

USAID GEO
GUYANA ECONOMIC OPPORTUNITIES

**Diagnostic Review of Guyana's
Anti-Money Laundering (Prevention) Program**

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Background

In February 2000, the Government of Guyana (GOG) approved and passed the Anti-Money Laundering (Prevention) Act. The Act, which identifies money laundering as an offence, was designed to strengthen the government's ability to fight money laundering by making it a criminal activity. As enacted, the Act provides for the following:

- ◆ Appointment of the Governor of the Bank of Guyana (BOG) or other fit and proper person as the Supervisory Authority responsible for the supervision of financial institutions.
- ◆ Obligations of Financial Institutions.
- ◆ Provisions for Recordkeeping, Reporting and Record Retention for currency and suspicious business transactions.
- ◆ Supervisory Authority's powers.
- ◆ Freezing, seizure, and forfeiture of property, proceeds or instrumentalities.
- ◆ International cooperation.

However, the Act is not yet enforced or fully implemented mainly due to lack of enforcing regulations, establishment of a Financial Intelligence Unit (FIU) and the creation of supervisory arrangements at the Bank of Guyana.

It is important to note that starting in early 1999, the Caribbean Anti-Money Laundering Program (CALP) began assisting the GOG with the drafting of the existing Act and the creation and implementation of the Financial Intelligence Unit. Despite the availability and offers of technical assistance from CALP, the development of an effective anti-money laundering program in Guyana has been stagnant.

The Bank of Guyana, as the Supervisory Authority has not enforced the Act; hence, the financial institutions in Guyana have developed and implemented their own guidelines for recording, reporting and maintaining currency and suspicious business transactions. These guidelines have not been approved by the BOG and banking sector practices range from simple guidelines to more formal procedures noted at those institutions with foreign ownership where policies and procedures are developed at the parent holding company.

Current Situation

As of the diagnostic review date Guyana's Anti-Money Laundering (Prevention) Program is considered ineffective. Therefore, Guyana remains vulnerable to money laundering due to drug trafficking and non-drug trafficking activities in the region. In addition, lack of enforceable regulations and effective supervision over the non-bank financial institutions exacerbate the problem. Although not validated, information gathered through meetings and interviews conducted with government and private sector banking officials revealed that Guyana's financial institutions, non-bank financial institutions (including cambios – independent currency exchanges), and the real estate market have probably been used to launder money.

Guyana's domestic banking sector is comprised of seven commercial banks (including foreign domiciled banks) and seven licensed non-bank financial institutions¹. The supervision of these institutions is the responsibility of the Bank of Guyana-Inspections Department. In addition to the supervision of the banks and licensed non-bank financial institutions, the Governor of the Bank of Guyana has been appointed under the Act as the Supervisory Authority and is responsible for ensuring compliance with the Act. Conversations with BOG officials revealed that bank inspections currently performed to ensure compliance with the Act are not consistent and for the most part superficial as formal examination guidelines are not in place.

Our interviews also revealed that the Bank of Guyana's failure to develop and implement the required regulations to enforce the Act has created inconsistencies among the financial institutions in the following areas: "Know Your Customer Policies", Currency Transaction Reports, Suspicious Business Transaction Reports, Recordkeeping and Reporting requirements and Training. Currently, a few banks are completing these reports but not forwarding them to the Supervisory Authority due to lack of reporting guidelines, while others decline to process a questionable (suspicious business) transaction. To-date, Guyana has made no arrests for or prosecution of money laundering offences.

In response to mounting concern over money laundering activities, the Government of Guyana has requested technical assistance from the United States Agency for International Development (USAID) to provide for an independent evaluation of the existing Act, internal control and systems in place, and the identification of deficiencies. The objective of this technical assistance is to provide the Government of Guyana with recommendations for strengthening its Anti-Money Laundering Program.

