

The Proceeds of Crime (Amendment) Bill, 2009

EXPLANATORY NOTE

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

The purpose of the Proceeds of Crime (Amendment) Bill, 2009 is to amend the Proceeds of Crime Act, 2000 to -

- (c) enable Trinidad and Tobago to achieve a higher compliance rating with the Revised Forty Recommendations of the Financial Action Task Force on Money Laundering and the Nine Special Recommendations on Terrorist Financing (“the Recommendations”);
- (b) improve the functionality of the Act; and
- (c) correct erroneous cross references in the Act.

The scope of the power vested in the Minister of Finance to make regulations under section 56 of the Act, is too restrictive to enable regulations of the type contemplated by the Recommendations to be made.

As a result of the additional powers that are necessary for compliance with the Recommendations, the Bill would require a two thirds majority voting in both Houses of Parliament and would therefore commence with a Preamble required by section 13 of the Constitution.

Clause 1 would provide the short title to the Act.

Clause 2 would define the words “the Act“.

Clause 3 would delete the long title of the Act and substitute a long title relevant to the Act which would result from the proposed amendments.

Clause 4 would amend section 2, to provide a new definition of the words “specified offence” and define other words and terms used in the Act. This clause would also delete subsections (6) and (7) of the said section 2 which would be re-inserted elsewhere in the Act.

Clause 5 would amend the entire Act, by deleting the term “person engaged in relevant business activity” wherever those words occur and substituting the term “listed business”.

Clause 6 would amend section 3(1) of the Act, to clarify the role of the Magistrate under section 110 of the Summary Courts Act, Chap 4:20 under which the Court may direct that a certain course of action be taken if a defendant is convicted of an offence and the Magistrate is of the view that he has benefited from the commission of the offence..

Clause 7 would amend section 8 to correct incorrect cross references in that section of the Act.

Clause 8 would amend section 10 to re-insert subsections (6) and (7) of section 2, which were deleted at clause 4.

Clauses 9, 10, 11, 12, 13 and 14 would amend sections 12, 15, 16, 18, 28, and 30 of the Act respectively, to correct errors in cross references appearing in those sections.

Clause 15 would effect miscellaneous amendments to section 32 of the Act.

Clause 16 would amend section 33 of the Act to delete certain words used in that section.

Clause 17 would also affect miscellaneous amendments to section 34 of the Act.

Clause 18 would delete subsection (1) of section 38, and would substitute the same, with two subsections. This clause would also delete and substitute subsections (4) and (11).

Clause 19 would also correct a cross reference in section 39.

Clause 20 would create the offence of money laundering and categorize it as an indictable offence.

Clauses 21, 22, 23, 24 and 25 would delete the words “or drug trafficking” from sections 43, 44, 45, 46(1), 47 and 50 of the Act.

Clause 26 would amend section 51, by deleting subsections (7) and (8).

Clause 27 would effect miscellaneous amends to section 52.

Clause 28 would repeal and substitute subsection (1) of section 53 to stipulate the

penalties in respect of the offences relating to the disclosure of an investigation of a money laundering offence, by a police officer or any other person.

Clause 29 would amend section 55, to insert a new subsection (3A) and to make other amendments to this section. The new subsection, would introduce the objective standard for reporting a matter to the Financial Intelligence Unit and would clarify the period for so reporting.

Clause 30 would repeal and substitute subsection (1) of section 56, to expand the scope of regulations which could be made under that section of the Act. This clause would also amend subsection (2), to delete the word “affirmative” and substitute the word “negative” thereby providing for these regulations to be subject to the procedure of the negative resolution of Parliament.

Clause 31 would amend section 57(1) to provide a penalty for breach of regulations made under section 56.

Clause 32 would authorize the Attorney General to sign an agreement with a government of a foreign state for reciprocal sharing of the proceeds from disposition of property confiscated, forfeited or seized from the defendant.

Clause 33 would provide for the Intelligence Unit to perform the functions of the Supervisory Authority, prior to the appointment of such an authority for certain financial institutions and listed business.

Clause 34 would provide for the repeal and substitution of the First Schedule.

Clause 35 would provide for amendments to the Third Schedule.

A BILL

An Act to amend the Proceeds of Crime Act, Chap 11:27

Preamble

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

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

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

Enactment.

ENACTED by the Parliament of Trinidad and Tobago as follows:

Short title.

1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2009.

Interpretation.

2. In this Act, unless the context otherwise required, “the Act” means the Proceeds of Crime Act.

Long title repealed and substituted.

3. The Long Title of the Act is repealed and the following is substituted:

“An Act to establish the procedure for the confiscation of the proceeds of certain offences and for the criminalizing of money laundering”.

Section 2 amended.

