
Second Session Ninth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 10 of 2009

[L.S.]

AN ACT to amend the Proceeds of Crime Act,
Chap. 11:27

[Assented to 9th October, 2009]

WHEREAS it is enacted *inter alia*, by subsection (1) of ^{Preamble} section 13 of the Constitution, that an Act to which that section applies may expressly declare that it shall have effect 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 section 13 of the Constitution, that an Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

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

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:—
Short title	1. This Act may be cited as the Proceeds of Crime (Amendment) Act, 2009.
Act inconsistent with the Constitution	2. This Act has effect even though inconsistent with Sections 4 and 5 of the Constitution.
Commencement	2A. This Act shall come into operation on such day as is set by the President by Proclamation.
Interpretation	3. In this Act, unless the context otherwise required, “the Act” means the Proceeds of Crime Act.
Long title repealed and substituted	4. The long title to the Act is repealed and the following is substituted: “An Act to establish the procedure for the confiscation of the proceeds of certain offences and for the criminalizing of money laundering”.
Section 2 amended	5. Section 2 of the Act is amended— (a) by deleting the definition of “Designated Authority” and substituting the following definition: “ “FIU” means the Financial Intelligence Unit of Trinidad and Tobago established under

section 3 of the Financial Intelligence Unit of Trinidad and Tobago Act, 2009;”;

(b) in the definition of “financial institution” by—

- (i) deleting the word “Banking” occurring in paragraph (a) and substituting the words “Financial Institutions”; and
- (ii) deleting the words “Central Bank” occurring in paragraph (f) and substituting the words “Exchange Control”; and
- (iii) deleting paragraph (h), under the definition “Financial Institution”, and substituting the following:
 - (h) a person who is registered to carry on cash remitting services under the Central Bank Act;
- (iv) inserting in the definition of Financial Institutions after paragraph (i) the following new paragraphs (j) and (k) and renumbering existing paragraph (j) as paragraph (l):
 - (j) an entity providing mutual funds;
 - (k) development banks, trust companies, mortgage companies; and

(c) by inserting after the definition of “import”, the following definition:

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

- (d) in the definition of “a police officer” by—
- (i) deleting the word “and” in line three and replacing it with a comma; and
 - (ii) inserting before the semi-colon at the end thereof the words “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, 2006.”;
- (e) in the definition of “Rules of Court” by inserting after the word “prescribed” the words “for the conduct of proceedings provided for in this Act.”;
- (f) by deleting the definition of “securities” and substituting the following definition:
- “ “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;

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- (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
 - (iii) an oil, natural gas or mining lease, claim or royalty or other mineral rights;”;
 - (g) by deleting the definition of “specified offence” and substituting the following definition:
 - “ “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) or an offence specified in the Second Schedule.”; and

(h) by inserting in the appropriate alphabetical sequence the following new definition:

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

(i) by repealing subsections (6) and (7).

Act amended

6. The Act is amended, by deleting the words—

(a) “Designated Authority” wherever they occur and substituting the word “FIU”; and

(b) “persons engaged in relevant business activities” wherever they occur and substituting the words “listed business”.

Section 3 amended

7. Section 3(1) of the Act is amended by deleting the word “Where” and substituting the words “Notwithstanding section 110 of the Summary Courts Act where”.

Section 8 amended

8. Section 8 of the Act is amended—

(a) in subsection 4(b), by deleting the words “(4)(b)” and substituting the words “(3)(b)”; and

(b) in the second line of subsection (5), occurring after the words “referred to in subsection” by deleting the word “(7)” and substituting the word “(6)”.

9. Section 10 of the Act is amended by—

Section 10 amended

- (a) deleting the word “and” at the end of paragraph (a);
- (b) deleting the full stop at the end of paragraph (b) and substituting a semicolon; and
- (c) inserting after paragraph (b) the following new paragraphs:

“(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 Chap. 4:20 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;
- (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."

Section 12 amended **10.** Section 12 of the Act is amended—

- (a) in subsection (6), by deleting the words "10(2)" and substituting the words "11(2)";
- (b) in subsection (7)(b) by deleting the words "10(2)(b)" and substituting the words "11(2)(b)"; and
- (c) in subsection (8) deleting the words "10(2)(b)" and substituting the words "11(2)(b)".

