (ii) a description of that transaction sufficient to identify its purpose and method of execution;
- (iii) the details of any account used for that transaction, including bank, branch and sort code; and
- (iv) the total value of that transaction;

(c) “competent authority” means the Director of Public Prosecutions, and includes any person authorized by him in that behalf;

Act No. 1 of 1995

(d)“financial institution” has the same meaning as in the Financial institution Act 1995 but where a person that is not a financial institution carries on any activity listed in the First Schedule such person be deemed to be a financial institution;

First Schedule

(e) “freezing” means temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order by a court or competent authority;

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(f) “forfeiture” means the permanent deprivation of property by order of a court;

(g) “Identification record” means-

(A) Where the person is a corporate body, the details-

(i) of the certificate of incorporation, such certificate to be notarized where the corporate body is incorporated outside Guyana;

(ii) of the most recent annual return of the corporate body filed at the Deeds Registry, such return to be notarized where the corporate body is incorporated outside Guyana;

(iii) of any officer of the corporation as required in subparagraph (B);and

In any other case, sufficient documentary evidence to prove to the satisfaction of a financial institution that the person is who that person claims to be, and for these purposes “person” includes any business transaction;

(h)“instrumentality” means something that is used in or intended for use in any manner in the commission of money laundering offence,

(i)“Minister” means the Minister responsible for legal affairs, unless specifically provided otherwise;

(j)“money laundering” means -

(i) engaging directly or indirectly, in a transaction that involves property that is the proceeds of crime, **knowing or believing the same to be the proceeds of crime, or**

(ii) receiving, possessing, managing, investing, concealing, disguising, disposing of or bringing into or removing from Guyana any property that is the proceeds of crime, knowing or believing the same to be the proceeds of crime;

(k) “persons” includes any entity, natural or juridical, a corporation, partnership, trust or estate, joint stock company, association, syndicate, joint venture, or other unincorporated organization or group, capable of acquiring rights or entering into obligations;

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Second Schedule

(1) “prescribed offence” means an offence for the time being listed in the Second Schedule;

(m) “proceeds of crime” means any property derived or obtained directly or indirectly, through the commission of a prescribed offence, whether committed in Guyana or elsewhere; and shall include any property which is knowingly mingled with property that is so derived or obtained;

(n) “property” includes money, investments, holdings possessions, assets and all other property movable or immovable, including things in action and other property wherever situate (whether in Guyana or elsewhere) and includes any interest in such property;

(o) “Supervisory Authority” means the Supervisory Authority referred to in section 10

(2) Knowledge, intent, purpose, belief or suspicion required as an element of any offence under this Act may be inferred from objective, factual circumstances.

PART II

MONEY LAUNDERING PROHIBITED

Offence of money laundering

3. A person who engages in money laundering is guilty of an offence.

Offence committed by a body of persons.

4. Where an offence under the provisions of section 3 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 he adduces evidence to show that the offence was committed without his knowledge, consent or connivance and that he exercised all due diligence to prevent the commission of the offence.

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- Attempts aiding and abetting conspiracy.
Penalty for money laundering
5. Any person who attempts or aids, abets, counsels or procures the commission of, or conspires to commit, the offence of money laundering is guilty of an offence.
6. A person guilty of an offence under the provision of section 3,4,or 5 is liable on conviction to a fine of not less than two hundred thousand dollars or more than one million dollars, and to imprisonment for a term of seven years.
- Tipping off
7. (1) It is an offence for a person who knows or suspects that an investigation into money laundering has been is being or is about to be, made to divulge that fact or other information to another whereby the investigation is likely to be prejudiced.
- (2) A person guilty of an offence under subsection (1) is liable on conviction to a fine of one hundred thousand dollars, and to imprisonment for three years.
- Falsification concealment etc of documents
8. (1) It is an offence for a person knowingly to falsify, conceal, destroy or otherwise dispose of or cause or permit the falsification, concealment, destruction or disposal of any document or material which is or is likely to be relevant to an investigation into money laundering or to any order made in accordance with the provisions of this act.
- (2) A person guilty of an offence under subsection (1) is liable on conviction to a fine of one hundred thousand dollars, and to imprisonment for five years.
- Jurisdiction
9. Notwithstanding anything to the contrary contained in any other law, the offences created by this Act shall be investigated, tried, judged and sentenced by a court in Guyana and regardless of whether or not a prescribed offence occurred in Guyana or in another territorial jurisdiction, but without prejudice to extradition when applicable in accordance with the law.

