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No. 22 of 2018

Fourth Session Eleventh Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Proceeds of Crime Act,
Chap 11:27, the Anti-Terrorism Act, Chap. 12:07
and the Financial Intelligence Unit of Trinidad
and Tobago Act, Chap 72:01

THE MISCELLANEOUS PROVISIONS (PROCEEDS OF CRIME,
ANTI-TERRORISM AND FINANCIAL INTELLIGENCE
UNIT OF TRINIDAD AND TOBAGO) BILL, 2018

Explanatory Notes

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

The Bill seeks to amend Proceeds of Crime Act, Chap 11:27, the Anti-Terrorism Act, Chap. 12:07 and the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01.

Clause 2 of the Bill would amend the Proceeds of Crime Act, Chap. 11:27 (“POCA”). Section 2 of POCA would be amended to exclude insurance agents, and the underwriting and placement of term life insurance, from the ambit of the definition of “financial institution”. Section 51 of POCA would be amended to extend the offence of tipping off to the disclosure of information that is likely to prejudice the filing of a suspicious transaction report or a suspicious activity report and to exempt the disclosure of information within a financial group from criminal liability. Section 53 of POCA would be amended to provide for the offence of facilitating money laundering and to impose higher penalties on public officers and persons employed on contract in the service of the State who commit the offence of tipping off or failing to disclose knowledge or suspicion of money laundering. Consequently, section 54 of POCA which provides for the extension of certain offences to public servants by regulation would be repealed. Section 55B of POCA would also be amended so that where a financial institution or listed business makes a suspicious transaction or suspicious activity report in good faith, it would be exempt from criminal, civil or administrative liability whether or not the underlying criminal activity was known or any illegal activity occurred. The definition of “Supervisory Authority” in section 55D(4) of POCA would be amended to exclude the National Insurance Board and the Unit Trust Corporation of Trinidad and Tobago. Section 57(2) of POCA would be amended to make it clear that a company and its officers, directors and agents are liable to be prosecuted and convicted for an offence committed by the company. Finally, a new Part IIA would be inserted into POCA to provide for the establishment, composition and functions of the National Anti-Money Laundering and Counter-Financing Terrorism Committee.

Clause 3 of the Bill would amend the Anti-Terrorism Act, Chap. 12:07 (“the Act”), by correcting a cross-reference in

section 22B and by inserting a new Part VIIIA to provide for the establishment of the Anti-Terrorism Unit in the Office of the Attorney General. The functions of the Attorney General under the Act would be exercisable by him in person or through a public officer or legal officer who is employed in the Anti-Terrorism Unit, authorised by the Attorney General in writing and acting under and in accordance with the general or special directions of the Attorney General. A public officer or legal officer would, however, be precluded from making an Order or other statutory instrument under the Act. The Attorney General would be required to cause an annual report with respect to the performance of his functions under the Act, to be prepared and laid in both Houses of Parliament.

Clause 4 of the Bill would correct certain cross-references in the Financial Intelligence Unit of Trinidad and Tobago Act, Chap. 72:01, and its Regulations.

BILL

AN ACT to amend to amend the Proceeds of Crime Act,
Chap 11:27, the Anti-Terrorism Act, Chap 12:07 and
the Financial Intelligence Unit of Trinidad and
Tobago Act, Chap 72:01

[, 2018]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Short title
Miscellaneous Provisions (Proceeds of Crime, Anti-Terrorism and
Financial Intelligence Unit of Trinidad and Tobago) Act,
2018.

2. The Proceeds of Crime Act is amended—

(a) in section 2, in paragraph (e) of the definition of “financial institution”—

(i) by deleting the words “, agent”; and

(ii) by inserting after the word “Act”, the words “involved in the underwriting and placement of life insurance, other than term life insurance, and other investment related insurance”;

(b) in section 51—

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

“ (1A) A person commits an offence if—

(a) he knows or suspects that a financial institution or listed business is reviewing information to determine whether to file or is otherwise in the process of filing a suspicious transaction report or suspicious activity report; and

(b) he discloses to any other person

information or any other matter which is likely to prejudice the filing of the suspicious transaction report or suspicious activity report.”;

- (ii) by inserting after subsection (4), the following subsection:

“ (4A) Nothing in subsection (1) to (3) makes it an offence for an employee, officer or agent of a financial institution in a financial group to disclose information to an employee, officer or agent of another financial institution in the financial group.”; and

- (iii) in subsection (5), by deleting the words “Subsection (4) does” and substituting the words “Subsections (4) and (4A) do”;

(c) in section 53—

- (i) by inserting after subsection (1) the following subsection:

“ (1A) A person who knowingly attempts, aids, abets, conspires, procures or otherwise facilitates the commission of an offence under section 45 commits an offence and is liable on conviction on

indictment to a fine of twenty-five million dollars and to imprisonment of fifteen years.”; and

- (ii) by inserting after subsection (3), the following subsection:

“ (4) Notwithstanding subsections (2) and (3), where a person employed in the service of the State as a public officer or on contract, commits an offence under—

(a) section 51, he is liable on summary conviction to a fine of ten million dollars and to imprisonment for ten years; or

