

THE MISCELLANEOUS PROVISIONS (MUTUAL ASSISTANCE IN CRIMINAL MATTERS, PROCEEDS OF CRIME, FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO, CUSTOMS AND EXCHANGE CONTROL) BILL, 2017

EXPLANATORY NOTES

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

This Bill seeks to amend the Mutual Assistance in Criminal Matters Act, Chap. 11:24, the Proceeds of Crime Act, Chap. 11:27, the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, the Customs Act, Chap. 78:01, the Exchange Control Act, Chap. 79:50 and contains six clauses.

Clause 1 of the Bill would provide the short title of the Bill.

Clause 2 of the Bill would amend **the Mutual Assistance in Criminal Matters Act** by deleting section 22(2)(k), which empowers the Central Authority to refuse a request that relates to a criminal offence under the tax laws of a Commonwealth country.

Clause 3 of the Bill would seek to make the prosecution for offences under the Act simpler. **The Proceeds of Crime Act** is therefore amended in section 44(2) by deleting subsection (2), which provides that money laundering is an indictable offence. The clause goes on to amend section 53(1), by deleting the existing penalties for money laundering and substituting new penalties for the offence which would make the offence triable both on summary conviction and on indictment.

Clause 4 of the Bill would amend **the Financial Intelligence Unit of Trinidad and Tobago Act** in section 2 in the definition of “Egmont Group” to provide that the Egmont Group means that group of Financial Intelligence Units which subscribe to the Egmont Group Statement of Purpose and its Principles for Information Exchange Between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases.

Section 8(3) of the Act is being amended to empower the Financial Intelligence Unit (hereinafter referred to as “the FIU”) to-

- (a) collect information as required for tactical and strategic analysis in order to generate trends and typologies; and
- (b) disseminate financial intelligence information to local and foreign authorities on their own motion or upon request.

Section 17, of the Financial Intelligence Unit of Trinidad and Tobago Act is also being amended to require the FIU to publish by Notices in the *Gazette* and in two newspapers in daily circulation in Trinidad and Tobago a list of the countries identified by -

- (a) the Financial Action Task Force, as non-compliant or not sufficiently compliant with its recommendations as jurisdictions that have strategic anti-money laundering and counter financing of terrorism deficiencies; and
- (b) an FSRB as having strategic anti-money-laundering and terrorist financing deficiencies.

Section 18G, of the Financial Intelligence Unit of Trinidad and Tobago Act is also being amended to include new subsections (2A) to (2E) which would require any person to provide to the FIU any documents, information or explanation on any information, provide for a warrant under subsection (2) to include a requirement to provide a police officer with any information or explanation on any information, make it an offence to obstruct a police officer in the execution of his duties and to knowingly give false or misleading information to a police officer and to protect individuals from self-incrimination.

The clause also seek to amend section 27 of the Financial Intelligence Unit of Trinidad and Tobago Act, by providing a general penalty for contravention of Regulations made under the Act.

Finally the clause would seek to amend the Financial Intelligence Unit of Trinidad and Tobago Regulations, in regulation 19(1), to allow the Director of the FIU to disseminate financial intelligence to local authorities and enforcement agencies on his own motion or upon request. Regulation 26(1)(d)(ii) would be amended to allow the FIU to provide financial institutions, listed businesses and other public or private bodies with reports on the current techniques, methods and trends or typologies and examples of financing of terrorism cases. Regulation 28(1), would be amended to provide that the form for the registration of a supervised entity shall be approved by the FIU. Regulations 29 and 29A, are being amended to shorten the time period for notifying the FIU of a change in registered office of a supervised entity or of a change in Directors, Owners, Partners or Compliance officers respectively, from six months to thirty days. Finally, the Schedule to the Regulations which contained a prescribed form as the FIU is now being permitted to develop its own forms and thereby make changes when required.

Clause 5 of the Bill would seek to amend **the Customs Act** in section 2, to delete the definition of “waters of Trinidad and Tobago” and substituting a new definition that defines the “waters of Trinidad and Tobago” as the territorial sea in accordance with section 3 of the Territorial Sea Act. The clause would go in section 23 to now empower the Comptroller of Customs to adjust the value of goods accepted by an Officer, within four years from the date of entry of the goods. Section 23 of the Customs Act would be amended to insert a new subsection (2B) which would

give the Comptroller of Customs the power to detain subsequent shipments of an importer, where an adjustment is made to the value of his goods and he has not paid the adjustment and fails to commence proceedings before the Appeal Board within six months from the date of notification. Section 45 of the Act is also being amended to include firearms and certain firearms accessories as goods prohibited from importation into Trinidad and Tobago except with the permission of the Commissioner of Police. However the prohibition would not apply to the holders of Firearm Users' Licence.