4. Section 2 of the Act is amended –

(a) by deleting the definition of “Designated Authority” and substituting the following definition:

“ “FIU” means the Financial Intelligence Unit of
Trinidad and Tobago established under section
3 of the Financial Intelligence Unit of Trinidad
and Tobago Act, 2009;”;

(b) in the definition of “financial institution” by –

(i) deleting the word “Banking” occurring in
paragraph (a) and substituting the words
“Exchange Control”; and

(ii) deleting the words “Central Bank” occurring in
paragraph (f) and substituting the words
“Exchange Control”;

(c) by inserting after the definition “import”, the following
definition:

“ “ listed business” means a business or profession
listed in the First Schedule;”;

(d) in the definition of “police officer” by –

(i) deleting the word “and” in line three;

(ii) inserting after the semi-colon at the end
thereof the words “or any officer of an
agency of the state, lawfully vested with
investigative powers similar to those
exercisable by the Police appointed under
the Police Service Act, 2006.”.

(e) in the definition “Rules of Court” by inserting after the
word “prescribed” the words “for the conduct of
proceedings provided for in this Act.”;

(f) by deleting the definition of “security” and substituting the
following definition:

“security” means any document, instrument or writing
evidencing ownership of, or any interest in the
capital, debt, profits, earnings or royalties of any
person or enterprise and without limiting the
generality of the foregoing, includes any:

(a) bond, debenture, note or other evidence of
indebtedness;

(b) share, stock, unit or unit certificate,
participation certificate, certificate of share or
interest;

- (c) document, instrument or writing commonly known as a security;
- (d) document or writing evidencing an option, subscription or other interest in respect of -
 - (i) a financial institution;
 - (ii) a credit union within the meaning of the Co-operative Societies Act; or
 - (iii) an insurance company;
- (e) investment contract;
- (f) document, instrument or writing constituting evidence of any interest or participation in-
 - (i) a profit sharing arrangement or agreement;
 - (ii) a trust; or
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral rights;
- (g) by deleting in the definition of “specified offence” and substituting the following definition:
 - “ “specified offence” means-
 - (a) an indictable offence committed in Trinidad and Tobago from which proceeds of crime may be derived and whether or not the offence is tried summarily;
 - (b) any act committed or omitted to be done outside of Trinidad and Tobago, which would have constituted an indictable offence within the meaning of paragraph (a); or
 - (c) an offence specified in the Second Schedule.”; and
- (h) by deleting subsections (6) and (7).

Act amended.

5. The Act is amended, by deleting the words-
 - (a) “Designated Authority” wherever they occur and substituting the word “FIU”; and
 - (b) “persons engaged in relevant business activity” wherever they occur, and substituting the words “listed business”.

Section 3 amended.

6. Section 3(1) of the Act is amended by deleting the word “Where” and substituting the words “Notwithstanding section 110 of the Summary Courts Act where”.

Section 8 amended.

7. Section 8 of the Act is amended-

- (a) in subsection 4(b), by deleting the words “(4)(b)” and substituting the words “(3)(b)”; and
- (b) in the second line of subsection (5) by deleting the word “(7)” and substituting the word “(6)”.

Section 10 amended.

8. Section 10 of the Act is amended, by -

- (a) deleting the word “and” at the end of paragraph (a);
- (b) deleting the full stop at the end of paragraph (b) and substituting a semicolon; and
- (c) inserting after paragraph (b) the following new paragraphs:

“(c) proceedings for an offence are instituted –

- (i) where a Magistrate or Justice issues a summons or warrant under section 38 or 41 of the Summary Courts Act in respect of the offence;
- (ii) where a person is charged with the offence, after being taken into custody without a warrant; and
- (iii) when an indictment is preferred against an accused person; and

(d) proceedings for an offence are concluded on the occurrence of the following events -

- (i) the discontinuance of the proceedings;
- (ii) the acquittal of the defendant;
- (iii) the quashing of a conviction for an offence where no retrial is ordered;
- (iv) the grant of the President’s pardon in respect of the offence;
- (v) the Court sentencing or otherwise dealing with the defendant in respect of the offence;

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- (vi) the satisfaction of a confiscation order made in proceedings by payment of the amount due under the order or by the defendant serving imprisonment in default.”.