PART III

ANTI-MONEY LAUNDERING SUPERVISION

- Supervisory Authority
10. (1) The Minister of Finance may appoint the Governor of the Bank of Guyana as the Supervisory Authority to supervise the financial institution in accordance with this Act

(2) Where the Minister does not so appoint the Governor, the Minister shall appoint a fit and proper person to be known as the Supervisory Authority, and such other officers and employees as may be necessary, to supervise the financial institutions in accordance with this Act.

Powers of the
Supervisory
Authority

11. The Supervisory Authority-

(i) **shall receive the reports issued by the financial institutions pursuant to the provisions of section 13 (2);**

(ii) shall send such report to the law enforcement agencies if, having considered the report, the Supervisory Authority also has reasonable grounds to believe that a money laundering offence is being, has been or is about to be committed;

(iii) **or a person authorised by the Supervisory Authority for such a purpose, may enter into the premises of any financial institution during normal working hours to inspect ant business transaction record kept by that financial institution pursuant to section 12 (i) and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;**

(iv) shall send to the law enforcement agencies any information derived from an inspection carried out pursuant to the provision of paragraph (iii) if it gives the Supervisory Authority reasonable grounds to believe that a money laundering offence is being has been, or is about to be committed;

(v) **shall destroy any note or copy therefore made or taken pursuant to the provisions of paragraph (iii) within three years of inspection save where any such note or copy has been sent to a law enforcement agencies.**

(vi) **may instruct any financial institution to be take such steps as may be appropriate to facilitate any investigation anticipated by the Supervisory Authority following a report or investigating made under this section;**

(vii)

- (vii) **may compile statistics and records, provide information to law enforcement agencies and regulatory bodies within or without Guyana in accordance with Part V, make recommendations arising out of any information received, issue guidelines to financial institutions and advise the Minister of Finance with regard to any matter relating to money laundering;**

- (viii) **shall create training requirements and provide such training for any financial institution in respect of the business transaction record- keeping and reporting obligations as provided under the provisions of sections 12(1), and 13(2), respectively,**

Obligations of financial institutions

12. A financial institution shall-

- (i) keep a business transaction record of any business transaction in respect of which it has made a report under section 13 (2) for a period of six years after the termination of the business transaction s recorded

- (ii) comply with any instruction issued to it by the Supervisory Authority pursuant to the provision of section 11(vi);

- (iii) **permit a person authorized by the Supervisory Authority upon request to enter into any premises of the financial institution during normal working hours and inspect the records kept pursuant to the provisions of paragraph (i) and to make any notes or take any copies of the whole or any part of any such record and shall answer any questions of the Supervisory Authority in relation to such records;**

- (iv) **comply with the guidelines and training requirements issued by the Supervisory Authority respectively in accordance with the provisions of paragraph (vii) or (viii) of section 11**

Reporting of suspicious business transactions by financial institutions

- 13. (1) **Financial institutions shall pay special attention to all complex, unusual or large business transactions, whether completed or not, and to all unusual patterns of transactions and to**

insignificant but periodic transaction, which have no apparent economic or lawful purpose.

- (2) Upon reasonable suspicion that the transactions described in subsection (1) could constitute or be related to money laundering, a financial institution shall promptly report the suspicious transaction to the Supervisory Authority.**
- (3) Financial institutions shall not notify any person, other than a court, competent authority or other person authorised by law, that information has been requested by or furnished to a court or the Supervisory Authority.**
- (4) When the report referred to in subsection (2) is made in good faith, the financial institutions and their employees, officers directors, owners or other representatives as authorised by law shall be exempted from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.**
- (5) A criminal offence is committed by a financial institution or its employees, officers, directors, owners or other authorised representatives who, acting as such, willfully make a false or falsified report referred to in subsection (2) and (4)**
- (6) Without prejudice to criminal or civil liabilities for offences connected to money laundering a financial institution and its employees that fail to comply with the requirement of this section shall be liable on conviction to a fine of fifty thousand dollars and in addition the license of such financial institution to operate as such may be suspended or revoked by the Supervisory Authority after Consultations with the Minister of Finance.**

(7) The question whether a reasonable suspicion for the purpose of subsection (2) has been formed shall be determine objectively having regard to all the facts and surrounding circumstances.

