

BELIZE:

MONEY LAUNDERING AND TERRORISM (PREVENTION)
(AMENDMENT) ACT, 2013

ARRANGEMENT OF SECTIONS

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No. 4 of 2013

I assent,

(SIR COLVILLE N. YOUNG)

Governor - General

31st January, 2013

AN ACT to amend the Money Laundering and Terrorism (Prevention) Act, No 18 of 2008, to provide for measures to ensure compliance with international standards and obligations in relation to money laundering; and to provide for matters connected therewith or incidental thereto.

(Gazetted 2nd February, 2013)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

1. This Act may be cited as the

Short title.

**MONEY LAUNDERING AND TERRORISM
(PREVENTION) (AMENDMENT) ACT, 2013**

18 of 2008.

and shall be read and construed as one with the *Money Laundering and Terrorism (Prevention) Act*, which is hereinafter referred to as the principal Act.

Amendment
of section 2.

2. The principal Act is amended in section 2 as follows –

(a) by inserting, in the appropriate alphabetical sequence, the following definitions –

““competent authority” means the Financial Intelligence Unit; and

“Financial Action Task Force” means the inter-governmental body established by the G-7 Summit that was held in Paris in 1989 and whose purpose is to develop and promote policies at the national and international level, to combat money laundering and terrorist financing;”;

(b) by amending the definition of “property” or “funds” as follows –

(i) by inserting the words “however acquired” after the word “kind; and

(ii) by inserting the words “in any form including electronic or digital” after the word “title”; and

(c) by amending the definition of “serious crime” by deleting the words “exceeding 24 months” wherever it occurs and substituting the words “of 12 months or more”.

3. The principal Act is amended in section 15 as follows –

Amendment
of section 15.

(a) in subsection (3) –

(i) by inserting in paragraph (a) immediately after the words “nature of the business relationship” the words “and the source of funds”;

(ii) by inserting in paragraph (b) immediately after subparagraph (ii) the following –

“(iii) the source of funds;”

(iii) by deleting paragraph (c) and substituting the following –

“(c) if the transaction is conducted by a legal person or legal arrangement, obtain information on that legal person or legal arrangement, adequately identify the company, the beneficial owner and ultimate natural persons providing the funds of such legal person or legal arrangement and take reasonable measures to identify and verify the legal status, ownership and control structure, including information relating to –

(i) proof of incorporation or similar evidence of establishment or existence; and

(ii) the customer’s name, name of trustee and ultimate settler (for trusts) and of persons providing funds and council members (for foundations), legal form, head office address and identities of directors (for legal persons) and source of funds;”

(iv) in paragraph (d) –

(a) by deleting the chapeau and substituting the words –

“have appropriate risk management systems to determine if a potential customer, customer or beneficial owner is, is likely to be, is found to be or becomes a politically exposed person, and if so, shall –”;

(b) in subparagraph (ii), by inserting immediately after the word “establishing” the words “or continuing”;

(c) in subparagraph (iv), by inserting immediately after the word “enhanced” the word “ongoing”;

(d) by inserting immediately after paragraph (d) the following paragraphs –

“(e) perform due diligence measures on a risk sensitive basis which are consistent with guidelines issued by the competent authority; and

(f) upon the establishment of a business relationship, and when completing the verification of the identity of the customer and beneficial owner, ensure that money laundering risks are effectively managed.”;

(b) by inserting after subsection (3) the following subsection –

“(3A) A reporting entity shall, in relation to its higher risk category of customers or business relationship, conduct annual reviews of its record to ensure that the documents, data or information obtained pursuant to subsection (3) is kept up-to-date and relevant.”.

(c) in subsection (6) –

(i) by deleting paragraph (a) and substituting the following subsection–

“(6)A bank or financial institution shall in relation to its cross- border correspondent banking and other similar relationship – ”;

(ii) by inserting immediately after paragraph (vi) the following -

“(vii) ascertain whether the correspondent bank or other similar institution has been subject to a money laundering or terrorist financing investigation or regulatory action.”;

(iii) by inserting immediately after paragraph (c) the following -

“(d) Banks or financial institutions shall satisfy themselves that the respondent bank or financial institution in a foreign country shall not permit its accounts to be used by shell banks unless that shell bank is subject to effective consolidated supervision by a competent authority in that foreign country.”

