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Fourth Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property through the use of the remedies of restriction in dealings with civil assets restriction and forfeiture of criminal property and the management of criminal property, and unexplained wealth orders and matters incidental thereto

THE CIVIL ASSET RECOVERY AND MANAGEMENT AND
UNEXPLAINED WEALTH BILL, 2019

Explanatory Note

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

PART I of the Bill sets out the preliminary clauses and contains clauses 1 to 7.

Clause 1 of the Bill provides for the short title.

Clause 2 of the Bill would provide for the Act to come into operation on Proclamation by the President.

Clause 3 of the Bill would define certain words and phrases used in the Bill.

Clause 4 of the Bill would provide for the application of the Bill.

Clause 5 would provide that the standard of proof required to be used under the Act would be the standard as in civil proceedings.

Clause 6 of the Bill would provide that Property Restriction Orders and Civil Asset Forfeiture Orders granted under this Act are orders *in rem* against assets believed to be or which are criminal property, terrorist property or instrumentalities of crime, rather than *in personam*, that is, against the person.

Clause 7 of the Bill would set out the types of property which are recoverable under this Act, namely criminal property, terrorist property or an instrumentality of crime, including the portion of such property that may be mixed with other property and an interest in recoverable property.

The clause further goes on to provide for property to be recovered from a person who has obtained property through criminal conduct and from a person who had the instrumentality for the purpose of, or with the intent of using an instrumentality for criminal conduct. The clause further sets out how recoverable property that is disposed of, or converted is to be treated, and when recoverable property ceases to be recoverable under the Act.

PART II of the Bill would establish the Civil Asset Recovery and Management Agency and provide for matters related to its operation and contains clauses 8 to 19.

Clause 8 of the Bill would establish the Civil Asset Recovery and Management Agency as a body corporate which is responsible for the recovery, management and disposal of criminal property under the Act.

Clause 9 of the Bill would provide for the composition of the Agency, which would comprise a Civil Asset Trustee and two Deputy Civil Asset Trustees who will be appointed by the President, on the advice of the Prime Minister and Leader of the Opposition, and where they cannot agree, will be appointed by the President after consultation with the Prime Minister and Leader of the Opposition. The clause goes on to set out the qualifications of the Trustees and provide for the procedure to be undertaken when a vacancy arises in the Agency or a Trustee is absent or incapable of performing his duties due to illness or other cause.

Clause 10 of the Bill would provide for the terms of appointment of the Civil Asset Trustee and Deputy Civil Asset Trustee, which will be no more than seven years and six years respectively. The clause would further allow for the reappointment of both the Civil Asset Trustee and Deputy Civil Asset Trustee and would require the Salaries Review Commission to review the salaries and other conditions of service of the Civil Asset Trustee and Deputy Civil Asset Trustees.

Clause 11 of the Bill would set out the criteria which would render a person ineligible for appointment as a Civil Asset Trustee or Deputy Civil Asset Trustee.

Clause 12 of the Bill would allow the Civil Asset Trustee to resign from office at any time by notice, in writing, addressed to the President, and the Deputy Civil Asset Trustee to resign at any time by notice, in writing, to the President, through the Civil Asset Trustee.

Clause 13 of the Bill would empower the President to revoke the appointment of a Trustee if the Trustee is declared bankrupt, becomes of unsound mind, is incapable of performing his duties, is convicted of an indictable offence, misbehaves in office, brings his office into disrepute or for any other reasonable cause.

Clause 14 of the Bill would provide for the functions of the Agency, which would include securing the detention, custody and preservation of property vested in it under a Property Restriction Order or Civil Asset Forfeiture Order or seized or forfeited by the State under any written law, managing the property that is so vested in it and realizing the value of any property so vested in it.

The clause goes on to set out the powers of the Agency, which would include removing, taking possession of, preserving, storing or managing criminal property, complying with the terms of an order of the court related to any property, incurring expenditure for acquiring criminal property and discharging liabilities or extinguishing rights of criminal property, making arrangements for the insurance of criminal property, destroying criminal property or contraband, donating property for humanitarian purposes and sharing information with and receiving information from law enforcement authorities.

Clause 15 of the Bill would require a Trustee, who has a direct or indirect interest in a matter under consideration by the Agency, to disclose the fact of his interest at the earliest opportunity and prohibits his participation in the consideration of the matter. The clause further penalizes a person who recklessly and knowingly fails to comply with the section and imposes a fine of up to five hundred thousand dollars and a term of imprisonment of up to five years on summary conviction unless he proves to the High Court that he did not know that the matter in which he had an interest was being considered by the Agency or that he did not know that he had an interest in the matter.

Clause 16 of the Bill would provide for the Trustees of the Agency to be protected from personal liability for anything done in good faith during the operations of the Agency, for no civil or criminal proceedings to lie against a person who discloses information, in good faith, in accordance with the Act and for money, damages or cost recovered against the Agency for anything done or omitted to be done or permitted to be done in good faith in the course of the operations of the Agency to be paid out of monies appropriated by Parliament.

Clause 17 shall provide for the appointment of a Property Manager by the President in his own discretion. The Property Manager shall be responsible for taking possession of, preserving, managing, disposing of, or otherwise dealing with any property which is subject to any proceedings under the Act. The terms and conditions of the Property Manager are to be set by the Salaries Review Commission.

Clause 18 of the Bill would provide protection for the Property Manager in respect of any act done by him in good faith in the performance of his duties.

Clause 19 of the Bill would empower the Agency to employ staff, and engage experts, advisers and consultants as necessary

and to assist in the conduct of its responsibilities under the Act. The clause would also provide for employees of the Agency to be protected from personal liability for anything done in good faith during the operations of the Agency. Employees and experts engaged by the Agency would also be required to disclose, in writing, any conflict of interest they may have with the activities of the Agency.

The clause further penalizes a person who recklessly and knowingly fails to comply with the section and imposes a fine of up to five hundred thousand dollars and a term of imprisonment of up to five years, on summary conviction unless he proves to the High Court that he did not know that the matter in which he had an interest was being considered by the Agency or that he had an interest in the matter. The penalty for an expert, adviser or consultant engaged by the Agency would include the withholding of remuneration in relation to the performance of the work.

The clause would require an officer who commences duties under the Act to take an Oath of Secrecy provided in the Act and would require the Agency to provide officers with identification documents signed by the Civil Asset Trustee.

PART III of the Bill would prescribe the relevant financial matters pertaining to the operations of the Agency and contains clauses 20 to 29.

Clause 20 of the Bill would define the term “Minister” to mean Minister with responsibility for finance.

Clause 21 of the Bill would establish the Civil Asset Recovery and Management Fund, which would comprise monies appropriated by Parliament for the Agency, money and property paid or provided to the Agency, fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the funds of the Agency; money derived from the disposal of, or dealing with real or personal property held and owned by the Agency, monies borrowed by the Agency with the approval of the Minister for the purpose of meeting any of its obligations and for discharging its functions, monies from the Seized Asset Fund used to defray the cost of management of recoverable property and all other monies lawfully received by, or made available to the Agency with the approval of the Minister.

Clause 22 of the Bill would prescribe the expenses which may be covered by the Fund, which would include, the acquisition of property by the Agency, the remuneration and allowances of the

Trustees and employees, advances, loans, pensions and gratuities payable to staff, experts, advisers and consultants, contributions to a pension fund plan, capital and operating expenses, the management of criminal property, covering expenses relative to legal proceedings, and other expenditure required in the performance of its functions. The clause would also allow the Agency to make provision for future expenditure for any of the prescribed expenses and to mandate that any additional monies required by the Agency be defrayed out of the Consolidated Fund.

Clause 23 of the Bill would require the Agency to prepare a budget for each financial year and submit estimates to the Treasury by a date stipulated by the Minister, after obtaining his approval. The clause goes on to require the Agency to furnish information relative to the submitted estimates to the Minister as he may require, and stipulates that the estimates approved by the Minister would be the expenditure budget of the Agency and would be subject to the provisions of the Constitution and the Exchequer and Audit Act.

Clause 24 of the Bill would prescribe the financial year of the Agency as twelve months beginning on the first day of October in any year to the thirtieth day of September in the following year. The clause would further empower the Agency to vary its financial year with the approval of the Minister.

Clause 25 of the Bill would prescribe the requirements for the keeping of accounts, by the Agency and would require it to ensure that all monies received are properly brought to account, all payments out of its money are correctly made and properly authorized and adequate control is maintained over the property and over the incurring of liabilities by the Agency. The clause goes on to require the Agency to prepare a report setting out the activities of the Agency and financial statements within three months after the end of the financial year. The clause would also empower the Comptroller of Accounts to provide instructions where the standards used in IFRS are inappropriate or inadequate.

Clause 26 of the Bill would provide for the audit of accounts of Agency, prescribing that they are public accounts for purposes of the Constitution. The clause goes on to empower the Auditor General to notify the Minister and the Board of any irregularity of a sufficient nature that has been disclosed in an audit. The Auditor General would also be required to submit a copy of his report in accordance with the Constitution and submit a copy to the Minister.

Clause 27 of the Bill would empower the Minister to lend money to the Agency on terms and conditions as he may determine, out of the money appropriated by Parliament.

Clause 28 of the Bill would require the Agency to submit an annual report to Parliament within three months after the end of the calendar year on the activities of the Authority for the previous year.

Clause 29 of the Bill would require the Agency to apply the realized proceeds of property vested in it firstly, to any payment required to be made in respect of associated or joint property under clause 45, secondly, to the payment of legal expenses in pursuance of a condition of a Property Restriction Order to provide for the exclusion of funds for the purpose of enabling a person to meet legal expenses or as a condition of an order of the High Court in making a Civil Asset Recovery Order, thirdly, to any fees payable to a liquidator of a company appointed by or supervised by the High Court and lastly, any other sums which remain to be paid to the Agency. The clause goes on to require that the sums that remain to be paid to the Agency, be paid into the Seized Assets Fund after an order for compensation has been made for the Agency to compensate an applicant who has suffered loss as a result of a Property Restriction Order or after the period within which an appeal may be made or determined, whichever happens later.

PART IV of the Bill would provide for the process of Civil Asset Recovery and contains clauses 30 to 57.

Clause 30 of the Bill would provide for the interpretation of certain words and phrases used in the Part.

Clause 31 of the Bill would empower a police officer to forward an investigative report to the Director of Public Prosecutions (“DPP”), where he suspects that the investigation involves recoverable property. The clause goes on to empower the DPP to refer a matter to the Agency for a Civil Asset Recovery Order to be made where he is of the view that there is insufficient evidence to pursue criminal charges for a specified offence, but there is sufficient evidence that the property is recoverable property and an application should be made for the property to be forfeited to the State.

Clause 32 of the Bill would require the Agency to have an equity valuation done for all property including a company that may be the subject of a Property Restriction Order or Civil Asset Recovery Order, in order to determine the debt load and equity of

the company and a valuation of any other asset as far as possible, prior to applying for a Property Restriction Order or Civil Asset Recovery Order. The clause goes on to provide that where such a valuation cannot be done prior to an application, it must be done as soon as an order is made.

Clause 33 of the Bill would empower the Agency to apply to the High Court for a Property Restriction Order to prohibit a person from dealing with recoverable property until an application can be made to forfeit the property in accordance with the Act. The clause goes on to provide for the matters the Civil Asset Trustee must consider in making an application to the Court and provides for the manner in which the application is to be made and heard. An application for a Property Restriction Order will be made *ex parte* to ensure that property is preserved this is also to ensure that property is not hidden or dissipated before a Property Restriction Order is in place.

Clause 34 of the Bill would provide for the grant of the Property Restriction Order and would empower the High Court to make such an order where it is satisfied that there are reasonable grounds to believe that the property is criminal property, instrumentalities of crime or terrorist property. The standard for the granting of a Property Restriction Order is set at this level for if it is too high, the Agency will rarely be able to satisfy the test, and there would be a serious risk that the assets that should be forfeited would be lost. The application can also be in relation to property to which the property relates includes associated property and the Agency has not identified the identity of the person who holds it and has taken all steps to do so.

The clause goes on to provide for the High Court to direct the Agency to take possession of any realizable property and manage or deal with any property and require any person to give up possession of the property to the Agency. The clause provides that the Property Restriction Order may authorize the Agency to seize, take possession and deliver up for safekeeping or otherwise secure the recoverable property and to manage or otherwise deal with the recoverable property. The Property Restriction Order may require a person having possession of recoverable property to give possession to the Agency. It may also require the property or part of the property be dealt with in a particular manner (for instance not sold, transferred, mortgaged etc.) including by encumbrances and may order the preservation, management or disposition of the recoverable property. This provision would enable the court to give effect to its restriction order by dealing with immovable property in an effective way. The clause also stipulates a time period of

fourteen days within which notice of a Property Restriction Order must be served on all persons known to the Agency and the claimant to have an interest in the property affected by the Order.

The clause would further empower the High Court to exclude property from the order or make exclusions on the prohibitions on dealing with the property. This would include to provide for meeting out of the property, reasonable living expenses, expenses incurred in defending a criminal charge, expenses to enable a person to carry on a trade or business, fees and service charges. The clause would also specify that the High Court must ensure that any exclusion to allow a person to meet legal expenses is limited to reasonable legal expenses and specifies the amount to be released for legal expenses.

The clause goes on to provide that no arrangements are to be made if there are unrecoverable assets from which provision for financial arrangements can be made for the purposes of meeting reasonable living expenses, legal expenses or expenses necessary to carry out a trade or business. Furthermore, the clause would prohibit the State from using any property that is the subject of a Property Restriction Order.

The clause also recognizes that there may be occasions when the assets are, by nature, perishable in such circumstances it would be pointless to restrain them to await the outcome of prolonged litigation, since by then the assets would have no value. It recognizes, in this instance, it would be better for the agency to step in and sell the assets while they still have value. The clause
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recognizes that there is a balancing decision when assets are particularly expensive to maintain relative to their actual value. In those instances, it may also be wise to sell the asset as the cost of their continued maintenance would outweigh any ultimate value realized.

Clause 35 of the Bill would empower the High Court to vary or set aside, in the interest of justice, a Property Restriction Order on the application of a person who has an interest in the property or the Agency. A variety of different orders may be needed in a single case depending upon the location and status of the property involved. The clause would empower the High Court to give any person who may be affected by its decision to grant a Property Restriction Order, an opportunity to be heard. The power of the High Court to vary the Property Restriction Order includes the power to make exclusions from the prohibition on making withdrawals from the account to which the Property Restriction

Order applies to meet reasonable living or legal expenses or to carry on any trade, business profession or occupation and vary or set aside an order on an application made by the Agency or a person affected by the order and sets out the procedures for the exercise of these powers.