The clause would also seek to amend section 228(4) of the Act, to make it an offence for an importer or exporter to neglect or refuse to provide certain documents required under the Act or to subscribe to a declaration as required by the Act. The clause goes on to insert a new section 259, which would empower the Minister to declare by Order that a treaty entered into between Trinidad and Tobago and another territory in relation to the provision of mutual assistance between or amongst Customs Administrations shall have the force of law in Trinidad and Tobago with limitations, conditions, exceptions or qualifications as required, and only where the treaty provides for the determination by either party to the Treaty.

Finally, the clause would introduce a new section 274A which would require every importer, exporter, agent, customs broker, customs clerk, warehouse-keeper or operator of a port, transit shed or sufferance wharf, conducting transactions under the Act or any other Customs law, to keep or cause to be kept all books, records, documents and any other information relating to the transaction for certain periods of time from the date the goods entered or were exported, and to make those books available to the Comptroller.

Clause 6 of the Bill would amend **the Exchange Control Act** in section 2, by inserting a definition of "bearer negotiable instrument". The clause goes on in section 22, to restrict the importation of any bearer negotiable instrument into Trinidad and Tobago without the permission of the Central Bank. The clause goes on to amend section 23, to restrict the exportation of any bearer negotiable instrument from Trinidad and Tobago without the permission of the Bank. Finally the clause would amend the Exchange Control (Import and Export) Order, 1993-

- (a) in clause 3, by inserting new subclauses (5), (6), (7) and (8) to exempt from section 22(1)(c) of the Act the importation into Trinidad and Tobago of bearer negotiable instruments brought in, or on the person or in the baggage of a traveller to the extent of twenty thousand Trinidad and Tobago dollars or five thousand United States dollars currency in value, and where it exceeds that value, to exempt the importation where a declaration is made to the Comptroller in respect of the amount exceeding twenty thousand Trinidad and Tobago dollars or five thousand United States dollars currency in value;

- (b) in clause 4, by inserting new subclauses (3) and (4), to exempt from section 22(1)(c) of the Act, the exportation of bearer negotiable instruments on the person or in the baggage of a traveller where the amount is to the extent of twenty thousand Trinidad and Tobago dollars or five thousand United States dollars currency in value, and where it exceeds that value, to exempt the exportation where a declaration is made to the Comptroller in respect of the amount exceeding twenty thousand Trinidad and Tobago dollars or five thousand United States dollars currency in value; and
- (c) in clause 5, to provide for bearer negotiable instruments expressed other than in Trinidad and Tobago or United States currency in value to be calculated at a rate determined by the Central Bank on the day on which they are to be imported or exported and where the rate is not readily ascertainable, at a rate to be determined by the Central Bank.

- (b) in section 8, in subsection (3)-
 - (i) in subparagraph (c)(ii), by inserting after the word “patterns,” the words “trends and typologies”; and
 - (ii) in subparagraph (f), by inserting after the word “may” the words “, on its own motion, or upon request”;
- (c) in section 12, in subsection (4), by inserting after the words “liable on”, the word “summary”;
- (d) in section 17-
 - (i) in subsection (1)(a)(i), by deleting the words “as noncompliant or not sufficiently compliant with its recommendations” and substituting the words “as jurisdictions that have strategic anti-money laundering and counter financing of terrorism deficiencies”;
 - (ii) by inserting after subsection (2), the following new subsections:
 - “ (3) The FIU may, where it deems necessary, publish by Notice in the *Gazette* and in at least two newspapers in daily circulation in Trinidad and Tobago, a list of the countries identified by an FSRB as having strategic anti-money laundering and terrorist financing deficiencies.
 - (4) For the purposes of this section, “FSRB” means a FATF-style regional body established to effectively develop, promote and implement the Recommendations and policies of the Financial Action Task Force in order to combat money laundering, terrorist financing and proliferation financing.”;
- (e) in section 18G, by inserting after subsection (2), the following new subsections:

“ (2A) In order to secure compliance with the written laws listed under section 18F, the FIU may require any person to provide to it any documents, information or explanation on any information.

(2B) A warrant under subsection (2) may include the requirement to provide a police officer with any information or any explanation on any information in accordance with subsection (1)(b).