(d) by inserting immediately after paragraph (d) the following as subsection (6A)-

“(6A) A financial institution shall –

- (a) adopt risk management procedures concerning the conditions under which a customer may utilize a business relationship prior to verification of the identity of that customer;
 - (b) consider making a suspicious transaction report when terminating an application for a business relationship or a one-off transaction due to inability to identify and verify the identity of the applicant;
 - (c) terminate the relationship and consider making a suspicious transaction report where the financial institution have doubts about the veracity or adequacy of previously obtained customer identification; or
 - (d) terminate the relationship on failure to renew customer identification.”;
- (e) in subsection (7) –
- (i) by inserting in paragraph (b) the words “and in accordance with the Financial Action Task Force recommendations on regulation, supervision and monitoring”;
 - (ii) by inserting immediately after paragraph (b) the following paragraphs –
 - “(c) the reporting entity shall immediately obtain from the third party, copies of identification data and other documents relating to the obligation of the customer due diligence process;

- (d) the reporting entity shall ensure countries where third parties are based adequately apply the Financial Action Task Force recommendations;
- (e) the reporting entity shall maintain ultimate responsibility for customer identification and verification of customer.”; and

(f) in subsection (9)(c), by deleting the words “the reporting entity shall terminate the business relationship with such a customer” and substituting the words “or a beneficial owner, the reporting entity shall terminate the business relationship with such a customer and consider making a suspicious transaction report.”.

4. The principal Act is amended in section 16 as follows –

**Amendment
of section 16.**

(a) in subsection (4), by deleting the words “whichever is later” and substituting the words “or any longer period if requested by the competent authority in specific cases and upon proper authority and the requirement to keep the record shall apply whether the account or business relationship is ongoing or has been terminated.”; and

(b) by inserting immediately after subsection (4) the following subsections (4A), (4B) and (4C) –

“(4A) (1) The competent authority may, in writing, require a reporting entity to keep a record for a specified period of time;

(2) A reporting entity shall keep such records of a transaction that are sufficient to permit reconstruction of individual transactions;

(3) Any record kept under this section, shall be maintained in a manner for use as evidence for prosecution of an offence.

(4B) A reporting entity shall ensure that customer information and transaction records are available on a timely basis to domestic authorities upon proper authority.

(4C) The receiving intermediary or third party financial institution shall keep all records received from an ordering financial institution where technical limitations would prevent the full originator information that should accompany a cross border wire transfer from being transmitted with a related domestic wire transfer for five years.”.

**Amendment
of section 17.**

5. The principal Act is amended in section 17 as follows –

(a) in subsection (1)(c) by inserting immediately after the word “information” the words “and shall adopt effective risk-based procedures to identify and handle any such transfer.”; and

(b) by deleting subsection (3) and substituting the following –

“(3) A reporting entity shall conduct ongoing due diligence on its business relationships and scrutinize transactions undertaken throughout the course of the relationship to ensure that its obligations under section 15 are met and that the transactions being conducted are consistent with information that the reporting entity has of its customer and the profile of the customer’s business and where necessary the source of funds.”.

6. The principal Act is amended in section 18 as follows –

Amendment
of section 18.

(a) in subsection (1)(b) –

(i) in subparagraph (v), by inserting immediately after the word “terrorism” the words “in particular, the laws on customer due diligence and suspicious transaction reporting”; and

(ii) by inserting immediately after subparagraph (vii) the following subparagraphs –

“(viii) disseminate warning notices and other information received from the competent authority relating to a weakness in the anti-money laundering and combating of financing of terrorism systems of other countries; and

(ix) ensure that a foreign branch or subsidiary observes the anti-money laundering and combating of financing of terrorism system that is consistent with Belize’s requirements and the Financial Action Task Force recommendations where that foreign country does not apply or insufficiently apply the Financial Action Task Force recommendations;”;

(b) in subsection (1)(c), by deleting the words “audit function to test” and substituting the words “independent audit function to test compliance (including sample testing) of”;

(c) by deleting subsection (1)(d) and substituting the following –

“(d) conduct ongoing training of its officers, employees and agents to ensure that employees

are kept informed of new developments, including information on current money laundering and terrorist financing techniques, methods and trends;”

(d) in subsection (2)(a), by deleting the words “to have reasonable” and substituting the words “as well as other appropriate staff to have timely and unimpeded”; and

(e) in subsection (3)(a) –

(i) by deleting the words “be a senior officer” and substituting the words “be of an officer of a rank at management level or above”; and

(ii) by inserting immediately after the word “business” the words “and possess core competencies and knowledge in administering anti- money laundering measures”.