Supervisory Authority's power to obtain search warrant

14. (1) The Supervisory Authority or a law enforcement agency may apply to a Judge of the High Court and upon satisfying him that there are reasonable grounds that a financial institution has failed-

(i) to keep a business transaction record as provided by the provision of section 12 (i); or

(ii) to report any business transaction as provided by the provisions of section 13(2),

he may make an order authorizing the Supervisory Authority to enter any premises belonging to, or in the possession or under the control of the financial institution and to search the premises and remove, on issuing a receipt therefore, any document, material or other thing therein for the purposes of the Supervisory Authority or law enforcement agency as ordered by the Judge and specified in the warrant.

(2) The Supervisor Authority or a law enforcement agency may apply to a Judge of the High Court and upon satisfying him that there are reasonable grounds that an officer or employee of a financial institution is committing, has committed or is about to commit a money laundering offence, he may make an order authorising the Supervisory Authority to enter any premises belonging to, or in the possession or under the control of such officer or employee of such institution and to search the premises and remove on issuing a receipt therefor, any document, material or other thing therein for the purposes of the Supervisor Authority or law enforcement agency as ordered by the Judge and specified in the warrant”.

Property tracking and monitoring orders

15. **The Supervisory Authority or law enforcement agency may upon application to a Judge of the High Court and upon satisfying him that there are reasonable grounds for believing that a person is committing, has committed or is about to commit a money laundering offence or for the**

purpose of determining whether any property belongs to, is in the possession or under the control of any person, he may make an order -

- (i) that any document relevant to-
 - (a) identifying, locating or quantifying any property; or
 - (b) identifying or locating any document necessary for the transfer of any property, belonging to, or in the possession or under the control of that person be delivered forthwith to the Supervisory Authority or law enforcement agency;
- (ii) that a financial institution forthwith produce to the Supervisory Authority or law enforcement agency all information obtained by the institution during such period before or after the date of the order as the Judge directs.

Mandatory injunction to enforce compliance

16. (1) The Supervisory Authority may upon application to a Judge of the High Court and upon satisfying him that a financial institution has failed without reasonable excuse to comply in whole or in part with any obligation as provided under the provisions of paragraphs (i), (ii), (iii) and (iv) of section 12 and section 13(2) may obtain a mandatory injunction **against any or all of the officers or employees of that financial institution in such terms as the Court deems necessary to enforce compliance with such obligation.**

(2) **In granting an injunction pursuant to the provisions of subsection (1) the Court may order that should the financial institution or any officer or employee of that institution fail without reasonable excuse to comply with all or any of the provisions of that injunction such financial institution, officer or employee shall pay a financial penalty of such sum and in such manner directed by the Court.**

Other measures to avoid money laundering

17. **A person who has been convicted of a prescribed offence whether in Guyana or elsewhere or of an offence under this Act may not be eligible or licensed to carry on the business of a financial institution.**

Currency reporting when entering or leaving

18. (1) A person may bring into Guyana on his person or in his baggage foreign currency amounting to ten thousand United States dollars or its equivalent in any other currency without making any declaration to the Commissioner General.

(2) A person may bring into Guyana on his person or in his baggage foreign currency amounting to more than ten thousand United States dollars or its equivalent in any other currency providing he makes a declaration to the Commissioner General in the Form in the Third Schedule.

(3) **A person may take out of Guyana on his or in his baggage foreign currency amounting to ten thousand United States Dollars or its equivalent in any other currency without making any declaration to the Commissioner General.**

(4) **A person may take out of Guyana on his or in his baggage foreign currency amounting to more than ten thousand United States dollars providing he makes a declaration to the Commissioner General in the form in the Third Schedule.**

Third Schedule

(5) **A person who fails to make a declaration required to be made under this section or who knowingly makes a declaration that is untrue in any material particular shall be guilty of an offence and shall be liable on summary conviction to a fine of two hundred and fifty thousand dollars and six months imprisonment and the currency found on the person, or in the baggage, of such person shall be forfeited by the court.**

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(6) This section shall be administered by the Commissioner General as though it were part of the Customs Act and the provisions of that Act and the regulations made thereunder, in so far as they relate to this section shall mutatis mutandis apply.