- Section 12 amended 9. Section 12 of the Act is amended -
- (a) in subsection (6), by deleting the words “10(2)” and substituting the words “11(2)”; and
 - (b) in subsection (7)(b) and subsection (8) by deleting the words “10(2)(b)” and substituting the words “11(2)(b)”; and
 - (c) deleting the words “10(2)(b)” and substituting the words “11(2)(b)”.
- Section 15 amended 10. Section 15 of the Act is amended in subsection (9), by deleting the words “5(2)” and substituting the words “5(3)”.
- Section 16 amended 11. Section 16 of the Act is amended in subsection (6), by deleting the word “and” after the words “section 5(2)” and substituting the word “or”.
- Section 18 amended 12. Section 18 of the Act is amended in subsection (4)(a) and (b), by deleting the words “(2)(a)” wherever they occur and substituting the words “(3)(a)”.
- Section 28 amended 13. Section 28 of the Act is amended in subsection (3), by deleting the words “section 25” and substituting the words “section 29”.
- Section 30 amended 14. Section 30 of the Act is amended by deleting the word “27” and substituting the word “28”.
- Section 32 amended 15. Section 32 of the Act is amended –
- (a) in subsection (1) by–
 - (i) inserting the word “or” after the semi-colon at the end of paragraph (b); and
 - (ii) inserting a comma at the end of paragraph (c) and by

- deleting paragraph (d);
- (b) in subsection (1)(a), by deleting the words “(2)(a)(i)” and substituting the words “(2)(a)”;
- (c) in subsection (6)(c)(ii), by deleting the words “or excluded material”;
- (d) in subsection (10)(b), by deleting the words “(2)(a)(ii)” and substituting the words “(2)(b)”;
- (e) in subsection (11), by deleting the words “or excluded material”; and
- (f) by deleting the word “associated” in relation to a person means, and substituting the words “For the purposes of this section.”.

Section 33 amended 16. Section 33 of the Act is amended in subsection (5), by deleting the words “and excluded material”.

Section 34 amended 17. Section 34 of the Act is amended –

- (a) in subsection (1), by deleting the words “government department”;
- (b) in subsection (2)(a), by deleting the words “section 19(1) and 20(1)” and substituting the words “sections 19(1), 20(1) and 21(1)”;
- (c) in subsection (4)(a), by deleting the words “18 to” and substituting the words “19”;
- (d) in subsection (4)(b), by deleting the words “18 or 20” and substituting the word “19”; and
- (e) in subsection (7)(b), by deleting the words “exercising functions”.

Section 38 amended 18. Section 38 of the Act is amended –

- (a) by deleting subsection (1) and substituting the following subsections:
 - “(1) A Customs and Excise Officer of the rank of Grade III or higher, on duty at a port of entry into Trinidad and Tobago, or a police officer of

the rank of sergeant or higher, on duty at any place, may seize from any person and in accordance with this section, detain any cash in accordance with this section if its amount is more than the prescribed sum.

(1A) A Customs and Excise officer or police officer referred to in subsection (1), may seize and detain cash only, where he has reason to believe that the cash directly or indirectly represents any person's proceeds of a specified offence, or is intended by any person for use in the commission of such an offence.”;

- (b) by deleting subsection (4) and substituting the following subsection:

“ (4) Any application for an order under subsection (2) or (3) shall be made before a magistrate by the Customs and Excise Officer or a police officer of the grade or rank referred to in subsection (1).”;

- (c) in subsection (10)(b), by deleting all the words after the word “Minister”; and

- (d) by deleting subsection (11) and substituting the following subsections:

“(11) In determining under this section, whether an amount of currency other than Trinidad and Tobago currency is less than the prescribed sum, that amount shall be converted at the prevailing rate of exchange.

(12) The Minister may for the purposes of subsection (1), make an Order prescribing the sum referred to therein.

(13) An Order made under subsection (12), shall be subject to negative resolution of Parliament.”.

- Section 39 amended. 19. Section 39 of the Act is amended in subsection (5)(b), by deleting the words “38(2)” and substituting the words “40(2)”.
- Section 42A inserted. 20. The Act is amended by inserting immediately after the Heading “PART II MONEY LAUNDERING” the following new section:
“Money laundering 42A. (1) An offence committed under sections 43 to 46 shall be known as a money laundering offence and the term “money laundering” shall be construed accordingly.
(2) The offence of money laundering is an indictable offence.”.
- Section 43 amended. 21. Section 43 of the Act is amended by deleting the words “drug trafficking” and substituting the words “a specified offence”.
- Section 44 and 45 amended. 22. Sections 44 and 45 of the Act are amended by deleting the words “or drug trafficking” wherever they occur.
- Section 46 amended. 23. Section 46 of the Act is amended in subsection (1), by deleting the words “or drug trafficking”.
- Section 47 amended. 24. Section 47 of the Act is amended in subsection (1), by deleting the words “or drug trafficking”.
- Section 50 amended. 25. Section 50 of the Act is amended by deleting the words “or drug trafficking” wherever they occur.
- Section 51 amended. 26. Section 51 of the Act is amended by deleting subsections (7) and (8).
- Section 52 amended. 27. Section 52 of the Act is amended –
(a) in subsection (1), by deleting paragraph (c) and substituting the following paragraph:
“(c) he does not disclose the information or other matter

- (b) by repealing subsection (5) and substituting the following subsection:
 - “ (5) Every financial institution or listed business shall develop and implement a written compliance programme, approved by the FIU.”;
- (c) in subsection (7), by deleting the word “(12)” and substituting the word “(10)”;
- (d) deleting subsection (10); and
- (e) in subsections (11) and (12), by inserting after the words “financial institution” the words “or listed business”.

