

PROCEEDS OF CRIME ACT

CHAPTER 11:27

Act
55 of 2000
Amended by
10 of 2009
17 of 2012

Current Authorised Pages
Pages *Authorised*
(inclusive) *by L.R.O.*
1-115 ..

Index of Subsidiary Legislation

	<i>Page</i>
Financial Obligations Regulations (LN 7/2010)...	87

Note on Omissions

Proceeds of Crime (Designated Authority) Order (LN 160/2003).

Proceeds of Crime (Prescribed Sum) Order (LN 184/2010).

Proceeds of Crime (Prescribed Sum) Order (LN 38/2011).

Note on Amendments made by this Act

- A.** Section 60 of this Act amends section 50 of the Supreme Court of Judicature Act, Ch. 4:01.
- B.** Section 61 of this Act amends sections 30 to 53 of the Dangerous Drugs Act, Ch. 11:25 with savings.

These amendments have been duly incorporated into the respective Acts.

CHAPTER 11:27

PROCEEDS OF CRIME ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.

PART I

**CONFISCATION OF THE PROCEEDS
OF A SPECIFIED OFFENCE**

3. Determination for purpose of confiscation orders.
4. Simple benefit from a specific offence that is not drug trafficking.
5. Aggravated benefit from a specified offence that is not drug trafficking.
6. Benefit from drug trafficking.
7. The amount that might be realised.
8. Realised property.
9. Standard of proof.
10. Definitions.
11. Exercise of powers of Court.
12. Postponed determinations.
13. Provision of information by the Director of Public Prosecutions.
14. Provision of information by the defendant.
15. Review of cases where the proceeds of crime not assessed.
16. Review of assessment of the proceeds of a specific offence or drug trafficking.
17. Revision of assessment of amount to be recovered.
18. Cases in which restraint and charging orders may be made.
19. Restraint orders.
20. Charging orders in respect of land, securities, etc.
21. Realisation of property.
22. Exercise of powers by High Court Receiver.
23. Variation of confiscation orders.
24. Increase in realisable property.
25. Confiscation orders where the defendant had absconded or died.

ARRANGEMENT OF SECTIONS—*Continued*

SECTION

26. Variation of confiscation made by virtue of section 25.
27. Acquittal of absconder.
28. Discharge of confiscation order made against an absconder.
29. Compensation.
30. Amount of compensation.
31. Sentence in default of payment and interest on sums to be paid under confiscation order.
32. Orders to make material available for investigating the benefit from a specified offence or drug trafficking.
33. Authority for search.
34. Orders against a government department.
35. Affected persons can make representations.
36. Enforcement of external confiscation orders.
37. Registration of external confiscation orders.
38. Seizure and detention of cash.
39. Forfeiture of cash.
40. Appeal against forfeiture order made by a Magistrates' Court.
41. Forfeiture orders.
42. Restoration of forfeited items.

PART II

MONEY LAUNDERING

- 42A. Money laundering.
43. Suspicious dealings with property, etc.
44. Concealing or disguising one's proceeds of crime.
45. Concealing or disguising another's proceeds of crime.
46. Receiving, etc., another's proceeds of crime.
47. Disclosing a suspicion or belief.
48. Defence to sections 43, 45 and 46.
49. Effect of sections 47 and 48.
50. Not offence.
51. Tipping-off.
52. Failure to disclose knowledge or suspicion of money laundering.

SECTION

- 53. Penalties.
- 54. Extension of certain offences to public servants.
- 55. Record keeping and retention duties.
- 56. Regulations.
- 56A. Supervisory Authority to submit report.
- 56B. Joint Committee of Parliament to be established.
- 57. Offences and punishment.

PART III

MISCELLANEOUS

- 58. Seized Assets Fund.
- 59. Rules.

FIRST SCHEDULE.
SECOND SCHEDULE.
THIRD SCHEDULE.

CHAPTER 11:27

PROCEEDS OF CRIME ACT

55 of 2000.
[10 of 2009].

An Act to establish the procedure for the confiscation of the proceeds of certain offences and for the criminalising of money laundering.

Commencement.
269/2000.
*212/2009.

[6TH NOVEMBER 2000]

Preamble.

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 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 by 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 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.

Short title.

1. This Act may be cited as the Proceeds of Crime Act.

Interpretation.
[10 of 2009
17 of 2012].

2. (1) In this Act—

“Board of Inland Revenue” means the Board of Inland Revenue established by section 3 of the Income Tax Act;

Ch. 75:01.

“business” means an activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all rights and liabilities arising from such activity;

* Act No. 10 of 2009 made substantial amendments to this Act and these amendments took effect from 9th October 2009 by LN 212/2009.

“date of conviction” means—

- (a) the date on which the defendant was convicted of the specified offence concerned; or
- (b) where he was convicted in the same proceedings, but on different dates, of two or more specified offences, the date of the latest of those convictions;

“Director of Public Prosecutions” means the Director of Public Prosecutions of Trinidad and Tobago or any person assigned by him for the purpose of this Act;

“drug trafficking” means the importation, exportation, cultivation, manufacture, sale, giving, administering, transportation, delivery or distribution by any person of a dangerous drug or any substance represented or held out by such person to be a dangerous drug or the making of any offer in respect thereof, whether in the Territory or elsewhere, an act that would constitute an offence under sections 5(3), 5(3A), 5(4) and (7), 6A, 7, 8, 9, 11, 17 and section 53B of the Dangerous Drugs Act including a conspiracy to commit such an Act as well as attempting, inciting, aiding, abetting, counselling or procuring such an act, but does not include—

- (a) the importation or exportation of a dangerous drug by or on behalf of any person who has a licence therefor under section 4 of the Dangerous Drugs Act; or
- (b) the manufacture, processing, packaging, sale, giving, administering, transportation, delivery or distribution of a dangerous drug or the making of any offer in respect thereof by or on behalf of a person who has a licence therefor or by or on behalf of a medical practitioner, dentist, veterinary surgeon or pharmacist for a medicinal purpose;

“drug trafficking offence” means an offence under sections 5(3), 5(3A), 5(4) and (7), 6A, 7, 8, 9, 11, 17 and 53B of the Dangerous Drugs Act, a conspiracy to commit such an offence as well as attempting, inciting, aiding, abetting, counselling or procuring the commission of such an offence;

“export” means the taking or conveying, or causing to be taken or conveyed, out of the Territory;

“financial institution” means—

- Ch. 79:09. (a) a bank licensed under the Financial Institutions Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- Ch. 33:04. (c) a building society registered under the Building Societies Act;
- Ch. 81:03. (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act;
- Ch. 84:01. (f) a person licensed under the Exchange Control Act to operate an exchange bureau;
- Ch. 79:50. (g) a person licensed under the Securities Industry Act as a broker-dealer, underwriter or investment adviser;
- Ch. 83:02. (h) a person who is registered to carry on cash remitting services under the Central Bank Act;
- Ch. 79:02. (i) a person who carries on postal service;
- (j) an entity providing mutual funds;
- (k) development banks, trust companies, mortgage companies; or
- (l) any other person declared by the Minister by Order, subject to negative resolution of Parliament to be a financial institution for the purpose of this Act;

Ch.72:01. “FIU” means the Financial Intelligence Unit of Trinidad and Tobago established under section 3 of the Financial Intelligence Unit of Trinidad and Tobago Act;

“holder”, in relation to any property, includes a person who—

- (a) is the owner of;
- (b) is in possession of;
- (c) is in occupation of;

- (d) has custody or control of; or
- (e) has any other right, interest, title, claim, power, duty or obligation, in relation to,

that property;

“import” means the bringing or conveying, or causing to be brought or conveyed, into the Territory;

“listed business” means a business or profession listed in the First Schedule;

First Schedule.

“Minister” means the Minister to whom responsibility for national security is assigned;

“Police Officer” means an Officer of the Trinidad and Tobago Police Service and includes an Officer of the Customs and Excise Division, an Officer of the Board of Inland Revenue or any officer of an agency of the State, lawfully vested with investigative powers similar to those exercisable by a police officer appointed under the Police Service Act;

Ch. 15:01.

“property” means real or personal property, whether within or outside the territory and includes—

- (a) a right, interest, title, claim, chose in action, power, privilege, whether present or future and whether vested or contingent, in relation to property, or which is otherwise of value;
- (b) a conveyance executed for conveying, assigning, appointing, surrendering, or otherwise transferring or disposing of immovable property whereof the person executing the conveyance is proprietor or possessed or wherein he is entitled to a contingent right, either for his whole interest or for a lesser interest;
- (c) a monetary instrument;
- (d) any other instrument or securities;
- (e) any business;
- (f) a vehicle, boat, aircraft or other means of conveyance of any description; and
- (g) any other tangible or intangible property;

“realisable property” means—

- (a) any property held by the defendant; and
- (b) any property held by a person to whom the defendant has directly or indirectly made a gift caught by the Act;

“relevant business activity” means an activity between two or more persons in which at least one person is acting in the course of a business referred to in the First Schedule;

First Schedule.

“relevant Court” means the Court in proceedings before which the defendant was convicted;

“Rules of Court” means such rules as may be prescribed for the conduct of proceedings provided for in this Act;

“security” includes any document, instrument or writing evidencing ownership of, or any interest in the capital, debt property, profits, earnings or royalties of any person or enterprise and without limiting the generality of the foregoing, includes any—

- (a) bond, debenture, note or other evidence of indebtedness;
- (b) share, stock, unit or unit certificate, participation certificate, certificate of share or interest;
- (c) document, instrument or writing commonly known as a security;
- (d) document, instrument or writing evidencing an option, subscription or other interest in respect of—
 - (i) a financial institution;
 - (ii) a credit union within the meaning of the Co-operative Societies Act; or
 - (iii) an insurance company;
- (e) investment contract;
- (f) document, instrument or writing constituting evidence of any interest or participation in—
 - (i) a profit-sharing arrangement or agreement;
 - (ii) a trust; or

Ch. 81:03.

- (iii) an oil, natural gas or mining lease, claim or royalty or other mineral rights;

“specified offence” means—

- (a) an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily;
- (b) any act committed or omitted to be done outside of Trinidad and Tobago, which would constitute an indictable offence in Trinidad and Tobago; or
- (c) an offence specified in the Second Schedule;

Second
Schedule.

“Supervisory Authority” means the competent authority responsible for ensuring compliance by financial institutions and listed business with requirements to combat money laundering;

“Territory” means the territory of Trinidad and Tobago;

“transaction” includes the receiving or making of a gift;

“trust” includes a legal obligation in favour of a beneficiary subject to which any person holds property.

(2) The Minister may by Order, subject to an affirmative resolution of Parliament amend the First and Second Schedules.

First and
Second
Schedules.

(3) Reference in this Act to an act that would constitute an offence includes a reference to acts which would constitute an offence committed before the commencement of this Act.

(4) References in this Act to anything received in connection with drug trafficking include a reference to anything received both in that connection and in a related connection.

(5) References to property held by a person include a reference to property vested in his trustee in bankruptcy or liquidator.

- (6) }
(7) } ***(Repealed by Act No. 10 of 2009).***

(8) A confiscation order is subject to appeal, where an appeal is competent but has not been brought and until the expiration of the time for bringing that appeal as laid down by law; and if the appeal is brought until the resolution of the appeal.

PART I

CONFISCATION OF THE PROCEEDS
OF A SPECIFIED OFFENCE

Determination
for purpose of
confiscation
orders.
[10 of 2009].
Ch. 4:20.

3. (1) Notwithstanding section 110 of the Summary Courts Act where a person is convicted of a specified offence in any proceeding—

(a) before a Magistrate's Court and where—

- (i) it appears to the Magistrate that the person convicted may have benefitted in accordance with subsection (3) and has or may have realisable property; or
- (ii) it appears to the Director of Public Prosecutions that the person convicted may have benefitted in accordance with subsection (3) and has or may have realisable property, on application by the Director of Public Prosecutions,

the Magistrate shall, after passing sentence, send the case to the High Court for determination as to whether a confiscation order should be made;

(b) before the High Court, the Court shall—

- (i) if the Director of Public Prosecutions has given written notice to the Court that he considers that it would be appropriate for the Court to proceed under this section; or
- (ii) if the Court considers, even though it has not been given such notice, that it would be appropriate for it so to proceed,

act in accordance with subsections (2) and (3) and either section 4 or 5 in the case of a specified offence that is not a drug trafficking offence and in the case of drug trafficking in accordance with subsections (2) and (3) and section 6.

(2) The Court shall first determine, whether the defendant has benefitted from the commission of the specified offence in respect of which the defendant has been convicted unless the

specified offence in respect of which the defendant has been convicted is a drug trafficking offence in which case the Court shall determine if the defendant has benefitted from drug trafficking.

- (3) For the purposes of this Act a person benefits—
- (a) from a specified offence that is not a drug trafficking offence where—
 - (i) he obtains property as a result of or in connection with its commission and his benefit is the value of the property so obtained;
 - (ii) he derives a pecuniary advantage as a result of or in connection with its commission, and his benefit is the money value of the pecuniary advantage;
 - (b) from drug trafficking if he has at any time whether before or after the commencement of this Act received any payment or other reward in connection with drug trafficking carried on by him or another person.

4. (1) If the Court determines that the defendant has benefitted from the commission of a specified offence that is not drug trafficking subject to subsection (2) below, it shall then—

Simple benefit from a specific offence that is not drug trafficking.

- (a) determine in accordance with section 7 the amount to be recovered in his case by virtue of this section; and
- (b) make an order under this section ordering the defendant to pay that amount.

(2) If, in a case falling within section 3(3)(a), the Court is satisfied that a victim of a specified offence has instituted, or intends to institute, civil proceedings against the defendant in respect of loss, injury or damage sustained in connection with that conduct—

- (a) the Court may make an order under this section;
- (b) section 7 shall not apply for determining the amount to be recovered in that case by virtue of this section; and

- (c) where the Court makes an order in exercise of that power, the sum required to be paid under that order shall be of such amount, not exceeding the amount which but for paragraph (b) would apply by virtue of section 7, as the Court thinks fit.

Aggravated benefit from a specified offence that is not drug trafficking.

5. (1) This section applies to a case where a defendant is convicted, in any proceedings before the High Court or a Magistrate's Court, of a specified offence other than a drug trafficking offence where the Director of Public Prosecutions gives notice for the purposes of section 3(1)(a)(ii) or 3(1)(b)(i) that the benefit is—

- (a) one million dollars or more; or
 (b) one million dollars or more when taken together with any benefit assessed in respect of any previous specified offence other than a drug trafficking offence in the relevant period, and

that notice contains a declaration that it is the opinion of the Director of Public Prosecutions that the case is one in which it is appropriate for the provisions of this section to be applied.

(2) When the Director of Public Prosecutions gives notice in accordance with subsection (1), the Court shall, subject to subsection (4), make the assumptions specified in subsection (3) for the purpose—

- (a) of determining whether the defendant has benefitted from the commission of a specified offence; and
 (b) if he has, of assessing the value of the defendant's benefit from the commission of the offence.

(3) The assumptions referred to in subsection (2) are—

- (a) that any property appearing to the Court—
 (i) to be held by the defendant at the date of conviction or any time in the period between that date and the determination in question; or

-
- (ii) to have been transferred to him at any time since the beginning of the relevant period, was received by him, at the earliest time when he appears to the Court to have held it, as a result of or in connection with the commission of a specified offence;
- (b) that any expenditure of his since the beginning of the relevant period was met out of payments received by him as a result of or in connection with the commission of a specified offence; and
- (c) that, for the purposes of valuing any benefit which he had or which he is assumed to have had at any time he received the benefit free of any other interests in it.
- (4) The Court shall not make any assumption in relation to any particular property or expenditure if—
- (a) that assumption so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
- (b) that assumption, so far as it so relates, is shown to be correct in relation to a specified offence, the defendant's benefit from which has been the subject of a previous confiscation order; or
- (c) the Court is satisfied that there would, for any other reason, be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.
- (5) Where the Court does not make one or more of the required assumptions, it shall state its reasons.
- (6) Where the assumptions specified in subsection (3) are made in any case, the specified offence from which, in accordance with those assumptions, the defendant is assumed to have benefitted shall be treated as if they were comprised, for the purposes of this Part of this Act, in the conduct which is to be treated, in that case, as relevant criminal conduct in relation to the defendant.

(7) If the Court determines that the defendant has benefitted from the commission of a specified offence that is not drug trafficking in accordance with this section, it shall then—

- (a) determine in accordance with section 7 the amount to be recovered in his case; and
- (b) make an order under this section ordering the defendant to pay that amount.

(8) The relevant period for the purposes of this section means the period not exceeding six years prior to the commencement of the proceedings and ending on the date of conviction.

Benefit from
drug trafficking.