The clause makes it clear that the High Court is not to exclude property or an amount from the recoverable property unless it is satisfied that the person cannot meet the expenses out of property he owns that is not the subject of the Property Restriction Order.

The clause goes on to set out requirements in respect of exclusions for legal expenses to ensure that the exclusion is limited to reasonable legal expenses that the person has reasonably incurred or may incur in proceedings. The subclause also requires that the exclusion specifies the total amount that may be required for legal expenses in pursuance of the exclusion and includes any other matter the High Court sees just in the circumstances.

The clause provides that where the High Court varies a Production Order, the High Court may stay any action, execution or other legal process in respect of the property under the Order and no distress may be levied against the property except with the leave of the court.

Clause 36 of the Bill would provide for the High Court to require persons to whom a Property Restriction Order applies, to bring the property and documents relating to the property in his possession or control to a place that may be specified by the Agency or to place it in the custody of the Agency or do anything required by the Agency for the preservation of the property or documents.

Clause 37 of the Bill would provide for third party rights where a Property Restriction Order has been made by the High Court. The High Court is empowered to make such orders on the application of the Agency, anyone with an interest in the property or claiming an interest in the property. The person must prove to the Court that he was deprived of the property he claims and of the property it represents by the unlawful conduct, the property he was deprived of was not property recoverable under the Act immediately before he was deprived of it and he has a legal or equitable interest in the property.

Clause 38 of the Bill would empower the High Court to make any further order in addition to a Property Restriction Order, including an order for the seizure, taking into possession, securing and safekeeping, preservation, management or disposition of

recoverable property, for dealing with recoverable property in a particular manner, the appointment of the Agency as a receiver or the appointment of another receiver and to authorize a police officer to seize property in order to prevent recoverable property from being removed from Trinidad and Tobago.

The clause goes on to provide what circumstances under which an order for search and seizure may be granted. The clause also provides that where property which is not the subject of the order is found, but which may have been included in the order if its existence or the existence of the place where it was found was known, the police officer may seize the recoverable property and the seizure order shall be deemed to authorize the seizure provided he gives notice to the High Court within 48 hours of the seizure of the recoverable property and a record of the seizure of the property is left on the premises and with the occupant.

Clause 39 of the Bill would provide for a Property Restriction Order or a further order made by the High Court to expire ninety days after the date on which notice of the order is given.

Clause 40 of the Bill would authorize the Agency to give notice of the grant of a Property Restriction Order to public or private institutions such as financial institutions, the Trinidad and Tobago Securities and Exchange Commission and publish a notice of the order in the *Gazette*.

Clause 41 of the Bill would allow the Agency to apply to the Registrar General for a restriction prohibiting or restricting dealings with the land where it makes an application for a Property Restriction Order, as it will be treated as a person interested in the land that is the subject of the application and the Registrar General would be empowered to enter the restriction on the relevant register.

The clause goes on to provide that the Agency is to be treated as an interested person in a motor vehicle or ship that is the subject of an application for a Property Restriction Order, and would allow the Agency to apply to the Commissioner of Transport for a restriction prohibiting dealings with a motor vehicle, and the agency responsible for the registration of ship prohibiting dealings with a ship, who may then enter the restriction in the relevant Register.

Clause 42 of the Bill would empower the Attorney General to request the assistance of another country under Part VI to prohibit a person from dealing with the property, and assist in the management of the property, where a Property Restriction Order is

granted in respect of property which is located in another country.

Clause 43 of the Bill would provide for the compensation of a person whose property is the subject of a Property Restriction Order, and the High Court determines that the property is not recoverable. The clause would require such a person to apply to the High Court for compensation within three months beginning with the date of the decision of the High Court that the property is not recoverable, or the date on which an application for leave to appeal is withdrawn or refused, or the proceedings concluded. The clause further provides for rights of pre-emption as it pertains to compensation to an applicant.

Clause 44 of the Bill would empower the Agency to apply to the High Court for a Civil Asset Forfeiture Order. Civil forfeiture enables the Agency to bring civil proceedings in the High Court in the State to recover property that is or represents property obtained through criminal conduct, is terrorist property or an instrumentality. A Civil Asset Forfeiture Order is an order, *in rem*, against assets which are recoverable property which removes the legal ownership in the property and vests in the State. As an order *in rem*, the property itself is the defendant, not the owner or a person who has an interest in the property. The clause goes on to provide that once an application for a Civil Asset Forfeiture Order is made, the Agency is required to serve a copy of the application on any person whom the Agency has reason to believe has an interest in the recoverable property and any person claiming an interest in the recoverable property may appear and adduce evidence at the hearing of the application. Subclause (5) also clarifies those upon whom notice of the application for civil forfeiture should be served, but makes clear that ultimately the court itself will be the arbiter of who should be served with notice.

The clause also makes it clear that tracing of process is possible where original proceeds have been disposed of, an application for forfeiture will be competent in respect of the replacement property. The subclause also provides that any time before the final determination of the application the High Court may direct the Agency to provide notice as it thinks appropriate to any person who in the Court's opinion appears to have an interest in the property. The notice to be given is to be given in accordance with the Civil Proceedings Rules and a person wishing to assert his interest or oppose the making of a Civil Asset Forfeiture Order is required to file an appearance in accordance with the Civil Proceedings Rules. The High Court can determine its own

procedures for evidence that may be adduced before it to ensure that persons with an interest have an opportunity to be heard.

Clause 45 of the Bill would empower the High Court to grant a Civil Asset Forfeiture Order where it is satisfied on a balance of probabilities that recoverable property should be forfeited. The clause goes on to provide for matters to be considered by the Court when making a Civil Asset Forfeiture Order and empowers the Court to make the order subject to any conditions and exceptions as it considers fit. This clause addresses how the High Court should arrive at the decision that the property is recoverable property. It sets out the link between the conduct and the property. It provides that it is not necessary to show that the property was obtained through a particular kind of conduct, as long as it can be shown to have been obtained through an offence of one kind or another. It will not matter, for example, that it cannot be established whether certain funds are attributable to drug dealing, money laundering, fraud or some other criminal activity, provided that it can be shown to have been obtained through an offence of one kind or another.

The clause provides that the remedy of civil forfeiture may still be appropriate even where a person has been acquitted in a criminal process associated with the criminal conduct, or the proceedings have otherwise terminated without conviction. The remedy may remain appropriate because the question is not whether the court is satisfied beyond reasonable doubt that a named person committed a specific criminal offence, but whether on a balance of probabilities the property was derived from criminal conduct. The principle behind civil forfeiture is that proceeds from criminal conduct should not be held by those whose conduct has led to their acquisition: no one should be able to profit from criminal conduct. Civil asset forfeiture is directed at an asset, not a person. It is therefore not related to the concept of a person's conviction.

The clause would further provide that the order could apply to all criminal property, instrumentalities of criminal or terrorist property whether it is described in the order or not, and whether it was transferred to the person after the making of the order and would provide for notice to be given to persons affected by the order. The clause would further provide for an order to be made in respect of the property of a deceased person where they committed the criminal conduct that forms the basis of the application for the order.

The clause would prohibit the High Court from making an

order if it is of the opinion that the right of the Agency to recover property has been satisfied by a previous order or if a consent order is made. The clause also goes on to provide for how the Court may treat with two or more related items of recoverable property and provides for property seized in accordance with the order to be dealt with in accordance with the direction of the High Court.

Clause 46 of the Bill would empower the High Court to authorize the Agency to give notice of the Civil Asset Forfeiture Order to public or private institutions and all persons known to the claimant that have an interest in the property that is the subject of the order and to publish a notice of the order in two newspapers in daily circulation in Trinidad and Tobago and on the website of the Agency.

Clause 47 of the Bill would provide for rights of pre-emption, providing that the order would have effect in relation to any property despite any provision which would otherwise prevent, penalize or restrict the vesting of the property, and providing that a right of pre-emption, return or other similar right would not operate or become exercisable as a result of the vesting of any property under a Civil Asset Forfeiture Order.

Clause 48 of the Bill would provide for associated property and joint property. The clause would require a person who holds associated property or is the excepted joint owner of property, with the permission of the Agency, to apply to the High Court for a Civil Asset Forfeiture Payment Order to allow for a payment to the Agency and the vesting, creating or extinguishing of any interest in the property. The clause goes on to specify how the amount of payment is to be determined or varied, considerations of the Court in making a Civil Asset Forfeiture Payment Order, what such an order may provide for and the procedure to be undertaken where the Agency and a person who holds associated property or a joint owner disagree on the payment.

Clause 49 of the Bill would empower the High Court to make a consent order to stay any proceedings for a Civil Asset Forfeiture Order, on terms agreed by the parties for the disposal of the proceedings.

Clause 50 of the Bill would empower the High Court if satisfied on a balance of probabilities that the property which is the subject of an application is recoverable but that a person is a legitimate owner, it may make any order it considers necessary to protect that person's interest in the property. The clause goes on to define a legitimate owner in the case of criminal property as a

person who was the rightful owner before the criminal conduct occurred and who was deprived of the property by the criminal conduct or who acquired the property in good faith and for fair value after the criminal conduct and did not and could not have reasonably known the property was criminal property. In respect of instrumentalities, the legitimate owner is the person who has done all that can reasonably be done to prevent the property from being used, as an instrumentality and where the property is terrorist property, the person who can satisfy the High Court that he would be the legitimate owner if the property fell under the aforementioned areas. The High Court is not permitted to make an order, however, if the property is property that it is unlawful for a person to possess in Trinidad and Tobago. So if the property were a valuable firearm, a legitimate owner would not be able to claim it if he did not have a valid firearms licence for the weapon.

Clause 51 of the Bill would provide that a person who might otherwise claim as a legitimate owner is not protected if the person has absconded from justice. Under the clause that person does not have standing to contest the civil forfeiture or appear in the proceeding either personally or through a representative.

Clause 52 of the Bill would specify how land that is the subject of a Property Restriction Order is to be dealt with. The clause would require the person to whom the property relates or the occupant to maintain payment of taxes and debts that have the potential to encumber the land with a lien, including rates and loan payments. The clause would also empower the Agency to enter into an agreement with such a person to grant continued occupation, conditional on the payment of the expenses, failing which, the Agency may take possession and evict the occupants. The Agency would be further empowered to lease the property at a rate that is sufficient to meet expenses or to sell the asset and use the proceeds to pay outstanding debts, where the occupants of the property have been evicted.

Clause 53 of the Bill would require the Agency to ensure that any stocks, bonds and brokerage accounts that it intends to make the subject of a Civil Asset Recovery Order are valued and determine how best to preserve the value of the assets.

Clause 54 of the Bill would require the Agency to maintain a motor vehicle, airplane or boat under a Property Restriction Order or a Civil Asset Recovery Order in a secure, appropriate storage facility. The Agency would also be empowered to sell the motor vehicle, airplane or boat with the permission of the court or permit

the owner of the motor vehicle, airplane or boat to retain use of the motor vehicle, airplane or boat during the Civil Asset Recovery proceedings by posting a bond in the value of the motor vehicle.

Clause 55 of the Bill would empower the Agency to ask the High Court for permission to have the current manager of the business that is the subject of the order, to continue the operations under the control of a business manager contracted by the Agency, and would set out the powers and responsibilities of the manager.

Clause 56 of the Bill would provide for a reference to the cost incurred in storing or insuring the listed assets as required by Regulations made under this Act to include a reference to storing or insuring the entire listed assets which are subject to a Property Restriction Order or Civil Asset Recovery Order, detained or realized under this Act and which represent only part of the listed assets which are subsequently detained or realized.

Clause 57 of the Bill would allow the Agency to sell perishable or rapidly depreciating assets and place the proceeds into the Seized Assets Fund.

PART V of the Bill would provide for Unexplained Wealth Orders and contains clauses 58 to 67.

Clause 58 of the Bill would empower the FIU, the Chairman of the Board of Inland Revenue, the Registrar General, the Commissioner of Valuations, a customs officer or a police officer attached to the branch of the Police Service responsible for financial investigations to apply to the High Court for a Preliminary Unexplained Wealth Order, where there is a reasonable suspicion that the total wealth of the respondent exceeds the value of his lawfully obtained wealth and any property is owned by the respondent or is under his effective control, to apply to the High Court and require a person to file a declaration and answer questions in relation to his assets. The clause goes on to set out what must be contained in an affidavit accompanying the application, and provides that it may be made *ex parte*.

Clause 59 of the Bill would provide for the declaration in the form set out as Form I in Schedule II.

Clause 60 of the Bill create the offence of making a statement which is false in any material particular on the declaration form, and prescribes a penalty on summary conviction to a fine of one hundred thousand dollars and to imprisonment of twenty years.

Clause 61 of the Bill would empower the court to make a

Preliminary Unexplained Wealth Order where it is satisfied that there are reasonable grounds to suspect that the total wealth of the respondent exceeds the value of his wealth that was lawfully obtained. The Preliminary Unexplained Wealth Order would require the respondent to file a declaration and appear before the High Court to answer questions relative to his assets for the High Court to decide whether to make an Unexplained Wealth Order.

Clause 62 of the Bill would allow a person in respect of whom a Preliminary Unexplained Wealth Order is made to apply to the High Court for the order to be revoked within twenty-eight days of notice of the order, and would require such a person to give notice to the FIU, the Chairman of the Board of Inland Revenue, the Registrar General, the Commissioner of Valuations, a customs officer or a police officer attached to the branch of the Police Service responsible for financial investigations, who first applied to the Court for the order, of his application. The clause further empowers the High Court to order an *inter partes* hearing within fourteen days. The applicant would further be allowed to appear and adduce evidence at the hearing of any application made.

Clause 63 of the Bill would empower the High Court to revoke a Preliminary Unexplained Wealth Order where it is satisfied that there are no grounds on which the order could be maintained.

Clause 64 of the Bill would empower the FIU, the Board of Inland Revenue, a Customs and Excise officer or a police officer attached to the branch of the Police Service responsible for financial investigations, to apply to the High Court for an Unexplained Wealth Order. The clause goes on to require an application to be accompanied by a supporting affidavit and any documents in support of the application.

Clause 65 of the Bill would empower the High Court to make an Unexplained Wealth Order where there is a Preliminary Unexplained Wealth Order that has not been revoked in relation to a respondent, and it is satisfied that on a balance of probabilities that part of the wealth of the respondent was not lawfully obtained or held and particular property is held by, and subject to the effective control of the respondent, irrespective of whether or not there are other persons who also hold the property or if the property was obtained by the respondent before or after the coming into force of the Act.