(2C) Without prejudice to any other written law, a person who—

- (a) willfully obstructs a police officer in the exercise of his powers or the performance of his duties under this section;
 - (b) willfully fails to comply with any requirement properly made to him by any such police officer; or
 - (c) without reasonable excuse, fails to give such police officer any other assistance which he may reasonably require to be given for the purpose of exercising his powers or performing his duties under this section,
- commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months.

(2D) A person who, when required to give information to a police officer in the exercise of his powers or the performance of his duties under this section, knowingly gives false or misleading information to any such police officer is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for twelve months.

(2E) Nothing in this section shall be construed as requiring any person to give any information which may incriminate him.”; and

(f) in section 27, by inserting after subsection (2), the following new subsection:

“ (3) Notwithstanding section 63 of the Interpretation Act, a person who commits an offence under Regulations made under this Act may be liable on conviction on indictment.

(4) A person who contravenes Regulations made under this section commits an offence and shall be liable-

- (a) on summary conviction to a fine of five hundred thousand dollars and to a further fine of twenty-five thousand dollars for each day that the offence continues; or
- (b) on conviction on indictment to a fine of one million dollars and to a further fine of fifty thousand dollars for each day that the offence continues.”.

(2) The Financial Intelligence Unit of Trinidad and Tobago Regulations are amended –

- (a) in regulation 19(1), by inserting after the word “may” the words “on his own motion or”;
- (b) in regulation 26(1)(d)(ii), by inserting after the word “laundering” the words “and financing of terrorism”;
- (c) in regulation 28(1), by deleting the words “set out in the Schedule” and substituting the words “approved by the FIU”;
- (d) in regulation 29, by deleting the words “six months” and substituting the words “thirty days”;
- (e) in regulation 29A, by deleting the words “six months” and substituting the words “thirty days” and
- (f) by repealing the Schedule.

- (a) in section 2, by deleting the definition of “Waters of Trinidad and Tobago” and substituting the following definition:

“ “Waters of Trinidad and Tobago” means the territorial sea as defined in section 3 of the Territorial Sea Act.”;

Chap. 1:51

- (b)
in section 23-

- (i) in subsection (2A)-

(A) by deleting the words “one year” and substituting the words “six years”; and

(B) by inserting after the words “imported goods,” the words “and by notice in writing to the importer,”;

- (ii) by inserting after subsection (2A) the following new subsection:

“ (2B) Where an importer receives notice of an adjustment in accordance with subsection (2A) which results in further duties or taxes being payable and the importer or consignee fails to commence proceedings before the Appeal Board within six months from the date he received notice of the adjustment, the Comptroller may refuse entry or delivery of subsequent shipments of the importer or consignee who has not paid the adjustment in addition to commencing proceedings under section 246 for the recovery of same.”;

- (c) in section 45-

- (i) in subsection (1), by deleting paragraph (c) and substituting the following paragraph:

“(c) firearms, ammunition, bullet-proof vests and firearm accessories including-

(i) lasers;

(ii) lights;

(iii) holsters;

(iv) scopes; and

(v) tools for the purposes of maintaining a firearm,

except with the written permission of the Commissioner of Police;”; and

(iii) by inserting after subsection (1) the following new subsection:

“ (1A) Subsection (1)(c), in relation to firearm accessories, shall not apply to the holder of Firearm Users’ Licence under the Firearms Act.”;

(d) in section 228-

(i) in subsection (1)-

(A) by deleting the word “three” where it first occurs, and substituting the word “six”;

(B) by deleting the words “three months”, and substituting the words “thirty days”;

(C) by deleting the word “six” and substituting the word “three”; and

(D) by deleting the words “date of the written request”, and substituting the words “date he received the written request”; and

(ii) in subsection (4)-

(A) by deleting the words “neglects or refuses” and substituting the word “fails”; and

(B) by deleting all the words from the words “, the Comptroller” to the end and substituting the words “he commits an offence and is liable on summary conviction to a fine of one hundred and twenty-five thousand dollars.”;

(e) by inserting after section 259 the following new section:

“Declaration of
treaty in force

259A. (1) Where a treaty has been concluded between Trinidad and Tobago and any other territory in relation to the provision of mutual assistance between or amongst Customs Administrations, the Minister 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 Minister 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-

“Customs Administration” means the department or agency of a State responsible for the enforcement of its statutory or regulatory provisions concerning the importation, exportation, transit and transshipment of goods; and

“treaty” means any Convention, Treaty, Agreement or Arrangement for the time being in force between Trinidad and Tobago and any other territory.”;

(f) by inserting after section 274 the following new section:

“ Requirement
to keep
documents

274A. (1) Subject to subsection (2), every importer, exporter, agent, customs broker, customs clerk, warehouse-keeper or operator of a port, transit shed or sufferance wharf, who conducts any transaction under this Act or any other Customs law, shall keep or cause to be kept at his place of business or residence in Trinidad and Tobago or at such other place as may be approved by the Comptroller, all books, records, documents and any other information relating to the transaction for a period of not less than six years from the date the goods subject to the transaction were entered or exported.

