

AS AMENDED IN THE HOUSE OF REPRESENTATIVES

A BILL

AN ACT to amend the Financial Intelligence Unit of Trinidad and Tobago Act, 2009
and the Anti-Terrorism Act, Chap. 12:07

Preamble

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

And whereas it is provided in section 13(2) of the Constitution that an Act of Parliament to which that 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 even 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 Miscellaneous Provisions (Financial Intelligence Unit of Trinidad and Tobago and Anti-Terrorism) Act, 2012.

Act inconsistent
with Constitution

2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Act No. 11 of
2009 amended

3. The Financial Intelligence Unit of Trinidad and Tobago Act is amended –

(a) in section 2(1) –

(i) by deleting the definition of “financing of terrorism” and substituting the following definition:

“ “financing of terrorism” means the offence created under section 22A(1) of the Anti-Terrorism Act;”;

(ii) by deleting the definition of the term “law enforcement authority” and substituting the following definition:

“ “law enforcement authority” means –

(a) the Commissioner of Police appointed in accordance with the Constitution;

- (b) the Comptroller of Customs and Excise appointed in accordance with the Public Service Commission Regulations;
- (c) the Chief Immigration Officer appointed in accordance with the Public Service Commission Regulations;
- Chap. 75:01 (d) the Chairman of the Board of Inland Revenue appointed by the President in accordance with the Income Tax Act; and
- Chap. 15:01 (e) any other office or agency of the State in which is vested coercive powers of a constable under the Police Service Act;”; and

(iii) **by deleting the definition “proceeds of crime”;**

(iv) by inserting in the appropriate alphabetical sequence, the following definition:

“ “public authority” means –

- (a) a Ministry or a department or division of a Ministry;
- (b) the Tobago House of Assembly, the Executive Council of the Tobago House of Assembly or a division of the Tobago House of Assembly;
- (c) a Municipal Corporation established under the Municipal Corporations Act;
- (d) a Regional Health Authority established under the Regional Health Authorities Act;
- (e) a statutory body, responsibility for which is assigned to a Minister of Government;
- (f) a company incorporated under the laws of the Republic of Trinidad and Tobago which is owned or controlled by the State;
- (g) a Service Commission established under the

Constitution or other written law; or

- (h) a body corporate or unincorporated entity –
 - (i) in relation to any function which it exercises on behalf of the State;
 - (ii) which is established by virtue of the President’s prerogative, by a Minister of Government in his capacity as such or by another public authority; or
 - (iii) which is supported, directly or indirectly, by Government funds and over which Government is in a position to exercise control;”;
- (b) in section 4, by deleting the words “anti-money laundering policies” and substituting the words “policies with respect to money laundering and financing of terrorism”;
- (c) in section 8(1), by –
 - (i) deleting the words “the primary institution” and substituting the word “responsible”;
 - (ii) deleting the words “the Proceeds of Crime Act, 2000, the Proceeds of Crime (Amendment) Act, 2009 and the Anti-Terrorism Act, 2005” and substituting the words “the Proceeds of Crime Act and the Anti-Terrorism Act”;
- (d) in section 8(3) by –
 - (i) **inserting in paragraph (d), after the word “Act”, the words “and section 22C of the Anti-Terrorism Act”;**
 - (ii) **deleting paragraph (e) and substituting the following paragraph:**
 - “(e) engage in the exchange of financial intelligence and information with members of the Egmont Group or with Foreign Financial Intelligence Units;”;**
 - (iii) **deleting paragraph (f) and substituting the following paragraph:**
 - “(f) may disseminate financial intelligence and**

information to local and foreign authorities and affiliates within the intelligence community;”.

- (iv) deleting the word “and” at the end of paragraph (i);
 - (v) deleting the full stop at the end of paragraph (j) and inserting the words “; and”; and
 - (vi) inserting after paragraph (j), the following paragraph:
 - “(k) may enter into such written agreements with a local authority or Foreign Financial Intelligence Unit as the Director considers necessary for the performance of its functions.”;
- (e) in section 8(4) –
- (i) by deleting paragraph (a) and substituting the following paragraph:
 - “(a) subsection (3)(e), the exchange of financial intelligence and1 information shall be undertaken on the basis of reciprocity with members of the Egmont Group or with Foreign Financial Intelligence Units; and”;
 - (ii) in paragraph (b), by deleting the words “subsection (3)(f), “local authorities” include” and substituting the words “subsection (3)(f) and (k), “local authority” includes”;
- (f) **in section 9 –**
- (i) **by deleting the words “its anti-money laundering policies” and substituting the words “its policies with respect to money laundering and financing of terrorism”;** and
 - (ii) **in paragraph (b), by inserting after the word “laundering”, the words “and financing of terrorism”.**
- (g) in section 10, by inserting after the word “Act” the words “or under the Anti-Terrorism Act”;

- (h) in section 12(2), by –
 - (i) deleting the words “subsection (4)” and substituting the words “subsection (1)”; and
 - (ii) deleting the words “non-regulated”;
- (i) by repealing section 13;
- (j) in section 14, by repealing subsection (1) and substituting the following subsection:

“ (1) The FIU may instruct a financial institution or listed business, in writing, to suspend the processing of a suspicious transaction or suspicious activity for a period not exceeding five working days –

- (a) in the course of enquiring into a suspicious transaction or suspicious activity relating to the proceeds of suspected criminal conduct, to a money laundering offence or to the financing of terrorism; or
- (b) where a request is made by a law enforcement authority or a Foreign Financial Intelligence Unit, during the course of its inquiry into a suspicious transaction or suspicious activity.”;

- (k) **in section 15(1), by inserting after the word “offence”, the words “or the financing of terrorism”;**
- (l) by repealing section 16 and substituting the following section:

“Request for information 16. (1) The FIU may, in the performance of its functions, co-operate and liaise with any person who, in the opinion of the Director is able to assist in the provision of information relevant to an analysis of a suspicious transaction or suspicious activity.