The clause goes on to require the respondent to pay the amount

that the Court is satisfied, does not represent the lawfully acquired property of the respondent, into the Seized Assets Fund, and would require him prove that the wealth that is the subject of the order has been lawfully acquired.

The clause would also empower the High Court to make an order restricting the rights of the respondent or any named person to deal with the property, if it is satisfied that the property would not be available to the FIU, the Board of Inland Revenue, the Registrar General, the Commissioner of Valuations, a customs officer or a police officer without the restriction.

The court would also be empowered to deduct an amount equal to the value of any property forfeited by the respondent under a Property Restriction Order, a Civil Asset Forfeiture Order under this Act or Confiscation Order or Forfeiture Order under the Proceeds of Crime Act, from the amount it would require the respondent to make in the Unexplained Wealth Order. The clause would prohibit the FIU, the Board of Inland Revenue or a police officer from applying for an Unexplained Wealth Order against a person if an application has previously been made for an Unexplained Wealth Order in relation to a person, or an application has been determined on the merits, without the leave of the High Court. The clause goes on to set out the matters for the Court to consider in granting leave for such an application.

Clause 66 of the Bill would require the Chairman of the Board of Inland Revenue, a Customs and Excise officer or a police officer attached to the branch of the Police Service responsible for financial investigations to give written notice of an application for an Unexplained Wealth Order to the respondent named in the order and any other person who it has reason to believe may have an interest in the property. The clause would also allow the respondent and any person who claims an interest in the property to appear and adduce evidence at the hearing of the application.

Clause 67 of the Bill would provide for the enforcement of an Unexplained Wealth Order against a respondent, and provides that an amount payable is a civil debt due by the respondent to the State and the order is a judgment debt. The clause further allows for an Unexplained Wealth Order to be exercisable against the estate of the respondent if it is made after his death.

PART VI of the Bill would provide for how property outside of Trinidad and Tobago is to be treated with, and contains clause 68 to 70.

Clause 68 of the Bill would allow the Attorney General by Order to declare a treaty as having the force of law in Trinidad and Tobago. The Order under this section shall be subject to negative resolution of Parliament.

Clause 69 of the Bill would empower the Attorney General to enter into an agreement with the government of any foreign State for the reciprocal sharing of the proceeds or disposition of property forfeited or disposed of under this Act, or property forfeited or disposed of by a foreign State. The clause goes on to provide for the proceeds received by Trinidad and Tobago to be deposited into the Seized Assets Fund and provide for the procedure for the sharing of forfeited property with another State where there is no agreement for the reciprocal sharing of proceeds forfeited under the Act.

Clause 70 of the Bill would allow the Attorney General to seek assistance for the enforcement of a Property Restriction Order, a Civil Asset Recovery Order or an Unexplained Wealth Order where he reasonably suspects that the property is in a country with which Trinidad and Tobago has a treaty. The clause goes on to provide for the procedure for seeking the assistance of the other country.

PART VII of the Bill would treat with Asset Management and contains clauses 71 to 73.

Clause 71 of the Bill would provide for the powers of the Property Manager, which would include all powers of the receiver, the power to remove, take possession of, preserve, manage, modify, store, sell or otherwise dispose of, or deal with the property in any manner he thinks appropriate, insure the property, destroy the property that has little value, where the cost of storage is high, allow for the destruction of property that is inherently dangerous, donate property for humanitarian purposes and make provision for the property to be used by the State. The clause goes on to allow the Property Manager to request information from and receive information from relevant authorities.

Clause 72 of the Bill would provide for the duties of the Property Manager, which including preparing and filing with the High Court and Minister, a report identifying the location of the property where he takes control of it, initiating and maintaining records of all property restrained, seized and forfeited under the Act, and filing a report with the High Court identifying the new location of property and value realized where it has been moved or sold.

Clause 73 of the Bill would provide for the realization of forfeited property through sale, destruction or otherwise by the Property Manager. The Agency and the Property Manager are empowered to realize the value of the property vested in it or him under a Civil Asset Forfeiture Order

PART VIII of the Bill would treat with miscellaneous matters and contains clauses 74 to 76.

Clause 74 of the Bill would require members of the Agency, employees and every person concerned with the administration of the Act, including experts engaged by the Agency, to treat documents, information or other matters related to the administration of this Act, as secret and confidential except disclosures made by the Agency, or any other person pursuant to the provisions of this Act or any Regulations made hereunder and which the Agency considers necessary in the discharge of its functions. The clause provides a penalty for breach of confidentiality; on summary conviction to a fine of one hundred thousand dollars or imprisonment for three years and on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for five years. The clause goes on to allow a person to request that proprietary and confidential documents, information or matters provided or submitted to the Agency be kept confidential and secret.

Clause 75 of the Bill would empower the Minister to make Regulations for the purpose of giving effect to anything required to be done under the Act and for other matters prescribed in the clause. Regulations made under this clause would be subject to negative resolution of Parliament.

Clause 76 of the Bill would provide for the consequential amendments set out in Schedule III to the Proceeds of Crime Act, Chap. 11:27 and the Integrity in Public Life Act, Chap. 22:01.

SCHEDULE 1 of the Bill would provide the Oath of Office and Secrecy.

SCHEDULE 2 of the Bill would set out Form 1, the Declaration of Assets and Form 2, the Status Report on Property Form.

SCHEDULE 3 of the Bill would provide for consequential amendments to the Proceeds of Crime Act, Chap. 11:27 and the Integrity in Public Life Act, Chap. 22:01.

CIVIL ASSET RECOVERY AND MANAGEMENT AND
UNEXPLAINED WEALTH BILL, 2019

Arrangement of Clauses

PART I

PRELIMINARY

Clause

1. Short title
2. Commencement
3. Interpretation
4. Application
5. Standard of proof
6. Orders *in rem*
7. Criminal property which may be recovered

PART II

CIVIL ASSET RECOVERY, MANAGEMENT AND UNEXPLAINED WEALTH
AGENCY

8. Establishment of Civil Asset Recovery, Management and Unexplained Wealth Agency
9. Composition of Agency
10. Tenure and Remuneration of Trustees
11. Disqualification of a Trustee
12. Resignation of a Trustee
13. Revocation of Appointment
14. Functions and powers of the Agency
15. Disclosure of interest
16. Immunity of Trustee
17. Property Manager

18. Liability of Property Manager
19. Staff and experts of Agency

PART III

FINANCIAL PROVISIONS

20. Definition of Minister
21. Civil Asset Recovery and Management Fund
22. Funds of the Agency
23. Estimates of expenditure
24. Financial year
25. Accounts
26. Audit of accounts
27. Borrowing from the Government
28. Annual report
29. Applying realized property

PART IV

CIVIL ASSET RECOVERY

30. Interpretation of certain words and phrases in Part IV
 31. Referral of matters to the Director of Public Prosecutions
 32. Agency to require equity valuation for a company
- Property Restriction Order*
33. Application for Property Restriction Order
 34. Grant of Property Restriction Order
 35. Variation or setting aside of Property Restriction Order
 36. Requirement of respondent under a Property Restriction Order
 37. Third party rights
 38. Further provision re: Property Restriction Order

39. Expiration of a Property Restriction Order
40. Notice of Property Restriction Order
41. Requirement to inform agencies of Property Restriction Order
42. Enforcement abroad of Property Restriction Order
43. Compensation

Civil Asset Forfeiture Order

44. Application for a Civil Asset Forfeiture Order
45. Grant of a Civil Asset Forfeiture Order
46. Notice of grant of Civil Asset Forfeiture Order
47. Rights of pre-emption
48. Agreements about associated property and joint property
49. Staying of proceedings and other options of the High Court
50. Orders regarding legitimate owners
51. Fugitive claims

Specific requirements for certain types of property

52. Real Property
53. Cash, bank accounts and financial instruments
54. Motor vehicles, airplanes or boats
55. Companies
56. Listed assets
57. Perishable and depreciating assets

PART V

UNEXPLAINED WEALTH ORDERS

58. Application for Order for a declaration
59. Form of declaration
60. False declaration

61. Grant of a Preliminary Unexplained Wealth Order
62. Application to revoke a Preliminary Unexplained Wealth Order
63. Revocation of Preliminary Unexplained Wealth Order
64. Application for an Unexplained Wealth Order
65. Grant of an Unexplained Wealth Order
66. Third party claims
67. Enforcement of Unexplained Wealth Order

PART VI

PROPERTY OUTSIDE OF TRINIDAD AND TOBAGO

68. Declaration of treaty in force
69. Reciprocal sharing of proceeds agreement
70. Assistance in relation to certain orders

PART VII

ASSET MANAGEMENT

71. Civil Asset Trustee to apply for appointment of Property Manager to manage
72. Duties of Property Manager
73. Realization of forfeited property

PART VIII

MISCELLANEOUS

74. Confidentiality
75. Regulations
76. Consequential amendments

SCHEDULE 1 — Civil Asset Recovery and Management Agency Oath of Secrecy under section 16

SCHEDULE 2 — Forms under section 59(1) and (2)
and section 72

SCHEDULE 3 — Consequential Amendments under
section 76

BILL

AN ACT to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property through the use of the remedies of restriction in dealings with civil assets restriction and forfeiture of criminal property and the management of criminal property, and unexplained wealth orders and matters incidental thereto

[, 2019]

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

PART I
PRELIMINARY

Short title **1.** This Act may be cited as the Civil Asset Recovery and Management and Unexplained Wealth Act, 2019.

Commencement **2.** This Act shall come into operation on such date as is fixed by the President by Proclamation.

Interpretation **3.** (1) In this Act, unless the context otherwise requires—

“Agency” means the Civil Asset Recovery and Management Agency established under section 8;

“associated property” means in relation to criminal property, terrorist property or instrumentality of a crime that is recoverable under this Act, that part of the property which is not recoverable and—

(a) is an interest in the recoverable property;

(b) is any other interest in the property in which the recoverable property subsists;

(c) the share of the other owner of the property where it is held in common ownership; or

(d) the remainder of a larger part of the property which is not a separate part;

“cash” includes coins and notes in any currency, postal orders, cheques of any kind including travellers’ cheques, bankers’ drafts, bearer bonds, bearer shares and bearer negotiable instruments and other bearer negotiable instruments in any currency;

“civil asset recovery” means the restriction or forfeiture of criminal property or the use of an Unexplained Wealth Order under this Act;

“Civil Asset Forfeiture Payment Order” means an order made by the High Court under section 48;

“consent order” means an order made by the High Court under section 49(1);

“criminal conduct” means conduct which-

- (a) constitutes an offence in Trinidad and Tobago; or
- (b) if it occurs in a country outside of Trinidad and Tobago—
 - (i) would constitute an offence in that country; and
 - (ii) if committed in Trinidad and Tobago would constitute an offence in Trinidad and Tobago;

“criminal property” means property—

- (a) which constitutes a benefit to a person from criminal conduct or represents such benefit, in whole or in part and whether directly or indirectly including economic gains and funds or property converted or transformed into other property; and
- (b) which the alleged offender knows or suspects constitutes or represents a benefit and for which it is immaterial who carried out the conduct or who benefitted from the conduct;

“excepted joint owner” means a person who has an interest in property which is not recoverable under this Act;

“IFRS” means the International Financial Reporting Standards as adopted from time to time by the International Accounting Standards Board;

“instrumentality of crime” or “instrumentalities” includes—

- (a) any property used or intended to be used, in a manner, wholly or in part in, or in connection with the commission of a criminal offence; and
- (b) property that is used, intended or allocated for use in the financing of terrorism or terrorist acts or by terrorist organizations;

“listed asset” means an item of property that falls within one of the following descriptions of property:

- (a) precious metals including gold, silver or platinum whether in a manufactured or unmanufactured state;
- (b) precious stones including diamonds, rubies, sapphires, or emeralds whether in a treated or untreated state;
- (c) watches;
- (d) artistic works falling under section 5 of the Copyright Act;
- (e) computers and electronics;
- (f) face-value vouchers, which are in a physical form which represents the

right to receive goods or services to the value of the amount stated on it; and

(g) postage stamps;

“Preliminary Unexplained Wealth Order” means an order of the High Court granted under section 6 by which the respondent is required to appear before the High Court for a determination to be made as to whether an Unexplained Wealth Order should be made;

“property” means assets, of any kind whether tangible or intangible, moveable or immovable, listed assets and includes cash;

“Property Manager” means the person appointed under section 17;

“reasonable living expenses” includes—

- (a) mortgage or rent payments;
- (b) allowances for food, medicine and medical treatment;
- (c) any payments due as a result of an order of the High Court;
- (d) provision for the reasonable living expenses of dependents including educational expenses; and
- (e) provision for taxes, insurance premiums and public utilities;

“recoverable property” means criminal property, terrorist property or an instrumentality of a crime;

“Seized Assets Fund” means the Fund established under section 59 of the Proceeds of Crime Act;

Chap. 11:27

“specified offence” has the meaning assigned to it by section 2 of the Proceeds of Crime Act;

“terrorist act” has the meaning assigned to it by section 2 of the Anti-Terrorism Act;

“terrorist organization” has the meaning assigned to it by section 2 of the Anti-Terrorism Act;

“terrorist property” has the meaning assigned to it by section 2 of the Anti-Terrorism Act;

“Trustee” means the Civil Asset Trustee or a Deputy Civil Asset Trustee; and

“Unexplained Wealth Order” means an order of the High Court made under section 65 by which the respondent is required to pay to the State the assessed difference between the total value of the wealth of the respondent and the lawfully acquired wealth of the respondent.

(2) References in this Act to a person disposing of his property includes a reference to his—

(a) divesting of—

(i) a part of the property;

(ii) the property under a will, disposition, intestacy or operation of law; or

(iii) the property where he gave unexecuted consideration which became executed consideration;

(b) granting an interest in it through mortgage, conveyance, gift or otherwise; or

(c) making a payment to a person in respect thereof.

4. Upon the coming into force of this Act, this Act shall apply to all recoverable property, irrespective of whether or not the criminal conduct relative to the recoverable property occurred before or after the coming into force of this Act.

5. The standard of proof required to determine any ^{Standard of proof} question under this Act as to whether recoverable property should be subject to civil asset recovery shall be that applicable in civil proceedings.

6. (1) A Property Restriction Order made under ^{Orders in rem} this Act is an order *in rem* against property believed to be criminal property, terrorist property or instrumentalities of crime.

(2) A Civil Asset Forfeiture Order made under this Act is an order *in rem* against property which is criminal property, terrorist property or instrumentalities of crime.

7. (1) Property which is criminal property, terrorist ^{Criminal property} property or an instrumentality of crime (hereinafter ^{which may be} referred to as “recoverable property”) is recoverable ^{recovered} under this Act.

