

# Legislative Amendments 2014: FIU Act & MLTPA

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# Financial Intelligence Unit (Amendment) Act, 2014

# Objects

- ❖ Make Belize compliant with international best practices and obligations
- ❖ Implement recommendations made by the IMF to strengthen the legislative framework to ensure operational independence
- ❖ Reconcile inconsistencies with the Money Laundering and Terrorism (Prevention) Act (“MLTPA”)

# Operational independence

- ❖ Required by FATF R26
- ❖ Security of tenure for the Director; removal from office only for cause
- ❖ Director responsible for the day-to-day management and administration, including appointment of staff
- ❖ Circumstances that may give rise to conflict of interest and disqualify a person from appointment as Director
- ❖ Narrow FIU reporting obligations to remove need to report on day to day work

## Miscellaneous

- ❖ Broadens duties of FIU for consistency with obligations imposed by MLTPA
- ❖ Expands range of law enforcement authorities who may refer matters to the FIU for investigation and prosecution for consistency with the MLTPA
- ❖ Strengthens protections from civil or criminal liability afforded to persons who make good faith disclosures in accordance with the Act

# Money Laundering and Terrorism (Prevention) (Amendment) Act, 2014

# Objects

- ❖ Enhance compliance with FATF Recommendations 5, 7, 8, 9, 12, 13, 15, 16, 17, 18, 21, 22,24, 27, 31, 34, 38, and Special Recommendations I, II, III, VI, VII, VIII and IX as required by CFATF Assessors
- ❖ Reconcile inconsistencies with FIU Act
- ❖ Clarify existing ambiguities in supervisory responsibilities and procedures

# Key Definitions

- ❖ **AML/CFT obligation:** an obligation of the reporting entity under the Act or any other law relating to money laundering or terrorist financing, the AML Regulations, and any applicable regulations or guidelines issued under this Act, and includes—
  - a) an obligation to provide information imposed on the reporting entity in a request given to it by the Financial Intelligence Unit under section 11(1)(k) or 17(6) of this Act; and
  - b) an obligation imposed by a directive given by a supervisory authority or competent authority under section 22 of this Act
- ❖ Reporting entities may face disciplinary action, including administrative penalties for failure to comply with AML/CFT obligations



## Key Definitions (continued)

❖ **Cash:** includes—

- a) notes and coins in any currency;
- b) postal orders;
- c) cheques of any kind, including travellers' cheques;
- d) bankers' drafts;
- e) bearer bonds and bearer shares; and
- f) such other monetary instrument as the Minister may, by notice published in the Gazette, specify;

❖ Requirement to declare “cash” when crossing the border includes bearer negotiable instruments

## Key Definitions (continued)

- ❖ **Funds**: financial assets and benefits of every kind, however acquired, including (but not limited to)—
  - a) cash, cheques, claims on money, drafts, money orders and other payment instruments;
  - b) deposits with relevant institutions or other entities, balances on accounts, debts and debt obligations;
  - c) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
  - d) interest, dividends or other income on or value accruing from or generated by assets;
  - e) credit, rights of set-off, guarantees, performance bonds or other financial commitments;
  - f) letters of credit, bills of lading and bills of sale;
  - g) documents providing evidence of an interest in funds or financial resources, in any form including electronic or digital; or
  - h) any other instrument of export financing
- ❖ FIU may instruct any reporting entity to freeze funds
- ❖ Making funds available to terrorists or to be used for terrorist acts is an offence

## Key Definitions (continued)

- ❖ **Terrorist:** any natural person who—
  - a) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully;
  - b) participates as an accomplice in terrorist acts;
  - c) organizes or directs others to commit terrorists acts;
  - d) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act;
  - e) is designated by, or under the authority of, the United Nations Security Council under Chapter VII of the Charter of the United Nations, including in accordance with Security Council Resolution 1267(1999) or its successor resolutions or designated by a country pursuant to Security Council Resolution 1373 (2001) or its successor resolutions
- ❖ FIU may issue a general notice requiring any reporting entities to freeze funds or seize goods of a person identified in a UN Security Council Resolution

## Politically Exposed Persons (PEPs)

- ❖ Have “prominent public function” in Belize or another country—
  - a) heads of state, heads of government and senior politicians
  - b) senior government or judicial officials
  - c) high-ranking officers in the armed forces
  - d) members of courts of auditors or of the boards of central banks
  - e) ambassadors and chargés d'affaires
  - f) senior executives of state-owned corporations
  - g) important political party officials
- ❖ Not intended to cover middle ranking or more junior individuals

## Politically Exposed Persons (PEPs) (continued)

- ❖ Entrusted (currently or previously) with a prominent function by an international organisation—
  - a) directors and deputy directors of the international organisation
  - b) members of the board or governing body of the international organisation
  - c) other members of the senior management of the international organisation
  
