

No. 2 of 2010

Third Session Ninth Parliament Republic of
Trinidad and Tobago

SENATE

BILL

AN ACT to amend the Anti-terrorism Act, 2005 to
provide for the criminalization of the financing of
terrorism and for related matters

THE ANTI-TERRORISM (AMENDMENT) (NO. 2) BILL, 2010

Explanatory Note

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

The Anti-Terrorism (Amendment) (No. 2) Bill, 2010 seeks to amend the Anti-Terrorism Act, 2005 to provide for the criminalization of the financing of terrorism and for related matters.

Clause 1 of the Bill would set out the short title.

Clause 2 of the Bill would provide that the Anti-Terrorism Act, 2005 would be referred to as “the Act” throughout the Bill unless otherwise stated.

Clause 3 of the Bill would provide for the repeal and substitution of the long title of the Anti-Terrorism Act, 2005.

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

Clause 5 of the Bill would amend section 2 of the Act by inserting certain definitions and amending other existing definitions.

Clause 6 of the Bill would amend section 3 of the Act.

Clause 7 of the Bill would amend section 18 of the Act.

Clause 8 of the Bill would amend section 21 of the Act.

Clause 9 of the Bill would insert a new Part IIIA which would consist of new sections 22A to 22E of the Act. The new section 22A would create the offence of financing of terrorism in accordance with the International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9th December, 1999. The penalty for the commission of the offence would be imprisonment for a term of twenty-five years or in the case of a legal entity, a fine of two million dollars.

The new section 22B would provide the procedure for the declaration of an entity to be included on a list of entities designated as terrorist entities by the United Nations Security Council.

The new section 22C would impose reporting requirements on financial institutions and listed businesses to report to the Financial Intelligence Unit (“the FIU”) where there are reasonable grounds to suspect that funds with the institution may be used for the financing of terrorism. Financial institutions and listed businesses would be required to pay special attention to complex, unusual or large transactions.

The new section 22D would enable the FIU to forward information to the relevant law enforcement authority for further investigation where the circumstances so warrant.

The new section 22E would empower the FIU to instruct a financial institution or listed business to suspend transactions for a period not exceeding three days, pending the completion of the analysis of a suspicious transaction or suspicious activity report.

Clause 10 of the Bill would amend section 23 of the Act.

Clause 11 of the Bill would amend section 24 of the Act.

Clause 12 of the Bill would insert after section 24 new sections 24A, 24B and 24C respectively. These new sections seek to enhance the investigative powers of police officers and officers of a law enforcement authority. The new section 24A would provide the power to search premises in relation to the offence of financing of terrorism. An application would be made to a judge in accordance with the procedure stated in the section.

The new section 24B would enable a police officer or officer of a law enforcement authority to apply to a judge for a customer information order for a financial institution or listed business to provide information relating to a customer where the information is sought pursuant to a criminal investigation of the financing of terrorism or another offence under the Act.

The new section 24C would enable a police officer or officer of a law enforcement authority to apply to a judge for a monitoring order to direct a financial institution or listed business to give information to an authorized officer in respect of an account where there are reasonable grounds to believe that an offence may have been committed or is about to be committed.

Clause 13 of the Bill would amend section 32 of the Act to impose a duty on any person or regulatory authority to disclose information relating to the commission of a terrorist act. The disclosure would be required to be made to a police officer, officer of a law enforcement authority or the Central Authority under the Mutual Assistance in Criminal Matters Act, Chap. 11:24. The term “regulatory authority” would be defined as Central Bank, the Securities Exchange Commission, the Financial Intelligence Unit, the Trinidad and Tobago Stock Exchange and the Inspector of Financial Institutions.

Clause 14 of the Bill would amend section 33 of the Act.

Clause 15 of the Bill would amend section 34 of the Act to provide for the restraint of funds that may be used for the financing of terrorism or is terrorist property.

Clause 16 of the Bill would amend section 35 of the Act.

Clause 17 of the Bill would amend section 36 of the Act.

Clause 18 of the Bill would amend section 37 of the Act.

Clause 19 of the Bill would insert a new section 38A to provide for the seizure and detention of cash by the relevant law enforcement authority for a period not exceeding ninety-six hours after which an application must be made to a judge for continued detention.

