

*Legal Supplement Part C to the "Trinidad and Tobago Gazette", Vol. 51,
No. 139, 23rd August, 2012*

No. 6 of 2012

Third Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Financial Intelligence Unit of
Trinidad and Tobago Act, 2009 and the
Anti-Terrorism Act, Chap. 12:07

THE MISCELLANEOUS PROVISIONS (FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO AND ANTI-TERRORISM) BILL, 2012

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The purpose of this Bill is to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 and the Anti-Terrorism Act, Chap. 12:07.

This Bill would be inconsistent with sections 4 and 5 of the Constitution and is therefore required, pursuant to section 13, to be passed by a special majority of three-fifths of all the members of each House of Parliament.

Clause 1 of the Bill contains the short title.

Clause 2 of the Bill would allow the Bill to have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 of the Bill seeks to amend the Financial Intelligence Unit of Trinidad and Tobago Act, in—

(a) section 2, by providing new definitions for the terms “financing of terrorism” and “law enforcement authority”. Also, it would provide a definition for the term “public authority”;

(b) section 8(1), by allowing the Financial Intelligence Unit to be the statutory department that is responsible for, *inter alia*, the collection of financial intelligence and information under the Proceed of Crime Act and the Anti-Terrorism Act;

(c) section 8(3), in—

(i) paragraph (e), by providing a substituted paragraph which would allow the Financial Intelligence Unit to engage in the exchange of both financial intelligence and information with members of Egmont Group and also with Foreign Financial Intelligence Units;

(ii) paragraphs (i) and (j), by providing for certain amendments to cater for an inserted paragraph (k) which would give the Director the power to enter into written agreements with a local authority or Foreign Financial Intelligence Unit when he considers it so necessary;

(d) section 8(4), in—

(i) paragraph (a), by providing a substituted paragraph which would allow the Financial Intelligence Unit to have the power, on the basis of reciprocity, to exchange both financial intelligence and information with Foreign Financial Intelligence Units, as well as, with members of the Egmont Group; and

(ii) paragraph (b), by providing, *inter alia*, for the definition of local authorities to be consistent within that section;

(e) section 10, by allowing the Financial Intelligence Unit to also provide written feedback on suspicious transaction or suspicious activity report which it receives from an institution under the Anti-Terrorism Act;

(f) section 12(2), by providing certain amendments for clarification and consistency in the Act;

(g) section 13, by repealing same;

(h) section 14(1), by repealing and substituting a new subsection that would allow the Financial Intelligence Unit to suspend a suspicious transaction or activity in certain circumstances;

(i) section 16, by repealing same and substituting a new section that would allow the Financial Intelligence Unit to obtain information through co-operation and liaising or on a request from any appropriate person, the Central Bank or certain authorities. Also, the Director could approach the Court for any information that was not provided within a

reasonable time. Further, information so obtained would not be disclosed by officers of the Financial Intelligence Unit without prior consent of the person who provided it;

(j) sections 18B, 18C and 18G, by providing for consistency in terminology throughout the Act;

(k) section 18F—

(i) in subsection (2)(a), by providing for consistency throughout the Act; and

(ii) by providing for an inserted subsection (3) which would provided a definition for the word “document” that would govern the section;

(l) section 23(1), by providing clarity in the Act;

(m) section 25, by providing a new subsection (2) that would protect any person, who acts in good faith and discloses financial information or intelligence to the Financial Intelligence Unit from any civil and criminal liability proceedings; and

(n) the Schedule, by including certain words to the Oath of Office and Secrecy which would be taken by officers of the Financial Intelligence Unit.

Clause 4 of the Bill would amend the Anti-Terrorism Act in—

(a) section 22AA(2), in paragraph (e), by extending the means by which the Financial Intelligence Unit would circulate the consolidated list of all Orders issued by the court;

(b) section 22AB, in paragraphs (a) and (b), by providing certain amendments to deal with procedure. However, paragraph (c) is deleted to remove the ability of any financial institution or listed business to obtain prior approval from the Financial Intelligence Unit to continue the transaction or relationship with a designated entity;

(c) section 22B, in—

(i) subsections (1) and (3), by allowing the Attorney General to apply and obtain from a Judge an Order in respect of an individual where certain reasonable grounds exist; and

(ii) subsection (6), by entitling such individual to review the Order, like that afforded to an entity, so obtained by the Attorney General;

(d) section 22E, by increasing the period of a suspended transaction to five days and thus, would make it consistent with similar provision in the Financial Intelligence Unit of Trinidad and Tobago Act;

(e) section 34(1), by providing a new paragraph (d) to restrain property of an individual or entity who participates in the commission of a terrorist act by an Order from a Judge; and

(f) section 42, by catering for certain amendments which clarifies the section.