Section 56 amended

30. Section 56 of the Act is amended by-

- (a) repealing subsection (1) and substituting the following subsection:
 - “ (1) The Minister to whom responsibility for finance is assigned, may make regulations prescribing the-
 - (a) type of records to be kept by a financial institution or listed business and the type of information to be included in these records;
 - (b) procedure to be followed in implementing subsections (5) and (6) of section 55;
 - (c) periods for which and the methods by which the records referred to in paragraph (a) may be retained;
 - (d) measures which a financial institution or listed business shall implement to –
 - (i) ascertain the identity of persons with whom they are dealing; and
 - (ii) treat with circumstances in which sufficient identification data is not made available by an applicant or business;
 - (e) manner in which the Supervisory Authority for-
 - (i) financial institutions which are not licensed under the Financial Institutions Act or the Securities Industry Act; and
 - (ii) listed businesses,

may be selected for the purpose of ensuring compliance with this Act; and

(f) generally, for the purpose of giving effect to this Act.”; and

(b) deleting in subsection (2), the word “affirmative” and substituting the word “negative”.

Section 57 amended

31. Section 57(1) of the Act is amended by inserting after the word “55” the words “and any regulations made under section 56”.

Section 58 amended

32. Section 58 of the Act is amended by –

(a) by inserting after subsection (3), the following subsections:

“ (3A) The Attorney General may enter into agreement with the government of any foreign state for the reciprocal sharing of the proceeds or disposition of–

(a) property confiscated, forfeited or seized under this Act; or

(b) property confiscated, forfeited or seized by that foreign state,

in circumstances where law enforcement agencies of that foreign state, or of Trinidad and Tobago, as the case may be, have participated in the investigation of the offence that led to the confiscation, forfeiture or seizure of the property or if the law enforcement agencies’ participation led to the confiscation, forfeiture or seizure of the property under this Act.”; and

(b) inserting after the word “Minister” in subsection (4), the words “with responsibility for finance”.

Transitional provision.

33. Until regulations are made under section 56 for the selection of

the Supervisory Authority, the FIU shall be the Supervisory Authority for the -

- (a) financial institutions at paragraphs (d), (h), and (i) of the definition of “financial institution”; and
- (b) listed business.

First Schedule
amended

34. The Act is amended by deleting the First Schedule and substituting the following Schedule:

“FIRST SCHEDULE

(Section 2)

LISTED BUSINESS

	FIRST COLUMN	SECOND COLUMN
	TYPE OF BUSINESS	INTERPRETATION
	REAL ESTATE	Any natural or legal person, partnership or firm carrying on the business of buying, selling or leasing land, any interest in land or any buildings thereon and appurtenances thereto.
Chap. 48:01	MOTOR VEHICLE SALES	Any natural or legal person, firm or partnership, carrying on the business of selling or leasing new or used motor vehicles as defined under the Motor Vehicles and Road Traffic Act.
	MONEY OR VALUE TRANSFER SERVICES	A financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money value

		service belongs.
Chap.11:19	GAMING HOUSE	Any such business registered under the Gambling and Betting Act.
	POOL BETTING	- do -
Chap.21:04	NATIONAL LOTTERIES ON-LINE BETTING GAMES	The business of lotteries operated in accordance with the National Lotteries Act.
Chap: 84:06	JEWELRY	A business licensed under the Precious Metals and Precious Stones Act
Chap. 21:01	A PRIVATE MEMBERS' CLUB	A club within the meaning of the Registration of Clubs Act.
	AN ACCOUNTANT AN ATTORNEY-AT-LAW OR OTHER INDEPENDENT LEGAL PROFESSIONAL	Such a person is accountable when performing the following functions on behalf of a client: (a) buying and selling of real estate; (b) managing of client money, securities and other assets; (c) management of banking savings or securities accounts; (d) organization of contributions for the creation, operation or management of companies, legal persons or arrangements; (e) buying or selling of business entities.
	AN ART DEALER	An individual or company that buys and sells works of any category of art.”

Third Schedule amended

35. The Third Schedule to the Act is amended -

- (a) by deleting the heading thereof and substituting the following heading:

“SUSPICIOUS TRANSACTION/SUSPICIOUS
ACTIVITY REPORT”;

- (b) in Part III by inserting the words “transactions or” before the word “activity” wherever it occurs; and
- (c) by deleting Part IV.

Passed in the House of Representatives this day of , 2009.

Clerk of the House.

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

Clerk of the House.

Passed in the Senate this day of , 2009.

Clerk of the Senate.

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

Clerk of the Senate.