(2) Recoverable property may be recovered—

- (a) in the case of criminal property or terrorist property obtained through criminal conduct, from the person who obtained the property through the criminal conduct; and
- (b) in the case of an instrumentality from any person who had the instrumentality for the purposes of, or with the intent of using the instrumentality for criminal conduct.

(3) Where recoverable property—

- (a) is disposed of, the recoverable property continues to represent the criminal property, terrorist property or instrumentality may be followed into the hands of the person who obtained it; and
- (b) is converted, the property into which it was converted is recoverable under this Act.

(4) Where recoverable property of a person is mixed with other property, whether the recoverable property is his property or belongs to another person, the portion of the mixed property which is attributable to the criminal property, terrorist property or instrumentality represents the property obtained through criminal conduct, a terrorist act or the instrumentality.

(5) For the purposes of subsection (4), criminal property, terrorist property or an instrumentality of a person is mixed with other property, if it is used—

- (a) to increase funds held in a bank account;
- (b) in part payment for the acquisition of an asset;
- (c) for the restoration or improvement of land;
- (d) by a person holding a leasehold interest in land to acquire the freehold; or
- (e) in such other manner so as to vest in another person an interest in the criminal property, terrorist property or instrumentality.

(6) Where a person who has criminal property or terrorist property obtains further property consisting of profits accruing in respect of the criminal property or terrorist property, those profits may be recovered under this Act.

(7) Recoverable property ceases to be recoverable under this Act—

- (a) if it is vested, forfeited or otherwise disposed of, under this Act;
- (b) if pursuant to a judgment in civil proceedings, the defendant makes payment to the claimant or the claimant otherwise obtains property from the defendant;

- (c) if the claim of the claimant is based on the criminal conduct of the defendant;
- (d) if civil proceedings have commenced and the property obtained by the claimant would be recoverable property;
- (e) if the property is the subject of proceedings in the High Court for which a trustee has been appointed; or
- (f) while a forfeiture applies to the recoverable property, whether made under this Act or any other written law.

(8) If a person grants an interest in recoverable property belonging to him, the interest is also to be treated as obtained through criminal conduct.

(9) Where a person holds recoverable property and is able to satisfy the Court, on a balance of probabilities, that the property was obtained in good faith for value without notice that it was recoverable property, the property ceases to be recoverable.

PART II

CIVIL ASSET RECOVERY, MANAGEMENT AND UNEXPLAINED WEALTH AGENCY

8. (1) There is hereby established an Agency to be known as the Civil Asset Recovery and Management Agency (hereinafter referred to as “the Agency”) which shall be responsible for the recovery, management and disposal of criminal property, terrorist property or an instrumentality under this Act. Establishment of Civil Asset Recovery and Management Agency

(2) The Agency shall be a body corporate.

9. (1) The Agency shall comprise of a Civil Asset Trustee and two Deputy Civil Asset Trustees. Composition of Agency

(2) The Civil Asset Trustee and one of the Deputy Civil Asset Trustees shall be Attorneys-at-law of at least

ten years' standing appointed by the President on the advice of the Judicial and Legal Services Commission with experience and qualifications in any of the following areas:

- (a) asset recovery;
- (b) asset management; or
- (c) finance and audit.

(3) The second Deputy Trustee shall be a person who possesses qualifications and experience in—

- (a) asset recovery;
- (b) asset management; or
- (c) finance and audit,

and shall be appointed by the President on the advice of the Prime Minister and Leader of the Opposition.

(4) In the event the Prime Minister and Leader of the Opposition cannot agree on the joint advice, the President shall appoint the second Deputy Trustee after consultation with the Prime Minister and Leader of the Opposition.

(5) For the purposes of subsection (3)(c), a person shall have at least ten years' experience and possess qualifications in finance and audit.

(6) Where a Civil Asset Trustee or Deputy Civil Asset Trustee under subsection (2) is temporarily absent or incapable of performing his duties due to illness or other cause, the Judicial and Legal Services Commission shall appoint a person possessing the same qualifications and experience to act in the place of that Civil Asset Trustee or Deputy Civil Asset Trustee during the period of the vacancy or the period of absence or temporary incapacity.

(7) Where the Deputy Trustee appointed under subsection (3) is temporarily absent or incapable of

performing his duties due to illness or other cause, the President may on the advice of the Prime Minister and Leader of Opposition appoint a person possessing the qualifications and experience set out in subsection (3) to act in the place of that Deputy Trustee during the period of the vacancy or the period of absence or temporary incapacity.

(8) In the event that the Prime Minister and Leader of the Opposition cannot agree on the joint advice for the purposes of subsection (7), the President shall appoint a Trustee after consultation with the Prime Minister and Leader of the Opposition.

(9) During the period of a vacancy, where two Trustees of the Agency are present those Trustees shall constitute the Agency and all actions taken by them during that period are deemed to have been taken as if all Trustees were present.

(10) A person appointed to fill a vacancy shall hold office as a Trustee for the unexpired term of his predecessor.

10. (1) The Civil Asset Trustee shall be appointed for a term not exceeding seven years and shall be eligible for reappointment. Tenure and remuneration of Trustees

(2) A Deputy Civil Asset Trustee shall be appointed for a term not exceeding six years and shall be eligible for reappointment.

(3) The Salaries Review Commission, under section 141 of the Constitution, shall review the salaries and other conditions of service of the Civil Asset Trustee and the Deputy Civil Asset Trustees.

(4) The salary, remuneration and other conditions of the Trustees shall not be altered to their disadvantage after their appointment and during their tenure of office and such salary, remuneration and allowances of the Trustees shall be a charge on the Consolidated Fund.

Disqualification of a
Trustee

11. No person is qualified to be appointed as Civil Asset Trustee or Deputy Civil Asset Trustee if that person—

- (a) is an undischarged bankrupt;
- (b) is of unsound mind; or
- (c) has at any time had a record of a criminal conviction for any indictable or summary offence which carries a term of imprisonment of at least five years.

Resignation of
Trustee

12. (1) The Civil Asset Trustee, may at any time, resign from office by notice in writing addressed to the President.

(2) A Deputy Civil Asset Trustee may resign, at any time, from office by notice in writing addressed to the President, through the Civil Asset Trustee.

Revocation of
appointment

13. The President may, at any time revoke the appointment of a Trustee if the Trustee—

- (a) is declared bankrupt in accordance with the laws of Trinidad and Tobago or any other country;
- (b) becomes of unsound mind;
- (c) is, for whatever reason, incapable of performing or unable to perform his duties as a member;
- (d) is convicted of an indictable offence or is sentenced to imprisonment for a term of six months or more;
- (e) has become a person who would be disqualified for appointment pursuant to section 11;
- (f) misbehaves in office or, brings his office into disrepute; or
- (g) for any other reasonable cause.

14. (1) The functions of the Agency shall be—

Functions and
powers of Agency

- (a) to secure the detention, custody or preservation of any recoverable property vested in it under a Civil Asset Restriction Order, Civil Asset Forfeiture Order or seized or forfeited to the State under any written law unless the recoverable property is to be used as an exhibit in court proceedings;
- (b) to manage criminal property, terrorist property or instrumentality vested in it under a Civil Asset Restriction Order, Civil Asset Forfeiture Order or an Unexplained Wealth Order or seized or forfeited by the State under any written law; and
- (c) in the case of criminal property, terrorist property or instrumentality other than cash or money, to realize the value of the criminal property vested in it under a Civil Asset Forfeiture Order, or seized or forfeited by the State under any written law as far as practicable, in the manner best calculated to maximize the amount payable to the Seized Assets Fund.

(2) In exercising its functions under this Act, the Agency shall have the following powers:

- (a) to remove, take possession of and preserve, store or manage criminal property, terrorist property or instrumentality for the length of time or the term it determines proper and in accordance with the Civil Asset Restriction Order or Civil Asset Forfeiture Order;
- (b) to comply with the terms of any order to which the property is subject, including an order to comply with environmental,

industrial, labour or property standards or to pay taxes, utility charges or other charges;

- (c) to incur expenditure for the purpose of—
 - (i) acquiring any part of the criminal property or any interest in it, which is not vested in it; and
 - (ii) discharging any liabilities, or extinguishing any rights to which the criminal property is subject;
- (d) to manage criminal property including—
 - (i) selling or otherwise disposing of assets comprising the criminal property which are perishable or which ought to be disposed of before their value diminishes;
 - (ii) where the criminal property comprises assets of a trade or business, carrying on or arranging for another to carry on, the trade or business; and
 - (iii) incurring capital expenditure in respect of the criminal property;
- (e) to sell criminal property or any part of it or interest in it;
- (f) to start, carry on or defend any legal proceedings in respect of the criminal property;
- (g) to make arrangements for the insurance of the criminal property;
- (h) to destroy criminal property that has little value, particularly in relation to the cost of storage;
- (i) to destroy contraband or criminal property that is inherently dangerous;

- (j) to donate property for humanitarian purposes if it cannot be sold, despite reasonable efforts, after a year;
- (k) to share information with, and receive information from, law enforcement authorities; and
- (l) for the purpose or in connection with the exercise of any of its functions to—
 - (i) hold property;
 - (ii) enter into contracts;
 - (iii) sue and be sued;
 - (iv) employ agents;
 - (v) execute a power of authority, deed or other instrument; and
 - (vi) power to do any other act which is necessary.

15. (1) A Trustee who has any actual, apparent or Disclosure of interest reasonably foreseeable conflict of a direct or indirect interest in a matter under consideration by the Agency shall disclose the fact of his interest in writing to the President at the earliest opportunity and shall not participate in the consideration of the matter.

(2) A person to whom this section applies who recklessly and knowingly fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for a term of five years unless he proves to the satisfaction of the High Court that he did not know that—

- (a) the matter in which he had an interest was the subject of consideration by the Agency; or
- (b) he had an interest in the matter under consideration by the Agency.

Immunity of Trustee

16. (1) A Trustee shall not be held personally liable for anything done, omitted to be done or permitted to be done in good faith in the course of the operations of the Agency under this Act.

(2) No civil or criminal proceedings shall lie against a Trustee who, in good faith, discloses information as permitted under this Act.

(3) Any sum of money, damages or cost recovered against the Agency for anything done or omitted to be done or permitted to be done in good faith in the course of the operations of the Agency shall be paid out of such monies as may be appropriated by Parliament.

Property Manager

17. (1) There shall be a Property Manager of the Agency who shall have responsibility for taking possession of, preserving, managing, disposing of, realising, or otherwise dealing with any property which is the subject to any proceedings under this Act.

(2) The Property Manager under subsection (1) shall be appointed by the President in his own discretion for a period of time as determined in his instrument of appointment.

(3) The Salaries Review Commission shall set the terms and conditions of the Property Manager which shall not be altered to his disadvantage after his appointment and during his term of office.

(4) The President may at any time revoke the appointment of the Property Manager if the Property Manager—

- (a) is declared bankrupt in accordance with the laws of Trinidad and Tobago or any other country;
- (b) becomes of unsound mind;
- (c) is, for whatever reason, incapable of performing or unable to perform his duties as the Property Manager;

- (d) is convicted of an indictable offence or is sentenced to imprisonment for a term of six months or more;
- (e) misbehaves in office or brings his office into disrepute; or
- (f) for any other reasonable cause.

(5) Subject to any limits contained in any order of a High Court in relation to any property subject of the order, the Property Manager shall have the powers of a receiver.

(6) In exercising his powers as receiver, the Property Manager may—

- (a) remove;
- (b) take possession of;
- (c) preserve;
- (d) manage;
- (e) modify;
- (f) store;
- (g) sell or otherwise dispose of; and
- (h) deal with,

the property in any manner that he thinks appropriate and proper.

(7) In removing, taking possession of, preserving, storing and managing property, the Property Manager may do so for the length of time and on the terms that he considers proper.

(8) Notwithstanding the secrecy provisions under any written law relative to the functions of an authority, the Property Manager may request information from and receive information from relevant authorities in exercising his functions under this Act.

(9) The Property Manager may in respect of property subject of an order under this Act—

- (a) insure the property;
- (b) destroy the property that has little value, where the cost of storage and maintenance is high;
- (c) allow for the destruction of property that is inherently dangerous;
- (d) donate property for humanitarian purposes;
- (e) make provision for the property to be used by the State; and
- (f) where the recoverable property is the subject of a Civil Asset Forfeiture Order, realize the recoverable property.

Liability of Property
Manager

18. No action or other proceeding may be commenced against any party in respect of the actions of the Property Manager for any act done in good faith in the performance or intended performance of any duty under this Part, or in the exercise or intended exercise of any power under this Act or for any neglect or default in the performance or exercise in good faith of any such duty or power.

Staff and experts of
Agency

19. (1) The Agency may employ such persons as it considers necessary for the due and efficient performance of its functions under this Act on such terms and conditions as are agreed upon between the Agency and the person and shall be guided by any guidelines for contractual employment issued by the Chief Personnel Officer, from time to time.

(2) The Agency may engage experts, advisers and consultants to assist in the conduct of its responsibilities under the Act.

(3) The use of an adviser, expert or consultant shall not relieve the Agency of its functions under this Act and Regulations made hereunder.

(4) An employee of the Agency shall not be held personally liable for anything done, omitted to be done or permitted to be done in good faith during the operations of the Agency under this Act.

(5) An employee or expert engaged by the Agency shall fully disclose in writing any actual, apparent or reasonably foreseeable conflict of a direct or indirect interest he may have with the activities of the Agency.

(6) An employee whose direct or indirect interest is likely to be affected in any way, on any matter under subsection (1), shall as soon as possible after the relevant facts come to his knowledge, disclose in writing to the Civil Asset Trustee the nature of the interest.

(7) An employee who recklessly and knowingly fails to comply with subsection (5) commits an offence and is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for a term of five years unless he proves to the satisfaction of the High Court that he did not know that—

- (a) the matter in which he had an interest was the subject of consideration by the Agency; or
- (b) he had an interest in the matter under consideration by the Agency.

(8) Where an expert, adviser or consultant engaged by the Agency fails to comply with subsection (5), he commits an offence and is liable to a fine of five hundred thousand dollars.

(9) Before any employee, expert, adviser or consultant commences duty under this Act, he shall take the Oath of Office and Secrecy set out in Schedule 1.

Schedule 1

PART III FINANCIAL PROVISIONS

20. In this Part, “Minister” means the Minister with Definition of Minister responsibility for finance.

Civil Asset Recovery
and Management
Fund

21. (1) There is hereby established a fund to be known as “the Civil Asset Recovery and Management Fund”.