Clause 20 of the Bill would amend paragraphs 1 and 9 of the Schedule respectively.

BILL

AN ACT to amend the Anti-terrorism Act, 2005 to provide for the criminalization of the financing of terrorism and for related matters

[, 2010]

WHEREAS it is enacted *inter alia* by subsection (1) of section 13 of the Constitution that an Act to which this section applies may expressly declare that it shall have effect even 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 in subsection 2 of the said 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 that at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

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

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|---|--|
| Enactment | ENACTED by the Parliament of Trinidad and Tobago as follows: |
| Short title | 1. This Act may be cited as the Anti-terrorism (Amendment) Bill, 2010. |
| Interpretation
No. 26 of 2005 | 2. In this Act, “the Act” means the Anti-terrorism Act, 2005. |
| Long title repealed
and substituted | 3. The long title of the Act is repealed and the following long title is substituted:

“An Act to criminalize terrorism and the financing of terrorism, to provide for the detection, prevention, prosecution, conviction and punishment of terrorist activities and the confiscation, forfeiture and seizure of terrorists’ assets and of those involved in the financing of terrorism and for related matters”. |
| Act inconsistent with
the Constitution | 4. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution. |
| Section 2
amended | 5. Section 2 of the Act is amended—

(a) by deleting the term “Designated Authority”; |

(b) by deleting the term “financial institution” and substituting the following:

“ “financial institution” has the meaning assigned to it in section 2 of the Financial Institutions Act, Act No. 26 of 2008 2008;”;

(c) by deleting the term “property” and substituting the following:

“ “property” or “funds” means assets of any kind, whether tangible or intangible, moveable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including but not limited to bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit whether situated in Trinidad and Tobago or elsewhere, and includes a legal or equitable interest, whether full or partial, in any such property;”;

(d) in the definition of “terrorist act”—

- (i) by deleting the word “or” at the end of paragraph (a); and
- (ii) in paragraph (b) by inserting the word “or” after the semi-colon; and
- (iii) by inserting a new paragraph (c) as follows:

“(c) an offence under Part II, Part III or section 22A of this Act;”;

(e) by inserting in the appropriate alphabetical sequence the following definitions:

“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;

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

“Group of Seven” means France, Italy, Germany, Japan, United Kingdom, United States and Canada;

“law enforcement authority” has the meaning assigned to it under section 2 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;

“legal entity” means a body corporate, foundation, partnership, association or other similar body that can establish a permanent customer relationship with a financial institution or otherwise own property;

“listed business” has the meaning assigned to it in section 2 of the Proceeds of Crime Act;

“listed entity” means an entity declared to be a listed entity in accordance with section 22B;

“non-profit organization” means a legal entity or organization that primarily engages in raising or

disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes or for the carrying out of other types of philanthropic work;

“terrorist” means a person who—

- (a) commits a terrorist act by any means directly or indirectly, unlawfully or wilfully;
- (b) participates as an accomplice in terrorist acts or the financing of terrorism;
- (c) organizes or directs others to commit terrorist acts or the financing of terrorism;
or
- (d) contributes to the commission of terrorists acts or the financing of terrorism by a group of persons acting with a common purpose where the contribution—
 - (i) is made intentionally and with the aim of furthering the terrorist act or the financing of terrorism;
 - (ii) with the knowledge of the intention of the group of persons to commit the terrorist act or the financing of terrorism;

“terrorist organisation” means a legal entity or group of terrorists that—

- (a) commits a terrorist act by any means, directly or indirectly, unlawfully and wilfully;
 - (b) participates as an accomplice in terrorist acts or the financing of terrorism;
 - (c) organises or directs others to commit terrorist acts or the financing of terrorism;
or
 - (d) contributes to the commission of terrorists acts or the financing of terrorism by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or the financing of terrorism with the knowledge of the intention of the group to commit the terrorist act or the financing of terrorism;”;
- (f) the definition of “terrorist property”, by inserting after the word “act”, the words “or terrorist organisation”.

Section 3 amended

6. Section 3 of the Act is amended by repealing subsection (1) and substituting the following:

“(1) Any person who participates in a terrorist act commits an offence and is liable on conviction on indictment to imprisonment for twenty-five years.”

7. Section 18 of the Act is amended in subsections Section 18 amended (5)(b) and (6)(b) by deleting the words “is guilty of” wherever they occur and substituting the words “commits”.