6. (1) For the purposes of this Act—

- (a) any payments or other rewards received by a person at any time whether before or after the commencement of this Act, in connection with drug trafficking carried on by him or another, are his proceeds of drug trafficking; and
- (b) the value of his proceeds of drug trafficking is the aggregate of the values of the payments or other rewards.

(2) The Court shall, for the purposes of determining whether the defendant has benefitted from drug trafficking and, if he has so benefitted, of assessing the value of his proceeds of drug trafficking, make the assumptions referred to in subsection (3) except to the extent that any of the assumptions are shown to be incorrect in the defendant's case.

(3) The assumptions referred to in subsection (2) are as follows:

- (a) that any property appearing to the Court—
 - (i) to have been held by him at any time since his conviction; or
 - (ii) to have been transferred to him at any time since the beginning of the period of six years ending when the proceedings were instituted against him,

was received by him, at the earliest time at which he appears to the Court to have held it, as a payment or reward in connection with drug trafficking carried on by him;

- (b) that any expenditure of his since the beginning of the period of six years was met out of payments received by him in connection with drug trafficking carried on by him; and
- (c) that, for the purpose of valuing any property received or assumed to have been received by him at any time as such a reward, he received the property free of any other interests in it.

(4) The Court shall not make any assumption in relation to any particular property or expenditure if—

- (a) that assumption, so far as it relates to that property or expenditure, is shown to be incorrect in the defendant's case;
- (b) that assumption, so far as it so relates, is shown to be correct in relation to drug trafficking, the defendant's benefit from which has been the subject of a previous confiscation order; or
- (c) the Court is satisfied that there would, for any other reason, be a serious risk of injustice in the defendant's case if the assumption were to be made in relation to that property or expenditure.

(5) Where the Court does not make one or more of the required assumptions, it shall state its reasons.

(6) For the purposes of assessing the value of the defendant's proceeds of drug trafficking in a case where a confiscation order has previously been made against him, the Court shall leave out of account any of his proceeds of drug trafficking that are shown to the Court to have been taken into account in determining the amount to be recovered under that order.

(7) If the Court determines that the defendant has benefitted from drug trafficking in accordance with this section, it shall then—

- (a) determine in accordance with section 7 the amount to be recovered in his case; and
- (b) make an order under this section ordering the defendant to pay that amount.

The amount that might be realised.

7. (1) Subject to section 3(3), the sum which an order made by a Court under this Part requiring a defendant to pay shall be equal to—

- (a) the benefit in respect of which it is made; or
- (b) the amount appearing to the Court to be the amount that might be realised at the time the order is made, whichever is the less.

(2) For the purposes of determining the amount that might be realised in a case where a confiscation order has previously been made against him, the Court shall leave out of account any amount that has been paid by the defendant in determining the amount to be recovered under that order.

(3) Where a confiscation order or part thereof has not been satisfied by a defendant and the outstanding amount owed is included for the purposes of a new confiscation order, the balance of the original order shall be set aside by the Court.

Realised property.
[10 of 2009].

8. (1) For the purposes of this Act the amount that might be realised at the time a confiscation order is made is—

- (a) the total of the values at that time of all the realisable property held by the defendant; less
- (b) where there are obligations having priority at that time, the total amounts payable in pursuance of such obligations, together with the total of the values at that time of all gifts caught by this Act.

(2) Subject to the following provisions of this section, for the purposes of this Act the value of property, other than cash, in relation to any person holding the property—

(a) where any other person holds an interest in the property, is—

(i) the market value of the first-mentioned person's beneficial interest in the property; less

(ii) the amount required to discharge any incumbrance, other than a charging order, on that interest; and

(b) in any other case, is its market value.

(3) References in this Act to the value at any time (referred to in subsection (5) as “the material time”) of any property obtained by a person as a result of or in connection with the commission of an offence are references to—

(a) the value of the property to him when he obtained it adjusted to take account of subsequent changes in the value of money; or

(b) where subsection (5) applies, the value here mentioned, whichever is the greater.

(4) If at the material time he holds—

(a) the property which he obtained, not being cash; or

(b) property which, in whole or in part, directly or indirectly represents in his hands the property which he obtained,

the value referred to in subsection (3)(b) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b), so far as it so represents the property which he obtained, but disregarding any charging order.

(5) Subject to subsection (10), references in this Part to the value at any time (referred to in subsection (6) as “the material time”) of a gift caught by this Part are references to—

- (a) the value of the gift to the recipient when he received it adjusted to take account of subsequent changes in the value of money; or
- (b) where subsection (7) applies, the value there mentioned, whichever is the greater.

(6) Subject to subsection (10), if at the material time he holds—

- (a) the property which he received, not being cash; or
- (b) property which, in whole or in part, directly or indirectly represents in his hands the property which he received, the value referred to in subsection (5) is the value to him at the material time of the property mentioned in paragraph (a) or, as the case may be, of the property mentioned in paragraph (b) so far as it so represents the property which he received, but disregarding any charging order.

(7) For the purposes of subsection (2), an obligation has priority at any time if it is an obligation of the defendant to—

- (a) pay an amount due in respect of a fine, or other order of a Court, imposed or made on conviction of an offence, where the fine was imposed or order made before the confiscation order; or
- (b) pay any sum which would be included among the preferential debts, in the defendant’s bankruptcy commencing on the date of the confiscation order or winding up under an order of the Court made on that date.

(8) A gift, including a gift made before the commencement of this Act, is caught by this Act if—

- (a) it was made by the defendant at any time after the commission of the specified offence not

- being a drug trafficking offence or, if more than one, the earliest of the offences to which the proceedings for the time being relate; and
- (b) the Court considers it appropriate in all the circumstances to take the gift into account; or
 - (c) in the case of drug trafficking—
 - (i) the gift was made by the defendant at any time, since the beginning of the period of six years ending when the proceedings were instituted against him; or
 - (ii) it was made by the defendant at any time and was a gift of property—
 - (A) received by the defendant in connection with drug trafficking carried on by him or another; or
 - (B) which in whole or in part, directly or indirectly, represented in the defendant's hands property received by him in that connection.

(9) The reference in subsection (8) to a specified offence to which the proceedings for the time being relate includes, where the proceedings have resulted in the conviction of the defendant, a reference to any offence which the Court takes into consideration when determining his sentence.

- (10) For the purposes of this Act—
- (a) the circumstances in which the defendant is to be treated as making a gift include those where he transfers property to another person directly or indirectly for a consideration, the value of which is significantly less than the value of the consideration provided by the defendant; and
 - (b) in those circumstances, the preceding provisions of this section shall apply as if the defendant had made a gift of such share in the property as bears to the whole property the same proportion as the

difference between the values referred to in paragraph (a) bears to the value of the consideration provided by the defendant.

Standard of proof.

9. The standard of proof required to determine any standard of proof question arising under this Act as to—

- (a) whether a person has benefitted from any offence; or
- (b) the amount to be recovered in his case,

shall be that applicable in civil proceedings.

Definitions.
[10 of 2009].

10. In this Act—

- (a) an order made by a Court under this Part is referred to as a “confiscation order”;
- (b) a person against whom proceedings have been instituted for an offence to which this Part applies is referred to (whether or not he has been convicted) as “the defendant”;
- (c) proceedings for an offence are instituted—
 - (i) where a Magistrate or Justice issues a summons or warrant under section 38 or 41 of the Summary Courts Act in respect of the offence;
 - (ii) where a person is charged with the offence, after being taken into custody without a warrant; and
 - (iii) when an indictment is preferred against an accused person; and
- (d) proceedings for an offence are concluded on the occurrence of the following events:
 - (i) the discontinuance of the proceedings;
 - (ii) the acquittal of the defendant;
 - (iii) the quashing of a conviction for an offence where no retrial is ordered;
 - (iv) the grant of the President’s pardon in respect of the offence;

Ch. 4:20.

- (v) the Court sentencing or otherwise dealing with the defendant in respect of the offence; and
- (vi) the satisfaction of a confiscation order made in proceedings by payment of the amount due under the order or by the defendant serving imprisonment in default.

11. (1) The Court before which the defendant is convicted other than a Magistrates' Court sending a defendant to the High Court for the purposes of a confiscation hearing, shall sentence the defendant in respect of the specified offence after the determination of the confiscation hearing.

Exercise of powers of Court.

(2) Where a Court makes a confiscation order against a defendant in any proceedings, the Court shall, in respect of any offence of which he is convicted in those proceedings, take account of the order before—

- (a) imposing any fine on him;
- (b) making any order involving any payment by him, but subject to that shall leave the order out of account in determining the appropriate sentence or other manner of dealing with him.

(3) No enactment restricting the power of a Court dealing with a defendant in a particular way from dealing with him also in any other way shall by reason only of the making of a confiscation order restrict the Court from dealing with a defendant in any way it considers appropriate in respect of a specified offence.

12. (1) Where a Court is acting under sections 3 to 6 but considers that it requires further information before—

Postponed determinations. [10 of 2009].

- (a) determining whether the defendant has benefitted from the commission of a specified offence or from drug trafficking, as the case may be; or
- (b) determining the amount to be recovered in his case,

it may, for the purpose of enabling that information to be obtained, postpone making that determination for such period as it may specify.

(2) More than one postponement may be made under subsection (1) in relation to the same case.

- (3) A postponement under subsection (1) may be made—
- (a) on application by the defendant or the Director of Public Prosecutions; or
 - (b) by the Court of its own motion.

(4) Unless the Court is satisfied that there are exceptional circumstances, the total period of any postponement under subsection (1) shall not exceed two years after the date of conviction.

(5) Where the Court exercised its power under subsection (1), it may nevertheless proceed to sentence, or otherwise deal with, the defendant in respect of the offence or any of the offences concerned.

(6) Where the Court has proceeded under subsection (5), section 11(2) shall have effect as if after the word “determining” there were inserted the words “in relation to any offence in respect of which he has not been sentenced or otherwise dealt with”.

(7) In sentencing, or otherwise dealing with, the defendant in respect of the offence or any of the offences, concerned at any time during the specified period, the Court shall not—

- (a) impose any fine on him; or
- (b) make any such order as is mentioned in section 11(2)(b).

(8) Where the Court has sentenced the defendant under subsection (5) during the period of postponement it may, after the end of that period, vary the sentence by imposing a fine or making any such order as is mentioned in section 11(2)(b).

Provision of
information by
the Director of
Public
Prosecutions.

13. (1) Subsection (2) applies to a case where a person has been convicted of a specified offence and the High Court is acting under section 3(1).

(2) Where this subsection applies, the Director of Public Prosecutions shall, within such period as the Court may direct, tender to the Court a statement as to any matters relevant—

- (a) to determining whether the defendant has benefitted from the commission of a specified offence; or
- (b) to an assessment of the value of the defendant's benefit from that offence,

and, where such a statement is tendered in a case in which a declaration has been made for the purposes of section 5(1) or section 6(2), that statement shall also set out all such information available to the Director of Public Prosecutions as may be relevant for the purposes of subsections (3) and (4)(b) or (c) of section 5 and subsections (3) and (4)(b) or (c) of section 6.

(3) Where a statement is tendered to the Court under this section—

- (a) the Director of Public Prosecutions may at any time tender to the Court a further statement as to the matters mentioned in subsection (2); and
- (b) the Court may at any time require the Director of Public Prosecutions to tender a further such statement within such period as it may direct.

(4) Where—

- (a) any statement has been tendered to any Court by the Director of Public Prosecutions under this section; and
- (b) the defendant accepts to any extent any allegation in the Statement,

the Court may, for the purpose of determining whether the defendant has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking, or of assessing the value of the defendant's benefit from such offence, treat his acceptance as conclusive of the matters to which it relates.

(5) Where—

- (a) a statement is tendered by the Director of Public Prosecutions under this section; and
- (b) the Court is satisfied that a copy of that statement has been served on the defendant,

the Court may require the defendant to indicate to what extent he accepts each allegation in the Statement and, so far as he does not accept any such allegation, to indicate any matters he proposes to rely on.

(6) If the defendant fails in any respect to comply with a requirement under subsection (5), he may be treated for the purposes of this section as accepting every allegation in the Statement apart from—

- (a) any allegation in respect of which he has complied with the requirement; and
- (b) any allegation that he has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking, or that any property was obtained by him as a result of or in connection with the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking.

(7) An allegation may be accepted or a matter indicated for the purposes of this section either—

- (a) orally before the Court; or
- (b) in writing in accordance with Rules of Court.

(8) If the Court is satisfied as to any matter relevant for determining the amount that might be realised at the time the confiscation order is made, whether by an acceptance under this section or otherwise, the Court may issue a certificate giving the Court's opinion as to the matters concerned and shall do so if satisfied that the amount that might be realised at the time the confiscation order is made is less than the amount the Court assesses to be the value of the defendant's benefit from the

commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking.

(9) Where the Court has given a direction under this section, it may at any time vary the direction by giving a further direction.

14. (1) Subsection (2) applies to a case where a person has been convicted of a specified offence and the High Court is acting under section 3(1). Provision of information by the defendant.

(2) For the purpose of obtaining information to assist it in carrying out its functions under this Part, the Court may at any time order the defendant to give it such information as may be specified in the order.

(3) An order under subsection (2) may require all, or any specified part, of the required information to be given to the Court in such manner, and before such date, as may be specified in the order.

(4) Rules of Court may make provision as to the maximum or minimum period that may be allowed under subsection (3).

(5) If the defendant fails, without reasonable excuse, to comply with any order under this section, the Court may draw such inference from that failure as it considers appropriate.

(6) Where the Director of Public Prosecutions accepts to any extent any allegation made by the defendant—

(a) in giving to the Court information required by an order under this section; or

(b) in any other statement tendered to the Court for the purpose of this Part,

the Court may treat that acceptance as conclusive of the matters to which it relates.

(7) For the purposes of this section an allegation may be accepted in such manner as may be prescribed by Rules of Court or as the Court may direct.

Review of cases where the proceeds of crime not assessed. [10 of 2009].

15. (1) This section applies to any case where—

- (a) a person has been convicted, in any proceedings before the High Court, or a Magistrates' Court, of a specified offence;
- (b) the Director of Public Prosecutions did not give notice for the purposes of section 3(1)(b)(i); and
- (c) a determination was made for the purposes of section 3(1)(b)(ii) not to proceed under that section or no determination was made for those purposes.

(2) If the Director of Public Prosecutions has evidence—

- (a) which, at the date of conviction or, if later, when any determination not to proceed under section 3 was made, was not available to the Director of Public Prosecutions and accordingly was not considered by the Court;
- (b) which the Director of Public Prosecutions believes would have led the Court to determine, if—
 - (i) he had given notice for the purposes of subsection (1)(a) of that section; and
 - (ii) the evidence had been considered by the Court that the defendant had benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking,

the Director of Public Prosecutions may apply to the relevant Court for it to consider the evidence.

(3) If, having considered the evidence, the relevant Court is satisfied that it is appropriate to do so, it shall proceed under section 3 as if it were doing so before sentencing or otherwise dealing with the defendant in respect of a specified offence and section 12 shall apply accordingly.

(4) In considering whether it is appropriate to proceed under section 3 in accordance with subsection (3), the Court shall have regard to all the circumstances of the case.

(5) Where, having decided in pursuance of subsection (3) to proceed under section 3, the relevant Court determines that the defendant did benefit from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking—

- (a) section 4(1) shall not apply and subsection (2) of that section shall not apply for determining the amount to be recovered in that case;
- (b) that Court may make a confiscation order; and
- (c) if the Court makes an order in exercise of that power, the sum required to be paid by that order shall be of such amount, not exceeding the amount which, but for paragraph (a), would apply by virtue of section 4(2), 5(7) or 6(7), as the Court thinks fit.

(6) In considering the circumstances of any case either under subsection (4) or for the purposes of subsections (5)(b) and (c), the relevant Court shall have regard, in particular, to any fine imposed on the defendant in respect of the commission of a specified offence.

(7) In making any determination under, or for the purposes of, this section, the relevant Court may take into account, to the extent that they represent instances in which the defendant has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking, any payments or other rewards which were not received by him until after the time when he was sentenced or otherwise dealt with in the case in question.

(8) Where an application under this section contains such a declaration as is mentioned in section 5(1), or the Court is proceeding under section 6, those sections shall apply, subject to subsection (9), in the case of any determination on the application as if it were a determination in a case in which the requirements of paragraphs (a) and (b) of section 5(2) and paragraphs (a) and (b) of section 6(3) had been satisfied.

(9) For the purposes of any determination to which section 5 or 6 applies by virtue of subsection (8), none of the assumptions specified in section 5(3) or section 6(3) shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(10) No application shall be entertained by the Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(11) Sections 13 and 14 shall apply where the Director of Public Prosecutions makes an application under this section as they apply in a case where the Director of Public Prosecutions has given written notice to the Court for the purposes of section 3(1)(b)(i), but as if the reference in section 13(2) to a declaration made for the purposes of section 5 were a reference to a declaration for the purposes of subsection (8).