(2) The monies in the Fund shall comprise—

- (a) money appropriated by Parliament for the purposes of the Agency;
- (b) any money and property paid or provided to the Agency and fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the funds of the Agency;
- (c) any money derived from the disposal of, or dealing with real or personal property held and owned by the Agency;
- (d) monies borrowed by the Agency with the approval of the Minister for the purpose of meeting any of its obligations and for discharging its functions;
- (e) monies from the Seized Assets Fund used to defray the cost of management of criminal property, terrorist property and instrumentality; and
- (f) all other monies lawfully received by, or made available to the Agency with the approval of the Minister.

Funds of the Agency

22. (1) The money in the Fund shall be applied in defraying the following expenditure:

- (a) the acquisition of property by the Agency in the course of performing its functions or exercising its powers;
- (b) the remuneration, allowances, advances, loans, pensions and gratuities payable to staff, experts, advisers and consultants;
- (c) contributions to a pension fund plan;

- (d) capital and operating expenses, including maintenance and insurance of the property of the Agency;
- (e) management of criminal property under the control of the Agency;
- (f) starting, carrying on and defending any legal proceedings; and
- (g) any other expenditure authorized by the Agency in the performance of its functions.

(2) The Agency, may in accordance with IFRS, make provision for future expenditure in any category referred to in subsection (1).

(3) Where monies from the Seized Assets Fund are insufficient to manage criminal property under the control of the Agency, the balance shall be defrayed out of the Consolidated Fund.

23. (1) The Agency shall prepare a budget in accordance with IFRS or in such other form as the Minister may direct for each financial year and the Agency shall submit estimates so prepared to the Treasury not later than the deadline date stipulated by the Minister having first obtained approval of the estimates of expenditure from the Minister.

(2) The Agency shall, at such time as the Minister directs, furnish him with any further information in relation to estimates he may require.

(3) Subject to the provisions of the Constitution and the Exchequer and Audit Act, the estimates of expenditure, as approved by the Minister, shall be the expenditure budget of the Agency for the financial year to which it pertains.

24. (1) The financial year of the Agency shall be the period of twelve months beginning on the first day of October in any year to the thirtieth day of September in the following year, but the period from the date of commencement of this Act to the end of September next following shall be deemed to be the first financial year.

(2) The Agency may, with the approval of the Minister, vary its financial year.

Accounts

25. (1) The Agency shall cause to be kept proper accounts and records of transactions and affairs of the Agency and shall do all things necessary to ensure that—

- (a) all monies received are properly brought to account;
- (b) all payments out of its money are correctly made and properly authorized; and
- (c) adequate control is maintained over the property and over the incurring of liabilities by the Agency.

(2) Within three months after the end of each financial year the Agency shall cause to be prepared, in respect of that year-

- (a) a report setting out the activities of the Agency; and
- (b) financial statements prepared in accordance with IFRS,

and a copy of such report and financial statements shall be forwarded to the Minister and shall be laid in Parliament as soon as possible thereafter.

(3) Where the standards included in IFRS are inappropriate or inadequate for any type of accounting method, the Comptroller of Accounts may provide such instructions as may be necessary.

Audit of accounts

26. (1) The accounts of the Agency are public accounts for the purposes of section 116 of the Constitution.

(2) On completion of an audit of the Agency, the Auditor General or an auditor authorized by him to undertake the audit, as the case may be, shall immediately draw to the attention of the Minister and

the Civil Asset Trustee any irregularity disclosed by the audit, which, in the opinion of the Auditor General or the auditor is of sufficient importance to justify so doing.

(3) For the purpose of an audit conducted pursuant to this Act, the Exchequer and Audit Act shall apply as if an audit referred to in this Part is one to which that Act applies.

(4) As soon as the accounts of the Agency have been audited, the Auditor General shall submit his report in accordance with section 116 of the Constitution and shall simultaneously forward a copy of the said report to the Minister.

(5) Nothing in this section precludes the Auditor General or an auditor engaged by the Agency or the Minister from performing a management or comprehensive audit of the activities of the Agency.

27. The Minister may, on behalf of the Government, ^{Borrowing from the Government} out of money appropriated by the Parliament for that purpose, lend money to the Agency on such terms and conditions as he determines in writing.

28. The Agency shall submit a report annually to ^{Annual report} Parliament within three months after the end of the calendar year on the activities of the Agency for the previous year, commencing one year after the coming into operation of this Act.

Realized proceeds

29. (1) The Agency shall make out of the sums which ^{Applying realizable proceeds} represent the realized proceeds of property which are vested in the Agency under a Civil Asset Forfeiture ^{Chap 3:01} Order or which it obtained pursuant to a Civil Asset Forfeiture Order—

- (a) first, any payment required to be made by it by virtue of section 48;

- (b) next, any payment of legal expenses which are payable under sections 34(9)(b) and 45(4)(b);
- (c) any fees payable to a liquidator or receiver of a company appointed by, or supervised by the High Court; and
- (d) any sums which remain to be paid to the Agency.

(2) Sums under subsection (1)(d) shall be paid into the Seized Assets Fund after the period—

- (a) referred under section 43(3) has expired or the application for compensation has been determined; or
- (b) within which an appeal may be made or if a person appealed after the appeal has been determined whichever is the later.

PART IV

CIVIL ASSET RECOVERY

Interpretation of certain words and phrases in Part IV

Chap. 72:01

30. For the purposes of this Part—

“FIU” means the “Financial Intelligence Unit of Trinidad and Tobago” established under the Financial Intelligence Unit of Trinidad and Tobago Act; and

“property lawfully obtained” means property that has been acquired through legitimate activities and includes property acquired by inheritance or other legitimate transfer.

Referral of matters to the Director of Public Prosecutions

31. (1) Where during the course of a criminal investigation a police officer, customs officer or the Chairman of the Board of Inland Revenue has reasonable grounds to suspect that the offence involves recoverable property he may forward an investigative report to the Director of Public Prosecutions.

(2) Where upon receipt of an investigative report under subsection (1), the Director of Public Prosecutions is of the view that there is insufficient evidence to pursue criminal charges for a specified offence but there is sufficient evidence that the property is recoverable property and an application should be made for the recoverable property to be forfeited to the State, he may refer the matter to the Agency.

32. (1) Prior to an application for a Property Restriction Order under section 33 or a Civil Asset Forfeiture Order under section 44, the Agency shall as far as possible have—

- (a) an equity valuation done for the company which will be subject to an order under this Part, to accurately determine the debt load and equity of the company; and
- (b) a valuation of any other asset which is to be the subject of the Order.

(2) Where it is not possible to conduct an equity valuation or valuation prior to an application for a Property Restriction Order or a Civil Asset Forfeiture Order, the Agency shall as soon as possible after the Property Restriction Order or the Civil Asset Forfeiture Order is made, cause to have done—

- (a) an equity valuation done for the company to accurately determine the debt load and equity of the company; and
- (b) a valuation of any other asset which is to be the subject of the Order.

Property Restriction Orders

33. (1) Upon referral of a matter by the Director of Public Prosecutions under section 31, the Agency shall apply to the High Court in the prescribed form for an order to be known as “a Property Restriction Order” to

prohibit a person from dealing with recoverable property until such time as an application can be made to forfeit the recoverable property under this Act.

(2) Where the recoverable property is money which is held in an account in a financial institution, the money may be all or part of the credit balance of the account.

(3) The Civil Asset Trustee shall, in making an application to the High Court under this Part take into consideration—

- (a) whether the recoverable property can be identified; and
- (b) that evidence of criminal conduct is to be assessed at the civil standard.

(4) An application under subsection (1) shall be accompanied by an affidavit from the investigating police officer.

(5) An application under subsection (1) or (2) may be made *ex parte* and without notice.

(6) The hearing of an application for a Property Restriction Order may be heard *in camera*.

Grant of Property
Restriction Order

34. (1) Where an application is made under section 33(1) and the High Court is satisfied that—

- (a) there are reasonable grounds to believe that the property to which the application relates is recoverable property or associated property;
- (b) if the property to which the application for the order relates includes property alleged to be associated property, and the Agency has not established the identity of the person who holds it, the Agency has taken all reasonable steps to do so.

(2) Where the High Court has made a Property Restriction Order, the High Court may, at any time—

(a) direct the Agency—

(i) to seize, take possession and deliver up for safekeeping or otherwise secure any recoverable property; and

(ii) to manage or otherwise deal with any recoverable property in respect of which it is appointed, subject to such exception and conditions as may be specified by the High Court;

(b) require any person having possession of recoverable property in respect of which the Agency is appointed under this section to give possession of it to the Agency;

(c) order that the property or any part of the recoverable property specified in the Property Restriction Order shall be dealt with in a particular manner including by an encumbrance that is ordered by the court on such recoverable property in favour of the Agency together with an order that prohibits any further encumbrance or which prohibits dealing in or with such recoverable property;

(d) order the preservation, management or disposition of the recoverable property or part of the recoverable property specified in the Property Restriction Order as the High Court considers appropriate.

(3) Within fourteen days of a Property Restriction Order being granted, or such other period as the High Court may direct, notice of the order shall be served on all persons known to the Agency and any person claiming to have an interest in the property affected by the order, and such other person as the High Court may direct.

(4) Where the High Court is satisfied that a Property Restriction Order has been applied for or made in respect of any property in respect of which proceedings are pending, the High Court may either stay the proceedings or allow them to continue on such terms as it thinks fit.

(5) The High Court in making a Property Restriction Order under this section may –

- (a) exclude specified property or property described in the Property Restriction Order from the Property Restriction Order;
- (b) otherwise make exclusions on the prohibitions on dealing with the property to which the Property Restriction Order applies; or
- (c) make such other orders as it sees fit in the interest of justice.

(6) Where the High Court makes a Property Restriction Order, under this section, the State, the Agency or any other agency of the State shall not use the property subject of the Property Restriction Order for the use of the State or the Agency or any agency of the State.

Chap. 8:09

(7) The Remedies of Creditor's Act shall apply in relation to a Property Restriction Order as they apply in relation to orders issued or made for the purpose of enforcing judgments and registering a memorandum of *lis pendens*.

(8) Where a Property Restriction Order is being made, the High Court may in the order—

- (a) make provision for meeting out of the property, or a specified part of the property, reasonable living expenses;

- (b) make provision for reasonable legal expenses, including expenses incurred in defending a criminal charge or any proceedings connected thereto and any proceedings under this Act;
- (c) make provision for expenses necessary to enable a person to carry on any trade, business, profession or occupation;
- (d) make provision for fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources;
- (e) make the person to whom the property relates subject to any other condition that the High Court considers reasonable;
- (f) indicate into which account held in a financial institution any excess cash shall be placed; or
- (g) prohibit the person to whom the property relates from possessing or controlling cash in excess of an amount to be prescribed by the Judge.

(9) Where the High Court provides in a Property Restriction Order for a person to meet legal expenses that the person has incurred or may incur in respect of proceedings under this Part, the High Court shall ensure that the provision—

- (a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs; and
- (b) specifies the total amount that may be released for legal expenses in pursuance of the exclusion.

(10) Where provisions are made under subsection (10)(a), (b) or (c), and unrecoverable assets exist from which provision for financial arrangements can be

made for those provisions, no financial arrangement shall be made out of the recoverable property.

(11) Where a Property Restriction Order has been made and the Agency has been directed to manage or otherwise deal with any recoverable property in respect of which it is appointed, the Agency may do anything that is reasonably necessary to preserve the recoverable property and its value including—

- (a) becoming a party to any civil proceedings that affect the recoverable property;
- (b) ensuring that the recoverable property is insured;
- (c) realising or otherwise dealing with recoverable property if—
 - (i) it is perishable, subject to wasting or other forms of loss;
 - (ii) its value is volatile or the cost of storage or maintenance is likely to exceed its value,

subject to the proviso that this power may be exercised without the prior approval of the High Court only in circumstance where—

- (iii) all persons known, by the agency, to have an interest in the recoverable property consent to the realization or other dealing with the recoverable property;
- (iv) the delay involved in obtaining such approval is likely to result in a significant diminution in the value of the recoverable property; or
- (v) the cost of obtaining such approval would, in the opinion of the receiver, be disproportionate to the value of the recoverable property concerned;

- (d) whether the recoverable property consists wholly or partly of a business—
- (i) employing, or terminating the employment of, persons in the business;
 - (ii) doing any other thing that is necessary or convenient for carrying on the business on a sound commercial basis;
 - (iii) selling, liquidating or winding up the business if it is not a viable concern, subject to obtaining the prior approval of the High Court; or
 - (iv) if the recoverable property includes shares in a company, exercising rights attaching to the shares as if the Agency were the registered holder of the shares.

35. (1) The High Court may at any time vary or set Variation or setting
aside of Property
Restriction Order aside a Property Restriction Order on an application made by—

- (a) the Agency; or
- (b) any person affected by the order,

where it appears in the interest of justice to do so.

(2) Before varying or setting aside a Property Restriction Order the High Court shall give any person who may be affected by its decision an opportunity to be heard.

(3) The power under subsection (1) to vary a Property Restriction Order shall include the power to make exclusions from the prohibition on making withdrawal payments from the account to which the Property Restriction Order applies for the purpose of enabling a person by, or for whom the account is operated—

- (a) to meet his reasonable living expenses;

(b) to carry on any trade, business, profession or occupation; or

(c) to meet reasonable legal expenses.

(4) The High Court shall not, under subsection (3), exclude property or amount from the recoverable property identified in the Property Restriction Order unless it is satisfied that the person cannot meet such expenses out of property that is not subject to a Property Restriction Order and the High Court determines that it is in the interest of justice to make such an exclusion.

(5) Where the High Court makes an exclusion for the purpose of enabling a person to meet legal expenses and that person has incurred or may incur in respect of proceedings under this Part, the High Court shall ensure that the exclusion—

(a) is limited to reasonable legal expenses that the person has reasonably incurred or that the person reasonably incurs; and

(b) specifies the total amount that may be released for reasonable legal expenses in pursuance of the exclusion; or

(c) includes any other matter the High Court sees just in the circumstances.

(6) Where the High Court makes an order under this section and while the order is in effect—

(a) the High Court may stay any action, execution or other legal process in respect of the property to which the order applies; and

(b) no distress may be levied against the property to which the order applies except with the leave of the High Court and subject to such terms as the High Court may impose.

36. For the purposes of the execution of a Property Restriction Order granted under section 34, the High Court may require the person to whom the Property Restriction Order applies to bring the property and any documents relating to the property which are in his possession or control to such place as may be specified by the Agency or to place it in the custody of the Agency and to do anything he is reasonably required to do by the Agency for the preservation of the property or the documents.