**Amendment
of section 19.**

7. The principal Act is amended in section 19 as follows –

(a) in subsection (1) by inserting immediately after the word “retained” the words “for a period of at least five years”;

(b) by deleting subsection (2) and substituting the following–

“(2) Originator information shall be set forth in the message or payment form accompanying the transfer and shall include the –

(a) name of the account holder and place where the account exist;

(b) account number (or where there is no account number, a unique reference number);

(c) address or a national identification number of customer; and

(d) date and place of birth.”; and

(c) in subsection (5) –

(i) by inserting immediately after the word “entity” the words “including a director or senior manager”; and

(ii) by deleting the word “ten” and substituting the words “one hundred”.

8. The principal Act is amended in section 21 as follows –

Amendment
of section 21.

(a) in subsection (2) –

(i) by deleting paragraph (d) and substituting the following –

“(d) impose requirements that –

(i) the reporting entity should ensure that their foreign branches and subsidiaries adopt and enforce measures of a higher standard or consistent with this law 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;

(ii) financial institutions pay particular attention that their branches

and subsidiaries in countries which do not or insufficiently apply Financial Action Task Force recommendations, observe measures consistent with Belize's requirements to combat money laundering and the financing of terrorism, and the Financial Action Task Force recommendations.”;

(ii) by inserting immediately after paragraph (h) the following—

“(i) share information with other supervisory authorities as listed in Column 2 of the Third Schedule, for the purpose of ensuring compliance.”;

(b) by inserting the following immediately after subsection (2) —

“(3) A supervisory authority, in carrying out its functions under this section shall have the power to obtain access to or compel the production of records, documents or information as it considers necessary to supervise compliance.

(4) Where the supervisory authority finds that a financial institution or reporting entity has committed a breach of any obligation under any instructions, guidelines or recommendations prescribed by this Act, the supervisory authority may impose any one or more of the following punishments —

(a) severe reprimand;

(b) suspension, restriction or revocation of the licence; or

- (c) minimum fine of one hundred thousand dollars depending on the severity of the offence, and this sanction shall be without prejudice to the penalties that may be imposed by any other law where the conduct involved is also a criminal offence.”; and

(c) by inserting the following as subsection (5) -

“(5) Where supervision of a reporting entity by supervisory authorities overlaps, the supervisory authorities for that reporting entity may share information relating to the particular activity or business.”.

9. The principal Act is amended in section 22 as follows—

Amendment of section 22.

(a) in the chapeau to subsection (1) -

- (i) by deleting the words “or regulatory” and “disciplinary” occurring therein; and
- (ii) by inserting immediately after the word “supervises” the words “or a breach of any other provision of this Act, the competent authority”; and
- (iii) by inserting immediately after the word “entity” the words “or other person”.

(b) in subsection (1)(d), by deleting the words “five thousand dollars and no greater than twenty thousand dollars” and substituting the words “one hundred thousand dollars and no greater than five hundred thousand dollars”.

10. The principal Act is amended by inserting immediately after section 22 the following section –

Insertion of section 22A.

“Pecuniary penalty. 22A. (1) Where by section 22, or an instruction, guideline or recommendation given under this Act, a reporting entity or 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 FIU is satisfied that the reporting entity or financial institution has failed to do so, the FIU may, by written notice, impose on the reporting entity or financial institution, a penalty of five thousand

- (2) A penalty shall not be imposed on a reporting entity or financial institution under this section unless the reporting entity or financial institution is first given an opportunity to be heard and to show cause as to why the action should not be taken.
- (3) Pecuniary penalties imposed and collected under this section shall be paid into the Belize Confiscated and Forfeited Assets Fund established in section 78.”.