Review of
assessment of
the proceeds of
a specific
offence or drug
trafficking.
[10 of 2009].

16. (1) This section applies where in any case there has been a determination under section 3(3) (hereinafter referred to as “the original determination”) that the defendant in that case had not benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking.

- (2) If the Director of Public Prosecutions has evidence—
- (a) which was not considered by the Court which made the original determination; but
 - (b) which the Director of Public Prosecutions believes would have led the Court, if it had been considered to determine that the defendant had benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking,

the Director of Public Prosecutions may apply to the relevant Court for it to consider that evidence.

(3) If, having considered the evidence, the relevant Court is satisfied that, if that evidence had been available to it, it would have determined that the defendant had benefitted from

the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking, that Court—

- (a) shall proceed, as if it were proceeding under section 3 before sentencing or otherwise dealing with the defendant in respect of a specified offence—
 - (i) to make a fresh determination of whether the defendant has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking; and
 - (ii) then to make such a determination as is mentioned in section 4(1), 5(7), or 6(7); and
- (b) subject to subsection (4), may, after making those determinations, make an order requiring the payment of such sum as it thinks fit,

and an order under paragraph (b) shall be deemed for all purposes to be a confiscation order.

(4) The Court shall not, in exercise of the power conferred by paragraph (b) of subsection (3), make any order for the payment of a sum which is more than the amount determined in pursuance of paragraph (a)(ii) of that subsection.

(5) In making any determination under or for the purposes of subsection (3), the relevant Court may take into account, to the extent that they represent respects in which the defendant has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, from drug trafficking, any payments or other rewards which were not received by him until after the making of the original determination.

(6) Where an application under this section contains such a declaration as is mentioned in section 5(1) or the Court is proceeding under section 6, those sections shall apply, subject to subsection (7), in the case of any determination on the application as if it were a determination in a case in which the requirements of paragraphs (a) and (b) of section 5(2) or paragraphs (a) and (b) of section 6(3) had been satisfied.

(7) For the purposes of any determination to which section 5 or 6 applies by virtue of subsection (6), none of the assumptions specified in section 5(3) or section 6(3) shall be made in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(8) No application shall be determined by the Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(9) Section 12 shall apply where the Court is acting under this section as it applies where the Court is acting under section 3.

(10) Sections 13 and 14 shall apply where the Director of Public Prosecutions makes an application under this section as they apply in a case where the Director of Public Prosecutions has given written notice to the Court for the purposes of section 3(1), but—

- (a) as if the reference in section 13(2) to a declaration made for the purposes of section 5 included a reference to a declaration for the purposes of subsection (6); and
- (b) as if any reference in section 13(8) to the time the confiscation order is made were a reference to the time the order is made on that application.

Revision of assessment of amount to be recovered.

17. (1) This section applies where, in the case of a person convicted of any offence, there has been a determination under the Act (hereinafter referred to as “the current determination”) of any sum required to be paid in his case under any confiscation order.

(2) Where the Director of Public Prosecutions is of the opinion that the value of any benefit to the defendant from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking, was greater than the value at which that benefit was assessed by the Court on the current determination, the Director of Public Prosecutions may apply to the relevant Court for the evidence on which he has formed his opinion to be considered by the Court.

(3) If, having considered the evidence, the relevant Court is satisfied that the value of the benefit from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking, is greater than the value so assessed by the Court, because the value of the benefit in question has subsequently increased, the relevant Court—

(a) subject to subsection (4), shall make a fresh determination, as if it were proceeding under section 3 before sentencing or otherwise dealing with the defendant in respect of the commission of a specified offence, of the following amounts, that is to say:

(i) the amount by which the defendant has benefitted from the offence; and

(ii) the amount appearing to be the amount that might be realised at the time of the fresh determination; and

(b) subject to subsection (5), shall have a power to increase, to such extent as it thinks just in all the circumstances of the case, the amount to be recovered by virtue of that section and to vary accordingly any confiscation order made by reference to the current determination.

(4) Where—

(a) the Court is under a duty to make a fresh determination for the purposes of subsection (3)(a) in any case; and

(b) that case is a case to which section 5 or 6 applies, the Court shall not have power, in determining any amounts for those purposes, to make any of the assumptions specified in those sections in relation to any property unless it is property held by or transferred to the defendant before the time when he was sentenced or otherwise dealt with in the case in question.

(5) The Court shall not, in exercise of the power conferred by subsection (3)(b), vary any order so as to make it an order requiring the payment of any sum which is more than the lesser of the two amounts determined in pursuance of paragraph (a) of that subsection.

(6) In making any determination under or for the purposes of subsection (3), the relevant Court may take into account, to the extent that they represent respects in which the defendant has benefitted from the commission of a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking, any payments or other rewards which were not received by him until after the making of the original determination.

(7) No application shall be entertained by a Court under this section if it is made after the end of the period of six years beginning with the date of conviction.

(8) Section 12 shall apply where the Court is acting under this section as it applies where the Court is acting under section 3.

(9) Sections 13 and 14 shall apply where the Director of Public Prosecutions makes an application under this section as they apply in a case where the Director of Public Prosecutions has given written notice to the Court for the purposes of section 3(1)(b)(i), but as if the reference in section 13(2) to a declaration made for the purposes of section 5 were a reference to a declaration for the purposes of subsection (8).

Cases in which restraint and charging orders may be made. [10 of 2009].

18. (1) The powers conferred on the High Court by sections 19 and 20 are exercisable where—

- (a) proceedings have been instituted in Trinidad and Tobago against any person for an offence to which this Act applies;
- (b) the proceedings have not been concluded or, if they have, an application that has not been concluded has been made under sections 15, 16 and 17 in respect of the defendant in those proceedings; and

-
- (c) the Court is satisfied that there is reasonable cause to believe—
- (i) in a case where there is an application under section 17, that the Court will be satisfied as mentioned in subsection (3) of that section;
 - (ii) in any case, that the proceedings may result or have resulted in, or that the application is made by reference to, a conviction of the defendant for a specified offence or, if the specified offence is a drug trafficking offence, drug trafficking, from which he may be, or has been, shown to have benefitted.
- (2) The Court shall not exercise those powers by virtue of subsection (1) if it is satisfied—
- (a) that there has been undue delay in continuing the proceedings or application in question; or
 - (b) that the person who appears to the Court to be the person who has or will have the conduct of the prosecution or, as the case may be, who made that application does not intend to proceed with it.
- (3) The powers conferred on the High Court by sections 1(1) and 20(1) are also exercisable where—
- (a) the Court is satisfied that a person is to be charged, whether by the laying of an information or otherwise, with an offence to which this Act applies or that an application of a kind mentioned in subsection (1)(b) is to be made; and
 - (b) the Court is satisfied that the making or variation of a confiscation order may result from proceedings for that offence or, as the case may be, from the application.

(4) For the purposes of sections 19 and 20 at any time when those powers are exercisable before proceedings have been instituted—

- (a) references in this Part to the defendant shall be construed as references to the person referred to in subsection (3)(a);
- (b) references in this Part to realisable property shall be construed as if, immediately before that time, proceedings had been instituted against the person referred to in subsection (3)(a) for an offence to which this Part applies.

(5) Where the Court has made an order under section 19(1) or 20(1) by virtue of subsection (2), the Court shall discharge the order if proceedings in respect of the offence are not instituted, whether by the laying of an information or otherwise, or, as the case may be, no application is made, within such time as the Court considers reasonable or if the Court is satisfied that the case has become one in which, in pursuance of subsection (2), it would be unable to exercise the powers conferred by virtue of subsection (1).

Restraint
orders.

19. (1) The High Court may by order (hereinafter referred to as a “restraint order”) prohibit any person from dealing with any realisable property, subject to such conditions and exceptions as may be specified in the order.

(2) Without prejudice to the generality of subsection (1), a restraint order may make such provision as the Court thinks fit for living expenses and legal expenses.

(3) A restraint order may apply—

- (a) to all realisable property held by a specified person, whether the property is described in the order or not; and
- (b) to realisable property held by a specified person, being property transferred to him after the making of the order.

(4) This section shall not have effect in relation to any property for the time being subject to a charge under section 20.

(5) An application for a restraint order shall be supported by an affidavit which may contain, unless the Court otherwise directs, statements of information or belief with the sources and grounds thereof.

(6) A restraint order—

- (a) may be made only on an application by the Director of Public Prosecutions;
- (b) may be made on an *ex parte* application to a Judge in Chambers; and
- (c) shall provide for notice to be given to persons affected by the order.

(7) A restraint order—

- (a) may be discharged or varied in relation to any property; and
- (b) shall be discharged on the conclusion of the proceedings or application in question.

(8) An application for the discharge or variation of a restraint order may be made by any person affected by it.

(9) Where the High Court has made a restraint order, the Court may at any time appoint a receiver—

- (a) to take possession of any realisable property; and
- (b) in accordance with the Court's directions, to manage or otherwise deal with any property in respect of which he is appointed,

subject to such exceptions and conditions as may be specified by the Court, and may require any person having possession of property in respect of which a receiver is appointed under this section to give possession of it to the receiver.

(10) For the purposes of this section, dealing with property held by any person includes, without prejudice to the generality of the expression—

- (a) where a debt is owed to that person, making a payment to any person in reduction of the amount of the debt; and
- (b) removing the property from Trinidad and Tobago.

(11) Where the High Court has made a restraint order, a police officer may, for the purpose of preventing any realisable property being removed from Trinidad and Tobago, seize the property.

(12) Property seized under subsection (11) shall be dealt with in accordance with the Court's directions.

Ch. 8:09.

(13) The Remedies of Creditors Act shall apply in relation to restraint orders as they apply in relation to orders issued or made for the purpose of enforcing judgment and registering a memorandum of *lis pendens*.

Charging orders
in respect of
land, securities,
etc.

20. (1) The High Court may make a charging order on realisable property for securing the payment to the State—

- (a) where a confiscation order has not been made, of an amount equal to the value from time to time of the property charged; and
- (b) in any other case, of an amount not exceeding the amount payable under the confiscation order.

(2) For the purpose of this Part, a charging order is an order made under this section imposing on any such realisable property as may be specified in the order a charge for securing the payment of money to the State.

(3) A charging order—

- (a) may be made only on an application by the Director of Public Prosecutions;
- (b) may be made on an *ex parte* application to a Judge in Chambers;
- (c) shall provide for notice to be given to persons affected by the order; and
- (d) may be made subject to such conditions as the Court thinks fit and, without prejudice to the generality of this paragraph, such conditions as it thinks fit as to the time when the charge is to become effective.

(4) An application for a charging order shall be supported by an affidavit which may contain, unless the Court otherwise directs, statements of information or belief with the sources and grounds thereof.

(5) Subject to subsection (6), a charge may be imposed by a charging order only on—

- (a) any interest in realisable property, being an interest held beneficially by the defendant or by a person to whom the defendant has directly or indirectly made a gift caught by this Act—
 - (i) in any asset of a kind mentioned in subsection (6); or
 - (ii) under any trust; or
 - (b) any interest in realisable property held by a person as trustee of a trust if the interest is in such an asset or is an interest under another trust and a charge may by virtue of paragraph (a) be imposed by a charging order on the whole beneficial interest under the first-mentioned trust.
- (6) The assets referred to in subsection (5) are—
- (a) land in Trinidad and Tobago; or
 - (b) securities of any of the following kinds:
 - (i) government stock;
 - (ii) stock of any body, other than a building society, incorporated within Trinidad and Tobago;
 - (iii) stock of any body incorporated outside Trinidad and Tobago or of any country or territory outside Trinidad and Tobago, being stock registered in a register kept at any place within Trinidad and Tobago;
 - (iv) units of any unit trust in respect of which a register of the unitholders is kept at any place within Trinidad and Tobago.

(7) In any case where a charge is imposed by a charging order on any interest in an asset of a kind mentioned in subsection (6)(b), the Court may provide for the charge to extend to any interest or dividend payable in respect of the asset.

(8) In relation to a charging order, the Court—

- (a) may at any time make an order discharging or varying it; and
- (b) shall make an order discharging it on the occurrence of whichever of the following first occurs, that is to say:
 - (i) the conclusion of the proceedings or application in question; and
 - (ii) the payment into Court of the amount payment of which is secured by the charge.

(9) An application for the discharge or variation of a charging order may be made by any person affected by it.

Ch. 8:09.

(10) The Remedies of Creditors Act shall apply in relation to charging orders as they apply in relation to orders issued or made for the purpose of enforcing judgment and registering a memorandum of *lis pendens*.

Realisation of property.

21. (1) Where—

- (a) a confiscation order is made in proceedings instituted for an offence to which this Act applies or an order is made or varied on an application under section 15, 16 or 17;
- (b) the proceedings in question have not, or the application in question has not, been concluded; and
- (c) the order or variation is not subject to appeal,

the High Court may, on an application by the Director of Public Prosecutions, exercise the powers conferred by subsections (2) to (6).

(2) The Court may appoint a receiver in respect of realisable property.

(3) The Court may empower a receiver appointed under subsection (2), under section 19 or in pursuance of a charging order—

(a) to enforce any legal or equitable charge imposed under section 20 on realisable property or on interest or dividends payable in respect of such property; and

(b) in relation to any realisable property other than property for the time being subject to a charge under section 20, to take possession of the property subject to such conditions or exceptions as may be specified by the Court.

(4) The Court may order any person having possession of realisable property to give possession of it to any such receiver.

(5) The Court may empower any such receiver to realise any realisable property in such manner as the Court may direct.

(6) The Court may order any person holding an interest in realisable property to make such payment to the receiver in respect of any beneficial interest held by the defendant or, as the case may be, the recipient of a gift caught by this Act as the Court may direct and the Court may, on the payment being made, by order, transfer, grant or extinguish any interest in the property.

(7) Subsections (4) to (6) do not apply to property for the time being subject to a charge under section 20.

(8) The Court shall not, in respect of any property, exercise the powers conferred by subsection (3)(a), (5) or (6) unless a reasonable opportunity has been given for persons holding any legal or equitable interest in the property to make representations to the Court.

22. (1) This section applies to the powers conferred on the High Court by sections 19, 20 and 21 or on a receiver appointed under this Act or in pursuance of a charging order. Exercise of powers by High Court Receiver.

(2) Subject to the following provisions of this section, the powers shall be exercised with a view to making available for satisfying the confiscation order or, as the case may be, any

confiscation order that may be made in the defendant's case the value for the time being of realisable property held by any person by the realisation of such property.

(3) In the case of realisable property held by a person to whom the defendant has directly or indirectly made a gift caught by this Act the powers shall be exercised with a view to realising no more than the value for the time being of the gift.

(4) The powers shall be exercised with a view to allowing any person other than the defendant or the recipient of any such gift to retain or recover the value of any property held by him.

(5) An order may be made or other action taken in respect of a debt owed by the State.

(6) In exercising those powers, no account shall be taken of any obligations of the defendant or of the recipient of any such gift which conflict with the obligation to satisfy the confiscation order.

Variation of
confiscation
orders.

23. (1) If, on an application made in respect of a confiscation order—

- (a) by the defendant; or
- (b) by a receiver appointed under section 19 or 21, or in pursuance of a charging order,

the High Court is satisfied that the realisable property is inadequate for the payment of any amount remaining to be recovered under the order the Court shall issue a certificate to that effect, giving the Court's reasons.

(2) For the purposes of subsection (1)—

- (a) in the case of realisable property held by a person who has been adjudged bankrupt or whose estate has been sequestrated the Court shall take into account the extent to which any property held by him may be distributed among creditors; and

(b) the Court may disregard any inadequacy in the realisable property which appears to the Court to be attributable wholly or partly to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made a gift caught by this Act from any risk of realisation under this Act.

(3) Where a certificate has been issued under subsection (1), the person who applied for it may apply to the Court that made the confiscation order for the amount to be recovered under the order to be reduced.

24. (1) Where the amount which a person is ordered to pay by a confiscation order is less than the amount assessed to be the value of his proceeds of a specified offence the Director of Public Prosecutions or a receiver appointed by the Court under this Act may make an application for a certificate under subsection (2).

Increase in
realisable
property.

(2) Where, on an application made in accordance with subsection (1), the High Court is satisfied that the amount that might be realised in the case of a person referred to in subsection (1) is greater than the amount taken into account in making the confiscation order, whether it was greater than was thought when the order was made or has subsequently increased, the Court shall issue a certificate to that effect giving its reasons.

(3) Where a certificate has been issued under subsection (2) the Director of Public Prosecutions may apply to the Court for an increase in the amount to be recovered under the confiscation order and on that application the Court may—

- (a) substitute for that amount such amount, not exceeding the amount assessed as the value referred to in subsection (1), as appears to the Court to be appropriate having regard to the amount now shown to be realisable; and
- (b) increase the term of imprisonment or detention fixed in respect of the confiscation order.

