No. 13 of 2009

Second Session Ninth Parliament Republic of Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task force.

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REPUBLIC OF TRINIDAD AND TOBAGO—2009

THE FINANCIAL INTELLIGENCE UNIT OF TRINIDAD AND TOBAGO BILL, 2009

Explanatory Note

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

The purposes of the Financial Intelligence Unit of Trinidad and Tobago Bill, 2009 are to—

(a) establish by statute a department of the Ministry of Finance to be called the Financial Intelligence Unit, ("the Unit") with primary responsibility for ensuring compliance by Trinidad and Tobago with the Revised Forty Recommendations and the Nine Special Recommendations on Terrorist Financing issued in 2003 by the Financial Action Task Force. (This responsibility is now being partly undertaken administratively, by a Unit of the Ministry of National Security);

(b) provide for its local and international functions and other powers; and

(c) empower the Unit and by extension its Director, to conduct, the degree of oversight over financial institutions identified in the Proceeds of Crime Act, 2000 and types of business listed in the First Schedule, necessary for the undertaking of the responsibility at paragraph *(a)*.

On account of the nature of the powers being vested in the department, the Bill would require a majority vote of not less than three-fifths of both Houses of Parliament in accordance with section 13 of the Constitution. Its provisions therefore commence with the Preamble required by that section.

Part I would contain preliminary clauses and contain clauses 1 and 2.

Clause 1 would contain the short title and commencement provisions.

Clause 2 would contain the interpretation of certain words and expressions used in the Bill.

Part II "Establishment and Staff of the FIU" would contain clauses 3 to 6.

Clause 3 would establish the FIU and would provide for its staff.

Clause 4 would provide for the status of the Director as Head of the FIU with overall responsibility for the supervision of the department and implementation of the anti-money laundering policies of the Financial Action Task Force.

Clause 5 would provide for circumstances in which a person is no longer employed by the Unit.

Clause 6 would provide for the Oath of Office to be taken by officers employed with the Unit.

Part III "Functions and Powers of the FIU" would contain clauses 7 to 17.

Clause 7 would detail the functions of the FIU.

Clause 8 would assign to the FIU specific responsibility for monitoring the effectiveness of the system for implementation of anti-money laundering policies of the Financial Action Task Force.

Clause 9 would mandate the FIU to provide a response to the financial institution or listed business after submission of a Suspicious Transaction or Suspicious Activity Report.

Clause 10 would detail the powers of the FIU.

Clause 11 would make it an offense for a financial institution or listed business to withhold information requested by the FIU.

Clause 12 would empower the FIU to grant approvals for the completion of certain transactions.

Clause 13 would empower the FIU to give certain instructions to financial institutions and listed business.

Clause 14 would authorize the FIU to forward a report to the relevant investigative authority when, after having received a Suspicious Transaction or Suspicious Activity Report, the Director is of the view that the report requires investigation.

Clause 15 would provide for the FIU to co-operate or liaise with other institutions in the performance of its functions.

Clause 16 would require the FIU to publish a list of countries that are not in compliance with the recommendations of the Financial Action Task Force, as well as information on typologies of money laundering offences for purposes of enhancing public awareness of this subject matter.

Clause 17 would place an obligation on the Director to submit an annual report to the Minister of Finance, on the performance of the FIU.

Part IV "Offences and Penalties" would contain clauses 19 to 27.

Clause 18 would identify the Director, Deputy Director and officers of the FIU as FIU officers for the purposes of the Part.

Clause 19 would provide the penalty for persons who do not return the identification provided by the FIU.

Clause 20 would provide the penalties for a financial institution or listed business which commits an offence under clause 11.

Clause 21 would provide the penalty for an offence of disclosure of information by a FIU officer otherwise than in the course of his duties.

Clause 22 would provide the penalty for disclosure of information by a person other than a FIU officer.

Clause 23 would provide for a penalty for disclosure of information by a FIU officer.

Clause 24 would provide protection from personal liability where a FIU officer does any or omits to do an act in good faith.