The USAID Guyana Economic Opportunities (GEO) Project was asked to assist in undertaking a diagnostic review of the existing Anti-Money Laundering Program and processes in Guyana. This review was carried out during a two-week period and included several meetings and interviews with Guyana's government and banking officials, private sector Chief Executive Officers and other parties responsible for the enforcement of the Anti-Money Laundering (Prevention) Act of 2000. The review focused on the following areas:

- ◆ existing legislation
- ◆ enforcement procedures and practices
- ◆ supervision capacity of the Bank of Guyana
- ◆ internal control systems in place
- ◆ recordkeeping, reporting and record retention policies, practices and procedures
- ◆ training

¹ The New Building Society (NBS) is not a licensed financial institution under the FIA, but exists under its own legislation. For statistical purposes the NBS's assets are included in Bank of Guyana reports with the seven non-bank financial institutions and account for 34% of the total assets of this group.

Results of the Diagnostic Review

This section focuses on the deficiencies identified within the Guyana's Anti-Money Laundering Program. The deficiencies are reported by areas of responsibilities.

Existing Act and Legal Framework

- ◆ The Anti-Money Laundering Act reflects many inconsistencies and contradictions. This Act needs further strengthening to include the "Terrorism" component, other criminal offenses and the ratification of United Nations Resolutions including the Vienna and Palermo Conventions. Refer to Recommendations in Annex I.
- ◆ No harmonization among Customs, Tax Revenue and other Acts in place. A comprehensive review of these other Acts needs to be performed to ensure effective harmonization among all Acts as they related to money laundering and combating financing of terrorism components.
- ◆ No Regulation/Guidelines in place to properly enforce the requirements of the Act.

Bank of Guyana's Responsibilities

- ◆ Lack of guidelines and minimum content for developing "Know Your Customer" Policies, Internal Control Systems, Compliance Systems, and Training Programs.
- ◆ Lack of formal examination procedures to ensure uniformity and consistency in evaluating the financial institutions' compliance with the requirements of the Act.
- ◆ Lack of formal Currency Transaction and Suspicious Business Transaction Reports and related guidelines for completing these forms, reporting mechanisms, and record-retention guidelines.
- ◆ No formal or informal training programs in place to provide for the proper training of bank inspectors and bankers in topics and issues dealing with money laundering and financing of terrorism.
- ◆ No public awareness/outreach programs in place to inform the public about the requirements of the Act, their responsibilities and the penalties for non-compliance.

Establishment of Financial Intelligence Unit (FIU)

- ◆ No Financial Intelligence Unit in place.
- ◆ No recruiting in place to provide for qualified personnel to operate the FIU once established.
- ◆ No strategy in place to provide for the necessary hardware and software equipment needed to operate the FIU.
- ◆ No formal or informal "Memorandum of Understanding" in place with other government agencies or at the international level.

Technical Assistance from Multi-Lateral Agencies

- ◆ No adequate follow-up performed since 2000 with technical assistance offered by CALP in the development of an effective Anti-Money Laundering Program and the establishment of the FIU.
- ◆ No adequate follow-up performed with the Inter-American Development Bank for technical assistance and resources available for the strengthening of the Anti-Money Laundering Program.
- ◆ No adequate follow-up performed with the U.S. Embassy concerning funds targeted for the procurement of computer and peripheral equipment needed to operate the FIU.

Ongoing Training

- ◆ No formal training programs in place within the Bank of Guyana.
- ◆ Training programs within the financial institutions vary from informal presentations to formal training mainly at those institutions with foreign ownership where the parent company provides oversight and assistance in preventing money laundering within their institutions.
- ◆ No formal training program in place for Bankers, Law Enforcement Personnel, Prosecutors and Judges.

Based on the significance of these deficiencies, the President of Guyana requested the development of an Action Plan to enhance and strengthen the existing Program and provide for prompt corrective actions to ensure that Guyana's Anti-Money Laundering Program becomes operational by April 30, 2003. Given this mandate a Proposed Action Plan was developed, presented and discussed with the President during the second week of the assignment highlighting major areas where immediate government action was required. On January 30, 2003 the Proposed Action Plan was discussed with members of the President's Cabinet and other senior government officials to present proposed target/completion dates and areas where improvement was needed. The tables below reflect the tasks to be performed, completion dates, responsibility for corrective action, and expected results.