(7) In this section “foreign currency” does not include any currency or notes issued by the Government or under the law of any part of the scheduled territories but, save as aforesaid, includes any currency other than Guyana dollars and any notes of a class which are or have at any time been legal tender in any territory outside Guyana,

and any reference to foreign currency, except so far as the context otherwise requires, includes a reference to any right to receive foreign currency in respect of any credit or balance at a bank.

PART IV

FREEZING AND FOREITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

Freezing of
property

19. (1) The competent authority upon application to a Judge of the High Court and satisfying him that a person has been charged or is about to be charged with a money laundering offence may apply for an order freezing the property of, or in the possession or under the control of that person wherever it may be.

(2) The Court in making any order freezing the property of that person may give directions as to the disposal of that property for that purpose of-

- (i) determining any dispute as to the ownership of the property or any part thereof;
- (ii) Its proper administration during the period of freezing;
- (iii) the payment of debts due to creditors prior to the order; and
- (iv) the payment moneys to that person for the reasonable subsistence of that person and his family.

(3) **An order made under this section shall cease to have effect at the end of the period of forty-eight hours following the hour the order was made if the person against whom such order was made has not been charged with a money laundering offence within that time.**

Forfeiture of
property, proceeds
or
instrumentalities

(20) (1) When a person is convicted of a money laundering offence, the court shall order that the property, proceeds or instrumentalities derived from or connected or related to such an offence be forfeited and subject to any regulations made therefor under section 29, disposed of in such manner as the Minister may direct **(a) that the Minister shall publicly announce the directions Given for disposal of the property.**

(2) When as a result of any act or omission of the person convicted, any of the property, proceeds or instrumentalities described in subsection (1) cannot be forfeited, the court shall order the forfeiture of any other property of the person convicted, for an equivalent value, or shall order the person convicted to pay a fine of such value.

(3) **In determining whether or not any property is derived from or connected or related to a money laundering offence the court shall apply the standard of proof required in civil proceedings.**

(4) **In making a forfeiture order the Court may give directions for the purpose of determining any dispute as to the ownership of the property or any part thereof.**

(5) **For the purpose of this Act, the court may infer that property was obtained or derived as a result of the commission of a money laundering offence where evidence established that the value, after the commission of that offence, of all the property of the person alleged to have committed the offence exceeds the value of all the property of that person before the commission of that offence and the court is satisfied that the income of that person from his legitimate sources as disclosed by him to the court pursuant to subsection (6) cannot reasonably account for such an increase in value.**

(6) **A person convicted or absolutely or conditionally discharged of a money laundering offence may be summoned to appear before the court at the**

instance of the competent authority and to give information as to his legitimate sources of income.

Rights of bona fide third parties

21. (1) The measures and sanctions referred to in sections 19 and 20 shall apply without prejudice to the rights of bona fide third parties.
- (2) Proper notifications shall be made so that all those claiming a legitimate legal interest in property, proceeds or instrumentalities may appear in support of their claims.
- (3) A third party's lack of good faith may be inferred, at the discretion of the court or the competent authority, from the objective circumstances of the case.
- (4) The court or the competent authority shall return the property, proceeds or instrumentalities to the claimant, when it has been demonstrated to its satisfaction that -
- (a) the claimant has a legitimate legal interest in the property, proceeds or instrumentalities;
 - (b) no participation, collusion or involvement with respect to money laundering offence which is the subject of the proceedings can be imputed to the claimant;
 - (c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, proceeds or instrumentalities or if he had knowledge, did not freely consent to its illegal use;
 - (d) the claimant did not acquire any right in the property, proceeds or instrumentalities from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent forfeiture of the property proceeds or instrumentalities; and

- (e) **the claimant did all that could reasonably be expected to prevent the illegal use of the property, proceeds or instrumentalities.**

Limitation
on freezing
or
forfeiture
of
property

22. The provisions of sections 19 and 20 shall only apply to property acquired, coming into the possession or under the control of a person after the coming into force of this Act.

PART V
INTERNATIONAL COOPERATION

Assistance
to foreign
countries

23. (1) **The court or the competent authority shall cooperate with the court or other competent authority of another State, taking the appropriate measures to provide assistance in matters concerning money laundering offences, in accordance with this Act, and within the limits of their respective legal systems.**
- (2) **The court or the competent authority may receive a request from the court or other competent authority of another State to identify, trace, freeze, seize or forfeit the property, proceeds, or instrumentalities connected to money laundering offences, and may take appropriate actions, including those contained in sections 19 and 20**
- (3) **A final judicial order or judgment that provides for the forfeiture of property, proceeds or instrumentalities connected to money laundering offences, issued by a court of another State, may be recognized as evidence that the property, proceeds or instrumentalities referred to by such order or judgment may be subject to forfeiture in accordance with the law.**
- (4) **The court or the competent authority may receive and take appropriate measures with respect to a request from a court or other competent authority from another State, for assistance**

related to a civil, criminal, or administrative investigation, prosecution or proceedings, as the case may be, involving money laundering offences, or violations of any provision of this Act.