Clause 25 would provide for any conflict between this Act and any other Act where the subject matter is disclosure of personal information.

Clause 26 would empower the Minister to make regulations for the purpose of giving effect to the Act.

The Schedule would provide the form of the Oath of Office required by clause 6.

BILL

AN ACT to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task Force.

[, 2009]

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: Preamble

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:—

PART I

PRELIMINARY

Short title and commencement

1. This Act may be cited as the Financial Intelligence Unit of Trinidad and Tobago Act, 2009 and shall come into operation on a date to be fixed by the President by Proclamation published in the *Gazette*.

Interpretation

2. In this Act—

Chap. 11:27

"Act" means the Proceeds of Crime Act;

Chap. 1:01

"Constitution" means the Constitution of the Republic of Trinidad and Tobago;

"Deputy Director" means the Deputy Director of the FIU;

"Director" means the Director of the FIU;

"Egmont Group" means that group of Financial Intelligence Units which subscribe to the Egmont Principles for Information Exchange and Financial Intelligence for Money Laundering cases;

"Financial Action Task Force" means the task force established by the Group of Seven to develop and provide national and international policies to combat money laundering and terrorist financing;

"financial institution" has the meaning assigned to it in the Proceeds of Crime Act;

"FIU" means the Financial Intelligence Unit established under section 3;

"law enforcement authorities" include—

(a) the Police Service established under the Police Service Act, 2006; No. 7 of 2006

(b) the Customs and Excise Department established under the Customs Act; Chap. 78:01

(c) the Board of Inland Revenue established under the Income Tax Act; and Chap. 75:01

(d) any other agency of the State in which investigative powers similar to those exercisable by a police constable appointed under the Police Service Act, are lawfully vested;

"listed business" means a business listed in the First Schedule to the Act;

"Minister" means the member of the Cabinet to whom responsibility for finance is assigned; and

"proceeds of crime" has the meaning assigned to it in the Proceeds of Crime Act.

PART II

Establishment and Staff of the Financial Intelligence Unit

Establishment and staff of FIU

3. (1) There is hereby established a department of the Ministry of Finance, to be known as the Financial Intelligence Unit (hereinafter referred to as "the FIU"), for the purpose of performing the functions and exercising the powers vested in it under this Act and any other written law.

(2) The FIU shall consist of a Director and Deputy Director and such appropriate number of staff as may be necessary, for the performance of its functions.

Implementation of policies

4. The Director shall be the head of the FIU and shall be responsible for the overall supervision of the department and the implementation of anti-money laundering policies in accordance with this Act and any other law.

Identification documents

5. (1) An officer performing functions assigned to the FIU under this Act, shall be provided with identification documents signed by the Minister.

(2) Where a person is no longer employed with the FIU, he shall return forthwith any identification documents given to him, in accordance with subsection (1).

(3) A person who contravenes subsection (2) commits an offence.

Oath of Office

6. Before any officer commences duty under this Act, he shall take the Oath of Office attached to the Schedule.

PART III

FUNCTIONS AND POWERS OF THE FIU

Functions of FIU

7. (1) The FIU shall be the primary institution for the collection, analysis, dissemination and exchange of financial intelligence and information among law enforcement authorities, financial institutions and listed business in Trinidad and Tobago and internationally.

(2) The FIU shall also receive suspicious transaction and suspicious activity reports from financial institutions and listed business in accordance with this Act.

(3) In furtherance of the functions assigned to it under subsections (1) and (2), the FIU—

(a) may request financial information from a financial institution or listed business in order to facilitate the exercise of its powers under the Act;

(b) shall analyze and evaluate reports and information upon receipt thereof, to determine whether there is sufficient basis to transmit reports for investigation by any local or foreign law enforcement authority;

(c) shall collect information as required for—

(i) the annual and periodic reports in accordance with sections 15 and 16; and

(ii) tactical analysis, in order to generate activity patterns, investigate leads and identify possible future behaviour; and

(d) set reporting standards to be followed by financial institutions or listed business in furtherance of section 53(3) of the Act;

(e) engage in the exchange of financial intelligence with members of the Egmont Group;

(f) disseminate at regular intervals, financial intelligence and information to local and foreign authorities and affiliates within the intelligence community, including statistics on recent money laundering practices and offences;

(g) facilitate the sharing of information among local financial institutions and listed business;

(h) provide information, advice and assistance to persons and law enforcement authorities, in furtherance of an investigation; and

(i) provide assistance to financial institutions and listed business in connection with their obligations under the Act.