37. (1) Where the High Court has made a Property Restriction Order, it may, at any time, upon application by—

- (a) anyone with an interest in the property;
- (b) anyone who claims an interest in the property; or
- (c) the Agency,

make any further order in respect of the recoverable property including an order to revoke the Property Restriction Order or to carry out the order, where it appears to the High Court to be in the interest of justice to do so.

(2) In considering an application under subsection (1)(a) or (b), the applicant shall satisfy the Court that—

- (a) he was deprived of the property he claims or of property which it represents by unlawful conduct;
- (b) the property he was deprived of was not property recoverable under this Act immediately before he was deprived of it; and
- (c) he has a legal or equitable interest in the property claims.

Further provision *re:*
Property Restriction
Order

38. (1) Where a High Court has made a Property Restriction Order, the High Court may, at any time thereafter, make any further order that it considers appropriate.

(2) A further order under subsection (1) may include an order—

- (a) to appoint the Agency as receiver, or a receiver of the Court's choosing to take custody and control of the property or a part of the property that is specified in the Property Restriction Order and to manage or otherwise deal with the whole or any part of the property in accordance with any directions of the High Court;
- (b) authorizing a police officer to search for and seize any other recoverable property to prevent the recoverable property from being removed from Trinidad and Tobago; or
- (c) for the preservation, management or disposition of the recoverable property or part of the recoverable property specified in the Property Restriction Order as the High Court considers appropriate.

(3) An order under subsection (2)(b) to search for and seize any other recoverable property may be granted where the Agency establishes that-

- (a) a Property Restriction Order would not be effective to preserve the recoverable property; or
- (b) there is reasonable suspicion of risk of dissipation or alienation of the recoverable property if the order is not granted.

(4) If, during the course of a search under an order granted under subsection (2)(b), a police officer finds any property that he believes, on reasonable

grounds, is of a kind that could have been included in the order has its existence, or its existence at that place been known of at the time of the application for the order, he may seize the recoverable property and the seizure order shall be deemed to authorise the seizure provided—

- (a) notice of the seizure of the recoverable property is reported within forty-eight hours to the High Court; and
- (b) a record of the seizure of the property is left at the premises from which the recoverable property was seized and is given to the occupier of the premises.

(5) Property seized under an order granted under subsection (2)(b) may be retained by or on behalf of the Agency for twenty-eight days and the Agency may subsequently make an application for a Property Restriction Order in respect of the recoverable property.

39. A Property Restriction Order granted under section 34 or a further order granted under section 38 expires ninety days after the date on which notice of the order is given under section 38—

- (a) unless an application for a Civil Asset Forfeiture Order under section 44 has been made; or
- (b) the Property Restriction Order is revoked before its expiration date.

40. Where the High Court has made a Property Restriction Order, the order shall require the Agency to—

- (a) give notice of the orders to public or private institutions; and
- (b) publish a notice of the Property Restriction Order in the *Gazette* and for two days within a two-week period in two newspapers in daily circulation in Trinidad and Tobago.

Requirement to
inform specified
agencies of Property
Restriction Order

41. (1) Where the Agency makes an application for a Property Restriction Order under section 33 in respect of land, the Agency shall be treated as a person interested in any land to which the application relates or to which a Property Restriction Order made on the application relates and the Agency may, at that time, request the Court direct the Registrar General to restrict or prohibit dealings with the land.

(2) The Registrar General may, on an Order being granted under subsection (1), enter the restriction in the relevant Register.

(3) Where the Agency makes an application for a Property Restriction Order under section 33 in respect of a motor vehicle, the Agency shall be treated as a person interested in the motor vehicle to which the application relates or to which a Property Restriction Order made on the application relates and the Agency may, at that time, request the Court direct the Commissioner of Transport to restrict or prohibit dealings with the motor vehicle.

(4) The Commissioner of Transport may, on an application made under subsection (3), enter the restriction in the relevant Register.

(5) Where the Agency makes an application for a Property Restriction Order under section 33 in respect of a ship, the Agency shall be treated as a person interested in the ship to which the application relates or to which a Property Restriction Order made on the application relates and the Agency may, at that time, request the Court direct the agency responsible for registration of Trinidad and Tobago ships in Trinidad and Tobago to restrict or prohibit dealings with the Trinidad and Tobago ship.

Enforcement abroad
of Property
Restriction Order

42. Where a Property Restriction Order is granted under section 34 in respect of property that is not located in Trinidad and Tobago, the Attorney General

may request the assistance of the country where the property is located under Part VI to—

- (a) prohibit any person from dealing with the property; or
- (b) assist in managing the property including securing its detention, custody or preservation.

43. (1) If, in the case of property to which a Property Restriction Order has at any time applied, the High Court does not, in the course of the proceedings, determine that the property is recoverable under this Act, the person to whom the property belongs may make an application to the High Court for compensation.

(2) Subsection (1) shall not apply where, the High Court—

- (a) has made an order under section 37 in respect of the property; or
- (b) makes a consent order under section 49.

(3) If a High Court has made a decision by which no Property Restriction Order can be made in respect of the property, the application for compensation shall be made—

- (a) within three months, beginning with the date of the decision;
- (b) if an application is made for leave to appeal, with the date on which the application is withdrawn or refused; or
- (c) if the application is granted, on which the proceedings on appeal are concluded.

(4) If the proceedings in respect of the property have been discontinued, the application for compensation shall be made within the period of three months beginning with the discontinuance.

(5) If the High Court is satisfied that the applicant has suffered loss as a result of the Property Restriction Order, it may require the Agency to pay compensation to the applicant.

(6) If, but for section 47(2), any right mentioned there would have operated in favour of, or become exercisable by, any person, that person may within the period of three months beginning with the order under that section, apply to the High Court for compensation under this section.

(7) If the High Court is satisfied that, in consequence of the operation of section 44, the right of pre-emption, right of return or other similar right cannot subsequently operate in favour of the applicant or become exercisable by him, the High Court may require the agency to pay compensation to the applicant.

(8) The amount of compensation to be paid under this section is the amount the High Court thinks reasonable, having regard to the loss suffered and any other relevant circumstances.

Civil Asset Forfeiture Order

Application for a
Civil Asset
Forfeiture Order

44. (1) Where a Property Restriction Order has been made under section 34 and the Agency is satisfied that an order should be made to forfeit the property specific to the Property Restriction Order, the Agency may apply to the High Court for an order (hereinafter referred to as a “Civil Asset Forfeiture Order”).

(2) A Civil Asset Forfeiture Order is an order *in rem* against assets which are recoverable property, which removes the legal ownership in the property and vests it in the State.

(3) An application for a Civil Asset Forfeiture Order may be made in respect of recoverable property into which original proceeds have been converted, whether by sale or otherwise.

(4) An application for a Civil Asset Forfeiture Order shall be supported by an affidavit from the investigating police officer relative to the application which may contain, unless the High Court otherwise directs, statements of information of belief with the sources and grounds thereof.

(5) Where the Agency makes an application for a Civil Asset Forfeiture Order against recoverable property under this section—

- (a) it shall serve a copy of the application on any person whom the Agency has reason to believe has an interest in the recoverable property;
- (b) any person claiming an interest in the recoverable property may appear and adduce evidence at the hearing of the application; and
- (c) at any time before the final determination of the application, the High Court may direct the Agency to provide such notice that the High Court deems appropriate to any person, who in the opinion of the High Court, appears to have an interest in the recoverable property.

(6) Service of notice under subsection (5) shall be made in accordance with rules applicable in Civil Proceedings Rules.

(7) Any person who asserts an interest in the recoverable property and who seeks to oppose the making of a Civil Asset Forfeiture Order, or who wishes to exclude his interest from a Civil Asset Forfeiture Order shall file an appearance in accordance with the Civil Proceedings Rules.

(8) Where an application is made for a Civil Asset Forfeiture Order before the High Court, the High Court may determine, by its own procedures, the evidence that

may be adduced before it and, in particular, shall ensure that the person with an interest of any nature in the recoverable property has the opportunity to make representations to the High Court as to whether a Civil Asset Forfeiture Order should be granted.

Grant of a Civil
Asset Forfeiture
Order

45. (1) The High Court may, where it is satisfied that on the balance of probabilities that the recoverable property should be forfeited, grant a Civil Asset Forfeiture Order to forfeit such property.

(2) In order to satisfy the High Court under subsection (1) that the property is—

- (a) criminal property, it is not necessary to show that the property is derived directly or indirectly, in whole or in part, from a particular offence, or that any person has been charged in relation to the particular offence, only that it is criminal property;
- (b) an instrumentality, it is not necessary to show that the property was used or intended to be used to commit a particular offence, or that any person has been charged in relation to the particular offence, only that it was used or intended to be used to commit an offence; and
- (c) terrorist property, it is not necessary to show that—
 - (i) the property was derived from a specific terrorist act;
 - (ii) the property has been, or is being, or is intended to be used by a terrorist or a terrorist organization, to commit a specific terrorist act, as long as it is shown that it has been, is being or is intended to be used by some terrorist organization or to commit some terrorist act;

- (iii) the property is owned or controlled by, or on behalf of a specific terrorist or terrorist organization, as long as it is shown to be owned or controlled by, or on behalf of some terrorist organization;
- (iv) the property has been provided or collected for the purpose of supporting a terrorist or a specific terrorist organization or funding a specific terrorist act, as long as it is shown to have been provided or collected for the purpose of providing support to some terrorist organisation or funding some terrorist act; or
- (v) any person has been charged in relation to any matter under subparagraph (i), (ii) or (iii) provided that always the evidence reveals that the property is connected to terrorism however evidenced.

(3) Property may be found to be recoverable property under subsection (1) even if a person was acquitted of any offence, charges were withdrawn before a verdict was returned or if the proceedings were stayed.

(4) Without prejudice to the generality of subsection (1), the High Court in making a Civil Asset Forfeiture Order may make it subject to such conditions and exceptions as the High Court considers fit, and may in particular—

- (a) make provision for meeting out of the property or a specified part of the property, reasonable living expenses, including but not limited to—
 - (i) mortgage or rent payments;

- (ii) allowances for food, medicine and medical treatment;
 - (iii) any payment due as a result of an order of the High Court;
 - (iv) provision for the reasonable living expenses of dependents including educational expenses; and
 - (v) provision for taxes, insurance premiums and public utilities;
- (b) make provision for reasonable expenses, including expenses incurred in defending any legal proceedings including any proceedings under this Act;
- (c) make provision for expenses necessary to enable a person to carry on any trade, business, profession or occupation; or
- (d) be made subject to any other condition that the High Court considers reasonable.

(5) Where provisions are made under subsection (4)(a), (b), or (c), and unrecoverable assets exist from which provision for financial arrangements can be made for those provisions, no financial arrangement shall be made out of the recoverable property.

(6) A Civil Asset Forfeiture Order shall have the effect of vesting the forfeited property in the Property Manager who shall be responsible for realising the property in accordance with section 73.

(7) A Civil Asset Forfeiture Order may apply to all criminal property, instrumentalities of crime or terrorist property, whether the property—

- (a) is described in the order or not; or
- (b) was transferred to the person subject of an order after the making of the order.

(8) A Civil Asset Forfeiture Order shall provide for notice to be given to persons affected by the order.

(9) A Civil Asset Forfeiture Order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or application in question.

(10) An application for a Civil Asset Forfeiture Order may be made where a person, now deceased, committed the conduct on which the application for the order is based.

(11) An application for the discharge or variation of a Civil Asset Forfeiture Order may be made by any person who has interest in the property subject to the order.

(12) The High Court shall not make a Civil Asset Forfeiture Order, if it is satisfied that the right of the Agency to recover the recoverable property has been satisfied by a previous Civil Asset Forfeiture Order or an order under section 49.

(13) Where the High Court has made a Civil Asset Forfeiture Order, the Order shall require the Agency publish a notice of the Civil Asset Forfeiture Order in the *Gazette* and for two days within a two-week period in two newspapers in daily circulation in Trinidad and Tobago.

(14) Subject to subsection (12), the High Court, where it is satisfied that a Civil Asset Forfeiture Order may be made in respect of two or more related items of recoverable property, however the making of the Civil Asset Forfeiture Order in respect of both or all of them is not required in order to satisfy the right of the Agency to recover recoverable property, the High Court may make a Civil Asset Forfeiture Order in relation to some of the related items of property or a part of any of the related items of the recoverable property.

(15) Property forfeiture under subsection (1) shall be dealt with in accordance with the direction of the High Court.

Notice of grant of
Civil Asset
Forfeiture Order

46. Where a Civil Asset Forfeiture Order is granted under section 45, it shall require the Agency to—

- (a) give notice of the orders to public or private institutions;
- (b) give notice to all persons known to the person making the claim that have an interest in the property specified in the Civil Asset Forfeiture Order;
- (c) publish a notice of the Civil Asset Forfeiture Order in two newspapers in daily circulation in Trinidad and Tobago; and
- (d) publish the Civil Asset Forfeiture Order on the website of the Agency.

Rights of
pre-emption

47. (1) A Civil Asset Forfeiture Order is to have effect in relation to any property despite any provision, of whatever nature, which would otherwise prevent, penalize or restrict the vesting of the property.

(2) A right of pre-emption, right of return or other similar right does not operate or become exercisable so as to frustrate the vesting of any property or the State under a Civil Asset Forfeiture Order.

(3) Once property has been vested in the State under a Civil Asset Forfeiture Order, a right of pre-emption right or return or other similar right cannot operate or be exercisable in respect of the property.

(4) For the purposes of this section, “a right of return” means any right under a provision for the return or reversion of property in specified circumstances.

48. (1) Where a Civil Asset Forfeiture Order has been made in respect of property, the person who—
- Agreements about
associated property
and joint property
- (a) holds the associated property; or
 - (b) is an excepted joint owner,

shall, where the Agency agrees, apply to the High Court for an order (hereinafter referred to as “a Civil Asset Forfeiture Payment Order”) to allow for a payment to the Agency and to allow for the vesting, creating or extinguishing of any interest in the property.

(2) The amount of payment shall be the amount that the Agency and the applicant under subsection (1) agree which represents-

- (a) property which is associated with the recoverable property and is specified or described in the application;
- (b) associated property which does not belong to the defendant, where the claim form or the application has been served on the person to whom the property belongs or the High Court has dispensed with service; and
- (c) the recoverable property belonging to joint owners or one of the owners is an excepted joint owner.

(3) Where a Civil Asset Forfeiture Payment Order is made under subsection (1), and the Agency, based on further information coming to its attention, is subsequently of the view that the amount of loss suffered is less than the amount of the Civil Asset Forfeiture Payment Order, the Agency may apply to the High Court to reduce the amount of the payment to an amount that the Agency and the applicant agree is reasonable, having regard to that loss and any other relevant circumstances.