8. Section 21 of the Act is amended— Section 21 amended

- (a) in subsections (1) and (2), by deleting the words “is guilty of” wherever they occur and substituting the words “commits”;
- (b) in subsection (3), by deleting the words “guilty of” and substituting the words “who commits”; and
- (c) in subsection (4), by deleting the words “be guilty of” and substituting the word “commits”.

9. The Act is amended by inserting after section 22 New Part IIIA inserted the following:

“PART IIIA

FINANCING OF TERRORISM

Offence of
financing of
terrorism

22A. (1) Any person who by any means, directly or indirectly, wilfully provides or collects funds, or attempts to do so, with the intention that they should be used or in the knowledge that they are to be used in whole or in part—

- (a) in order to carry out a terrorist act;
- (b) by a terrorist; or
- (c) by a terrorist organization,

commits the offence of financing of terrorism.

(2) An offence under subsection (1) is committed irrespective of whether—

- (a) the funds are actually used to commit or attempt to commit a terrorist act;

- (b) the funds are linked to a terrorist act; and
- (c) the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist or terrorist organization is located or the terrorist act occurred or will occur.

(3) A person who contravenes this section commits an offence and is liable on conviction on indictment—

- (a) in the case of an individual, to imprisonment for twenty five years; or
- (b) in the case of a legal entity, to a fine of two million dollars.

(4) A director or person in charge of a legal entity who commits an offence under this section is liable on conviction on indictment to imprisonment for twenty-five years.

Listing of
terrorist
entities

22B. (1) The Attorney General shall apply to a Judge for an order under subsection (3) in respect of an entity where—

- (a) the entity is included on a list of entities designated as terrorist entities by the United Nations Security Council; or
- (b) there are reasonable grounds to believe that the entity—
 - (i) has knowingly committed or participated in the commission of a terrorist act; or

(ii) is knowingly acting on behalf of, at the direction of, or in association with, an entity referred to in paragraph (a).

(2) An application under subsection (1) shall be—

- (a) *ex parte*; and
- (b) accompanied by an affidavit deposing to the matters referred to in subsection (1).

(3) Upon an application under subsection (1) the Judge shall, by order—

- (a) declare an entity to be a listed entity for the purposes of this Act if the Judge is satisfied as to the matters referred to in subsection (1); and
- (b) freeze the funds of the listed entity.

(4) An order made under subsection (3) may make such provision as the court thinks fit for living expenses and legal expenses of the individual or legal entity as the case may be.

(5) Where an order is made under subsections (3), (7)(d) or (10), the Attorney General shall, within seven days after the date of the order, cause to be published in the *Gazette* and in two daily newspapers of general circulation in Trinidad and Tobago—

- (a) a copy of the order; and
- (b) in the case of an order under subsection (3), a statement that the matter will be reviewed every six months.

(6) Within sixty days after the date of publication of an order under subsection (5), the entity in respect of which the order is made may apply to a Judge for a review of the order and shall notify the Attorney General of the application.

(7) Upon an application made under subsection (6), the Judge shall—

- (a) hear any evidence or other information that may be presented by the Attorney General and may, at the request of the Attorney General, hear all or part of that evidence or information in the absence of the applicant or any counsel representing the applicant, if the Judge is of the opinion that the disclosure of the information would be prejudicial to national security or endanger the safety of any person;
- (b) provide the applicant with a statement summarizing the information available to the Judge, so as to enable the applicant to be reasonably informed of the reasons for the making of the order, without disclosing any information the disclosure of which would, in the opinion of the Judge, be prejudicial to national security or endanger the safety of any person;
- (c) provide the applicant with a reasonable opportunity to be heard; and

(d) determine whether or not the order should be revoked on the basis of the information available to the Judge and, if he determines that the order should be revoked, make an order for such revocation.

(8) For the purposes of any application or review under this section, the Judge may receive in evidence anything that, in the opinion of the Judge is reliable and relevant.

(9) The Attorney General, shall, every six months—

(a) review all orders made under subsection (3) so as to determine whether the circumstances referred to in subsection (1) continue to exist in respect of the listed entity; and

(b) if he determines that such circumstances no longer exist, apply to a Judge for the revocation of the order in respect of the listed entity.