(b) section 52, he is liable on summary conviction to a fine of five hundred thousand dollars and to imprisonment for five years.”;

(d) by repealing section 54;

(e) in section 55(3C), by deleting the words “subsection (1)” and substituting the words “subsection (2)(a)(ii)”;

(f) in section 55B, by inserting after the word

“shall”, the words “, whether or not the underlying criminal activity was known or any illegal activity occurred,”;

(g) in section 55D (4), in paragraph (a) of the definition of “Supervisory Authority”, by deleting—

(i) the words “or the National Insurance Board established under the National Insurance Act” and “the Unit Trust Corporation of Trinidad and Tobago established under the Unit Trust Corporation of Trinidad and Tobago Act”; and

(ii) the words “Company and” and substituting the words “Company,”;

(h) in section 57(2)—

(i) by inserting after the words “offence and”, the word “is”; and

(ii) by deleting the words “, whether or not the company has been prosecuted or convicted”; and

(i) by inserting after section 57, the following Part:

“PART IIA

NATIONAL ANTI-MONEY LAUNDERING COUNTER FINANCING OF TERRORISM COMMITTEE

Establishment
of NAMLC

57A. (1) There shall be established a committee to be known as “the National Anti-Money Laundering and Counter Financing of Terrorism Committee” (“NAMLC”) which shall be responsible—

(a) for—

(i) making recommendations to the

Minister in relation
to the development;
and

(ii) coordinating the
implementation,

of national anti-money
laundering, counter financ-
ing of terrorism and prolif-
eration financing policies;

(b) for collecting and compiling
statistics with respect to
anti-money laundering,
counter financing of terror-
ism and proliferation
financing; and

(c) for coordinating the
conduct of national risk
assessments and mutual
evaluations.

(2) The NAMLC shall comprise a
minimum of nine, but no more than fifteen,
members selected from among—

(a) persons representing—

(i) the Ministry with
responsibility for
finance;

(ii) the Ministry with
responsibility for
national security;

(iii) the Attorney
General;

(iv) the Director of
Public Prosecutions;

(v) the Commissioner
of Police;

(vi) the Financial Intelligence Unit of Trinidad and Tobago;

(vii) the Central Bank;

(viii) the Chairman of the Board of Inland Revenue; and

(ix) the Trinidad and Tobago Securities and Exchange Commission; and

(b) such other persons as the Minister thinks fit.

(3) A member of the NAMLC shall be appointed by the Minister for a period not exceeding four years and may be reappointed.

(4) The Minister shall appoint the Chairman and Deputy Chairman of the NAMLC from among the members of the NAMLC.

(5) The terms and conditions of the appointment of a member of NAMLC and the period of tenure of office shall be such as the Minister may set out in the instrument of appointment.

(6) The NAMLC may establish such subcommittees as it thinks fit.

(7) In this Part, "Minister" means the Minister to whom responsibility for NAMLC is assigned.

Rules to
govern proce-
dure of
NAMLC

57B. NAMLC may make rules to govern its own procedure."

Chap. 12:07
amended

3. The Anti-Terrorism Act is amended—

- (a) in section 22B, in subsections (2), (3), (9) and (9A), by deleting the words “(1)” wherever they occur and substituting in each place the words “(1A)”;
- (b) by inserting after section 38A, the following Part:

“PART-IIA

THE ANTI-TERRORISM UNIT

Establishment
of the Anti-
Terrorism
Unit

38B. (1) There is established in the Office of the Attorney General, a unit to be known as “the Anti-Terrorism Unit” (“the Unit”).

(2) The functions of the Attorney General under this Act may be exercised by the Attorney General in person or through a public officer or legal officer who is—

- (a) employed in the Unit;
- (b) authorised by the Attorney General in writing; and
- (c) acting under and in accordance with the general or special directions of the Attorney General.

(3) Nothing in this section shall be construed as authorising a public officer or legal officer to make an Order or other statutory instrument under this Act.

Annual Report

38D. (1) The Attorney General shall, within three months after the end of each year, cause a report with respect to the performance of his functions under this Act to be prepared.

(2) A report under subsection (1) shall contain such statistical and other

information as the Attorney General thinks fit in relation to—

- (a) court listings;
- (b) international cooperation;
- (c) forfeitures; and
- (d) such other matters as the Attorney General considers necessary.

(3) The Attorney General shall cause a copy of the report prepared under subsection (1) to be laid before both Houses of Parliament within one month after its completion.”.

4. (1) The Financial Intelligence Unit of Trinidad and Tobago Act is amended—

Chap. 72:01
amended

- (a) in section 8(3)(d), by deleting the word “55(3)” and substituting the word “55A”; and
- (b) in section 19, by deleting the words “section 55(7) of”.

(2) Regulation 2 of the Financial Intelligence Unit of Trinidad and Tobago Regulations is amended in the definition of “Suspicious Transaction/Activity Report” by deleting the words “section 55(3)” and substituting the words “section 55A”.

Passed in the House of Representatives this _____ day of _____, 2018.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2018.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 22 of 2018

FOURTH SESSION
ELEVENTH PARLIAMENT

REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

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Received and read the

First time
Second time
Third time