- ❖ International Organisations—
  - a) United Nations and affiliated international organisations
  - b) Regional international organisations (E.g. Organisation of Eastern Caribbean States, Council of Europe, Organization of American States)
  - c) Military international organisations (E.g. North Atlantic Treaty Organization)
  - d) Economic organisations (E.g. World Trade Organisation, CARICOM)

# Politically Exposed Persons (PEPs) (continued)

## ❖ Family Members and Close Associates should be treated the same as a PEP

### a) Family members—

- Spouse or common-law partner (including domestic partners as recognized in other jurisdictions)
- Child and his or her spouse or common-law partner
- Parent
- Grandparent and grandchild
- Brother, sister, half-brother or half-sister (any other child of the individual's mother or father)

### b) Close associates—

- Person who has a close business relationship with the PEP or authority to conduct substantial financial transactions on behalf of the PEP
- Person who has joint ownership of a legal entity or trust with the PEP
- Person who has sole beneficial ownership of a legal entity or trust which is set up for the benefit of the PEP

## ❖ **Additional Information:**

<http://www.fatf-gafi.org/documents/documents/peps-r12-r22.html>

# Obligations of Reporting Entities: §15 - 19

- ❖ Prepared in consultation with CBB
- ❖ Extensive amendments to requirements for—
  - Customer due diligence and ongoing monitoring
  - Performance of risk assessments
  - Recordkeeping requirements
  - Duty to provide information to the FIU upon request
  - Reporting requirements
  - Appointment of compliance officers
  - Establishment of procedures and policies
  - Wire transfer rules
- ❖ See Hand-out: EXPLANATORY NOTE

# AML/CFT Supervision

- ❖ **Section 20:** clarifies specific circumstances under which law enforcement, the FIU or a supervisory authority may seek a search warrant to obtain information regarding compliance with AML/CFT obligations
- ❖ **Section 21:** clarifies the role of the supervisory authorities relating to—
  - Issuing warnings or notices about weaknesses in other countries' AML/CFT systems
  - AML/CFT measures in foreign branches and subsidiaries
  - Information sharing among supervisory authorities to ensure compliance
  - Administrative sanctions impacting license status for licensees of supervisory authority
- ❖ **Sections 22 and 22A:** clarify supervisory authorities' sanctioning powers
- ❖ **Section 22B:** provides general right of appeal from any decision made by a supervisory authority or the FIU made under the MLTPA



# Cash

- ❖ **Section 37:** clarifies offence provisions, creates a defence for failure to declare cash with entering or leaving Belize
- ❖ **Section 37B:** empowers police and customs officers to search any premises where they have reasonable grounds to suspect that there is illicit cash
- ❖ **Section 38:** clarifies circumstances under which cash may be seized and detained and related procedures, including application for forfeiture
- ❖ **Sections 38A, 38B, and 38C:** new provisions addressing—
  - right to appeal against forfeiture
  - application of forfeited cash
  - payment to victims and innocent third party owners from forfeited cash

# Counter-terrorism and financing of terrorism

- ❖ **Section 67:** provides for seizure and detention of cash that represents the proceeds or instrumentalities of terrorism or the funds of a terrorist or terrorist organization
- ❖ **Section 68:** provides a mechanism by which the Minister of Foreign Affairs may publicly “list and de-list” persons who are suspected terrorists in compliance with UN Security Council Resolution 1373
- ❖ **Section 76A:** establishes procedures to expedite implementation of freezing actions directed by United Nations Security Council Resolutions

## Part IVA: Mutual legal assistance and international co-operation

### ❖ Procedures for—

- enforcement of foreign court orders
- application for restraint orders in response to requests from foreign authorities

### ❖ Duty to co-operate with foreign regulatory authorities and domestic law enforcement agencies

### ❖ Protection of privacy and privilege—

- restrictions on disclosure of information
- right to refuse disclosure of information subject to legal professional privilege

## Miscellaneous

- ❖ **Section 77A:** enables frozen accounts to be credited with interest or other amounts due
- ❖ **Section 77B:** establishes in law the National Anti-Money Laundering Committee
- ❖ **Section 86:** regulation making powers –
  - requires consultation with the National AML/CFT Committee before making regulations
  - enable offences that carry maximum penalties of two years' imprisonment or \$500,000 fine or both to be created by regulation

## Additional Information

❖ Electronic versions of FIU Act and MLTPA with amendments consolidated at—

- [https://fiubelize.org/images/FIU%20Act%20as%20Amended%207%20Feb%202014%20\(p\).pdf](https://fiubelize.org/images/FIU%20Act%20as%20Amended%207%20Feb%202014%20(p).pdf)
- <https://fiubelize.org/images/MLTPA%20as%20Amended%207%20Feb%202014.pdf>

❖ CFATF Mutual Evaluation Report and Follow-Up Reports:

<https://www.cfatf-gafic.org/index.php/member-countries/a-d/belize>

Thank you!