(10) Upon an application under subsection (9), the Judge shall, if satisfied as to the matters referred to in that subsection, make an order for the revocation which order shall be published in the *Gazette* and in two daily newspapers of general circulation in Trinidad and Tobago.

Reporting
requirements

22C. (1) Where a financial institution or listed business knows or has reasonable grounds to suspect that funds within the financial institution or listed business belong to an individual or legal entity who—

- (a) commits terrorist acts or participates in or facilitates the commission of terrorist acts or the financing of terrorism; or
- (b) is a person or entity designated by the United Nations Security Council,

the financial institution or listed business shall report the existence of such funds to the FIU.

(2) Every financial institution or listed business shall—

- (a) pay special attention to and report all—
 - (i) business transactions between individuals, corporate persons and financial institutions in or from other countries which do not comply with, or who comply insufficiently with the recommendations of the Financial Action Task Force; and
 - (ii) complex, unusual, or large transactions, whether completed or not, unusual

patterns of transactions and to insignificant but periodic transactions which have no apparent economic or visible lawful purpose,

to the FIU;

- (b) examine the background and purpose of all transactions which have no economic or visible legal purpose under paragraph (a)(i) and make available to the FIU, written findings after its examinations where necessary.

(3) Where a financial institution or listed business knows or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism, the financial institution or listed business shall make a suspicious transactions or a suspicious activity report to the FIU in the forms as set out in the Third Schedule to the Proceeds of Crime Act.

(4) Subject to section 22D, where a financial institution or listed business makes a suspicious transaction or suspicious activity report to the FIU under this section, the Director or staff of the FIU or of such financial institution or listed business shall not disclose the fact or content of such report to any person.

(5) Any person who contravenes subsection (4) commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

(6) A report to which subsection (3) refers shall be made within fourteen days of the date on which the financial institution or listed business knew or had reasonable grounds to suspect that the funds were linked or related to, or were to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism.

(7) When the report referred to in this section is made in good faith, the financial institution or listed business and their employees, staff, directors, owners or other representatives as authorized by law, are exempt from criminal, civil or administrative liability, as the case may be, for complying with this section or for breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision, regardless of the result of the communication.

Identification
of offence of
financing of
terrorism

22D. (1) Where the FIU receives information from a financial institution or listed business and it considers that an investigation may disclose that funds in the possession of any individual or legal entity is being used, has been used or is intended for use in the financing of terrorism, it shall forward such information to the relevant law enforcement authority for further investigation.

FIU may
suspend
certain
transactions

22E. (1) The FIU may 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 evaluation and analysis of a suspicious transaction or suspicious activity report.

(2) Where those 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.

(3) After the FIU has concluded its evaluation and analysis of a suspicious transaction or activity report, and where the Director of the FIU is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority for investigation to determine whether an offence of financing of terrorism has been committed and whether the funds are located in Trinidad and Tobago or elsewhere.

(4) For the purposes of this section, the Minister with responsibility for national security may by Order prescribe the law enforcement authorities to which the FIU shall submit the report referred to in subsection (3).”

Section 23 amended

10. Section 23 of the Act is amended—

(a) in subsection (1)—

(i) by inserting after the words “police officer” the words “or officer of a law enforcement authority”;

(ii) by deleting the words “in Chambers”; and

(b) in subsection (2), by inserting after the words “police officer” the words “or officer of a law enforcement authority”.

Section 24 amended

11. Section 24 of the Act is amended—

(a) in subsection (1)—

(i) by inserting after the words “Inspector or above” the words “or an officer of a law enforcement authority”; and

(ii) by deleting the words “in chambers”;

(b) in subsection (2) by inserting after the words “police officer” the words “or officer of a law enforcement authority”

(c) in subsection (3)—

(i) by deleting the word “order” and substituting the word “Order”;

(ii) in paragraphs (a)(ii) and (b)(iii) by inserting after the words “police officer” wherever they occur the words “or officer of a law enforcement authority”;

(d) in subsections (6), (7) and (11) by deleting the word “order” wherever they occur and substituting the word “Order”;

- (e) in subsection (12), by deleting the words “police officer” and “police officer’s behalf” and substituting the words “police officer or officer of a law enforcement authority” and “police officer or officer of a law enforcement authority’s behalf”, respectively.