- (5) Assistance referred to in this section may include providing original or certified copies of relevant documents and records, including those of financial institutions and government agencies, obtaining testimony in the requested State, facilitating the voluntary presence or availability in the requesting State of persons, including those in custody, to give testimony, locating or identifying persons, service of documents, examining objects and places, executing searches and seizures, providing information and evidentiary items, and provisional measures.
- (6) Any provisions referring to secrecy or confidentiality shall not be an impediment to compliance with this section, when the information is requested by or shared with the court or other competent authority.
- (7) Assistance referred to in this section shall be provided only to those countries with whom Guyana has entered into mutual assistance treaties on a bilateral or multilateral basis, and all such assistance shall be subject to the terms of such treaties.

**PART VI
MISCELLANEOUS**

Money laundering an offence for extradition purposes

- 24. Money laundering is an offence for the purpose of any law relating to extradition or the rendition of fugitive offenders.

Secrecy obligations overridden

- 25. Subject to the provisions of the Constitution, the provisions of this Act shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by law or otherwise.

Disclosure protected	26.	It shall not be unlawful for any person to make any disclosure in compliance with this Act.
Prosecution of offences	27.	(1) No prosecution in respect of any offence committed under this Act or the regulations made thereunder shall be instituted except by, or with the consent in writing of the Director of Public Prosecutions. (2) All offences under this Act shall be tried summarily without the consent of the accused unless otherwise directed by the Director of Public Prosecutions.
Limitation of proceedings	28.	All prosecutions, actions, suits or other proceedings brought for any offence, or for the recovery of any fines, penalties or forfeiture, under this Act or the subsidiary legislation made thereunder, shall be brought within six years next after the date of the offence committed or the cause of action accrued.
Subsidiary legislation	29	(1) The Minister may make regulations for the better carrying out of the provisions of this Act and, subject to subsection (2) for prescribing anything that needs to be prescribed. (2) The Minister may by order amend the Schedules. (3) A regulation made under this subsection (1) or an order made under subsection (2) shall be subject to negative resolution of the National Assembly.

FIRST SCHEDULE s.2

ACTIVITIES OF FINANCIAL INSTITUTIONS

Act No. 1 of 1995	1.	“Banking business” and “financial business” as defined in the Financial Institution Act 1995
	2.	Venture risk capital;
	3.	Money transaction service;
	4.	Issuing and administering means of payments (e.g. credit cards, travelers cheques and bankers’ draft)

- 5. **Guarantees and commitments;**
- 6 **Trading for own account or for account of customs in -**
 - (a) **money market instruments (e.g. cheques, bills, certificates of deposit, commercial paper, etc.)**
 - (b) **foreign exchange;**
 - (c) **financial and commodity- based derivative instruments (e.g. futures, options, interest rate and foreign exchange instrument etc.);**
 - (d) **transferable or negotiable instruments;**

- 7. **Money broking;**
- 8. **Money lending and pawing**
- 9. **Money exchange (e.g. *casa de cambio*);**
- 10. **Immovable property business**
- 11. **Credit unions;**
- 12. **Building societies;**
- 13. **Trust business**
- 14. **Safe custody service.**

SECOND SCHEDULE s.2

PRESCRIBED OFFENCES

- Blackmail
- Bribery
- Counterfeiting
- Drug Trafficking and related offences
- False accounting**
- Forgery**
- Fraud**
- Illegal deposit taking**
- Robbery involving more than \$20,000**

Thefts involving more than \$20,000
Insider Trading

THIRD SCHEDULE

GUYANA
FORM

Declaration to be made by a person entering or leaving Guyana under section 18 of the Money Laundering (Prevention) Act 1998.

I hereby declare that I am taking * out of Guyana/bringing* into Guyana foreign currency amounting to more than ten thousand United States dollars or its equivalent in any other currency.

Signature of Declarant