
Second Session Ninth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 11 of 2009

[L.S.]

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.

[Assented to 9th October, 2009]

WHEREAS it is enacted *inter alia*, by subsection (1) of ^{Preamble} 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:

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*.

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

Interpretation

2. (1) In this 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 Act;

“FIU” means the Financial Intelligence Unit established under section 3;

“law enforcement authority” means the Commissioner of Police or any law enforcement body prescribed by the Minister with responsibility for national security, under subsection (2);

“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 Chap. 11:27 to it in the Act.

“the Act” means the Proceeds of Crime Act;

(2) In determining what is a suspicious transaction or suspicious activity, a financial institution or listed business shall follow the guidelines issued by the Central Bank of Trinidad and Tobago, or other supervisory authority, from time to time.

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 such number of suitably qualified public officers including a Director and Deputy Director as may be necessary, for the performance of its functions and may include—

- (a) public officers, appointed, assigned, seconded or transferred from another Ministry or statutory corporation to the FIU; and
- (b) officers and other persons appointed on contract by the Permanent Secretary of the Ministry of Finance.

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.

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

PART III

FUNCTIONS AND POWERS OF THE FIU

7. The salaries and other conditions of service of the Salaries and other conditions Director and Deputy Director shall be subject to review by the Salaries Review Commission, in accordance with section 141 of the Constitution.

8. (1) The FIU shall be the primary institution Functions of FIU for the collection of financial intelligence and information and the analysis, dissemination, and exchange of such 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 this 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;

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- (c) shall collect information as required for—
- (i) the annual and periodic reports in accordance with section 18; and
 - (ii) tactical analysis, in order to generate activity patterns, investigative leads and identify possible future behaviour;
- (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 and prosecutorial authorities;
- (h) provide information, advice and assistance to persons and law enforcement authorities, in furtherance of an investigation;
- (i) provide assistance to financial institutions and listed business in connection with their obligations under this Act; and
- (j) shall retain all pertinent information it receives for a minimum of six years.
- (4) For the purpose of—
- (a) subsection (3)(e), exchange of intelligence shall be undertaken on the basis of reciprocity with an FIU which belongs to the Egmont Group; and

- (b) subsection (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.

9. 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.

10. 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.

11. Where, after the analysis of a suspicious transaction or suspicious activity report from a financial institution or listed business in accordance with section 8(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 or elsewhere, 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 15.

Offence to withhold
information

12. Where the information requested under section 11(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

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

(a) a transaction or activity appears to be suspicious; or

(b) a suspicious transaction or suspicious 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 and 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

14. (1) The FIU may, where the circumstances set out in Regulations prescribed under section 27 exist, instruct a financial institution or listed business in writing, to suspend the processing of a suspicious 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.

15. (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 for investigation 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.

(3) 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 a report within the context of its subject matter.

16. 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.

17. (1) The FIU shall publish—

- (a) as frequently as is necessary, by Notices in the *Gazette* and in at least two newspapers 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

Investigation

Co-operation and
liaison with other
authorities and
persons

Publication in the
Gazette and in
newspapers

(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.

(2) In respect of countries listed in the Notice published under subsection (1), the FIU may by Order set out the measures that may be utilized by a financial institution or listed business, against such countries.

Annual Reports

18. (1) The Director shall submit within sixty days of the end of the financial year 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 thirty days of receipt of a report from the Director under subsection (1), lay the report in Parliament.

PART IV

OFFENCES AND PENALTIES

FIU Officer

19. 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

20. 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.

21. (1) A financial institution or listed business convicted of an offence under section 12, is liable— Failure to provide information

(a) on summary conviction, to a fine of five hundred thousand dollars and a further fine of twenty-five thousand dollars for each day that the offence continues; and

(b) on conviction on indictment, to a fine of one million dollars and 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;

(b) the Chief Executive Officer or other officer;
or

(c) the owner or partner,

of a financial institution or listed business, and that person knowingly authorized or acquiesced in the failure to provide the additional information required, the person 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.

(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.

22. (1) 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. Confidentiality of information

(2) Subsection (1) does not apply to information in the possession of an FIU officer as a result of the execution of his functions under section 55 of the Act.

Disclosure of
information to
Minister

22A (1). The Director shall not disclose or cause to be disclosed to the Minister or to any other person, except in accordance with this Act, the personal or financial details pertaining to an individual or business contained in—

- (a) a suspicious transaction or a suspicious activity report;
- (b) a report on any analysis forwarded to prescribed law enforcement authorities; and
- (c) information obtained from a financial institution or listed business concerning any account held by a customer or business,

and arising out of or in connection with the annual report or out of or in connection with any other circumstances.

(2) Where the Director contravenes subsection (1), he commits an offence and shall be liable on summary conviction to a fine of three hundred thousand dollars and imprisonment for three years and on conviction on indictment to a fine of one million dollars and imprisonment for five years.

Disclosure of
information

23. (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).

24. 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. Disclosure of investigation

25. 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. Protection from personal liability

PART V MISCELLANEOUS

26. Notwithstanding any other law pertaining to the disclosure of personal information, the power of the FIU to collect, disseminate or exchange information under this Act, shall prevail. Act to prevail

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

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

28. (1) Within one year of the coming into effect of this Act, the Minister shall return to Parliament for a review, by Parliament, of the operation of this Act. Minister may review Act

(2) The review shall be debated by Parliament with a review to any amendment of the Act that may further the compliance with the Financial Action Task Force obligations of the State.

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 30th day of September, 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 26 members of the House.

Clerk of the House

Passed in the Senate this 6th day of October, 2009.

Acting 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 27 members of the Senate.

Acting Clerk of the Senate

Senate amendments agreed to by the House of Representatives this 9th day of October, 2009.

Clerk of the House