(4) The High Court, where it is satisfied upon an application under subsection (3) that the amount to be paid should be reduced, may amend the Civil Asset Forfeiture Payment Order made under subsection (1).

(5) Where there is no agreement under subsection (1) and the High Court thinks it just and equitable to do so, the High Court may, by Order—

- (a) vest associated property in the Agency;
- (b) extinguish the interest of the excepted joint owner; or
- (c) secure the interest of the excepted joint owner.

(6) An amended Civil Asset Forfeiture Payment Order under subsection (4), may provide for either or both of the following:

- (a) for the Agency to pay an amount to a person who holds the associated property or who is the excepted joint owner; and
- (b) for the creation of interest in favour of that person or the imposition of liabilities or conditions in relation to the property vested in the Agency.

(7) In making a Civil Asset Forfeiture Payment Order under subsection (5) or (6), the High Court shall take into consideration—

- (a) the rights of any person who holds the associated property or who is an excepted joint owner and the value to him of that property or as the case may be of his share including any value which cannot be assessed in term of money; and
- (b) the interest of the Agency in receiving the realized proceeds of the property.

Staying of
proceedings and
other options of the
High Court

49. (1) The High Court may make an order (hereinafter referred to as a “consent order”) staying any proceedings for a Civil Asset Forfeiture Order on terms agreed by the parties for the disposal of the proceedings, if each person, to whom the property which is the subject of the proceedings or the agreement, is a party to both the proceedings and the agreement.

(2) An order under subsection (1) may, as well as staying the proceedings—

- (a) make provision for any property which may be recoverable under this Act to cease to be recoverable; and
- (b) make any further provision which the High Court thinks appropriate.

50. (1) If, in the course of hearing an application for a Civil Asset Forfeiture Order, the High Court is satisfied, on a balance of probabilities, that the property that is the subject of the application is recoverable property, but that a person is a legitimate owner, the High Court shall make any order it considers necessary to protect that person's interest in the property.

Orders regarding
legitimate owners

(2) For the purposes of subsection (1) “a legitimate owner” means in the case of—

- (a) criminal property, a person who—
 - (i) was the rightful owner of the property before the criminal conduct occurred and was deprived of the property by the criminal conduct; or
 - (ii) acquired the property in good faith and for fair value after the criminal conduct and did not and could not reasonably have known the property was criminal property;
- (b) instrumentalities, a person who has done all that can reasonably be done to prevent the property from being used as an instrumentality; and
- (c) terrorist property, a person who can satisfy the High Court that he would be the legitimate owner if the property fell under paragraphs (a) or (b).

(3) The High Court shall not make an order under subsection (1), if the property is property that is unlawful for a person to possess in Trinidad and Tobago.

Fugitive claims

51. A person who has absconded from any process of the court and is still an absconder in Trinidad and Tobago may not appear, whether personally or through a representative, in proceedings for a Civil Asset Forfeiture Order or contesting the granting of a Civil Asset Forfeiture Order.

Specific Requirements for Certain Types of Properties

Real property

52. (1) Where land which is the subject of a Property Restriction Order is subject to government rates and taxes or encumbered as security for mortgages or loans, the Property Restriction Order should provide that the person to whom the property relates or other occupant of the land is required to maintain up to date payments of taxes and other debts that have the potential to encumber the land with a lien.

(2) Where the person to whom the property relates or other occupant of the land fails to pay rates, taxes and loan payments in respect of the property, the Agency shall inform the High Court of such failure and the High Court may order the person to pay the relevant rates, taxes and loan payments.

(3) Taxes and liens will take priority over a Civil Asset Forfeiture Order made under this Act.

(4) The Agency may, in making an application for a Property Restriction Order, enter into an agreement with the person to whom the property relates or other occupant of the land to grant continued occupancy, conditional on the payment of the expenses and that grants the Agency the immediate right to take possession and evict the occupants if the conditions are not met.

(5) Where the Agency is required to evict the occupants under subsection (4), the Agency may lease the property at a rate that is sufficient to meet expenses or to sell the asset and use the proceeds to pay outstanding debts.

53. (1) Prior to an application for a Civil Asset Restraint Order in respect of stocks, bonds and brokerage accounts, the Agency shall ensure that the asset is valued and determines how best to preserve the value of the asset. Cash, bank accounts and financial instruments

(2) Cash, restrained under this Act and placed into the possession of the Agency by the High Court under a Property Restraint Order, shall be preserved by the Agency in an interest-bearing account until a Civil Asset Forfeiture Order is made under this Act.

(3) Financial instruments such as cashier cheques, money orders, certificates, deposits, stocks, bonds and brokerage accounts may also be seized with procedures taken to preserve or redeem their value.

54. (1) Where the Agency is required to maintain a motor vehicle, airplane or boat under a Property Restriction Order or a Civil Asset Forfeiture Order, the Agency shall maintain the motor vehicle, airplane or boat in a secure, appropriate storage facility. Motor vehicles, airplanes or boats

(2) The Agency may, with the permission of the High Court under a Property Restriction Order or a Civil Asset Forfeiture Order, dispose of by sale and in accordance with Regulations made under this Act, any motor vehicle, airplane or boat seized so as to obtain the best value possible.

(3) The Agency may, with the permission of the High Court under a Property Restriction Order and upon the inter-parties application of the owner of the motor vehicle, airplane or boat, permit the owner to retain use of the motor vehicle, airplane or boat during

the course of the Civil Asset Forfeiture proceedings with the posting of a bond by the owner guaranteeing the payment of an amount equivalent to its value at the time the case was initiated.

Companies

55. (1) The Agency may apply to ask the High Court for permission in the relevant order for the current manager of the business which is the subject of an order to continue the operations under the control of a business manager contracted by the Agency or appointed by the High Court.

(2) The Agency or appointed or contracted manager under subsection (2) is required to take immediate control of bank accounts, accounting systems and records, important business data, valuable stocks and valuable plant and equipment.

(3) Where a manager is appointed or contracted under subsection (2), he shall send regular reports on the performance of the business to the Agency.

(4) Where the business is the subject of an Order under this Part is assessed to be of little value, the Agency, shall include the business in the relevant order but decide not to undertake the financial risks associated with the continued operation, and may instead close the operations or sell the business and place the proceeds in the Seized Assets Fund.

Listed assets

56. Where listed assets, subject to a Property Restriction Order or Civil Asset Forfeiture Order detained or realized under this Act represents only part of the listed assets which are subsequently detained or realized, a reference to the cost incurred in storing or insuring the listed assets as required by Regulations made under this Act, includes a reference to storing or insuring the entire listed assets.

Perishable and
depreciating assets

57. Where a Civil Asset Forfeiture Order is made in respect of property which is perishable or subject to wasting or other forms of loss, its value is volatile or the

cost of storage or maintenance is likely to exceed its value, the Agency may sell the perishable or rapidly depreciating asset and place the proceeds in the Seized Assets Fund.

PART V

UNEXPLAINED WEALTH ORDERS

58. (1) Where the Chairman of the Board of Inland Revenue, a Customs and Excise officer or a police officer^{Application for Order for a declaration} attached to the branch of the Police Service responsible for financial investigations (hereinafter referred to as “the applicant”) reasonably suspects that—

- (a) the total wealth of the respondent exceeds the value of his lawfully obtained wealth; and
- (b) the property is owned by the respondent or is under his effective control,

he may apply to the High Court in writing for an order (“in this Part hereinafter referred to as a Preliminary Unexplained Wealth Order”), requiring the respondent to file a declaration and answer questions as required in relation to his assets.

(2) An application under subsection (1) shall be accompanied by an affidavit stating-

- (a) the identity of the respondent;
- (b) the grounds by which the applicant reasonably suspects that the total wealth of the respondent exceeds the value of his lawfully obtained wealth; and
- (c) the grounds by which the applicant reasonably suspects that any property is owned by the respondent or is under his effective control.

(3) An application under subsection (1) may be made *ex parte*.

- Form of declaration
Schedule 2 **59.** A declaration under section 58(1) shall be in the form set out as Form 1 in Schedule 2.
- False declaration **60.** A person who knowingly and wilfully makes a statement which is false in any material particular on the declaration form under section 58 commits an offence and is liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment of twenty years.
- Grant of a
Preliminary
Unexplained Wealth
Order **61.** (1) Where the High Court is satisfied that there are reasonable grounds to suspect that the total wealth of the respondent exceeds the value of his wealth that was lawfully obtained, it may make a Preliminary Unexplained Wealth Order, requiring the respondent to file a declaration and appear before the High Court to answer questions relative to his assets for the High Court to decide whether to make an Unexplained Wealth Order.
- (2) Where a Preliminary Unexplained Wealth Order has been made under this section, a notice of the making of the order shall be served on the respondent.
- Application to revoke
a Preliminary
Unexplained Wealth
Order **62.** (1) Where the High Court makes a Preliminary Unexplained Wealth Order under section 61, the respondent may, within twenty-eight days of notice of the order under section 61(2), apply to the High Court for the order to be left aside or discharged.
- (2) Where an application is made under this section, the High Court may order an *inter partes* hearing date within fourteen days.
- (3) Where an application is made under this section, the respondent under subsection (1) shall provide the Chairman of the Board of Inland Revenue, Customs and Excise Officer or a police officer who made the application under section 58(1) with—
- (a) written notice of the application; and

(b) a copy of any documents supporting the application.

(4) Where an application is made under this section, the respondent under subsection (1) may appear and adduce evidence.

(5) The applicant under section 58(1) may appear and adduce evidence at the hearing of any application made under this section and shall give the respondent a copy of any document or material it proposes to rely on opposing the application.

(6) The notice and copies of any evidence or pleadings under this section shall be given no later than seven days before the hearing of the application.

63. Where an application has been made to revoke a Preliminary Unexplained Wealth Order, the High Court may revoke the order if it is satisfied that there are no grounds on which the order could be maintained.

64. (1) The applicant may apply to the High Court for an Unexplained Wealth Order.

(2) An application under subsection (1) shall be accompanied by-

(a) an affidavit setting out the reasons why an Unexplained Wealth Order should be made; and

(b) documents in support of the application.

65. (1) Where the High Court has made a Preliminary Unexplained Wealth Order, which had not been revoked, in relation to a respondent and on the basis of the affidavit and documents submitted, is satisfied that—

(a) on a balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or held; or

(b) particular property is held by, and subject to the effective control of the respondents, it may make an Unexplained Wealth Order.

(2) It does not matter for the purposes of subsection (1)(b)—

(a) whether or not there are other persons who also hold the property; or

(b) whether the property was obtained by the respondent before or after the coming into force of this Act.

(3) Where the High Court makes an order under this section, the order shall specify that the respondent is liable to pay into the Seized Assets Fund an amount being the “unexplained wealth amount” of the respondent, equal to the amount that the High Court is satisfied does not represent the lawfully acquired property of the respondent.

(4) In proceedings under this section, the burden of proving the wealth of the respondent is lawfully acquired lies on the respondent.

(5) When considering the issues under subsection (1), the High Court may have regard to information not included in the Preliminary Unexplained Wealth Order.

(6) An order under subsection (1) may be enforced against the property as if the property were the property of the respondent.

(7) An order that restricts the right of the respondent or any named person to deal with the property identified in this section may be made, upon application of the applicant under section 58(1), if the High Court is satisfied that the property would not be available to the Chairman of the Board of Inland Revenue, the Customs and Excise officer or a police officer under section 58(1) without such restriction.

(8) When considering the amount of an Unexplained Wealth Order, the High Court shall deduct an amount equal to the value, at the time of the making of the order, of any property the respondent forfeited under a Property Restriction Order under section 34, a Civil Asset Forfeiture Order under section 45, or a Confiscation Order or Forfeiture Order under the Proceeds of Crime Act.

(9) The Chairman of the Board of Inland Revenue, Customs and Excise officer or the police officer under section 58(1) shall not, unless the High Court gives leave, apply for an Unexplained Wealth Order against any person if—

- (a) an application has previously been made for an Unexplained Wealth Order in relation to that person; and
- (b) the application has been finally determined on the merits.

(10) Leave shall not be granted under subsection (9) unless the High Court is satisfied that—

- (a) the wealth to which the new application relates was identified only after the first application was determined; or
- (b) the evidence became available only after the first application was determined; and
- (c) it is in the interest of justice to give the leave.

66. (1) If the applicant, under section 58(1), applies Third party claims for an Unexplained Wealth Order in respect of a particular property, he or it, as applicable, shall give written notice of the application to—

- (a) the respondent, who is subject to the application for the Unexplained Wealth Order; and

(b) any other person whom he or it has reason to believe may have an interest in the property.

(2) The respondent, and any person who claims an interest in the property, may appear and adduce evidence at the hearing of the application.

Enforcement of
Unexplained Wealth
Order

67. (1) An amount payable by the respondent into the Seized Assets Fund under an Unexplained Wealth Order is a civil debt due by the respondent to the State.

(2) An Unexplained Wealth Order against the respondent may be enforced as if it were an order made in civil proceedings instituted by the applicant under section 58(1) against the respondent to recover a debt due by him to the State.

(3) An Unexplained Wealth Order is for all purposes to be treated as a judgment debt.

(4) If an Unexplained Wealth Order is made after the death of a respondent, the Order is exercisable against the estate of the respondent.

PART VI

PROPERTY OUTSIDE OF TRINIDAD AND TOBAGO

Declaration of treaty
in force

68. (1) Where a treaty has been concluded between Trinidad and Tobago and any other territory in relation to the provision of mutual assistance for the purposes of this Act, the Attorney General may by Order, subject to negative resolution of Parliament, declare that the treaty shall have the force of law in Trinidad and Tobago subject to such limitations, conditions, exceptions or qualifications as may be specified in the Order.

(2) The Attorney General shall not make an Order under subsection (1), unless the treaty provides for the determination by either party to the Treaty.

(3) An Order made under subsection (1), shall recite or embody the terms of the treaty and shall not remain in force for any longer period than the treaty.

(4) In this section, “treaty” means any Convention, Treaty, Agreement or Arrangement for the time being in force between Trinidad and Tobago and any other territory.

69. (1) The Attorney General may enter into an agreement with the government of any foreign State for the reciprocal sharing of the proceeds or disposition of—

- (a) property forfeited or disposed of under this Act; or
- (b) property forfeited or disposed of by a foreign State,

in circumstances where agencies of that foreign State, or of Trinidad and Tobago, as the case may be, have participated in the forfeiture or disposal of the property.

(2) Where proceeds are received by Trinidad and Tobago under an agreement under this section, the proceeds shall be deposited into the Seized Assets Fund.