Confiscation orders where the defendant had absconded or died.

25. (1) Where a person has been convicted of one or more specified offences and has subsequently absconded or died, the Court, upon the application of the Director of Public Prosecutions, may make a confiscation order against the person or his estate as provided for by the Act.

(2) Subject to subsection (3), where proceedings for one or more specified offences have been instituted but have not been concluded against a person and the person has absconded, the Court may, upon the application of the Director of Public Prosecutions, make a confiscation order against the defendant, if satisfied that the defendant has absconded.

(3) An order shall not be made under subsection (2) before the end of a period of two years beginning with the date which is, in the opinion of the Court, the date on which the defendant absconded.

(4) Where an application for an order is made under this section—

- (a) sections 5(3) and 6(3) shall not apply;
- (b) the Court shall not make the order against a person who has absconded unless it is satisfied that the Director of Public Prosecutions has taken reasonable steps to contact him; and
- (c) any person appearing to the Court to be likely to be affected by the making of the order shall be entitled to appear before the Court and make representations.

(5) Sections 19 and 20 shall apply to a person against whom a confiscation order is made under this section.

Variation of confiscation made by virtue of section 25.

26. (1) Where the High Court has made a confiscation order under section 25(2) and the defendant has ceased to be an absconder, he may apply to the Court for a variation of the order.

(2) Where the Court is satisfied on the application of the defendant that—

- (a) the value of the proceeds of the defendant's commission of a specified offence or, if the

specified offence is a drug trafficking offence, drug trafficking, in the period by reference to which the determination in question was made; or

- (b) the amount that might have been realised at the time the confiscation order was made, was less than the amount ordered to be paid under the confiscation order,

the Court may vary the amount to be recovered under the order.

(3) Where the Court varies a confiscation order under this section, the Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(4) No application shall be entertained by the Court under this section if it is made after the end of a period of six years beginning with the date on which the confiscation order is made.

27. Where the Court has made a confiscation order under section 25(2) and the defendant is subsequently tried and acquitted of the specified offence in respect of which the confiscation order was made, the Court by which the defendant is acquitted shall cancel the confiscation order. Acquittal of absconder.

28. (1) Where the High Court has made a confiscation order under section 25(2) and— Discharge of confiscation order made against an absconder. [10 of 2009].

(a) the defendant ceases to be an absconder; but

(b) section 25 does not apply,

the Court may, on the application of the defendant cancel the order.

(2) Before cancelling an order under subsection (1), the Court shall be satisfied that—

- (a) there has been undue delay in continuing the proceedings in respect of which the power under section 25(2) was exercised; or
- (b) the prosecutor does not intend to proceed with the prosecution.

(3) Where the Court cancels a confiscation order under subsection (1), it may on the application of a person who held property, which was realisable property, order compensation to be paid to the applicant in accordance with section 29, if it is satisfied that the applicant has suffered a loss as a result of the making of the order.

(4) The Court may make an order which it determines is consequential or incidental to the making of a cancellation order.

Compensation.

29. (1) If proceedings are instituted against a person for an offence or offences to which this Act applies and either—

(a) the proceedings do not result in his conviction for any such offence; or

(b) where he is convicted of one or more such offences—

(i) the conviction or convictions concerned are quashed; or

(ii) he is pardoned by the President in respect of the conviction or convictions concerned,

the High Court may, on an application by a person who held property which was realisable property, order compensation to be paid to the applicant if, having regard to all the circumstances, it considers it appropriate to make such an order.

(2) The High Court shall not order compensation to be paid in any case unless the Court is satisfied—

(a) that there has been some serious default on the part of a person concerned in the investigation or prosecution of the offence concerned; and

(b) that the applicant has suffered loss in consequence of anything done in relation to the property by or in pursuance of an order under this Part.

(3) The Court shall not order compensation to be paid in any case where it appears to the Court that the proceedings would have been instituted or continued even if the serious default had not occurred.

(4) The amount of compensation to be paid under this section shall be such as the High Court thinks just in all the circumstances of the case.

(5) Compensation payable under this section shall be paid out of the Consolidated Fund.

30. Where the High Court orders compensation to be paid under section 26, 28 or 29 the amount of the compensation shall be such as the Court considers reasonable in all the circumstances.

Amount of compensation. [10 of 2009].

31. (1) If any sum required to be paid by a person under a confiscation order is not paid when it is required to be paid that person shall be liable to pay interest on that sum for the period for which it remains unpaid and the amount of the interest shall for the purposes of enforcement be treated as part of the amount to be recovered from him under the confiscation order.

Sentence in default of payment and interest on sums to be paid under confiscation order.

(2) Where a defendant fails to pay the amount to be recovered under a confiscation order within a period of three months from the date of the confiscation order or such other period as specified by the Court the defendant shall be liable to imprisonment which shall not exceed the maximum fixed by reference to the table in subsection (4).

(3) If a defendant fails to pay interest owing under subsection (1) the High Court may, on the application of the Director of Public Prosecutions, and in accordance with subsection (4), increase the term of imprisonment fixed in respect of the default of payment of the amount to be recovered under a confiscation order.

(4) An amount not exceeding \$10,000 ...	5 years
An amount exceeding \$10,000 but not exceeding \$20,000	7 years
An amount exceeding \$20,000 but not exceeding \$50,000	9 years
An amount exceeding \$50,000 but not exceeding \$100,000	11 years

An amount exceeding \$100,000 but not exceeding \$250,000	13 years
An amount exceeding \$250,000 but not exceeding \$1 million	15 years
An amount exceeding \$1 million but not exceeding \$2 million	17 years
An amount exceeding \$2 million	20 years

(5) Where the defendant serves a term of imprisonment or detention in default of paying any amount due under a confiscation order, his serving that term does not prevent the confiscation order from continuing to have effect, so far as any other method of enforcement is concerned.

(6) The term of imprisonment or detention under subsection (2) shall not begin to run until the defendant has served any other term of imprisonment or detention in respect of any other offence.

(7) The Minister may by Order amend subsection (4).

Orders to make material available for investigating the benefit from a specified offence or drug trafficking. [10 of 2009].

32. (1) A police officer may, for the purposes of an investigation, in or outside of Trinidad and Tobago, into—

- (a) a specified offence;
- (b) whether a person has benefitted from a specified offence; or
- (c) the extent or whereabouts of the proceeds of a specified offence,
- (d) *(Deleted by Act No. 10 of 2009)*

apply to a judge for an order under subsection (2) in relation to particular material or material of a particular description.

(2) If, on such an application, the Judge is satisfied that the conditions in subsection (6) are fulfilled he may make an order that the person who appears to him to be in possession of the material to which the application relates shall—

- (a) produce it to a police officer for him to take away; or

(b) give a police officer access to it, within such period as the order may specify.

(3) If, on such an application in relation to subsection (1)(d), the Judge is satisfied that the conditions in subsection (6) are fulfilled, he may make an order that the person being a relative or associate of such person shall within such period as the order may specify make a statutory declaration—

- (a) identifying each item of property, whether within or outside the Territory, belonging to or possessed by such person;
- (b) identifying each property sent out of the Territory by such persons during such period as may be specified in the notice;
- (c) setting out the estimated value and location of each of the properties identified under paragraphs (a) and (b);
- (d) stating in respect of each of the properties identified in paragraphs (a) and (b) whether the property is held by such person or by any other person on his behalf, whether it has been transferred, sold to, or kept with any other person.

(4) Subsections (2) and (3) has effect subject to section 33.

(5) The period to be specified in an order under subsection (2) or (3) shall be seven days unless it appears to the Judge that a longer or shorter period would be appropriate in the particular circumstances of the application.

(6) The conditions referred to in subsections (2) and (3) are—

- (a) in the case of subsection (2), that there are reasonable grounds for suspecting that a specified person has benefitted from a specified offence;
- (b) in the case of subsection (3), that there are reasonable grounds for suspecting that a specified person has benefitted from drug trafficking;

- (c) that there are reasonable grounds for suspecting that the material or declaration to which the application under subsection (2) or (3) relates—
 - (i) is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (d) that there are reasonable grounds for believing that it is in the public interest, having regard—
 - (i) to the benefit likely to accrue to the investigation if the material is obtained or the declaration made; and
 - (ii) to the circumstances under which the person in possession of the material holds it, or the relationship or dealings of the person required to make the declaration with the specified person referred to in subsection (3),

that the material should be produced or that access to it should be given or that declaration be made.

(7) Where the Judge makes an order under subsection (2) in relation to material on any premises he may, on the application of a Police Officer, order any person who appears to him to be entitled to grant entry to the premises to allow a Police Officer to enter the premises to obtain access to the material.

(8) An application under this section may be made *ex parte* to a Judge in Chambers.

- (9) Provision may be made by Rules of Court as to—
 - (a) the discharge and variation of orders under this section; and
 - (b) proceedings relating to such orders.

- (10) Where the material to which an application under this section relates consists of information contained in a computer—
- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
 - (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.
- (11) An order under subsection (2) or (3)—
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise; and
 - (c) may be made in relation to material in the possession of a government department.
- (12) For the purposes of this section, associated in relation to a person includes—
- (a) any person who was or is residing in the residential premises (including appurtenances) of such person;
 - (b) any person who was or is an agent or nominee of such person;
 - (c) any person who was or is managing the affairs of keeping the account of such person;
 - (d) any partnership firm of which such person, or agent or nominee of his, is or was a partner or a person in charge or control of its business or affairs;
 - (e) any company within the meaning of the Companies Act, of which such person, or any agent or nominee of his, was or is a director or had been or is in charge of or control of its business or affairs, or in which such person, together with an

agent or nominee of his, has or had held shares to the total value of not less than ten per centum of the total issued capital of the company;

- (f) any person who was or is keeping the accounts of any partnership, firm or corporation referred to in paragraph (d) or (e);
- (g) the trustee of any trust, where—
 - (i) the trust was created by such person; or
 - (ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the trust, amounts, or had amounted, at any time, to not less than twenty per centum of the total value of the assets of the trust;
- (h) any person who has in his possession any property belonging to such person; and
- (i) any person who is indebted to such person;

“relative”, in relation to a person means—

- (a) spouse of the person or cohabitant of the person;
- (b) brother or sister of the person;
- (c) brother or sister of the spouse or cohabitant of the person;
- (d) any lineal ascendant or descendant of the person;
- (e) any lineal ascendant or descendant of the spouse or cohabitant of the person;
- (f) spouse or cohabitant of a person referred to in paragraph (b), (c), (d) or (e); or
- (g) any lineal descendant of a person referred to in paragraph (b) or (c).

(13) Notwithstanding any law to the contrary, material to which an application under this section relates may be used in evidence in the prosecution of a defendant by the Board of Inland Revenue.

33. (1) A police officer may, for the purposes of an investigation, in or outside of Trinidad and Tobago, into— Authority for search.
[10 of 2009].

- (a) a specified offence;
- (b) whether a person has benefitted from a specified offence;
- (c) the extent or whereabouts of the proceeds of a specified offence; or
- (d) drug trafficking,

apply to a Judge for a warrant under this section in relation to specified premises.

(2) On such application the Judge may issue a warrant authorising a police officer to enter and search the premises if the Judge is satisfied—

- (a) that an order made under section 32 in relation to material on the premises has not been complied with;
 - (b) that the conditions in subsection (3) are fulfilled; or
 - (c) that the conditions in subsection (4) are fulfilled.
- (3) The conditions referred to in subsection (2)(b) are—
- (a) in the case of a specified offence that is not drug trafficking, that there are reasonable grounds for suspecting that a person has benefitted from the commission of a specified offence;
 - (b) in the case of a specified offence that is a drug trafficking offence, that there are reasonable grounds for suspecting that a specified person has carried on or has benefitted from drug trafficking;
 - (c) that the conditions in subsection (6)(c) and (d) of section 32 are fulfilled in relation to any material on the premises; and
 - (d) that it would not be appropriate to make an order under that section 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 could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are—
 - (a) in the case of a specified offence that is not drug trafficking, that there are reasonable grounds for suspecting that a person has benefitted from the commission of a specified offence;
 - (b) in the case of a drug trafficking investigation, that there are reasonable grounds for suspecting that a specified person has carried on or has benefitted from drug trafficking;
 - (c) that there are reasonable grounds for suspecting that there is on the premises any such material relating—
 - (i) to the person; and
 - (ii) in the case of a specified offence that it is not a drug trafficking offence, to the question whether that person has benefitted from the commission of a specified offence or to any question as to the extent or whereabouts of the proceeds of the commission of a specified offence is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purposes of which the application is made, but that the material cannot at the time of the application be particularised; or

- (iii) in the case of an investigation into drug trafficking, that there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to drug trafficking which is likely to be of substantial value, whether by itself or together with other material, to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularised; and
- (d) that—
- (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a Police Officer arriving at the premises could secure immediate entry to them.

(5) Where a Police Officer has entered 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.

(6) The person to whom a search warrant is issued shall furnish a report in writing 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;
- (c) if the warrant was not executed, setting out briefly the reasons why the warrant was not executed.

(7) A report with respect to a search warrant shall be made within ten days after the execution of the warrant or the expiry of the warrant whichever first occurs and if the Judge who issued the search warrant died, has ceased to be a Judge or is absent, the report shall be furnished to the Chief Justice.

Orders against a government department. [10 of 2009].

34. (1) Subject to subsection (4), the High Court may, on an application by the person appearing to the Court to have the conduct of any prosecution, order any material mentioned in subsection (3) which is in the possession of an authorised government department to be produced to the Court within such period as the Court may specify.

(2) The power to make an order under subsection (1) is exercisable if—

- (a) the powers conferred on the Court by sections 19(1), 20(1) and 21(1) are exercisable by virtue of subsection (1) of section 18; or
- (b) those powers are exercisable by virtue of section 18(2) and the Court has made a restraint order or a charging order which, in either case, has not been discharged, but where the power to make an order under subsection (1) is exercisable by virtue only of paragraph (b), section 18(3) shall apply for the purposes of this section as it applies for the purposes of sections 19 and 20.

(3) The material referred to in subsection (1) is any material which—

- (a) has been submitted to an officer of an authorised government department by the officer or by a person who has at any time held property which was realisable property;
- (b) has been made by an officer of an authorised government department in relation to the defendant or such a person; or

- (c) is correspondence which passed between an officer of an authorised government department and the defendant or such a person,

and an order under that subsection may require the production of all such material or of a particular description of such material, being material in the possession of the department concerned.

(4) An order under subsection (1) shall not require the production of any material unless it appears to the High Court that the material is likely to contain information that would facilitate the exercise of the powers conferred either—

- (a) on the Court by sections 19 and 20; or
(b) on a receiver appointed under section 19 or in pursuance of a charging order.

(5) The Court may by order authorise the disclosure to such a receiver of any material produced under subsection (1) or any part of such material, but the Court shall not make an order under this subsection unless a reasonable opportunity has been given for an officer of the department to make representations to the Court.

(6) Material disclosed in pursuance of an order under subsection (5) may, subject to any conditions contained in the order, be further disclosed for the purposes of the functions by virtue of any provision of this Act of the receiver of the High Court, or of any Magistrates' Court.

(7) The Court may by order authorise the disclosure to a person mentioned in subsection (8) of any material produced under subsection (1) or any part of such material, but the Court shall not make an order under this subsection unless—

- (a) a reasonable opportunity has been given for an officer of the department to make representations to the Court; and
(b) it appears to the Court that the material is likely to be of substantial value relating to investigation of crime.

(8) The persons referred to in subsection (7) are—

- (a) any member of the Police Service;
- (b) any member of the department of the Director of Public Prosecutions;
- (c) any officer within the meaning of the Customs Act; and
- (d) any officer within the meaning of the Income Tax Act.

Ch. 78:01.

Ch. 75:01.

(9) Material disclosed in pursuance of an order under subsection (7) may, subject to any conditions contained in the order, be further disclosed for the purposes of functions relating to the investigation of crime, of whether any person has benefitted from the commission of a specified offence or of the extent or whereabouts of the proceeds of any such offence.

(10) Material may be produced or disclosed in pursuance of this section notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by statute or otherwise.

(11) An order under subsection (1) and, in the case of material in the possession of an authorised government department, an order under section 32, may require any officer of the department, whether named in the order or not, who may, for the time being, be in possession of the material concerned, to comply with it, and an order containing any requirement by virtue of this subsection shall be served as if the proceedings were civil proceedings against the department.

(12) Where any requirement is included in any order by virtue of subsection (11), the person on whom the order is served—

- (a) shall take all reasonable steps to bring it to the attention of the officer concerned; and
- (b) if the order is not brought to that officer's attention within the period referred to in subsection (1), shall report the reasons for the failure to the Court, and it shall also be the duty of any other officer of the department in receipt of the order to take such steps as are mentioned in paragraph (a).