**Proposed Action Plan and Recommendations for Improving
Guyana's Money Laundering (Prevention) Act 2000 Effectiveness**

**Developing and Establishing an Effective
Anti-Money Laundering (AML) (Prevention) Program**

Tasks	Target Completion Date	Responsibility Assigned To	Expected Results
Phase I – Assessment and Planning			
Initial Evaluation of Existing AML Program	Jan. 30, 2003	USAID/GEO Project Short-Term Consultant	To provide Government and Bank of Guyana with a comprehensive diagnostic evaluation of the effectiveness of their AML Program.
Presentation of Findings and Recommendations	Jan. 30, 2003	USAID/GEO Project Short-Term Consultant	To provide Government and Bank of Guyana with areas where immediate corrective action is needed.
Preparation, Submission and Discussion of Preliminary Action Plan	Jan. 30, 2003	USAID/GEO Project Short-Term Consultant	To create an Action Plan for the effective implementation of recommendations and enhancements to the existing Program.
Approval of Final Action Plan	Feb. 14, 2003	Mr. Rajendra Rampersaud, AML Program Coordinator	To provide the necessary mechanisms and internal control systems for an effective AML Program.

Phase II – Formulation/Enactment of Operational Procedures			
Legal Framework <ul style="list-style-type: none"> • Revisions to AML/CFT Act (Refer to Annex I) • Review Acts (Customs, Tax Revenue, Firearms, FIA) 	Mar. 31, 2003	Attorney Gen. Office & Legal Dept. BOG Attorney Gen. Office, Legal Dept. BOG, Customs Office, Tax Revenue Office	To strengthen the government’s ability to fight money laundering and other related crimes. To provide for harmonization of Acts and to identify potential loopholes in existing legislation.
Develop Regulations/Guidelines for Implementation of AML/CFT Act	Mar. 31, 2003	Bank of Guyana Inspectors & Legal Department.	To provide for a formal and uniform process to evaluate financial institutions.
Develop & Adopt National AML/CFT Strategy	Mar. 31, 2003	FIU (Once established), GOG Senior Officials, President’s Office	To provide for a clear and detailed plan for government action.
Appoint Point-Of-Contact/Coordinator for Action Plan	Feb. 7, 2003	Appointed by President of Guyana Jan. 30, 2003	To delegate responsibility and accountability for monitoring progress with the action plan as designed.
Develop Minimum Guidelines: <ul style="list-style-type: none"> • Know Your Customer (KYC) Policies • Internal Control Systems • Independent Reviews • Training 	Apr. 30, 2003 (all tasks)	Bank of Guyana – Inspections Dept., Legal Dept. Feedback should be solicited from Guyana Association of Bankers.	To strengthen domestic enforcement and ensure that financial institutions have sound internal control systems in place to identify criminal activity and build stronger partnerships with regulatory bodies.
Develop Currency Transaction (CTR) and Suspicious Activity Reports (SAR) & Respective Guidelines/Instructions	Mar. 15, 2003	Bank of Guyana – Inspections Dept., Legal Dept., and FIU (once established)	To provide a formal process for gathering customer information, reporting and record-keeping requirements. To promote consistency among financial institutions.
Develop BOG Examination Procedures to	Apr. 15, 2003	Bank of Guyana – Inspections Dept.,	To provide for a formal and uniform system