(3) Where there exists no agreement for the reciprocal sharing of proceeds of, or disposition of property forfeited or disposed of under this Act and a request is made from a foreign State in respect of the return of property or proceeds from property the Attorney General may approach the High Court for an Order to allow the return of the property or sharing of the proceeds of property forfeited or disposed of under this Act.

70. (1) Where a Property Restriction Order, a Civil Asset Forfeiture Order or an Unexplained Wealth Order has been made and the property to which those orders apply is suspected to be on reasonable grounds in a country with which Trinidad and Tobago has a treaty

under section 68, then, subject to subsection (3), a request may be transmitted by the Attorney General requesting that the order concerned be enforced in accordance with the laws of that country, and seeking the assistance of that country to that end.

(2) Assistance under subsection (1) may include—

- (a) securing the detention, custody or preservation of the property;
- (b) in the case of money, ensuring that it is applied in accordance with the laws of that country; and
- (c) in the case of property other than money, ensuring that the property is realized and the proceeds applied in accordance with the laws of that country.

(3) In any case where a request to a country under this section has been accepted, the Agency shall inform the relevant authority for that country if the concerned Property Restriction Order, Civil Asset Forfeiture Order or Unexplained Wealth Order is thereafter varied or ceases to have effect.

(4) A request shall not be made under this section for the enforcement of an Unexplained Wealth Order if the amount specified in the order or the total value of the property required to satisfy the order is less than twenty-five thousand dollars or such other amount as may be prescribed by Minister with responsibility for finance, by Order.

(5) Assistance that may also be requested under this section is assistance in obtaining, outside of Trinidad and Tobago, relevant evidence specified in the request including evidence to establish—

- (a) the property to which the order applies is property which is recoverable under this Act or associated property;

- (b) the property is recoverable under this Act in relation to the same criminal conduct and, if it is, who holds it; or
 - (c) other property is tainted property in relation to the same unlawful conduct, and if it is, who holds it.
- (6) The Agency shall, in requesting assistance under this section, make the request to the Attorney General with a view to it being forwarded to—
- (a) a court or tribunal which is specified in the request and which exercises jurisdiction in the place where the evidence is to be obtained;
 - (b) the government of the country concerned; or
 - (c) the authority recognised by the government of the country concerned as the appropriate authority for receiving request for assistance of that kind.

PART VII

ASSET MANAGEMENT

71. (1) Where the Civil Asset Trustee applies for a Property Restriction Order or a Civil Asset Forfeiture Order under this Act, he may also apply for the Property Manager to be appointed to manage the property relative to the Property Restriction Order or a Civil Asset Forfeiture Order.

Civil Asset Trustee
to apply for
appointment of
Property Manager to
manage

(2) The Property Manager may act notwithstanding the prior appointment of a trustee or receiver in respect of any property.

(3) The Property Manager may be assisted in his duties by any person appointed by the Civil Asset Trustee for the purpose.

(4) The Property Manager may request information from and receive information from relevant authorities in exercising his functions under this Act.

Duties of Property
Manager

72. (1) Where the Property Manager takes control of property pursuant to a High Court order, he shall as soon as practicable after the order is issued, prepare and file with the High Court and the Attorney General, a report identifying the location of the property.

Form 2

(2) A report under subsection (1) shall be in the form set out as Form 2 in Schedule 2.

(3) The Property Manager will initiate and maintain detailed records of all property restrained, seized, forfeited, realized and destroyed under this Act.

(4) Records under subsection (3) shall include the value of any property under the management of the Property Manager at the time of the restraint or seizure, disposition, destruction and in the case of sale, the value realized.

(5) Where the property is no longer at the place where it was reported to be located under subsection (1), or the property has been sold, the Property Manager shall file with the High Court and the Attorney General, a report identifying the new location of the property and the value realized.

Realization of forfeit-
ed property

73. (1) Subject to any limits in the Civil Asset Forfeiture Order, the Property Manager may take steps to sell, destroy or otherwise deal with property as he sees fit.

(2) Subject to subsection (1), the Agency or the Property Manager shall realize the value of the property vested in it or him under the Civil Asset Forfeiture Order, so far as practicable, in the manner best calculated to maximise the realized amount.

(3) The Agency or the Property Manager shall as soon as practicable dispose of the forfeited property.

(4) The Agency or the Property Manager may incur reasonable expenditure for the purpose of realizing the value of property subject of a Civil Asset Forfeiture Order.

(5) Any expenditure incurred by the Agency or the Property Manager under subsection (4) shall be recovered from the amount realized by forfeiture of the property.

(6) The process of the realization of property forfeited as a result of a Civil Asset Forfeiture Order shall be paid into the Seized Asset Fund

PART VIII

MISCELLANEOUS

74. (1) Trustees of the Agency, the Property Manager, Confidentiality employees of the Agency and every person concerned with the administration of this Act including experts engaged under section 18(2) shall treat documents, information or other matters related to the administration of this Act, as secret and confidential except disclosures—

- (a) made by the Agency, or any other person pursuant to the provisions of this Act or any Regulations made hereunder; and
- (b) which the Agency considers necessary in the discharge of its functions.

(2) Subject to subsection (1), a person has the right to request that any proprietary or confidential documents, information or matter provided or submitted to the Agency is kept as confidential and secret by the Agency.

(3) A Trustee, the Property Manager, employee of the Agency or any person concerned with the administration of the Act, who discloses documents, information or any other matter relevant to the administration of this Act in contravention of this section commits an offence and is liable—

- (a) on summary conviction to a fine of one hundred thousand dollars or to imprisonment for three years; and

(b) on conviction on indictment to a fine of one hundred and fifty thousand dollars and to imprisonment for five years.

Regulations

75. (1) The Attorney General may make Regulations for the purpose of giving effect to anything required to be done under this Act.

(2) Regulations made under subsection (1), shall be subject to negative resolution of Parliament.

(3) Notwithstanding the generality of subsection (1), the Attorney General may make regulations for—

(a) the procedures for the—

(i) storage of—

(A) precious metals, jewels and artwork;

(B) motor vehicles, boats and airplanes;

(C) seized cash, bank accounts and financial instruments; and

(D) agricultural products and livestock;

(ii) for the management or disposal of—

(A) motor vehicles, boats and airplanes;

(B) seized cash, bank accounts and financial instruments;

(C) real property; and

(D) agricultural products, livestock and farms; or

(b) the procedures for the exchange of information, evidence and property under an agreement made under section 68;

- (c) the making of any forms required to be made under this Act; and
- (d) prescribing the form and content of registers required for the purposes of this Act.

Chap. 3:01

(4) Notwithstanding section 63 of the Interpretation Act, Regulations made under this section may prescribe penalties for breaches of those Regulations of up to five hundred thousand dollars.

Consequential amendments
Schedule 3

76. The Acts listed in the First Column of the table set out in Schedule 3 are amended to the extent set out in the Second Column of that table.

SCHEDULE 1

(Section 19)

CIVIL ASSET RECOVERY AND MANAGEMENT AGENCY OATH OF OFFICE AND SECRECY

I, AB, solemnly and sincerely swear that I will conscientiously and to best of my ability discharge the duties of my office and that I will treat all documents and all records and information relating thereto in the Civil Asset Recovery and Management Agency as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any such person to have access to any such document, reports and record. So help me God.

Justice of the Peace

SCHEDULE 2

[Section 59(1)]

FORM 1

DECLARATION OF ASSETS

**PART 1
IDENTIFICATION SECTION**

NAME OF DECLARANT:

HOME ADDRESS OF DECLARANT:

OFFICE ADDRESS OF DECLARANT:

Date of Birth: YYYY MM DD Telephones (Home):

Telephone (Office):

Fax:

Fax:

NIS Number: E-mail:

E-mail:

BIR Number:

NAME OF DECLARANT'S SPOUSE (SURNAME, OTHER NAMES):

HOME ADDRESS OF DECLARANT'S SPOUSE:

NAMES OF DECLARANT'S DEPENDENT CHILDREN (SURNAME, OTHER NAMES)

OFFICE ADDRESS OF DECLARANT'S SPOUSE (if applicable):

1.
2.
3.
4.
5.

2. INCOME FROM TRADE, PROFESSION OR VOCATION (Please state Net Income—after deduction of expenses)

Name and Address of Business	Nature of Business	Recipient's Name (Declarant/Spouse/Dependent Child)	Annual Net Income \$

3. INCOME FROM PROPERTY (Please state Net Income—after deduction of expenses)

Address and Description of Property	Tenant's Name	Recipient's Name (Declarant/Spouse/Dependent Child)	Annual Net Income \$

**PART III
DETAILS OF ASSETS
(OF DECLARANT, SPOUSE AND DEPENDENT CHILDREN)**

1. REAL PROPERTY						
1.1 LAND AND BUILDINGS (including townhouses and condominiums)						
Address and Description of Property including Land and Floor Areas	In Whose Name Held (Declarant/Spouse/Dependent Child)	Date of Acquisition	Original Cost ₱	Cost of Additions ₱	Estimated Value as at date of declaration	

6.2 COMPANY SHARES AND STOCK (UNQUOTED)

Name and Address of Company	Nature of Business	Stock Units/ Shares Held	In Whose Name Held (Declarant/Spouse/Dependent Child)	Estimated Value \$

7. INVESTMENT IN PARTNERSHIPS, JOINT VENTURES AND OTHER BUSINESSES

Name and Address of Company or Business	Nature of Business	Percentage Ownership	In Whose Name Held (Declarant/Spouse/Dependent Child)	Investment as at date of declaration

8. OTHER ASSETS
8.1 MOTOR VEHICLES

Make and Model	Registration Number	Purchase Price \$	In Whose Name Held (Declarant/Spouse/Dependent Child)	Sum Assured \$	Estimated Value as at date of declaration

8.2 MONEY LOANED

Name and Address of Borrower	Amount Lent \$	Date Lent	Name of Lender (Declarant/Spouse/Dependent Child)	Balance Due as at date of declaration

8.3 GOVERNMENT AND CORPORATE BONDS

Issuing Organisation	In Whose Name Held (Declarant/Spouse/Dependent Child)	Date of Purchase	Interest Rate	Maturity Date	Estimated Value as at date of declaration

8.4 CREDIT UNIONS

Name and Address of Credit Union	Type of Account (Shares/Savings/Fixed Deposit)	In Whose Name Held (Declarant/Spouse/Dependent Child)	Account Number	Balance Due as at date of declaration

**PART IV
DETAILS OF LIABILITIES
(OF DECLARANT, SPOUSE AND DEPENDENT CHILDREN)**

1. MORTGAGE LOANS

Name and Address of Lender	Name of Borrower (Declarant/Spouse/Dependent Child)	Property/Asset Mortgaged	Original Loan and Date Incurred	Interest Rate and Term	Amount Paid for the Year	Balance Owning as at date of declaration

**PART V
DECLARATION**

I declare that I have given a full return of the particulars, as are known to me, of the income from every source whatsoever, and of the assets and liabilities, of my spouse, my dependent children and myself; required to be filed in accordance with the provisions of the Civil Asset Recovery, Management and Unexplained Wealth Act, 2019.

Dated this day of 20.....

.....
Signature of Declarant

SCHEDULE 2—CONTINUED

(Section 72)

FORM 2

STATUS REPORT ON PROPERTY

NAME OF PROPERTY MANAGER: _____		DATE: _____	
DATE OF ORDER: _____		PRESIDING JUDGE: _____	
TYPE OF PROPERTY:	DESCRIPTION OF PROPERTY:	VALUE OF PROPERTY:	LOCATION OF PROPERTY:
SIGNATURE _____			DATE _____

SCHEDULE 3

(Section 76)

CONSEQUENTIAL AMENDMENTS

First Column <i>Written Laws</i>	Second Column <i>Amendment</i>
The Proceeds of Crime Act, Chap. 11:27	<p>The Proceeds of Crime Act is amended—</p> <p>(a) in section 58A—</p> <p style="padding-left: 40px;">(i) in paragraph (g), by deleting the word “and”;</p> <p style="padding-left: 40px;">(ii) in paragraph (h), by deleting the word “.” and substituting the words “; and”; and</p> <p style="padding-left: 40px;">(iii) by inserting after paragraph (h), the following new paragraph:</p> <p style="padding-left: 80px;">“(i) cash or proceeds of the sale of any property, real or personal forfeited to the State under the Civil Asset Recovery and Management and Unexplained Wealth Act.”;</p> <p>(b) in section 58B, by inserting after subsection (2) the following new subsection:</p> <p style="padding-left: 40px;">“ (3) The Civil Asset Recovery and Management Agency shall be responsible for managing property under subsection (1) or (2) until it is sold and where it is to be sold, the Civil Asset Recovery and Management Agency shall be responsible for managing the sale on behalf of the State.”;</p> <p>(c) in section 58C, by inserting after subsection (2) the following new subsection:</p> <p style="padding-left: 40px;">“ (3) The Civil Asset Recovery and Management Agency shall be responsible for managing property under subsection (1) or (2) until it is sold and where it is to be sold, the Civil Asset Recovery and Management Agency shall be responsible for managing the sale on behalf of the State.”;</p>

SCHEDULE 3—CONTINUED

(Section 76)

CONSEQUENTIAL AMENDMENTS

(d) in section 58E—

- (i) in paragraph *(c)*, by deleting the word “and”;
- (ii) in paragraph *(f)*, by deleting the word “.” and substituting the words “; and”; and
- (iii) by inserting after paragraph *(f)*, the following new paragraph:

“*(g)* use by the Civil Asset Recovery and Management Agency established under section 8 of the Civil Asset Recovery and Management and Unexplained Wealth Act in the performance of its functions.”; and

(e) in section 58M—

- (i) in paragraph *(b)*, by deleting the words “; and”;
- (ii) in paragraph *(c)*, by deleting the word “.” and substituting the words “; and”; and
- (iii) by inserting after paragraph *(c)*, the following new paragraph:

“*(d)* the management and control of the Civil Asset Recovery and Management Fund established under section 21 of the Civil Asset Recovery and Management and Unexplained Wealth Act.”.

The Financial
Intelligence Unit of
Trinidad and Tobago
Act, Chap. 72:01

In section 8(1) by deleting the words “and the Anti-terrorism Act” and substituting the words “, the Anti-terrorism Act, the Economic Sanctions Act and the Civil Asset Recovery and Management and Unexplained Wealth Act.”.

Passed in the House of Representatives this day
of , 2019.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day
of , 2019.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 6 of 2019

FOURTH SESSION
ELEVENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property through the use of the remedies of restriction in dealings with civil assets restriction and forfeiture of criminal property and the management of criminal property, and unexplained wealth orders and matters incidental thereto

Received and read the

First time

Second time

Third time