35. Any person who appears to the Court to be likely to be affected by an exercise of its power under section 25, 26 or 32(3) shall be given the opportunity to make representations to the Court.

Affected persons can make representations.

36. (1) The Minister may, by Order—

Enforcement of external confiscation orders.

- (a) designate a country or territory outside of Trinidad and Tobago to be a designated country for the purposes of this Act;
- (b) direct, in relation to a country or territory outside Trinidad and Tobago designated by the Order (hereinafter referred to as “a designated country”) that, subject to such modifications as may be specified, this Act shall apply to external confiscation orders, and to proceedings which have been or are to be instituted in the designated country and may result in an external confiscation order being made there;
- (c) make—
 - (i) such provision in connection with the taking of action in the designated country with a view to satisfying a confiscation order;
 - (ii) such provision as to evidence or proof of any matter for the purposes of this section and section 33; and
 - (iii) such incidental, consequential and transitional provision, as appears to him to be expedient; and
- (d) without prejudice to the generality of this subsection, direct that in such circumstances as may be specified proceeds which arise out of action taken in the designated country with a view to satisfying a confiscation order shall be treated as reducing the amount payable under the order to such extent as may be specified.

(2) In this Part, “external confiscation order” means an order made by a Court in a designated country for the purpose—

(a) of recovering—

(i) property obtained as a result of or in connection with conduct corresponding to an offence to which this Part applies; or

(ii) the value of property so obtained; or

(b) of depriving a person of a pecuniary advantage so obtained;

and “modifications” includes additions, alterations and omissions.

(3) An order under this section may make different provisions for different cases or classes of case.

(4) The power to make an Order under this section includes power to modify this Part in such a way as to confer power on a person to exercise a discretion.

Registration of external confiscation orders.

37. (1) On an application made by or on behalf of the government of a designated country, the High Court may register an external confiscation order made there if—

(a) it is satisfied that at the time of registration the order is in force and not subject to appeal;

(b) it is satisfied, where the person against whom the order is made did not appear in the proceedings, that he received notice of the proceeds in sufficient time to enable him to defend them; and

(c) it is of the opinion that enforcing the order in Trinidad and Tobago would not be contrary to the interest of justice.

(2) In subsection (1) “appeal” includes—

(a) any proceedings by way of discharging or setting aside a judgment; and

(b) an application for a new trial or a stay of execution.

(3) The High Court shall cancel the registration of an external confiscation order if it appears to the Court that the order

has been satisfied by payment of the amount due under it or by the person against whom it was made serving imprisonment in default of payment or by any other means.

38. (1) A Customs and Excise Officer of the rank of Grade III or higher, on duty at a port of entry into Trinidad and Tobago, or a Police Officer of the rank of sergeant or higher, on duty at any place, may seize from any person and in accordance with this section, detain any cash in accordance with this section if its amount is more than the prescribed sum.

Seizure and
detention of
cash.
[10 of 2009].

(1A) A Customs and Excise Officer or Police Officer referred to in subsection (1), may seize and detain cash only, where he has reason to believe that the cash directly or indirectly represents any person's proceeds of a specified offence, or is intended by any person for use in the commission of such an offence.

(2) Cash seized by virtue of this section shall not be detained for more than ninety-six hours unless its continued detention is detention authorised by an order made by a Magistrate, and no such order shall be made unless the Magistrate is satisfied—

- (a) that there are reasonable grounds for the suspicion mentioned in subsection (1); and
- (b) that continued detention of the cash is justified while its origin or derivation is further investigated or consideration is given to the institution, whether in Trinidad and Tobago or elsewhere, of criminal proceedings against any person for an offence with which the cash is connected.

(3) Any order under subsection (2) shall authorise the continued detention of the cash to which it relates for such period, not exceeding three months beginning with the date of the order as may be specified in the order, and a Magistrate, if satisfied as to the matters mentioned in that subsection, may thereafter from time to time by order authorise the further detention of the cash but so that—

- (a) no period of detention specified in such an order shall exceed three months beginning with the date of the order; and

(b) the total period of detention shall not exceed two years from the date of the order under subsection (2).

(4) Any application for an order under subsection (2) or (3) shall be made before a Magistrate by the Customs and Excise Officer or a Police Officer of the grade or rank referred to in subsection (1).

(5) Any cash subject to continued detention under subsection (3) shall, unless required as evidence of an offence, immediately upon an order for such detention being made, be delivered into the care of the Comptroller of Accounts who shall forthwith deposit it into an interest bearing account.

(6) An order made under subsection (2) shall provide for detention of cash seized for the period stated in the order until—

- (a) the expiration of the period;
- (b) the release of the cash by the Court; or
- (c) the release of the cash by the Comptroller of Accounts.

(7) At any time while cash is detained under this section—

- (a) a Magistrate may direct its release if satisfied—
 - (i) on application made by the person from whom it was seized or a person by or on whose behalf it was being imported or exported, that there are no, or are no longer any grounds for its detention as are mentioned in subsection (2); or
 - (ii) on an application made by any other person, that detention of the cash is not for that or any other reason justified; and

(b) the Comptroller of Accounts may, upon the written application of the applicant for the order, release the cash together with any interest that may have accrued, if satisfied that the detention is no longer justified.

(8) Where the cash is to be released under subsection (6)(b), the Comptroller of Accounts shall first notify the Magistrate under whose order it is being detained.

(9) If at a time when any cash is being detained under this section—

- (a) an application for its forfeiture is made under this Act; or
- (b) proceedings are instituted, whether in Trinidad and Tobago or elsewhere, against any person for an offence with which the cash is connected,

the cash shall not be released until any proceedings pursuant to the application or, as the case may be, the proceedings for that offence have been concluded.

(10) In this section—

- (a) “cash” includes coins, notes and negotiable instruments in any currency; and
- (b) “the prescribed sum” means such sum in Trinidad and Tobago currency as may be prescribed for the purposes of this section by an Order made by the Minister.

(11) In determining under this section whether an amount of currency other than Trinidad and Tobago currency is less than the prescribed sum, that amount shall be converted at the prevailing rate of exchange.

*(12) The Minister may for the purposes of subsection (1), make an Order prescribing the sum referred to therein.

(13) An Order made under subsection (12), shall be subject to negative resolution of Parliament.

39. (1) A Magistrates’ Court may order the forfeiture of any cash which has been seized under section 38 if satisfied, on an application made while the cash is detained under that section, that the cash directly or indirectly represents any person’s proceeds of the commission of a specified offence or is intended by any person for use in the commission of a specified offence.

Forfeiture of cash.
[10 of 2009].

*See Note on Omissions on page 2 regarding Orders.

(2) An application for an order under this section shall be made by the Director of Public Prosecutions or the Comptroller of Customs.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.

(4) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

(5) Subsection (1) does not apply—

(a) where an appeal is made under section 40 and has not yet been determined or otherwise disposed of;

(b) in any other case where the forfeiture was ordered by a Magistrates' Court before the end of the period of thirty days mentioned in section 40(2).

Appeal against forfeiture order made by a Magistrates' Court.

40. (1) This section applies where an order for the forfeiture of cash ("the forfeiture order") is made under section 39 by a Magistrates' Court.

(2) Any party to the proceedings in which the forfeiture order is made, other than the applicant for the order, may appeal to the Court of Appeal within thirty days of the date on which the order is made, such thirty days to begin on the date the order is made.

(3) An appeal under this section shall be by way of a rehearing.

(4) On an application made by the appellant to a Magistrates' Court, at any time that Court may order the release of so much of the cash to which the forfeiture order relates as it considers appropriate to enable the appellant to meet his legal expenses in connection with the appeal.

(5) The Court of Appeal hearing an appeal under this section may make such order as it considers appropriate.

(6) If it holds up the appeal, the Court may order the release of the cash, or the remaining cash, together with any accrued interest.

(7) Section 39(3) shall apply in relation to a rehearing on an appeal under this section as it applies to proceedings under that section.

41. (1) Where a person is convicted of a specified offence and the Court by or before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension—

Forfeiture orders.

- (a) has been used for the purpose of committing a specified offence;
- (b) has been used for the purpose of facilitating the commission of a specified offence; or
- (c) was intended by him to be used for the purpose of committing a specified offence,

the Court may make an order for forfeiture of that property under this section.

(2) Facilitating the commission of specified offence shall be taken for the purpose of this section to include the taking of any steps after it has been committed for the purpose of disposing of any property to which it relates or of avoiding apprehension or detection.

(3) Where, upon application made by the Director of Public Prosecutions, the Court determines that property identified in the application constitutes the proceeds of a specified offence and is satisfied that the property—

- (a) forms part of or represents the estate of a deceased person; or
- (b) has been abandoned,

the Court may make an order for forfeiture of that property under this section.

(4) In making its determination —

- (a) under subsection (3)(a), the Court shall consider any representations made by a personal representative, beneficiary, or other relevant party regarding the estate of the deceased person;

(b) under subsection (3)(b), the Court shall do so one month after notice of the application made by the Director of Public Prosecutions has been advertised in a daily newspaper.

(5) The Court shall not order anything to be forfeited under this section where a person who claims to be the owner or be otherwise interested in it applies to the Court to be heard, unless an opportunity has been given to him to show cause why the order should not be made.

Restoration of
forfeited items.

42. The President may direct that anything forfeited under sections 38 to 41 of this Act, other than a dangerous drug, be restored on such terms and conditions as he thinks fit.

PART II

MONEY LAUNDERING

Money
laundering.
[10 of 2009].

42A. (1) An offence committed under sections 43 to 46 shall be known as a money laundering offence and the term “money laundering” shall be construed accordingly.

(2) The offence of money laundering is an indictable offence.

Suspicious
dealings with
property, etc.
[10 of 2009].

43. A person is guilty of an offence who conceals, disposes, disguises, transfers, brings into Trinidad and Tobago or removes from Trinidad and Tobago any money or other property knowing or having reasonable grounds to suspect that the money or other property is derived, obtained or realised, directly or indirectly from a specified offence.

Concealing or
disguising one's
proceeds of
crime.
[10 of 2009].

44. A person is guilty of an offence if he—

- (a) conceals or disguises any property which is, or which, in whole or in part directly or indirectly represents, his proceeds of a specified offence; or
- (b) converts, transfers or disposes of that property or removes it from the jurisdiction,

for the purpose of avoiding prosecution for a specified offence or the making or enforcement in his case of a confiscation order or a forfeiture order.

45. A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any property is, or in whole or in part directly or indirectly represents another person's proceeds of a specified offence, he—

Concealing or disguising another's proceeds of crime.
[10 of 2009].

- (a) conceals or disguises that property; or
- (b) converts, transfers or disposes of that property or removes it from the jurisdiction,

for the purpose of assisting any person to avoid prosecution for a specified offence or the making or enforcement of a confiscation order or a forfeiture order.

46. (1) A person is guilty of an offence if, knowing or having reasonable grounds to suspect that any money or other property is, or in whole or in part directly or indirectly represents another person's proceeds of a specified offence, he receives, possesses or converts that money or other property.

Receiving, etc., another's proceeds of crime.
[10 of 2009].

(2) It is a defence to a charge of committing an offence under this section that the person charged acquired the property for adequate consideration.

(3) The provision for any person of services or goods which are of assistance to him in drug trafficking shall not be treated as consideration for the purposes of subsection (2).

47. (1) Where a person discloses to a Police Officer a suspicion or belief that any property is, or in whole or in part directly or indirectly represents another person's proceeds of a specified offence, or discloses to a police officer any matter on which such a suspicion or belief is based, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, regulation, rule of conduct or other provision.

Disclosing a suspicion or belief.
[10 of 2009].

(2) Where a person who has made a disclosure under subsection (1) does any act in relation to the property in contravention of sections 43 to 46, he does not commit an offence under this section if—

- (a) the disclosure is made before he does the act concerned and the act is done with the consent of the Police Officer; or

(b) the disclosure is made after he does the act, but on his initiative and as soon as it is reasonable for him to make it.

(3) For the purposes of subsection (2), having possession of any property shall be taken to be doing an act in relation to it.

Defence to sections 43, 45 and 46.

48. In proceedings against a person for an offence under sections 43, 45 and 46, it is a defence to prove that—

- (a) he intended to disclose to a Police Officer such a suspicion, belief or matter as is mentioned in sections 43, 45 and 46; and
- (b) there is reasonable excuse for his failure to make the disclosure in accordance with section 47(1).

Effect of sections 47 and 48.

49. In the case of a person who was in employment at the relevant time, sections 47 and 48 shall have effect in relation to disclosures and intended disclosures to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures as they have effect in relation to disclosures, and intended disclosures, to a Police Officer.

Not offence. [10 of 2009].

50. A Police Officer or any other person shall not be guilty of an offence under section 43, 45 or 46 in respect of anything done by such person in the course of acting in connection with the enforcement, or intended enforcement, of any provision of this Act or of any written law relating to a specified offence or the proceeds of such specified offence, if the Court is satisfied that the act was done in good faith and there were reasonable grounds for doing it.

Tipping-off. [10 of 2009].

51. (1) A person is guilty of an offence if—

- (a) he knows or suspects that a Police Officer is acting, or is proposing to act, in connection with an investigation which is being, or is about to be, conducted into money laundering; and
- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation, or proposed investigation.

-
- (2) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure (hereinafter referred to as “the disclosure”) has been made to a Police Officer or the designated authority under section 47, 48 or 49; and
 - (b) he discloses to any other person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (3) A person is guilty of an offence if—
- (a) he knows or suspects that a disclosure of a kind mentioned in section 48(a), 49 or 50 (“the disclosure”) has been made; and
 - (b) he discloses to any person information or any other matter which is likely to prejudice any investigation which might be conducted following the disclosure.
- (4) Nothing in subsections (1) to (3) makes it an offence for an employee of a financial institution to disclose any information in a suspicious activity report or for a professional legal adviser to disclose any information or other matter—
- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client; or
 - (b) to any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.
- (5) Subsection (4) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.
- (6) In proceedings against a person for an offence under subsection (1), (2) or (3), it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in that subsection.

(7) }
 (8) } ***(Repealed by Act No. 10 of 2009).***

Failure to
disclose
knowledge or
suspicion of
money
laundering.
[10 of 2009].

52. (1) A person is guilty of an offence if—

- (a) he knows or suspects that another person is engaged in money laundering;
- (b) the information, or other matter, on which that knowledge or suspicion is based came to his attention in the course of his trade, profession, business or employment; and
- (c) he does not disclose the information or other matter to the Police Officer of the rank of sergeant or above or to the FIU as soon as it is reasonably practicable after it comes to his attention.

(2) Subsection (1) above does not make it an offence for a professional legal adviser to fail to disclose any information or other matter which has come to him in privileged circumstances.

(3) It is a defence to a charge of committing an offence under this section that the person charged had a reasonable excuse for not disclosing the information or other matter in question.

(4) Where a person discloses to a Police Officer—

- (a) his suspicion or belief that another person is engaged in money laundering; or
- (b) any information or other matter on which that suspicion or belief is based,

the disclosure shall not be treated as a breach of any restriction imposed by statute or otherwise.

(5) Without prejudice to subsection (3) or (4) above, in the case of a person who was in employment at the time in question, it is a defence to a charge of committing an offence under this section that he disclosed the information or other matter in question to the appropriate person in accordance with the procedure established by his employer for the making of such disclosures.

(6) A disclosure to which subsection (5) above applies shall not be treated as a breach of any restriction imposed by statute or otherwise.

(7) For the purposes of this section, any information or other matter comes to a professional legal adviser in privileged circumstances if it is communicated, or given, to him—

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person—
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(8) No information or other matter required to be reported under section 55(3) shall be treated as coming to a professional legal adviser in privileged circumstances if it is communicated or given with a view to furthering any criminal purpose.

(9) ***(Repealed by Act No. 10 of 2009).***

53. (1) A person guilty of an offence under sections 43, 44, 45 and 46 is liable on conviction on indictment, to a fine of twenty-five million dollars and to imprisonment for fifteen years. Penalties. [10 of 2009].

(2) A person guilty of an offence under section 51 is liable on summary conviction to a fine of five million dollars and to imprisonment for five years.

(3) A person guilty of an offence under section 52 is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

54. (1) The Minister responsible for Public Administration may make Regulations to provide that, in such circumstances as may be prescribed, sections 43, 45, 46, 51 and 52 shall apply to such persons in the public service of the State or such categories Extension of certain offences to public servants.

of persons in that service, in the execution of their duties, as may be prescribed.

(2) Regulations made under subsection (1) shall be subject to an affirmative resolution of Parliament.

Record keeping
and retention
duties.
[10 of 2009].

55. (1) Every financial institution or listed business shall keep and retain records relating to financial activities in accordance with the Regulations made under section 56(1).