assist in the effective implementation of the AML/CFT Act		Legal Dept., FIU (once established)	to ensure the institutions' policies, procedures, and internal controls are adequate with respect to the Act and related regulations.
Define Inter-Agency Roles, Cooperation, Sharing of Information, Jurisdiction	Mar. 31, 2003	Senior Officials Government of Guyana, Ministries of Finance, Customs, Tax Revenue, CANU, Attorney General, Law Enforcement, Judges.	To provide for a broad range of national cooperation between inspectors/law enforcement consistent with their mandates. In order for this to be effective, there should be clear Memorandum of Understanding (MOU) in place for exchange of information relating to money laundering and financing of terrorism and there should not be unduly restrictive conditions on such exchange. The main goal is to prevent duplication of efforts, maximize efficiency and improve communication among the agencies.
Establish: <ul style="list-style-type: none"> Financial Intelligence Unit (FIU) or Competent Authority Recruit qualified personnel Procure necessary hardware/software and administrative equipment 	Apr. 30, 2003 (for all tasks)	Minister of Finance, Governor Bank of Guyana, Technical Assistance from Multilateral Agencies (CALP, CFATF, US Embassy, etc.)	To centralize the investigative function for suspicious business transactions and provide for independent assessment of compliance with the Act and its reporting requirements.
Establish National Working Group	Mar. 15, 2003	FIU (once established), Customs, Tax Revenue, CANU, other government agencies responsible for preventing money laundering and terrorism.	To improve cooperation among agencies and provide the mechanism to ensure that all agencies remain abreast of new money laundering and terrorist schemes.
Revise Action Plan, if needed	Mar. 31, 2003	AML Coordinator in consultation with the President of Guyana and other Senior government officials.	To provide flexibility in case unexpected situations arise. Changes to the Action Plan should be minimal and should required formal approval from the President and/or his designee.

Phase III – Training & Implementation			
<p>Ongoing Training for:</p> <ul style="list-style-type: none"> • BOG Inspectors* • FIU Personnel* • Licensed Financial Institutions (Bankers) • Guyana Association of Bankers • Licensed Non-Bank Financial Institutions • Law Enforcement (Customs, Tax Revenue, Attorney General, etc.) • Others 	<p>Apr-May 2003 Apr-May 2003 Late May 2003 Late May 2003 Late May 2003 May 2003 May 2003 *Other training sessions scheduled for Jul – Aug 2003 and Oct 2003</p>	<p>Training should be provided by Multi-Lateral agencies and/or individuals experienced in Anti-Money Laundering Methodologies, training and recent schemes.</p>	<p>To provide all parties involved in the prevention of money laundering and combating financing of terrorism with the necessary training, formal and on-the-job, in all aspects of the requirements of the Act and related regulations (once developed) and the financial institutions' internal compliance and anti-money laundering policies, practices, and procedures.</p>
<p>Prepare and Deliver Public Awareness/Outreach Program(s)</p>	<p>Apr. 30, 2003</p>	<p>FIU (once established), Bank of Guyana, President's Office, Minister of Finance.</p>	<p>To inform the public about the requirements of the Act, types of offenses identified in this Act, Supervisory Authority responsible for the implementation of the Act, and its penalties, civil and criminal, for non-compliance.</p>
<p>Perform Ongoing AML/CFT Inspections using the newly developed Examination Procedures</p>	<p>May – Oct 2003 –Ongoing</p>	<p>Bank of Guyana – Inspections Department</p>	<p>To ensure that all financial and non-financial institutions comply with the requirements of the Act and enforcing regulations. Also to ensure that examination procedures developed are effective and cover all areas of operation of the institutions where money laundering or financing of terrorism could take place.</p>

Annex I

Recommendations for Strengthening Guyana's Anti-Money Laundering (Prevention) Act 2000

PART 1 - PRELIMINARY

- 2.1.(e) - add "seizure" to existing definition to read "freezing or seizure".
- 2.1.(f) - add "...or other competent authority" at the end of this sentence.
- 2.1.(h) - replace "...money laundering offence" at the end of this sentence and insert "...illicit traffic and other serious offences." Or "...prescribed offence and other serious offences".
- 2.1.(l) - replace definition with "...means an offence set forth in the Convention and in the list provided in the Second Schedule.
- 2.1.(m) - add the word "from" to read "...means any property derived from or obtained directly or indirectly..."
- 2.1.(n) -- definition of "property" should be revised to include..."means assets of every kind, including currency, investments, holdings, and all other property...).
- 2.1.(2) -- Is this paragraph supposed to be a definition? Is it improperly numbered? Is this section out of place? Needs research.