BILL

AN ACT to amend the Financial Intelligence Unit of
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Anti-Terrorism Act, Chap. 12:07

[, 2012]

WHEREAS it is enacted by section 13(1) of the Preamble
Constitution that an Act of Parliament to which that
section applies may expressly declare that it shall have
effect even though inconsistent with sections 4 and 5 of
the Constitution and, if any Act does so declare, it shall
have effect accordingly;

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House;

And whereas it is necessary and expedient that the provisions of this Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution:

Enactment ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title **1.** This Act may be cited as the Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and Anti-Terrorism) Act, 2012.

Act inconsistent with the Constitution **2.** This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Act No. 11 of 2009 amended **3.** The Financial Intelligence Unit of Trinidad and Tobago Act is amended—

(a) in section 2(1)—

(i) by deleting the definition of “financing of terrorism” and substituting the following definition:

“financing of terrorism” means the offence created under section 22A(1) of the

Chap. 12:07 Anti-Terrorism Act;”;

(ii) by deleting the definition of the term “law enforcement authority” and substituting the following definition:

“ “law enforcement authority” means—

(a) the Commissioner of Police appointed in accordance with the Constitution;

(b) the Comptroller of Customs and Excise appointed in accordance with the Public Service Commission Regulations;

(c) the Chief Immigration Officer appointed in accordance with the Public Service Commission Regulations;

(d) the Chairman of the Board of Inland Revenue appointed by the President in accordance with the Income Tax Act; and

Chap. 75:01

(e) any other office or agency of the State in which is vested coercive powers of a constable under the Police Service Act;” and

Chap. 15:01

(iii) by inserting in the appropriate alphabetical sequence, the following definition:

“public authority” means—

(a) a Ministry or a department or division of a Ministry;

(b) the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;

(c) a Municipal Corporation established under the Municipal Corporations Act;

- (d) a Regional Health Authority established under the Regional Health Authorities Act;
- (e) a statutory body, responsibility for which is assigned to a Minister of Government;
- (f) a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State;
- (g) a Service Commission established under the Constitution or other written law; or
- (h) a body corporate or unincorporated entity—
 - (i) in relation to any function which it exercises on behalf of the State;
 - (ii) which is established by virtue of the President's prerogative, by a Minister of Government in his capacity as such or by another public authority; or
 - (iii) which is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control;

(b) in section 8(1), by—

- (i) deleting the words “the primary institution” and substituting the word “responsible”;
- (ii) deleting the words “the Proceeds of Crime Act, 2000, the Proceeds of Crime (Amendment) Act, 2009 and the Anti-Terrorism Act, 2005” and substituting the words “the Proceeds of Crime Act and the Anti-Terrorism Act”;

(c) in section 8(3), by—

- (i) deleting paragraph (e) and substituting the following paragraph:

“(e) engage in the exchange of financial intelligence and information with members of the Egmont Group or with Foreign Financial Intelligence Units.”;
- (ii) deleting the word “and” at the end of paragraph (i);
- (iii) deleting the full stop at the end of paragraph (j) and inserting the words “; and”; and
- (iv) inserting after paragraph (j), the following paragraph:

“(k) may enter into such written agreements with a local authority or Foreign Financial Intelligence Unit as the Director considers necessary for the performance of its functions.”;

(d) in section 8(4)—

(i) by deleting paragraph (a) and substituting the following paragraph:

“(a) subsection (3)(e), the exchange of financial intelligence and information shall be undertaken on the basis of reciprocity with members of the Egmont Group or with Foreign Financial Intelligence Units; and”;

(ii) in paragraph (b), by deleting the words “subsection (3)(f), “local authorities” include” and substituting the words “subsection (3)(f) and (k)”, “local authority” includes”;

(e) in section 10, by inserting after the word “Act” the words “or under the Anti-Terrorism Act”;

(f) in section 12(2), by—

(i) deleting the words “subsection (4)” and substituting the words “subsection (1)”;

(ii) deleting the words “non-regulated”;

(g) by repealing section 13;

(h) in section 14, by repealing subsection (1) and substituting the following subsection:

“(1) The FIU may instruct a financial institution or listed business, in writing, to suspend the processing of a suspicious transaction or

suspicious activity for a period not exceeding five working days—

- (a) in the course of enquiring into a suspicious transaction or suspicious activity relating to the proceeds of suspected criminal conduct, to a money laundering offence or to the financing of terrorism; or
- (b) where a request is made by a law enforcement authority or a Foreign Financial Intelligence Unit, during the course of its inquiry into a suspicious transaction or suspicious activity.”;

(i) by repealing section 16 and substituting the following section:

“Request for information 16. (1) The FIU may, in the performance of its functions, co-operate and liaise with any person who, in the opinion of the Director is able to assist in the provision of information relevant to an analysis of a suspicious transaction or suspicious activity.

(2) Notwithstanding subsection (1), the FIU may, in the performance of its functions, request information from—

- (a) the Central Bank;
- (b) a public authority; or
- (c) an authority specified by or under a treaty for co-operation on any matter provided for in this Act and to which Trinidad and Tobago is a party.

(3) Any information requested under subsection (2) shall be provided within a reasonable time.

(4) Where a person fails to provide the requested information or fails to provide it in a reasonable time, under subsection (2) or (3), the Director may apply to a Judge for an order to direct that person to comply with the request made under subsection (2).

(5) Information received under this section shall not be disclosed without the prior consent of the person from whom the information was obtained.”;

(j) in section 18B, by deleting the words “listed businesses and non-regulated financial institutions” and substituting the words “non-regulated financial institutions and listed businesses”;

(k) in section 18C, by inserting the words “non-regulated financial institutions and” before the word “listed”;

(l) in section 18F—

(i) in subsection (2)(a), by deleting the words “section 18(1)(a)” and substituting the words “section 18E(1)”; and

(ii) by inserting the following subsection:

“(3) For the purpose of this section, “document” includes any data, correspondence, memorandum, book, machine-readable record or other documentary material, regardless of the form or manner in which it is stored.”;

(*m*) in section 18G—

(i) in subsection 4(*b*), by inserting before the words “financial institution”, the word “non-regulated”;

(ii) in subsection (6), by deleting the words “subsection (9)” and substituting the words “subsection (8)”; and

(iii) by renumbering subsection (8) and subsection (9) as subsection (9) and subsection (8), respectively;

(*n*) in section 23(1), by deleting the words “about the commission of an offence”;

(*o*) in section 25, by renumbering the section as section 25(1) and inserting thereafter the following subsection:

“(2) No civil or criminal proceedings shall lie against a person who, in good faith, discloses financial intelligence or information under this Act.”; and

(*p*) in the Schedule entitled “Oath of Office and Secrecy” by inserting after the word “will” the words “conscientiously and to the best of my ability discharge the duties of my office and that I will”.

4. The Anti-Terrorism Act is amended—

(*a*) in section 22AA(2)(*e*), by inserting after the word “transmission”, the words “or other electronic means”;

(*b*) in section 22AB(*a*), by inserting after the word “FIU,” the words “on the prescribed form,”;

(*c*) in section 22AB(*b*), by deleting the words “the FIU shall be informed immediately” and substituting the words “it shall immediately inform the FIU on the prescribed form”;

- (d) in section 22AB, by deleting paragraph (c);
- (e) in section 22B(1)—
- (i) by deleting the words “in respect of an entity where”;
 - (ii) in paragraph (a), by inserting before the word “the”, the words “in respect of an entity, where”; and
 - (iii) in paragraph (b), by deleting the words “there are reasonable grounds to believe that the entity” and substituting the words “in respect of an entity or individual where there are reasonable grounds to believe that the entity or individual”;
- (f) in section 22B(3)(a), by inserting after the word “declare” the words “an individual or”;
- (g) in section 22B(6), by inserting before the word “entity”, the words “individual or”;
- (h) in section 22E(1), by deleting the word “three” and substituting the word “five”;
- (i) in section 34(1), by inserting after paragraph (c), the following paragraph:
- “(d) property of an individual or entity who participates in the commission of a terrorist act,”; and
- (j) in section 42—
- (i) in subsection (1), by deleting the word “A” and substituting the words “Subject to subsection (2), a”;
 - (ii) in subsection (1)(a), by deleting the word “and” in the first two places where it occurs and substituting the word “or”; and

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say, by the votes of Senators.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 6 of 2012

THIRD SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

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Intelligence Unit of Trinidad and
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Received and read the

First time

Second time

Third time