(2) Every financial institution or listed business shall—

(a) pay special attention to all—

(i) business transactions with persons and financial institutions in or from other countries which do not or insufficiently comply with the recommendations of the Financial Action Task Force;

(ii) complex, unusual, or large transactions, whether completed or not, to, all unusual patterns of transaction and to insignificant but periodic transactions which have no apparent economic or visible lawful purpose;

(b) report all complex, unusual or large transactions referred to in subparagraph (a) to the FIU;

(c) 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 Supervisory Authority, written findings after its examinations where necessary.

(3) Where a financial institution or listed business knows or has reasonable grounds to suspect that funds being used for the purpose of a transaction to which subsection (2) refers are the proceeds of a specified offence, the financial institution or listed business shall make a suspicious transaction or a suspicious activity report to the FIU in the form attached as the Third Schedule, or such other form as the FIU may prescribe.

Third Schedule.

(3A) 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 or such financial institution or listed business shall not disclose the fact or content of such report to any person, and any person who contravenes this subsection commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and imprisonment for three years.

(3B) A report to which subsection (3) refers shall be made as soon as possible, but in any event, within fourteen days of the date on which the financial institution or listed business knew or had reasonable grounds to suspect that the funds used for a transaction were the proceeds of a specified offence.

(3C) For the purpose of subsection (1), “large transaction” means a transaction, the value of which is ninety-five thousand dollars or such other amount as the Minister may by Order prescribe.

(3D) A report shall be made irrespective of the type of specified offence from which the funds may be generated including offences under the Income Tax Act, the Corporation Tax Act and the Value Added Tax Act.

Ch. 75:01.
Ch. 75:02.
Ch. 75:06.

(4) When the report referred to in subsection (3) is made in good faith, the financial institutions or listed business and their employees, staff, directors, owners or other representatives as authorised by law, shall be exempted 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.

(5) Every financial institution or listed business shall develop and implement a written compliance programme, approved by the FIU.

(6) A compliance programme referred to in subsection (5) shall include—

- (a) a system of internal controls to ensure ongoing compliance;

- (b) internal or external independent testing for compliance;
- (c) training of personnel in the identification of suspicious transactions; and
- (d) appointment of a staff member responsible for continual compliance with the Act and the Regulations.

(7) The FIU or a person authorised by the FIU may, enter into the premises of any financial institution—

- (a) to inspect any business transaction record or client information record kept by the financial institution or listed business pursuant to this Act and the Regulations made thereunder and ask any questions relevant to such record and to make any notes or take any copies of the whole or any part of any such record;
- (b) to determine whether a compliance programme has been implemented; and
- (c) to determine whether there is compliance with this Act or any Rules or Regulations made thereunder.

(8) The FIU shall regard and deal with all information and documents which it has obtained in the course of duties as the FIU as secret and confidential.

(9) If the FIU communicates or attempts to communicate such information to any person or anything contained in such document or copies to any person—

- (a) other than a person to whom it is authorised to communicate it; or
- (b) otherwise than for the purposes of this Act or any other written law,

he 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.

(10) ***(Repealed by Act No. 10 of 2009).***

(11) The FIU in order to exercise the powers given to it under subsection (7) shall apply for and obtain an *ex parte* order of a Judge of the High Court, which order shall constitute the warrant for the FIU to enter into the premises of the financial institution or listed business.

(12) The application referred to in subsection (11) shall show reasonable cause for the FIU to enter into the premises of the financial institution or listed business to fulfil the requirements of subsection (7).

56. (1) The Minister to whom responsibility for finance is assigned may make Regulations prescribing the—

Regulations.
[10 of 2009].

- (a) type of records to be kept by a financial institution or listed business and the type of information to be included in these records;
- (b) procedure to be followed in implementing subsections (5) and (6) of section 55;
- (c) periods for which and the methods by which the records referred to in paragraph (a) may be retained;
- (d) measures which a financial institution or listed business shall implement to—
 - (i) ascertain the identity of persons with whom they are dealing; and
 - (ii) treat with circumstances in which sufficient identification data is not made available by an applicant or business;
- (e) manner in which the Supervisory Authority for—
 - (i) financial institutions which are not licensed under the Financial Institutions Act or the Securities Industry Act; and
 - (ii) listed businesses,may be selected for the purpose of ensuring compliance with this Act;

Ch. 79:09.
Ch. 83:02.

- (f) the measures that may be taken by a Supervisory Authority to secure compliance with this Act or to prevent the commission of an unsafe or unsound practice including—
- (i) administrative sanctions;
 - (ii) disciplinary actions when possible;
- (g) the manner and time frame in which retrospective due diligence may be undertaken in respect of business relationships or one-off transactions that were established or performed prior to the coming into force of the Proceeds of Crime (Amendment) Act, 2009 by a financial institution or listed business; and
- (h) generally, for the purpose of giving effect to this Act.
- (2) Regulations made under subsection (1) shall be—
- (a) subject to a negative resolution of Parliament;
 - (b) published in the *Trinidad and Tobago Gazette*.

Sub. Leg.
10 of 2009.

Supervisory
Authority to
submit report.
[10 of 2009].

56A. The Supervisory Authority shall submit an annual report to the Minister who shall lay such report, in Parliament, one month after its receipt.

Joint
Committee of
Parliament to
be established.
[10 of 2009].

56B. There shall be established for the purposes of this Act, a Joint Committee of Parliament to be known as the Joint Parliamentary Committee on the Proceeds of Crime.

Offences and
punishment.
[10 of 2009].

57. (1) A person who knowingly contravenes or fails to comply with the provisions of section 55 and any Regulations made under section 56 is guilty of an offence and liable—

- (a) on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for a term of two years; or
- (b) on conviction on indictment, to a fine of three million dollars and to imprisonment for a term of seven years.

(2) Where a company commits an offence under this Act any officer, director or agent of the company who directed, authorised, assented to, acquiesced in or participated in the commission of the offence is a party to, and guilty of, the offence and liable on conviction to the punishment provided for the offence, whether or not the company has been prosecuted or convicted.

PART III

MISCELLANEOUS

58. (1) For the purposes of this Act there shall be established by the Comptroller of Accounts in the accounts of the Government of Trinidad and Tobago a Seized Assets Fund.

Seized Assets
Fund.
[10 of 2009].

(2) Any moneys paid in satisfaction of a confiscation or cash or property seized pursuant to a forfeiture order under this Act shall be placed with the Seized Assets Committee to be dealt with in accordance with subsection (3).

(3) Anything placed with the Seized Assets Committee pursuant to subsection (2) shall be used for the purpose of community development, drug abuse demand reduction and rehabilitation projects and law enforcement.

(3A) The Attorney General may enter into an agreement with the government of any foreign State for the reciprocal sharing of the proceeds or disposition of—

- (a) property confiscated, forfeited or seized under this Act; or
- (b) property confiscated, forfeited or seized by that foreign State,

in circumstances where law enforcement authorities of that foreign State, or of Trinidad and Tobago, as the case may be, have participated in the investigation of the offence that led to the confiscation, forfeiture or seizure of the property or if the law enforcement authorities participation led to the confiscation, forfeiture or seizure of the property under this Act.

(4) The Minister with responsibility for finance may make Regulations for carrying into effect the purposes of this section and in particular for—

- (a) the appointment of the Seized Assets Committee consisting of a chairman and four other members of which one member shall be nominated by the Leader of the Opposition;
- (b) the appointment and terms of office of members of the Fund Committee;
- (c) the basis, conditions, procedures and realisations upon which disbursement from the Fund shall be allowed; and
- (d) the keeping of records and accounts in respect of the Fund.

Rules.

59. The Minister may make Rules for regulating and prescribing the procedure to be followed under this Act.

FIRST SCHEDULE

Section 2.
 [10 of 2009].

LISTED BUSINESS

	First Column <i>Type of Business</i>	Second Column <i>Interpretation</i>
	Real Estate	Any natural or legal person, partnership or firm carrying on the business of buying, selling or leasing land and any interest in land or any buildings thereon and appurtenances thereto.
Chap. 48:50	Motor Vehicle Sales	Any natural or legal person, firm or partnership, carrying on the business of selling or leasing new or used motor vehicles as defined under the Motor Vehicles and Road Traffic Act.
	Money or Value Transfer Services	A financial service that accepts cash, cheques, other monetary instruments or other stores of value in one location and pays a corresponding sum in cash or other form to a beneficiary in another location by means of a communication, message, transfer or through a clearing network to which the money value service belongs.
Chap.11:19	Gaming House	Any such business registered under the Gambling and Betting Act.
	Pool Betting	do.
Chap. 21:04	National Lotteries On-Line Betting Games	The business of lotteries operated in accordance with the National Lotteries Act.

LISTED BUSINESS—Continued

	First Column <i>Type of Business</i>	Second Column <i>Interpretation</i>
Chap. 84:06	Jewellery	A Business licensed under the Licensing of Dealers (Precious Metals and Stones) Act.
Chap. 21:01	A Private Members' Club	A club within the meaning of the Registration of Clubs Act.
	An Accountant, an Attorney-at-law or other Independent Legal Professional	Such a person is accountable when performing the following functions on behalf of a client: <ul style="list-style-type: none"> (a) buying and selling of real estate; (b) managing of client money, securities and other assets; (c) management of banking, savings or securities accounts; (d) organisation of contributions for the creation, operation or management of companies, legal persons or arrangements; (e) buying or selling of business entities.
	An Art Dealer	An individual or company that buys and sells works of any category of art.

LISTED BUSINESS—Continued

First Column <i>Type of Business</i>	Second Column <i>Interpretation</i>
Trust and Company Service Provider	Any such person when he prepares for and when he carries out transactions for a client in relation to the following activities: <ul style="list-style-type: none"><li data-bbox="808 810 1135 877">(a) acting as a formation agent of legal persons;<li data-bbox="808 890 1135 1150">(b) acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership or a similar position on relation to other legal persons;<li data-bbox="808 1163 1135 1499">(c) providing a registered office, business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;<li data-bbox="808 1512 1135 1659">(d) acting as (or arranging for another person to act as) a nominee shareholder for another person.

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

82

Chap. 11:27

Proceeds of Crime

Section 2.

SECOND SCHEDULE

Ch. 75:01.

The Income Tax Act

Section No.	Nature of Offence	Penalty
119	Fraud	\$8,000.00 and imprisonment for three years

Ch. 75:02.

The Corporation Tax Act

Section 19 of this Act incorporates the following provision of the Income Tax Act to Corporation Tax Act.

Section No.	Nature of Offence	Penalty
119	Fraud	\$8,000.00 and imprisonment for three years

Ch. 75:06.

The Value Added Tax Act

Section No.	Nature of Offence	Penalty
23	Unregistered person recovering tax from person supplied	\$30,000.00 and imprisonment for two years
27(5)	Unregistered person displaying certificate of registration	\$15,000.00 and imprisonment for one year
29(6)	Failure to return the Certificate of Registration after cancellation	\$15,000.00 and imprisonment for one year
38	Failure to keep books and records	\$15,000.00 and imprisonment for one year
56	Failure to comply with requirement under Act or provides false and misleading information	\$15,000.00 and imprisonment for one year

Ch. 82:80.

The Copyright Act

Section No.	Nature of Offence	Penalty
41	Infringement of copyright	\$100,000.00 and imprisonment for ten years

UNOFFICIAL VERSION

UPDATED TO JUNE 30TH 2013

THIRD SCHEDULE

Section 55(3).
[10 of 2009].

**SUSPICIOUS TRANSACTIONS /
SUSPICIOUS ACTIVITY REPORT**

ALWAYS COMPLETE ENTIRE REPORT

1. Check appropriate box:

(a) Initial Report (b) Corrected Report (c) Supplemental
Report.

PART I

**REPORTING FINANCIAL INSTITUTION
OR RELEVANT BUSINESS**

ACTIVITY INFORMATION

2. Name of Financial Institution or person or Company engaged in a relevant business activity.

3. Address of Financial Institution or person engaged in a relevant business activity.

4. Address of Branch Office(s) where activity occurred.

5. Asset size of Financial Institution or person or Company engaged in a relevant business activity.

\$.00

6. If institution or relevant business activity closed, date closed (DDMMYY) / / .

7. Account number(s) affected if any:

(a)

(b)

8. Have any of the institution's or relevant business activity's accounts related to this matter been closed?

(a) Yes

(b) No. If Yes, identify.

PART II

SUSPECT INFORMATION

9. Last name or Name of Entity	10. First Name	11. Middle Initial
12. Address		
13. Date of Birth (DDMMYY) / / .		
14. Phone Number—Residence		15. Phone Number—Work
16. Occupation		
17. Forms of Identification for Suspect:		
(a) Driver’s Licence (b) Passport (c) Trinidad and Tobago I.D. Card (d) Other (e) Number (f) Issuing Authority.		
18. Relationship to Financial Institution or relevant business activity:		
(a) Accountant (e) Borrower (i) Employee (b) Agent (f) Broker (j) Officer (c) Appraiser (g) Customer (k) Shareholder (d) Attorney (h) Director (l) Other		

PART III

SUSPICIOUS ACTIVITY INFORMATION

19. Date of suspicious transactions or activity (DDMMYY) / / .	20. Dollar amount involved in known or suspicious transactions or activity. \$.00
--	--

PART IV

(Deleted by Act No. 10 of 2009).

PART V

PREPARED INFORMATION

30. Last Name	31. First Name	32. Middle Initial
33. Title	34. Phone Number	35. Date (DDMMYY) / /

PART VI

**CONTACT FOR ASSISTANCE (IF DIFFERENT FROM
PREPARER INFORMATION IN PART V)**

36. Last Name	37. First Name	38. Middle Initial
39. Title	40. Phone Number	41. Institution

PART VII

**SUSPICIOUS ACTIVITY
INFORMATION/EXPLANATION/DESCRIPTION**

Explanation/Description of known or suspected violation of law or suspicious activity. This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.

- (a) Describe supporting documentation and retain for 6 years.
- (b) Explain who benefitted financially or otherwise, from the transaction, how much, and how.

PART VII—*Continued***SUSPICIOUS ACTIVITY
INFORMATION/EXPLANATION/DESCRIPTION**

- (c) Retain any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
 - (d) Retain any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
 - (e) Retain any evidence of cover-up or evidence of an attempt to deceive institution.
 - (f) Indicate where the possible violation took place (e.g., main office, branch, other).
 - (g) Indicate whether the possible violation is an Isolated Incident or relates to other transactions.
 - (h) Indicate whether there is any related litigation; if so, specify.
 - (i) Recommend any further investigation that might assist law enforcement authorities.
 - (j) Indicate whether any information has been excluded from this report; if so, why?
 - (k) Indicate whether currency and/or monetary Instruments were involved. If so, provide the amount and/or description.
 - (l) Indicate any account number that may be involved or affected.
-

SUBSIDIARY LEGISLATION

FINANCIAL OBLIGATIONS REGULATIONS

ARRANGEMENT OF REGULATIONS

REGULATION

PART I

PRELIMINARY

1. Citation.
2. Interpretation.

PART II

**TRAINING OBLIGATIONS AND COMPLIANCE
PROGRAMME OF A FINANCIAL INSTITUTION OR
LISTED BUSINESS**

3. Compliance Officer.
4. Functions of the Compliance Officer.
5. Recruitment of staff.
6. Training of staff.
7. Compliance programme.
8. Internal reporting to Compliance Officer.
9. Legal professional adviser.
10. Auditors to review programme.

PART III

CUSTOMER DUE DILIGENCE

11. Identification procedure.
12. Beneficial owner.
13. Representative applicant.
14. Exceptions.
15. New business relationship.
16. Identity of a business customer.
17. Trust fiduciaries.
18. Discrepancies in information.
19. Anonymous accounts.
20. Politically exposed person.
21. Correspondent banking.
22. Shell banks.
23. Technological developments.

ARRANGEMENT OF REGULATIONS—*Continued*

REGULATION

PART IV

**CUSTOMER DUE DILIGENCE PROVISIONS FOR
INSURANCE COMPANIES**

24. General requirements.
25. Verification of customer identity.
26. Reinsurers.
27. Payment of claims.
28. Payments on surrender of policy.
29. Exceptions to verification of identity.
30. Transactions not linked.

PART V

RECORD KEEPING

31. Records.
32. Record keeping procedures.
33. Wire transfers.
34. Information required for transfer.
35. Exemption for wire transfers.
36. Continuous analysis.
37. Retrospective due diligence.
38. Register of enquiries.

PART VI

SUPERVISORY AUTHORITY

39. Delegation by Supervisory Authority.
40. Measures to ensure compliance.
41. Reports to the F.I.U.

PART VII

OFFENCES AND PENALTIES

42. Offences and penalties.
43. Offences by companies, etc.
44. Prosecutions.

PART VIII

MISCELLANEOUS

45. Repeal and Savings.

FINANCIAL OBLIGATIONS REGULATIONS

7/2010.

made under section 56

PART I

PRELIMINARY

1. These Regulations may be cited as the Financial Obligations Regulations. Citation.

2. (1) In these Regulations— Interpretation.