12. The Act is amended by inserting the following New sections 24A, 24B and 24C inserted sections after section 24:

Authority for search 24A. (1) A police officer or officer of a law enforcement authority may, for the purposes of an investigation into the offence of financing of terrorism apply to a Judge for a warrant under this section.

(2) On such application the Judge may issue a warrant authorising a police officer or officer of a law enforcement authority to enter and search the premises if the Judge is satisfied in relation to the offence of financing of terrorism—

- (a) that there are reasonable grounds for suspecting that an individual or legal entity is linked to the commission of that offence;
- (b) that there are reasonable grounds for suspecting that there are on the premises material relating to the commission of that offence; and
- (c) that it would be appropriate to make an order in relation to the material because—
 - (i) it is not practicable to communicate with any person entitled to produce the material;

- (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
- (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a police officer or officer of a law enforcement authority could secure immediate access to the material.

(3) Where a police officer or officer of a law enforcement authority has entered the premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the warrant was issued.

(4) The person to whom a search warrant is issued shall furnish a report in writing, within ten days after the execution of the warrant or the expiry of the warrant whichever occurs first, to the Judge who issued the warrant—

- (a) stating whether or not the warrant was executed;
- (b) if the warrant was executed, setting out a brief description of anything seized; or

- (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed.

Customer
Information
Order

24B. (1) A Judge may on application made by a police officer or officer of a law enforcement authority and if the conditions set out in subsection (2) are met, make an order that a financial institution or listed business provide to an authorized officer any such customer information relating to the person or account specified in the application.

(2) An application under subsection (1) shall state—

- (a) that there is an investigation of financing of terrorism or other offence under this Act and the order is sought for purposes of a criminal investigation of that offence; and
- (b) the Judge is satisfied that there are reasonable grounds for believing that the financial institution or listed business may have information that is relevant in the investigation.

(3) Customer information is information as to whether a person holds, or has held, an account or accounts at the financial institution or listed business (whether solely or jointly), and information identifying a person who holds an account, and includes all information as to—

- (a) the account number or numbers;
- (b) the person's full name;

- (c) his date of birth;
- (d) his most recent address and any previous addresses;
- (e) the date or dates on which he began to hold the account or accounts and, if he has ceased to hold the account or any of the accounts, the date or dates on which he did so;
- (f) such evidence of his identity as was obtained by the financial institution;
- (g) the full name, date of birth and most recent address, and any previous addresses, of any person who holds, or has held, an account at the financial institution jointly with him;
- (h) the account number or numbers of any other account or accounts held at the financial institution to which he is a signatory and details of the person holding the other account or accounts; and
- (i) any other information which the court specifies in the customer information order.

(5) Where the customer is a legal entity, the information shall include—

- (a) a description of any business which it carries on;
- (b) the country or territory in which it is incorporated or otherwise established and any number allocated to it;

- (c) its registered office, and any previous registered offices;
- (d) the full name, date of birth and most recent address and any previous addresses of any person who is a signatory to the account or any of the accounts; and
- (e) any other information which the court specifies in the customer information order.

(6) A financial institution or listed business shall provide the information to the authorized officer in such manner, and at or by such time, as is specified in the order.

(7) An authorized officer for purposes of this section is the FIU.

(8) No obligation to maintain the confidentiality of information held by a financial institution or listed business, whether imposed by a law or contract, can excuse compliance with an order made under this section.

(9) Where a financial institution or listed business subject to an order under this section, knowingly—

- (a) fails to comply with the order; or
- (b) provides false or misleading information in purported compliance with the order,

the financial institution or listed business commits an offence and is liable on conviction on indictment to a fine of one million dollars.

(10) A financial institution or listed business that has been served with an order under this section shall not disclose the existence or operation of the notice to any person except—

- (a) an officer or agent of the institution for the purpose of complying with the order;
- (b) an officer or agent of the institution for the purpose of complying with the order; or
- (c) an authorized officer referred to in the order.

(11) Where a financial institution or listed business contravenes subsection (10), it commits an offence and is liable on conviction on indictment to a fine of five hundred thousand dollars.

Monitoring
Order

24C. (1) A police officer or officer of a law enforcement authority may apply, *ex parte* to a Judge for a monitoring order directing a financial institution, listed business or non-profit organization to provide certain information.