(4) For the purpose of—

(a) paragraph (3)*(e)*, exchange of intelligence shall be undertaken on the basis of reciprocity with an FIU which belongs to the Egmont Group; and

(b) paragraph (3)*(f)*, "local authorities" include investigative and prosecutorial authorities in respect of criminal matters and Supervisory Authorities and regulators, in respect of administrative sanctions and civil penalties.

Monitoring the effectiveness of the system

8. The FIU shall also implement a system for monitoring the effectiveness of its anti-money laundering policies by maintaining comprehensive statistics on—

(a) suspicious transaction or suspicious activity reports received and transmitted to law enforcement;

(b) money laundering investigations and convictions;

(c) property frozen, seized and confiscated; and

(d) international requests for mutual legal assistance or other co-operation.

Suspicious transaction or suspicious activity report

9. Where the FIU receives a suspicious transaction or suspicious activity report or information from a financial institution or listed business under the Act, it shall provide feedback in writing on the report or information to the financial institution or listed business.

Powers of FIU

10. Where, after the analysis of a suspicious transaction or suspicious activity report from a financial institution or listed business in accordance with section 7(3)*(b)*, the Director is of the view that further information may disclose that a specified offence has been or may be committed or the proceeds of crime are or may be located within Trinidad and Tobago, he may—

(a) request further information from a financial institution or listed business within a specified time, which information shall be provided accordingly; or

(b) take action in accordance with section 14.

Offence to withold information

11. Where the information requested under section 10*(a),* is not provided within the time specified, unless the time is extended by the Director, the financial institution or listed business or a director or officer thereof, commits an offence.

Approval for transaction

12. A financial institution or listed business may, where—

(a) a transaction appears to be suspicious; or

(b) a suspicious transaction or activity report has been submitted in respect of a customer or other person, who attempts a subsequent transaction,

seek the approval of the FIU to complete the transaction the Director may grant such approval with such conditions as he sees fit, but the granting of the approval shall not prejudice any analysis or evaluation being undertaken by the FIU.

Instructions to financial institutions

13. (1) The FIU may, where the circumstances set out in Regulations prescribed under section 26 exist, instruct a financial institution or listed business in writing, to suspend the processing of a transaction for a period not exceeding three working days, pending the completion of an analysis or evaluation of a suspicious transaction or suspicious activity report.

(2) Where such instructions are given, a financial institution, listed business or any other aggrieved person may apply to a judge to discharge the instructions of the FIU and shall serve notice on the FIU, to join in the proceedings, save however, that the instructions shall remain in force until the judge determines otherwise.

Investigation

14. (1) After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report, and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority to determine whether a money laundering offence has been committed, or whether the proceeds of crime are located in Trinidad and Tobago or elsewhere.

(2) Any department or agency of government to which a report is submitted under subsection (1), shall take appropriate action.

Co-operation and liaison with other authorities and persons

15. The FIU may, in the performance of its functions, co-operate and liaise with—

(a) the Central Bank and any other agency of Government;

(b) the relevant authorities specified by or under a treaty for co-operation on any matter provided for in this Act and to which Trinidad and Tobago is a party; and

(c) any other person who, in the opinion of the Director is able to assist in the provision of information relevant to an analysis of intelligence or other information.

Publication in the *Gazette* and in newspaper

16. The FIU shall publish—

(a) as frequently as is necessary, by Notices in the *Gazette* and in at least one newspaper in daily circulation in Trinidad and Tobago, a list of the countries identified by the Financial Action Task Force, as non-compliant or not sufficiently compliant with its recommendations; and

(b) periodically, information on trends and typologies of money laundering, locally and internationally, as well as appropriate statistics and any other information that would enhance public awareness and understanding of the nature of money laundering and its offences.