**Amendment
of section 37.**

11. The principal Act is amended in section 37 as follows –

- (i) by inserting immediately after the words “enters or leaves”, the words, “or on whose behalf or benefit another person enters or leaves,”; and
- (ii) by inserting immediately after the word “existence” the word “source”.

12. The principal Act is amended by inserting immediately after section 37 the following section –

Insertion of section 37A.

“Cash prohibited when leaving Belize.

37A. (1) No person shall leave Belize with more than twenty thousand dollars in cash.

(2) A person who contravenes this section commits an offence and is liable on summary conviction to the forfeiture of the amount above the twenty thousand dollars limit prohibited by subsection (1).”.

13. The principal Act is amended in section 38 by deleting subsection (1) and substituting the following –

Amendment of section 38.

“(1) A police officer or a customs officer may seize and, in accordance with this section, detain any currency or negotiable instrument which is being imported into, or exported from Belize, if he has reasonable grounds for suspecting that it is –

- (a) property derived from the commission of a serious crime;
- (b) intended by any person for use in the commission of a serious crime;
- (c) involved in money laundering or the financing of terrorism; or
- (d) being brought into or taken out of Belize without making the declaration required under section 37 of this Act or after making a false declaration.”.

14. The principal Act is amended in section 40(2) as follows –

Amendment of section 40.

- (a) in paragraph (a), by deleting the words “(including the reasonable living expenses of the person’s dependants, if any)”; and

(b) by deleting paragraph (c).

Amendment
of section 67.

15. The principal Act is amended in section 67 by deleting subsection (4) and substituting the following –

“(4) The FIU shall, as soon as is reasonably practicable and upon an *ex parte* application, apply to a Judge in Chambers for a detention order with respect to cash seized under subsection (1).”.

Amendment
of section 68.

16. The principal Act is amended in section 68 as follows –

(a) in the chapeau to subsection (1), by inserting immediately after the word “part” the words “in or outside of Belize”;

(b) in subsection (1)(b), by inserting immediately after the word “act” the words “in or outside Belize”; and

(c) in subsection (3), by inserting immediately after the word “subsection (1)” the words “or (2)”.

Amendment
of section 79.

17. The principal Act is amended in section 79(1) by inserting immediately after paragraph (e), the following –

“(f) any sums of money received from the imposition of a pecuniary penalty.”

Amendment
of section 83.

18. The principal Act is amended in section 83 by inserting immediately after the word “direction” the word “guideline”.

Insertion of
sections 85A
and 85B.

19. The principal Act is amended by inserting immediately after section 85 the following sections –

“Information by
reporting entity,
when due.

85A (1) Where in this Act, there is a requirement for a reporting entity to provide information to the competent authority, that

information shall be provided within ten days of the request.

(2) Where a reporting entity is to comply with a request within ten days it shall notify the competent authority in writing prior to the expiration of the ten days of its inability to comply and shall provide a reasonable time period in which the information will be provided.

85B (1) A person who intends to or is carrying on the business of dealing in real estate, precious metal, precious stones, or vehicles shall apply for registration with the FIU.

Registration with the FIU.

(2) An application pursuant to subsection (1) shall be accompanied by an application fee of one hundred dollars.

(3) A person who contravenes this section commits an offence and is liable on summary conviction to a fine of not less than ten thousand dollars and not more than fifty thousand dollars or to imprisonment for twelve months or to both.

(4) A person who, at the commencement of this Act, was engaged in any of the businesses under subsection (1) shall apply for registration and comply with this provision within thirty days of the commencement of this Act.”.

20. The First Schedule of the principal Act is amended by inserting immediately after item 30 the following items –

Amendment of First Schedule.

“31. a business operating in a free zone area.

32. Non-Governmental Organizations.”.

**Amendment
of Second
Schedule.**

21. The Second Schedule of the principal Act is amended as follows –

(a) by deleting the words “involving more than \$10,000.00”.

(b) by adding to the list of offences the following –

“Illicit arms trafficking

Insider trading

Piracy

Tax evasion”.

**Amendment
of Third
Schedule.**

22. The Third Schedule of the principal Act is amended in Column 3, which is titled “Supervisory authority” at item number 31, by deleting the words “Financial Intelligence Unit”.