(2) An application under subsection (1) shall be supported by an affidavit deposing to matters referred to in subsection (4).

(3) A monitoring order shall—

- (a) direct a financial institution, listed business or non-profit organization to disclose information it obtained relating to transactions conducted through an

account held by a particular person with the financial institution, listed business or non-profit organisation;

- (b) not have retrospective effect; and
- (c) only apply for a period not exceeding three months from the date it is made.

(4) A Judge shall issue a monitoring order only if he is satisfied that there are reasonable grounds for believing that—

- (a) the person in respect of whose account the order is sought:
 - (i) has committed or was involved in the commission, or is about to commit or be involved in the commission of, an offence; and
 - (ii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of an offence; or
- (b) the account is relevant to identifying, locating or quantifying terrorist property.

(5) A monitoring order shall specify—

- (a) the name or names in which the account is believed to be held; and
- (b) the class of information that the financial institution, listed business or non-profit organization is required to give.

(6) Where a financial institution, listed business or non-profit organisation subject to an order under this section, knowingly—

- (a) fails to comply with the order; or
- (b) provides false or misleading information in purported compliance with the order,

the financial institution, listed business or non-profit organisation commits an offence and is liable on conviction on indictment to a fine of one million dollars.

(7) A financial institution, listed business or non-profit organization that is or has been subject to a monitoring order shall not knowingly disclose the existence or operation of the order to any person except—

- (a) an officer or agent of the financial institution, listed business or non-profit organization for the purpose of ensuring compliance with the order;
- (b) a legal adviser for the purpose of obtaining legal advice or representation in respect of the order; or
- (c) the authorised officer referred to in the order.

(8) Where a financial institution, listed business or non-profit organisation contravenes subsection (7), it commits an offence and liable on conviction on indictment to a fine of five hundred thousand dollars.

(9) Nothing in this section prevents the disclosure of information concerning a monitoring order for the purposes of or in connection with legal proceedings or in the course of proceedings before a court.

(10) Nothing in this section shall be construed as requiring a legal adviser to disclose to any court the existence or operation of a monitoring order.

13. The Act is amended in section 32—

Section 32 amended

(a) by repealing subsection (1) and substituting the following subsection:

“(1) Every person or regulatory authority who has any information which will assist in—

- (a) preventing the commission by another person, of a terrorist act; or
- (b) securing the arrest or prosecution of another person for an offence under this Act, or an offence under any other law and which also constitutes a terrorist act,

shall forthwith disclose the information to a police officer, officer of a law enforcement authority or the Central Authority as defined under the Mutual Assistance in Criminal Matters Act.”; and

(b) by inserting after subsection (4) the following subsection:

“(5) For the purposes of this section, “regulatory authority” means the Central Bank, the Securities Exchange

Commission, the Financial Intelligence Unit, the Trinidad and Tobago Stock Exchange and the Inspector of Financial Institutions”.

Section 33 amended **14.** The Act is amended in section 33, by deleting the words “designated authority” and “Designated Authority” wherever they occur and substituting the words “FIU”.

Section 34 amended **15.** Section 34 of the Act is amended—

(a) by repealing subsection (1) and substituting the following subsection:

“(1) Where a customs officer, immigration officer, police officer or officer of a law enforcement authority reasonably believes that property in the possession of a person is—

- (a) property intended to be used for the purpose of a terrorist act or for financing terrorism;
- (b) terrorist property; or
- (c) property of a person or entities designated by the United Nations Security Council,

he may apply to a judge for a restraint order in respect of that property.”;

(b) by inserting after subsection (1) the following subsection:

“(1A) Where information is forwarded to a law enforcement authority pursuant to section 22D, and it has reasonable grounds to believe that funds should be restrained, an officer of that law enforcement agency may apply to the Court for an Order to restrain such funds.”;

(c) in subsection (3)—

- (i) by deleting the words “subsection (1)” and substituting the words “subsections (1) and (1A)”; and
- (ii) by deleting the words “Judge of the High Court” and substituting the word “judge”;

(d) by inserting after subsection (3) the following subsection

“(3A). A restraint order made under subsections (1) and (1A) may make such provision as the Court thinks fit for living expenses and legal expenses of an individual or legal entity as the case may be.”;

(e) in subsection (4)—

- (i) by deleting the words “Judge of the High Court” and substituting the word “judge”; and
- (ii) in paragraph (b), by inserting the word “no” before the word “proceedings”; and

(f) in subsection (5), by deleting the words “subsection (1)” and substituting the words “subsections (1) and (1A)”.