“applicant” or “applicant for business” means a person seeking to form a business relationship, or carry out a one-off transaction, with a financial institution or listed business;

“business relationship” means an arrangement between—

(a) a financial institution and a customer; or

(b) a listed business and a customer, for the carrying out of financial transactions on a regular basis;

“Central Bank” means the bank established and incorporated under the Central Bank Act;

Ch. 79:02.

“Compliance Officer” means the officer designated in accordance with regulation 3, as the anti-money laundering compliance officer, for any financial institution or listed business;

“Constitution” means the Constitution of the Republic of Trinidad and Tobago; Ch. 1:01.

“cross-border wire transfer” in relation to the transfer of money, means a single wire transfer in which the originator and beneficiary of the transfer are located in different countries or any chain of such transfers;

“Director” means the Director of the FIU;

“domestic wire transfer” in relation to the transfer of money, means any wire transfer in which the originator and beneficiary are located in Trinidad and Tobago;

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

90

Chap. 11:27

Proceeds of Crime

[Subsidiary]

Financial Obligations Regulations

“exempt customer” means—

- (a) a public authority; or
- (b) a financial institution in a country, the laws of which sufficiently comply with the revised Forty Recommendations of the Financial Action Task Force;

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

“financial institution” has the meaning assigned to it in the Act and “institution” has the corresponding meaning;

Ch. 72:01.

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

First Schedule.

“listed business” means any business activity or profession listed in the First Schedule to the Act;

“Minister” means the member of the Cabinet to whom responsibility for finance is assigned;

“money or value transfer service business” means a financial service that accepts cash, cheques, other monetary instruments or other stores of value, in one location and pays a corresponding sum in cash or other form to a beneficiary in another location, by means of a communication, message, transfer or through a clearing network to which the money or value transfer service belongs;

“one-off transaction” means any transaction other than one carried out in the course of an existing business relationship;

“originator” means a person whether natural or legal who places an order with the financial institution or listed business for the transmission of a wire transfer;

“public authority” means—

- (a) Parliament;
- (b) the Supreme Court of Judicature established under the Constitution, the Industrial Court,

UNOFFICIAL VERSION

UPDATED TO JUNE 30TH 2013

- established under the Industrial Relations Act, Ch. 88:01.
the Tax Appeal Board established under the
Tax Appeal Board Act, the Environmental Ch. 4:50.
Commission established under the
Environmental Management Act, the Land Ch. 35:05.
Tribunal established under the Land Tribunal 15 of 2000.
Act or any other superior Court of record;
- (c) a Court of summary jurisdiction;
- (d) a ministry or a department of a ministry;
- (e) a service commission established under the
Constitution; Ch. 1:01.
- (f) the Tobago House of Assembly, established
under the Constitution, the Executive Council
of the Tobago House of Assembly or a division
of the Tobago House of Assembly;
- (g) a municipal corporation established under the
Municipal Corporations Act; Ch. 25:04.
- (h) a regional health authority established under the
Regional Health Authorities Act; Ch. 29:05.
- (i) a body created by statute, responsibility for
which is assigned to a member of the Cabinet;
- (j) a company incorporated or continued under the
Companies Act, which is owned or controlled Ch. 81:01.
by the State, other than a company licensed
under the Financial Institutions Act; or Ch. 79:09.
- (k) a body corporate or unincorporated entity—
- (i) in relation to any function which it
exercises on behalf of the State; or
- (ii) which is supported, directly or indirectly,
by funds appropriated by Parliament and
over which government is in a position to
exercise control;

“Supervisory Authority” means in respect of—

- (a) financial institutions licensed under the
Financial Institutions Act, the Insurance Act, Ch. 84:01.

LAWS OF TRINIDAD AND TOBAGO

MINISTRY OF LEGAL AFFAIRS

www.legalaffairs.gov.tt

92

Chap. 11:27

Proceeds of Crime

[Subsidiary]

Financial Obligations Regulations

- Ch. 79:50. the Exchange Control Act, or a person who is registered to carry on cash remitting services under the Central Bank Act, the Central Bank;
- Ch. 79:02. (b) persons licensed as a dealer or investment advisor under the Securities Industries Act, the Trinidad and Tobago Securities and Exchange Commission; or
- Ch. 83:02. (c) other financial institutions and listed business, the FIU;
- Ch. 11:27. “the Act” means the Proceeds of Crime Act; and
“wire transfer” means any transaction carried out on behalf of an originator, who may be either a natural or a legal person through a financial institution or a listed business, by electronic means, with a view to making money available to a beneficiary at another financial institution or listed business.

(2) In these Regulations, a reference to an amount in Trinidad and Tobago dollars, includes a reference to an equivalent amount in any other currency.

PART II

TRAINING OBLIGATIONS AND COMPLIANCE PROGRAMME OF A FINANCIAL INSTITUTION OR LISTED BUSINESS

Compliance Officer.

3. (1) Subject to subregulations (2) and (3), a financial institution or listed business shall for the purpose of securing compliance with section 55(3) of the Act and these Regulations, designate a manager or official employed at managerial level as the Compliance Officer of that institution or business.

(2) Where the financial institution or listed business employs five persons or less, the employee who occupies the most senior position, shall be the Compliance Officer.

(3) Where the financial institution or listed business is an individual who neither employs nor acts in association with another person, that individual shall be the Compliance Officer.

UNOFFICIAL VERSION

UPDATED TO JUNE 30TH 2013

(4) The financial institution or listed business shall be responsible for training the Compliance Officer in accordance with regulation 6.

4. (1) The Compliance Officer shall—

- (a) ensure that the necessary compliance programme procedures and controls required by these Regulations are in place;
- (b) co-ordinate and monitor the compliance programme to ensure continuous compliance with these Regulations;
- (c) receive and review reports of suspicious transactions, or suspicious activities made by the staff of the financial institution or listed business and report the same to the FIU in accordance with the Act and guidelines issued by the relevant Supervisory Authority;
- (d) maintain records of reports of the type identified in paragraph (c); and
- (e) function as the liaison official with the FIU, where the institution or business executes the instructions of the Director.

Functions of
the
Compliance
Officer.

(2) A financial institution or listed business shall seek the approval of the relevant Supervisory Authority for the appointment of the Compliance Officer, designated under regulation 3(1).

(3) The identity of the Compliance Officer shall be treated with strictest confidence by the members of staff of the institution or business.

(4) For the purposes of these Regulations, the relevant Supervisory Authority may issue guidelines to financial institutions or listed business, indicating the circumstances that may be considered in determining whether a transaction or activity is suspicious.

LAWS OF TRINIDAD AND TOBAGO

Recruitment of staff.

5. (1) The financial institution or listed business shall utilise best practices of the industry, to determine its staff recruitment policy, with the use of which, staff of the highest levels of integrity and competence shall be hired and retained.

(2) The names, addresses, position titles and other official information pertaining to staff appointed or recruited by the financial institution or listed business shall be maintained for up to a period of six years after termination of employment and made available to the relevant Supervisory Authority when necessary.

(3) The financial institution or listed business shall ensure to the extent permitted by the laws of the relevant country, that similar recruitment policies are followed by its branches, subsidiaries and associate companies abroad, especially in those countries which are not sufficiently compliant with the recommendations of the Financial Action Task Force.

Training of staff.

6. (1) The financial institution or listed business shall make arrangements for the training of the directors and all members of its staff to equip them—

(a) to perform their obligations under—

(i) the Act;

Ch. 72:01.

(ii) the Financial Intelligence Unit of Trinidad and Tobago Act;

Ch. 12:07.

(iii) the Anti-Terrorism Act;

(iv) these Regulations; and

(v) guidelines on the subject of money laundering issued under regulation 4(4); and

(b) to understand the techniques for identifying any suspicious transactions or suspicious activities.

(2) The training required by subregulation (1), shall be given in such a manner that employees at all levels of the financial institution or listed business, would become capable of detecting suspicious transactions and other suspicious activities.

7. A compliance programme established under these Regulations shall be appropriate for the respective financial institutions and listed business and shall be designed to include policies, procedures and controls for—

Compliance programme.

- (a) customer identification, documentation and verification of customer information and other customer due diligence measures;
- (b) identification and internal reporting of suspicious transactions and suspicious activities;
- (c) adoption of a risk-based approach to monitoring financial activities, which would include categories of activities that are considered to be of a high risk;
- (d) external and independent testing for compliance;
- (e) an effective risk-based audit function to evaluate the compliance programme;
- (f) internal control and communication as may be appropriate for the purposes of forestalling money laundering;
- (g) retention of transaction records and other information; and
- (h) a list of countries, published by the Financial Intelligence Unit, which are non-compliant, or do not sufficiently comply with the recommendations of the Financial Action Task Force.

8. (1) In support of its compliance programmes, a financial institution or listed business shall establish internal reporting rules which would—

Internal reporting to Compliance Officer.

- (a) mandate any person employed in a financial institution or with a listed business, who knows or suspects that a transaction involves the use of, or the proceeds of a specified offence, to

report the matter to the Compliance Officer in writing and keep copies of the said report;

- (b) mandate the Compliance Officer to consider the report in the light of any relevant information which is available to him and any such guidelines issued by the relevant Supervisory Authority, under regulation 4(1)(c) and to determine whether it gives rise to such knowledge or suspicion; and
- (c) make it obligatory for the Compliance Officer to report the activity or suspicious transaction to the FIU within the period stipulated in the Act, where he makes such a determination.

(2) The financial institution or listed business shall also ensure that the Compliance Officer and other employees have timely access to customer identification data and other records and relevant information to enable them to produce reports in a timely manner.

Legal
professional
adviser.

9. (1) Regulation 8 shall not apply where a listed business is a legal professional adviser and the knowledge or suspicion is based on advice or information or other matters which came to him in privileged circumstances.

(2) Information or any other matter comes to a professional legal adviser in privileged circumstances, if it is communicated or given to him or given—

- (a) by his client or a representative of the client, in connection with the provision of legal advice to him;
- (b) by another person or his representative, seeking legal advice from the adviser; or
- (c) in connection with legal proceedings or contemplated legal proceedings.

(3) This regulation does not apply in the case of information or other matters, which is communicated or given with a view to furthering a criminal purpose known to the professional legal adviser.

10. (1) The compliance programme of a financial institution or listed business shall be reviewed by the internal and external auditors engaged by the financial institution or listed business.

Auditors to review programme.

(2) In reviewing the compliance programme—

- (a) the external auditor shall evaluate compliance with relevant legislation and guidelines and shall submit reports and recommendations annually or with such frequency as may be specified by the relevant Supervisory Authority, to the Board of Directors of the financial institution or listed business and to the relevant Supervisory Authority; and
- (b) the internal auditor shall ensure that policies, procedures and systems are in compliance with the requirements of these Regulations and that the level of transaction testing, is in line with the risk profile of the customer.

(3) Where the financial institution or listed business does not engage the services of an external or internal auditor, the Supervisory Authority shall assign a competent professional to perform the functions outlined in subregulation (2).

(4) The cost of the services of the competent professional assigned by the Supervisory Authority to review the compliance programme under subregulation (3), shall be met by the financial institution or listed business.

(5) All auditors or other competent professionals engaged for the purposes of these Regulations, shall be specifically trained to undertake their functions.

PART III

CUSTOMER DUE DILIGENCE

11. (1) Where a financial institution or listed business undertakes a financial transaction—

Identification procedure.

- (a) pursuant to an agreement to form a business relationship;

- (b) as a one-off or occasional transaction of ninety thousand dollars or more;
- (c) as two or more one-off transactions, each of which is less than ninety thousand dollars but together the total value is ninety thousand dollars or more and it appears, whether at the outset of each transaction or subsequently that the transactions are linked; or
- (d) as a one-off or occasional wire transfer of six thousand dollars or more or two or more one-off transactions, each of which is less than six thousand dollars, but together the total value is six thousand dollars or more and it appears, whether at the outset of each transaction or subsequently that the transactions are linked,

the financial institution or listed business shall conduct due diligence in accordance with this Part and shall make rules for so doing, in accordance with the categories of risk established under regulation 7.

(2) Whenever a financial institution or listed business knows or has reasonable grounds to suspect that the funds used for a transaction are or may be the proceeds of money laundering or any other specified offence, the financial institution or listed business shall apply the procedures or policies identified in this regulation.

- (3) The financial institution or listed business shall—
- (a) request evidence of the identity of the customer in accordance with its compliance programme established under regulation 7(a) and record all the information received; and
 - (b) implement any other customer identification policies and procedures required to prevent money laundering.

(4) Where in the course of a business relationship or one-off transaction a financial institution or listed business undertakes a transaction with a financial institution or other persons from another country, contact shall be made with appropriate persons in that country for satisfactory evidence of the identity of the customer before completing the transaction.

(5) Where satisfactory evidence of identity has not been obtained, the business relationship or one-off transaction shall not proceed any further and the matter shall be reported to the Compliance Officer in accordance with regulation 7(b), (c) and (d).

(6) Where the person to whom satisfactory evidence of identity is presented, knows or has reasonable grounds for believing that the applicant for business is a money or value transfer service operator, satisfactory evidence of identity shall also include documents identifying the official name of the business and its owners or directors in accordance with this Part.

(7) For the purposes of this regulation, “satisfactory evidence of identity” means—

- (a) in relation to an individual, evidence that is reasonably capable of establishing or does in fact establish that the applicant for business is the person whom he claims to be; and
- (b) in relation to a corporation or other business arrangement, evidence that the corporation or other business exists and evidence of the identity of its directors, partners or persons of like status in the business arrangement.

12. (1) A financial institution or listed business shall identify and verify the identity of the beneficial owner of any accounts held at the financial institution or listed business or potential accounts and for that purpose, shall request original identification documents, data or other information from an applicant for business.

Beneficial
owner.

(2) Where a beneficial owner or customer is a legal person or where there is a legal arrangement, the financial institution or listed business shall—

- (a) verify that any person purporting to act on behalf of the legal person or legal arrangement is so authorised and identify and verify the identity of that person;
- (b) verify the legal status of the legal person or legal arrangement;
- (c) understand the ownership and control structure of the legal person or legal arrangement; and
- (d) determine who are natural persons who have effective control over a legal person or legal arrangement.

(3) In furtherance of subregulation (2), a financial institution or listed business shall conduct on-going due diligence on or continuous review of the business relationship and monitor transactions undertaken in the course of the relationship, to—

- (a) maintain up to date records of information; and
- (b) ensure consistency with the business and risk profile of the applicant and where necessary, its source of funds.

(4) Where a financial institution or listed business having monitored transactions undertaken in the course of a business relationship, knows or has reasonable grounds to believe that suspicious activities or suspicious transactions have taken place, these activities or transactions shall be reported to the FIU in accordance with the Act.

(5) For the purpose of this regulation—

“beneficial owner” means the person who ultimately owns and controls an account, or who exercises ultimate control over a legal person or legal arrangement; and
“legal arrangement” includes an express trust.

13. (1) Where an applicant for business acts or appears to act as a representative of a financial institution or listed business, the recipient of the application shall—

Representative applicant.

- (a) request a written assurance from the applicant that the identity of the customer has been recorded in accordance with customer due diligence procedures of this Part; and
- (b) take the measures necessary to ensure that the applicant is legally authorised to act for the customer.

(2) The financial institution or listed business shall take reasonable steps to ensure that identification documents provided by an applicant are authentic and are available to the financial institution or listed business upon request or without delay.

(3) The identity of the customer referred to in this regulation shall be ascertained by reference to at least two forms of identification from among those listed in regulations 15 and 16.

(4) In the case where the applicant for business acts or appears to act for a customer, who or which is based in another country, the financial institution or listed business may process a transaction under this regulation only where there are reasonable grounds for believing that the applicant for business is—

- (a) regulated by an overseas supervisory authority; or
- (b) based or incorporated in a country where there are laws that give effect to the revised Forty Recommendations and Nine Special Recommendations (on Terrorist Financing) of the Financial Action Task Force.

14. Identification procedures under this Part do not require a financial institution or listed business to take steps to obtain evidence of the identity of a person in any of the following circumstances:

Exceptions.

- (a) where the financial institution or listed business carries out a one-off transaction with a third

party under regulation 13, pursuant to an introduction effected by a person who has provided a written assurance that evidence of the identity of the third party introduced by him has been obtained and is recorded under procedures maintained by him and the person identifies the third party;

- (b) in connection with a pension scheme taken out by virtue of a person's occupation or a contract of employment where contributions are made by deductions from wages and assignments of a member's interest is not permitted under the scheme; or
- (c) where there is a contract of long-term insurance or where a contract of insurance contains no surrender clause and may not be used as collateral for a loan.