Annual Reports

17. (1) The Director shall submit an annual report to the Minister on the performance of the FIU, including statistics on suspicious transaction and suspicious activities reports, the results of any analyses of these reports, trends and typologies of money laundering activities or offences.

(2) The Minister shall, within two months of receipt of a report from the Director under subsection (1), lay the report in Parliament.

PART IV

Offences and Penalties

FIU Officer

18. For the purposes of this Part, the Director, Deputy Director and any other person authorized by the Minister to perform functions under section 55(7) of the Act, is an FIU Officer.

Failure to return ID

19. A person found guilty of an offence under section 5(3) is liable on summary conviction, to a fine of twenty thousand dollars and to imprisonment for six months.

Failure to provide information

20. (1) A financial institution convicted of an offence under section 11, is liable on summary conviction, to a fine of one million dollars and to a further fine of fifty thousand dollars for each day that the offence continues.

(2) Where a person is—

(a) a member of the Board of Directors; or

(b) the Chief Executive Officer or other officer of a financial institution or listed business and that person knowingly authorized or acquiesced in the omission to provide the additional information requested, that person is guilty of an offence and is liable to a fine of five hundred thousand dollars and to imprisonment for five years.

(3) Where the offence is committed jointly by members of the Board or officers of a financial institution or listed business, they may be tried jointly or severally.

(4) A listed business convicted of an offence under section 10*(a)*, is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years, and to a further fine of fifty thousand dollars for each day that the offence continues.

Confidentiality of information

21. A FIU Officer who discloses information that has come into his possession as a result of his employment in the FIU to a person otherwise than in the proper exercise of his duties, commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for three years.

Disclosure of information

22. (1) Subject to subsection (2), any person other than an FIU officer, who, in the course of his business obtains or receives information from the FIU about the commission of an offence, commits an offence if he knowingly discloses—

(a) the information to any person; or

(b) the fact that an analysis has been recommended by the FIU,

is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

(2) A person who receives information in accordance with subsection (1), may communicate that information to a legal practitioner for the sole purpose of obtaining legal advice and the practitioner who receives information for this purpose, shall be deemed to have received it from the FIU and is subject to the provisions of subsection (1).

Disclosure of investigation

23. A FIU officer or other person who discloses the fact that an investigation into a suspicious transaction or suspicious activity report has been recommended by the FIU or that an investigation has commenced, otherwise than in the proper exercise of his duties, is guilty of an offence, and is liable on summary conviction, to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

Protection from personal liability

24. A FIU Officer, other member of the staff of the FIU, or any other person authorized to perform any function under this Act, shall not be personally liable for any act done or omitted to be done by him in good faith in the discharge of his functions.

Act shall prevail

25. Notwithstanding any other law pertaining to the disclosure of personal information, this Act shall prevail.

Regulations

26. (1) The Minister may make Regulations necessary for carrying out or for giving effect to this Act.

(2) Regulations made under this section shall be subject to negative resolution of Parliament.

SCHEDULE

(Section 6)

OATH OF OFFICE

Form of Oath of (Affirmation) for (Title of Post)

I, A. B. having been appointed (title of post) do swear by (solemnly affirm) that I bear true faith and allegiance to Trinidad and Tobago and will uphold the Consitution and the law, that I will conscientiously, impartially and to the best of my knowledge, judgment and ability discharge the functions of my office and do right to all manner of people after the laws and usages of Trinidad and Tobago, without fear or favour, affection or ill-will.

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 of Representatives 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

I confirm the above.

Speaker

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

I confirm the above.

President of the Senate

No. 13 of 2009

SECOND SESSION

NINTH PARLIAMENT

REPUBLIC OF

TRINIDAD AND TOBAGO

BILL

AN ACT to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the anti-money laundering policies of the Financial Action Task Force.

Received and read the

First time .....

Second time .....

Third time .....