16. The Act is amended in section 35, by deleting the word “order” wherever it occurs in subsections (2) and (3) and substituting the word “Order”. Section 35 amended

17. The Act is amended in section 36— Section 36 amended

(a) in subsection (1)—

- (i) by deleting the words “application made” and substituting the words “application is made”;

- (ii) by deleting the words “judge in chambers” and substituting the word “judge”
- (iii) by deleting the word “order” wherever it occurs and substituting the word “Order”;
- (b) in subsections (4), (5), (7) and (8), by deleting the word “order” and substituting the word “Order”; and
- (c) in subsections (4) and (8), by deleting the words “Judge of the High Court” and substituting the word “judge”.

Section 37 amended **18.** The Act is amended in section 37—

- (a) in subsection (1)—
 - (i) deleting the words “of the High Court”; and
 - (ii) by deleting the word “order” and substituting the word “Order”; and
- (b) in subsections (5), (7), (8) and (9), by deleting the word “order” wherever it occurs and substituting the word “Order”.

Section 38A inserted **19.** The Act is amended by inserting after section 38 the following section:

- Seizure and
detention of
cash
- 38A. (1) Any customs officer, police officer or officer of a law enforcement authority may seize and detain part of or the whole amount of any cash where there are reasonable grounds for suspecting that it is—
- (a) intended for use in the commission of an offence under this Act; or
 - (b) is terrorist property.

(2) Cash detained under subsection (1) shall not be detained for more than ninety-six hours after seizure, unless a Judge orders its continued detention for a period not exceeding three months from the date of the initial seizure and the detained cash shall be paid into Court.

(3) A Judge may order a detention under subsection (1) upon being satisfied that the continued detention of the cash is justified while—

- (a) its origin or derivation is further investigated; or
- (b) consideration is given to the institution in Trinidad and Tobago or elsewhere of criminal proceedings against any person for an offence with which the seized item is connected.

(4) A Judge may subsequently order continued detention of the cash if satisfied of the matters set forth in subsections (2) and (3), but the total period of detention shall not exceed two years from the date of the order made under those subsections.

(5) Subject to subsection (6), cash detained under this section may be released in whole or in part to the person on whose behalf it was transported by order of a Judge, that its continued detention is no longer justified upon application by or on behalf of that person and after considering any views of a police officer or officer of a law enforcement authority.

(6) Cash detained under this section shall not be released where an application for restraint or forfeiture of the cash is pending under this Act or if proceedings have been instituted in Trinidad and Tobago or elsewhere against any person for an offence with which the cash is connected, unless and until the proceedings on the application or the proceedings related to an offence have been concluded.

(7) Where the application relates to cash that is commingled with other cash, the commingled cash is subject to continued detention under this subsection.

(8) Upon an application by a police officer or officer of a law enforcement authority, a Judge shall order forfeiture of any cash which has been seized and detained under this section if satisfied on the balance of probabilities that the cash directly or indirectly represents—

- (a) terrorist property; or
- (b) proceeds of an offence or intended for use in the commission of an offence.

(9) Before making an order of forfeiture under subsection (8), the court shall order that notice be provided to any person who has asserted an interest in the cash and provide an opportunity for that person to be heard.

(10) In this section—

- (a) “cash” includes coins, notes and other bearer negotiable instruments in any currency;
- (b) “bearer negotiable instrument” includes 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 cheques, promissory notes and money orders signed, but with the payee’s name omitted.”.

20. The Schedule is amended—

Schedule amended

- (a) in paragraph 1(*h*), by inserting after the words “police officer” the words “or officer of a law enforcement authority”; and
- (b) in paragraph 9, by inserting after the words “Inspector or above” the words “or officer of a law enforcement authority”.

Passed in the Senate this day of , 2010.

Clerk of the Senate

No. 2 of 2010

THIRD SESSION
NINTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Anti-terrorism Act,
2005 to provide for the criminalization of
the financing of terrorism and for related
matters

Received and read the

First time.....

Second time.....

Third time.....