New business relationship.

15. (1) The financial institution or listed business shall on initiating a business relationship or transaction with an applicant, obtain relevant identification records of the applicant as follows:

- (a) full name of the applicant(s);
- (b) permanent address and proof thereof;
- (c) date and place of birth;
- (d) nationality;
- (e) nature and place of business/occupation where applicable;
- (f) occupational income where applicable;
- (g) signature;
- (h) purpose of the proposed business relationship or transaction and source of funds; and
- (i) any other information deemed appropriate by the financial institution or listed business.

(2) A valid passport, national identification card or driver's licence shall be proof of identification and shall also be obtained or examined by the financial institution or listed business.

(3) Where the business relationship involves a foreign customer a reference shall be sought from the foreign customer's bank.

(4) Where original documents are not available, copies shall be acceptable only where they are certified by identification.

16. (1) The requirements outlined in regulation 15, with appropriate adaptations, shall apply to a business customer and the financial institution or listed business shall verify the identity of the directors and other officers of a company, partners of a partnership, account signatories, beneficial owners and sole traders by means of documentary evidence.

Identity of a business customer.

(2) In addition, the financial institution or listed business shall obtain, to the extent relevant to a proposed business relationship or transaction—

- (a) the Certificate of Incorporation or Certificate of Continuance;
- (b) the Articles of Incorporation;
- (c) a copy of the bye-laws, where applicable;
- (d) management accounts for the last three years for self-employed persons and businesses which have been in operation for more than three years; and
- (e) information on the identity of shareholders holding more than ten per centum of the paid up share capital of the company.

(3) In the event that an applicant for business cannot satisfy the requirements of subregulation (2)(d), the financial institution or listed business may request other forms of proof of the integrity of the source of funds to be used for the transaction.

17. (1) Where an applicant for business is a trustee, nominee or fiduciary customer, in addition to the requirements outlined in regulation 15, the financial institution or listed business shall obtain the following information:

Trust fiduciaries.

- (a) evidence of the appointment of the trustee by means of a certified copy of the Deed of Trust;

- (b) the nature and purpose of the trust; and
- (c) verification of the identity of the trustee.

(2) In this regulation, “trustee” includes the settlor, protector, person providing the trust funds, controller or any person holding power to appoint or remove the trustee.

Discrepancies
in
information.

18. (1) Where at any time, a financial institution or listed business is in doubt about the veracity of any information previously given by a customer, due diligence procedures shall be performed and where there are discrepancies in the information previously provided, the financial institution or listed business shall make every effort to obtain the correct information.

(2) Where such information cannot be verified, the financial institution or listed business shall discontinue any business relationship with the customer and report the matter to the Compliance Officer.

(3) On receipt of a report in subregulation (2), the Compliance Officer shall consider whether a suspicious report shall be submitted to the FIU.

Anonymous
accounts.

19. (1) A financial institution or listed business shall not keep anonymous accounts or accounts in fictitious names and shall identify and record the identity of customers in accordance with this Part.

(2) Where a new account is opened or a new service is provided by a financial institution and the customer purports to be acting on his own behalf but the financial institution suspects otherwise, the institution shall verify the true identity of the beneficial owner and if it is not satisfied with the response of the customer, it shall terminate all relations with that customer forthwith.

Politically
exposed
person.

20. (1) In this regulation, “politically exposed person” means a person who is or was entrusted with important public functions in a foreign country such as—

- (a) a current or former senior official in the executive, legislative, administrative or judicial

branch of a foreign government, whether elected or not;

- (b) a senior official of a major political party;
- (c) a senior executive of a foreign government-owned commercial enterprise;
- (d) a senior military official;
- (e) an immediate family member of a person mentioned in paragraphs (a) to (d) meaning the spouse, parents, siblings or children of that person and the parents, siblings and additional children of the person's spouse; and
- (f) any individual publicly known or actually known to the relevant financial institution to be a close personal or professional associate of the person mentioned in paragraphs (a) to (d).

(2) A financial institution or listed business shall put appropriate measures in place to determine whether an applicant for business, an account holder or a beneficial owner is a politically exposed person.

(3) Where the applicant for business has been found to be a politically exposed person, in addition to the identification data required by regulation 15, further due diligence measures shall be conducted in accordance with this regulation.

(4) The permission of a senior management official of the financial institution or listed business is required before establishing a business relationship with a politically exposed person.

(5) A financial institution or listed business shall also take reasonable measures to determine the source of wealth and the source of funds of the politically exposed person and where the institution or business has entered a business relationship with the person, it shall conduct enhanced on-going monitoring of that relationship.

21. (1) In this regulation, "correspondent banking" means the provision of banking services by one bank in Trinidad and

Correspondent banking.

Tobago (“the correspondent bank”) to another bank (“the respondent bank”) in a foreign country.

(2) A correspondent bank shall collect sufficient information about its respondent bank to—

- (a) understand fully the nature of the business which it is required to undertake and shall only establish correspondent accounts with a foreign bank, after determining that it is effectively supervised by the competent authorities in its jurisdiction; and
- (b) assess the anti-money laundering controls of the respondent bank.

(3) A correspondent bank shall also—

- (a) obtain approval from senior management before establishing new correspondent relationships;
- (b) record the respective responsibilities of the correspondent and the respondent banks;
- (c) ensure that the respondent bank undertakes to provide relevant customer identification data to the correspondent bank upon request; and
- (d) with respect to “payable through accounts”, satisfy itself that the respondent bank has verified the identity of and performed on-going due diligence on the customers who have access to accounts in the correspondent bank.

(4) A correspondent bank shall also ascertain whether the respondent bank has been the subject of money laundering investigations or other regulatory action in the country in which it is incorporated or in any other country.

Shell banks.

22. (1) A bank shall not enter or continue a correspondent banking relationship with a bank—

- (a) incorporated in a jurisdiction in which it has no physical presence; or

(b) which is unaffiliated with a financial group regulated by a supervisory authority in a country where the Recommendations of the Financial Action Task Force are applicable.

(2) A financial institution or listed business shall ensure that the respondent financial institution or listed business in a foreign country does not permit a shell bank to use its accounts.

(3) In this regulation, “affiliate” means a branch, a holding company or a subsidiary company.

23. (1) A financial institution or listed business shall pay special attention to any money laundering patterns that may arise from—

Technological developments.

(a) new or developing technology that might favour anonymity; and

(b) use of such technology in money laundering offences,

and shall take appropriate measures to treat with such patterns.

(2) A financial institution or listed business shall put special know-your-customer policies in place to address the specific concerns associated with non-face-to-face business relationships or transactions.

PART IV

CUSTOMER DUE DILIGENCE PROVISIONS FOR INSURANCE COMPANIES

24. (1) An insurance company shall undertake its customer identification procedures in respect of a party entering into an insurance contract but where the party acts or appears to act on behalf of a principal, the true nature of the principal shall be established and appropriate enquiries made, especially if the policy holder is accustomed to acting on the instructions of the customer.

General requirements.

(2) If it is necessary for sound business reasons to enter into an insurance contract before verification of the identity of

the customer can be completed, this action should be subject to stringent controls to ensure that any funds payable under the contract are not passed to third parties before identification procedures are completed.

(3) Any decision to enter into a contract in the circumstances of subregulation (2), shall be made by a senior manager and recorded in writing.

Verification of customer identity.

25. (1) An insurance company undertaking verification of the identity of a customer, shall establish to its reasonable satisfaction that every party relevant to the application for insurance, actually exists.

(2) Where there is a large number of parties to the application, for example, in the case of group life pensions, the requirement of this regulation may be fulfilled by carrying out identification procedures on a limited group only, such as the principal shareholder, or the main directors of a company.

(3) Where a transaction involves an insurer and an intermediary, each party shall consider its own position separately to ensure that its own obligations regarding identification and records are duly discharged.

Reinsurers.

26. Prior to entering into any reinsurance contract, the insurance company shall verify the identity of the customer to ensure that the monies payable under the reinsurance contract are paid only to bona fide reinsurers at rates commensurate with the risks that were underwritten.

Payment of claims.

27. Where claims and other monies are to be paid to persons, partnerships and other forms of business arrangements, the identity of the proposed recipient of those payments shall be the subject of identification procedures.

Payments on surrender of policy.

28. Whether a transaction is—

- (a) a one-off transaction; or
- (b) carried on in the course of a business relationship,

and the value of the transaction is ninety thousand dollars or more the identity of the customer shall be verified before the insurance company surrenders the payments to the customer.

29. Verification of the identity of a party to an insurance contract is not required—

Exceptions to verification of identity.

- (a) where the applicant for an insurance contract is a financial institution or listed business operating in Trinidad and Tobago and is regulated by a supervisory authority; and
- (b) where an insurance company offers the facility of money due to the insured in respect of one policy of insurance to fund the premium payments for another policy of insurance and the insured uses that facility.

30. In this Part, transactions which are separated by an interval of three months or more are not required to be treated as linked transactions.

Transactions not linked.

PART V

RECORD KEEPING

31. (1) Subject to regulation 33 a financial institution or listed business, shall retain records of—

Records.

- (a) all domestic and international transactions; and
- (b) identification data obtained through the customer due diligence process,

in electronic or in written form, for a period of six years to enable the financial institution or listed business to comply with lawful requests for information from auditors, other competent authorities and law enforcement authorities that request these records, for purposes of criminal investigations or the prosecution of persons charged with criminal offences.

(2) The period referred to in subregulation (1), may be extended at the request of the FIU or other Supervisory Authority.

(3) Transaction records referred to in subregulation (1), shall be—

- (a) kept in the format specified by the FIU and contain sufficient detail to permit reconstruction of individual transactions; and
- (b) made available to the FIU, upon its request.

Record
keeping
procedures.

32. (1) The records referred to in regulation 31, shall contain the following:

- (a) details of a transaction, including the amount of and type of currency used for the transaction carried out by the financial institution or listed business, in the course of a business relationship or a one-off transaction to provide the evidence necessary for the prosecution of criminal activity; and
- (b) in the case of evidence of identity obtained in accordance with regulations 15, 16 and 17—
 - (i) a copy of that evidence;
 - (ii) the address of the place where a copy of that evidence may be obtained; or
 - (iii) information enabling the evidence of identity to be obtained a second time, but only where it is not reasonably practicable for the financial institution or listed business to comply with subregulation (i) or (ii).

(2) The period of six years for which the records referred to in regulation 31(1) shall be kept is determined as follows:

- (a) in the case where a financial institution or listed business and an applicant for business have formed a business relationship, at least six years from the date on which the relationship ended; or

(b) in the case of a one-off transaction, or a series of such transactions, at least six years from the date of the completion of the one-off transaction or, as the case may be, the last of the series of such transactions.

(3) Where a financial institution or listed business is an appointed representative, its principal shall ensure compliance with this regulation in respect of any financial transaction carried out by the financial institution or listed business for which the principal has accepted responsibility.

33. (1) The information listed in regulation 34 concerning the originator and recipient of the funds transferred, shall be included on all domestic and cross-border wire transfers.

Wire transfers.

(2) A financial institution or listed business that participates in a business transaction via wire transfer shall relay the identification data about the originator and recipient of the funds transferred, to any other financial institution participating in the transaction.

(3) Where the originator of the wire transfer does not supply the transfer identification data requested by the financial institution or listed business, the transaction shall not be effected and a suspicious activity report shall be submitted to the FIU.

34. (1) Domestic and cross-border wire transfers shall be accompanied by accurate and meaningful identification data on the originator of the transfer which shall be kept in a format determined by the FIU.

Information required for transfer.

(2) Information accompanying a cross-border transfer shall consist of—

- (a) the name and address of the originator of the transfer;
- (b) a national identification number or a passport number where the address of the originator of the transfer is not available;

- (c) the financial institution where the account exists; and
- (d) the number of the account and in the absence of an account, a unique reference number.

(3) Information accompanying a domestic wire transfer shall be kept in a format which enables it to be produced immediately, to the FIU.

(4) The financial institution or listed business shall put provisions in place to identify wire transfers lacking complete originator information so that the lack of complete originator information shall be considered as a factor in assessing whether a wire transfer is or related transactions are suspicious and thus required to be reported to the FIU.

Exemption
for wire
transfers.

35. A wire transfer from one financial institution to another, is exempted from the provisions of this Part, where both the originator and beneficiary are financial institutions acting on their own behalf.

Continuous
analysis.

36. Where a suspicious transaction or suspicious activity report has been submitted to the FIU, as a result of which there is an on-going analysis, the financial institution shall—

- (a) retain the related records for the period requested by the FIU or until otherwise ordered by the Court; and
- (b) co-operate fully with any instructions given by the Director or such other person as he may appoint.

Retrospective
due diligence.

37. Every financial institution or listed business shall conduct due diligence on all existing accounts within a time-frame agreed upon, in consultation with the industry.

Register of
enquiries.

38. (1) The financial institution or listed business shall maintain a register of all enquiries made to them by any law enforcement authority or other local or foreign authorities acting under powers provided by the relevant laws or their foreign equivalent.

(2) The register shall be kept separate from other records and contain as a minimum the following details:

- (a) the date and nature of the enquiry;
- (b) the name and agency of the enquiring officer; and
- (c) the powers being exercised.

PART VI

SUPERVISORY AUTHORITY

39. A Supervisory Authority may, with the approval of the Director, delegate its function to any person who is suitably qualified or experienced in the operations of a specific type of financial institution or listed business.

Delegation by Supervisory Authority.

40. A Supervisory Authority may take such regulatory measures as prescribed to ensure compliance with these Regulations in respect of—

Measures to ensure compliance.

- (a) financial institutions licensed under the Financial Institutions Act; Ch. 79:09.
- (b) insurance companies and intermediaries registered under the Insurance Act; Ch. 84:01.
- (c) exchange bureaus licensed under the Exchange Control Act; Ch. 79:50.
- (d) cash remitting services in accordance with the Central Bank Act; Ch. 79:02.
- (e) a dealer or investment advisor licensed under the Securities Industry Act; and Ch. 83:02.
- (f) any other financial institution or listed business in accordance with the Act and the Financial Intelligence Unit of Trinidad and Tobago Act. Ch. 72:01.

41. (1) Where a Supervisory Authority, in light of any information obtained by it, knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering, the Supervisory Authority shall disclose the information or belief to the FIU as soon as is reasonably practicable.

Reports to the FIU.

(2) Subject to subregulation (4), where any person receives information through which he knows or has reasonable grounds for believing that a financial institution or listed business has or may have been engaged in money laundering or other specified offence, that person shall disclose the information to the FIU.

(3) Where any person exercising delegated authority under regulation 39, in the light of any information obtained by him, knows or has reasonable grounds for believing that someone has or may have been engaged in money laundering, that person shall, as soon as is reasonably practicable, disclose the knowledge or belief either to the FIU or to the Supervisory Authority by whom he was appointed or authorised.

(4) Where information has been disclosed to the FIU under this regulation, the FIU may only disclose the information in connection with the investigation of an offence under any law or for the purpose of any proceedings relating to the offence.

(5) A disclosure made under this regulation shall not be construed as a breach of any restriction on the disclosure of information, however that restriction may have been imposed.

PART VII

OFFENCES AND PENALTIES

Offences and penalties.

42. A financial institution or listed business which does not comply with these Regulations, commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

Offences by companies, etc.

43. (1) Where a company commits an offence under these Regulations, any officer, director or agent of the company—

(a) who directed, authorised, assented to, or acquiesced in the commission of the offence; or

(b) to whom any omission is attributable,

is a party to the offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act whether or not the company has been prosecuted or convicted.

(2) Where a partnership commits an offence under these Regulations and it is proved that the partner acted according to paragraph (a) or (b) of subregulation (1), the partner and the partnership are liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

(3) Where an unincorporated association, other than a partnership, commits an offence and it is proved that an officer or member of the governing body acted according to paragraph (a) or (b) of subregulation (1), that officer or member as well as the unincorporated body, commits an offence and is liable on summary conviction or on conviction on indictment, to the penalty prescribed in section 57 of the Act.

(4) If the affairs of a body corporate are managed by its members, subregulation (1), applies in relation to the acts and omissions of a member in connection with his functions of management, as if he were a director of the body.

(5) In this regulation—
“officer”, in relation to a body corporate, means a director, manager, secretary, Chief Executive Officer, member of the committee of management or a person acting in such a capacity; and
“partner” includes a person purporting to act as a partner.

44. Proceedings for an offence under these Regulations may not be instituted without the approval of the Director of Public Prosecutions.

PART VIII
MISCELLANEOUS

45. (1) The Financial Obligations Regulations, 2009 are hereby repealed.

Repeal and savings.
[213/2009].

(2) Notwithstanding the repeal of the Financial Obligations Regulations, 2009, nothing done pursuant to or actions taken in respect of those regulations are invalid.