(2) Where goods under this section have not yet been entered, all documents, books, records and any other information relating to the goods shall be kept for a period of seven years.

(3) A person referred to in subsection (1) shall, as and when required by an Officer in writing, but within thirty days from the date of receipt of the written request -

(a) make the books, records,
documents or other

information requested
available to the Officer;
and

(b) provide copies of the
books, records,
documents or other
information, as required.

(4) Subject to subsection (2),
every Officer shall cause to be kept at
such place as the Comptroller may
direct, all documents, books, records
and any other information he receives
in the execution of his duties for a
period of not less than six years from
the date the goods were entered or
exported.

(5) A person referred to in
subsection (4) shall, as and when
required by the Comptroller in writing,
within thirty days of the date of receipt
of the written request, provide the
books, records, documents or other
information available to the
Comptroller.

(6) A person who fails to
comply with this section commits an
offence and is liable on summary
conviction to a fine of one hundred and
twenty-five thousand dollars.”;

Chap. 79:50
amended

6. (1) The Exchange Control Act is amended –

(a) in section 2, by inserting after the definition of
“authorized dealer”, the following new definition:

“bearer negotiable instrument” means monetary instruments in bearer form such as travellers’ cheques; negotiable instruments including cheques, promissory notes and money orders that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete instruments including travellers’ cheques, cheques, promissory notes and money orders signed but with the payee’s name omitted;”;

(b) in section 22(1)-

(i) in paragraph (b), by inserting after the word “,” the word “and”; and

(ii) by inserting after paragraph (b), the following new paragraph:

“(c) any bearer negotiable instrument;”;

(c) in section 23(1) by inserting after paragraph (a), the following new paragraph:

“(b) any bearer negotiable instrument.”.

(2) The Exchange Control (Import and Export) Order, 1993 –

(a) in clause 3, by inserting after subclause (4), the following new subclauses:

“ (5) There shall be exempted from the provisions of section 22(1)(c) of the Act, the importation into Trinidad and Tobago of bearer negotiable instruments brought in on the person or in the baggage of a traveller to the extent of TT\$20,000.00 currency in value.

(6) There shall be exempted from the provisions of section 22(1)(c) of the Act, the importation into Trinidad and Tobago of bearer negotiable instruments brought in on the person

or in the baggage of a traveller to the extent of US\$5,000.00 currency in value.

(7) There shall be exempted from the provisions of section 22(1)(c) of the Act, the importation into Trinidad and Tobago of bearer negotiable instruments brought in on the person or in the baggage of a traveller amounting to more than TT\$20,000.00 currency in value in respect of which a declaration is made to the Comptroller under the Customs Act.

(8) There shall be exempted from the provisions of section 22(1)(c) of the Act, the importation into Trinidad and Tobago of bearer negotiable instruments brought in on the person or in the baggage of a traveller amounting to more than US\$5,000.00 currency in value in respect of which a declaration is made to the Comptroller under the Customs Act.”;

- (b) in clause 4, by inserting after subclause (2), the following new subclauses:

“ (3) There shall be exempted from the provisions of section 23(1)(e) of the Act, the exportation from Trinidad and Tobago by any traveller on his person or in his baggage of bearer negotiable instruments as follows:

- (a) which are to the extent of TT\$20,000.00 currency in value; or

(b) amounting to more than TT\$20,000.00 currency in value in respect of which a declaration is made to the Comptroller under the Customs Act.

(4) There shall be exempted from the provisions of section 23(1)(e) of the Act, the exportation from Trinidad and Tobago by any traveller on his person or in his baggage of bearer negotiable instruments as follows:

(a) which are to the extent of US\$5,000.00 currency in value; or

(b) amounting to more than US\$5,000.00 currency in value, in respect of which a declaration is made to the Comptroller under the Customs Act.”; and

(c) in clause 5, by inserting after the words “legal tender in any country” the words “or bearer negotiable instruments expressed other than in Trinidad and Tobago or United States currency in value”.

Passed in the House of Representatives this day of , 2017.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2017.

Clerk of the Senate

I confirm the above.

President of the Senate