(2) Notwithstanding subsection (1), the FIU may, in the performance of its functions, request information from –

- (a) the Central Bank;

- (b) a public authority; or
- (c) an authority 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.

(3) Any information requested under subsection (2) shall be provided within a reasonable time.

(4) Where a person fails to provide the requested information or fails to provide it in a reasonable time, under subsection (2) or (3), the Director may apply to a judge for an order to direct that person to comply with the request made under subsection (2).

(5) Information received under this section shall not be disclosed without the prior consent of the person from whom the information was obtained.”;

(m) **in section 17(1)(b) by –**

- (i) **inserting after the word “laundering” in the first place where it occurs, the words “and the financing of terrorism”; and**
- (ii) **deleting the words “and its offences” and substituting the words “and financing of terrorism”;**

(n) **in section 18(1), by –**

- (i) **deleting the word “transaction” and substituting the word “transactions”;**
- (ii) **inserting after the words “these reports,” the word “and”;** and
- (iii) **inserting after the word “offences”, the words “and the financing of terrorism”;**

- (o) in section 18B, by deleting the words “listed businesses and non-regulated financial institutions” and substituting the words “non-regulated financial institutions and listed businesses”;
- (p) in section 18C, by inserting the words “non-regulated financial institutions and” before the word “listed”;
- (q) in section 18F –
 - (i) in subsection (2)(a), by deleting the words “section 18(1)(a)” and substituting the words “section 18E(1)”; and
 - (ii) by inserting the following subsection:
 - “ (3) For the purpose of this section, “document” includes any data, correspondence, memorandum, book, machine-readable record or other documentary material, regardless of the form or manner in which it is stored.”;
- (r) in section 18G –
 - (i) in subsection 4(b), by inserting before the words “financial institution”, the word “non-regulated”;
 - (ii) in subsection (6), by deleting the words “subsection (9)” and substituting the words “subsection (8)”; and
 - (iii) by renumbering subsection (8) and subsection (9) as subsection (9) and subsection (8), respectively;
- (s) **in section 19, by inserting after the word “under”, the words “the Anti-Terrorism Act,”;**
- (t) in section 23(1), by deleting the words “about the commission of an offence”;
- (u) in section 25, by renumbering the section as section 25(1) and inserting thereafter the following subsection:
 - “(2) No civil or criminal proceedings shall lie against a person who, in good faith, discloses financial intelligence or information under this Act.”; and
- (v) **in section 28(2), by deleting the words “with a review to any amendment of the Act” and substituting the words “with a view to any amendment of this Act”;**

- (w) in the Schedule entitled “Oath of Office and Secrecy”, by inserting after the word “will” the words “conscientiously and to the best of my ability discharge the duties of my office and that I will”.

Chap. 12:07 amended

- 4. The Anti-Terrorism Act is amended –
 - (a) in section 22AA(2)(e), by inserting after the word “transmission”, the words “or other electronic means”;
 - (b) in section 22AB(a), by inserting after the words “FIU,”, the words “on the prescribed form.”;
 - (c) in section 22AB(b), by deleting the words “the FIU shall be informed immediately” and substituting the words “it shall immediately inform the FIU on the prescribed form”;
 - (d) in section 22AB, by deleting paragraph (c);
 - (e) in section 22B(1) –
 - (i) by deleting the words “in respect of an entity where”;
 - (ii) in paragraph (a), by inserting before the word “the”, the words “in respect of an entity, where”; and
 - (iii) in paragraph (b), by deleting the words “there are reasonable grounds to believe that the entity” and substituting the words “in respect of an entity or individual where there are reasonable grounds to believe that the entity or individual”;
 - (f) in section 22B(3)(a), by inserting after the word “declare”, the words “an individual or”;
 - (g) **in section 22B(4A), by inserting after the word “upon”, the words “the listed entity,”; and**
 - (h) **in section 22B(5), by deleting the word “may” and substituting the word “shall”;**
 - (i) in section 22B(6), by inserting before the word “entity”, the words “individual or”;
 - (j) in section 22E(1), by deleting the word “three” and substituting the word “five”;
 - (k) in section 34(1), by inserting after paragraph (c), the following

paragraph:

“ (d) property of an individual or entity who participates in the commission of a terrorist act,”; and

(l) in section 42 –

- (i) in subsection (1), by deleting the word “A” and substituting the words “Subject to subsection (2), a”;
- (ii) in subsection (1)(a), by deleting the word “and” in the first two places where it occurs and substituting the word “or”; and
- (iii) in subsection (2), by deleting the words “, whether or not the company has been prosecuted or convicted”.

Passed by the House of Representatives this day of , 2012.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by 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 the 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 by the Senate this

day of

, 2012.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by 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 the members of the Senate, that is to say, by the votes of _____ Senators.

Clerk of the Senate

I confirm the above.

President of the Senate