NEW SECTION

- 2.1.(p) - add new definition: "Convention" means the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which was signed in Vienna, Austria, on December 20, 1988, and entered into force on November 11, 1990.

PART II – MONEY LAUNDERING PROHIBITED

- 3. Add to the offence of money laundering the term "indictable under this Law". Sentence should read as "A Person who engages in money laundering is guilty of an offence that is Indictable under this Law."
- 4. Paragraph should be revisited to indicate "the burden of proof is on the defendant(s)".
Currently the last four lines contradict the intent of the offence committed by a body of persons.
- 9. Contradictions noted starting on the second line because a "court in Guyana cannot investigate, try, judge and sentence offences". Is this an error in this Act? If not then, replace word "tired" with "tried" and delete word "and" third line to read..."a court in Guyana or other competent authority regardless of whether..." delete word "but" fourth line to read .." territorial jurisdiction without prejudice to extradition..."
- 11.(i) - add "...and analyze" to first line to read ..."shall receive and analyze the reports issued by the financial ...".
- 11.(viii) - Is this really the SA's responsibility? Or does it fall within the BOG?
- 13.(2) - replace "money laundering" with "illicit activities" and/or "prescribed offence".

13.(4) - delete “or” fourth line and replace with “and” to read...” shall be exempted from criminal, civil and administrative liability,...”.

PART III – ANTI-MONEY LAUNDERING SUPERVISION

18.(3) - replace word “his” on first line with “him”.

PART IV – FREEZING AND FORFEITURE OF ASSETS IN RELATION TO MONEY LAUNDERING

19.(3) - Why is “48 hrs.” the threshold for an order to cease to have effect? What happens if additional time is needed? This time period needs to be further investigated.

PART V – INTERNATIONAL COOPERATION

23.(2) - replace “money laundering” fourth line to read ...”instrumentalities connected to illicit traffic or other serious offences,...”.

23.(3) - replace “money laundering” second line to read ...”or instrumentalities connected to illicit traffic or other serious offences,...”

23.(4) - replace “money laundering” fifth line to read ...”as the case may be, involving illicit traffic or other serious offences,...”

23.(6) - add at the end of the sentence “...in accordance with the Law.”

27.(2) - delete from first line “tired” and replace with “tried” to read “... under this Act shall be tried summarily without the consent...”. Also, is this statute of limitations right (six years)? Of equal importance, this section allows the Director of Public Prosecution to try all offences under this Act summarily without the consent of the accused. Is this allowed under the law? Does it violate accused rights?

NEW SECTION

30 -- add a new section addressing “Harsher Penalties and Sanctions for Public Officials. For Example: (the following is just provided for consideration”

“Specific aggravating circumstances. If the crime of money laundering or any other prescribed offence is committed by a person serving in a popularly elected office, a public officer or employee or an officer or employee of the Supervisory Authority or Competent Authority, while in the exercise of their responsibilities, such person will be subject to the established criminal penalties increased by a factor of XXX, in addition to the additional associated penalties. Additionally, such persons will be subject to the accessory penalty of prohibition from the exercise of public office or employment for a term equal to twice the term of incarceration.”

SECOND SCHEDULE -- PRESCRIBED OFFENCES

Consider adding the following offences:

- illicit traffic of firearms
- illicit traffic of human beings (including illegal immigrants) and human organ trafficking.
- Prostitution
- Kidnapping
- Pornography
- Terrorism

Also, consider adding a section on the following topics/areas:

- 1. Liability to Financial Institutions**
- 2. Mandatory Compliance Programs in Financial Institutions**