Section 15 amended **11.** Section 15 of the Act is amended in subsection (9), by deleting the words "5(2)" and substituting the words "5(3)".

Section 16 amended **12.** Section 16 of the Act is amended in subsection (6), by deleting the word "and" after the words "section 5(2)" and substituting the word "or".

Section 18 amended **13.** Section 18 of the Act is amended in subsection (4)(a) and (b), by deleting the words "(2)(a)" wherever they occur and substituting the words "(3)(a)".

Section 28 amended **14.** Section 28 of the Act is amended in subsection (3), by deleting the words "section 25" and substituting the words "section 29".

15. Section 30 of the Act is amended by deleting the word “27” and substituting the word “28”. Section 30 amended

16. Section 32 of the Act is amended— Section 32 amended

(a) in subsection (1) by—

(i) inserting the word “or” after the semi-colon at the end of paragraph (b); and

(ii) inserting a comma at the end of paragraph (c) and by deleting paragraph (d);

(b) in subsection (10)(a), by deleting the words “(2)(a)(i)” and substituting the words “(2)(a)”;

(c) in subsection (6)(c)(ii), by deleting the words “or excluded material”;

(d) in subsection (10)(b), by deleting the words “(2)(a)(ii)” and substituting the words “(2)(b)”;

(e) in subsection (11), by deleting the words “or excluded material”; and

(f) by deleting the word “Associated” and substituting the words “For the purposes of this section associated.”.

17. Section 33 of the Act is amended in subsection (5), by deleting the words “and excluded material”. Section 33 amended

18. Section 34 of the Act is amended in— Section 34 amended

(a) subsection (1), by deleting the words “government department” where it first appears;

(b) subsection (2)(a), by deleting the words “sections 19(1) and 20(1)” and substituting the words “sections 19(1), 20(1) and 21(1)”;

(c) subsection (4)(a), by deleting the words “18 to” and substituting the word “19 and”;

- (d) subsection (4)(b), by deleting the words “18 or 20” and substituting the word “19”; and
- (e) subsection (7)(b), by deleting the words “exercising functions”.

Section 38 amended

19. Section 38 of the Act is amended—

- (a) by deleting subsection (1) and substituting the following subsections:

“(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.

(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.”;

- (b) by repealing subsection (4) and substituting the following subsection:

“(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).”;

- (c) in subsection (10)(b), by deleting all the words after the word “Minister”; and
- (d) by repealing subsection (11) and substituting the following subsections:

“(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.”.

20. Section 39 of the Act is amended in subsection (5)(b), by deleting the words “38(2)” and substituting the words “40(2)”. Section 39 amended

21. The Act is amended by inserting immediately after the Heading “PART II MONEY LAUNDERING” the following new section: Section 42A inserted

“Money laundering 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.”.

22. Section 43 of the Act is amended by deleting the words “drug trafficking” and substituting the words “a specified offence”. Section 43 amended

- Sections 44 and 45 amended **23.** Sections 44 and 45 of the Act are amended by deleting the words “or drug trafficking” wherever they occur.
- Section 46 amended **24.** Section 46 of the Act is amended in subsection (1), by deleting the words “or drug trafficking”.
- Section 47 amended **25.** Section 47 of the Act is amended in subsection (1), by deleting the words “or drug trafficking”.
- Section 50 amended **26.** Section 50 of the Act is amended by deleting the words “or drug trafficking” wherever they occur.
- Section 51 amended **27.** Section 51 of the Act is amended by repealing subsections (7) and (8).
- Section 52 amended **28.** Section 52 of the Act is amended—
- (a) in subsection (1), by deleting paragraph (c) and substituting the following paragraph:
 - “(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.”;
 - (b) in subsection (8), by inserting after the word “matter” the words “required to be reported under section 55(3)”; and
 - (c) by repealing subsection (9).
- Section 53 amended **29.** The Act is amended by repealing section 53(1) and substituting the following:
- “Penalties 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.

(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.”.

30. Section 55 of the Act is amended—

Section 55 amended

(a) by repealing subsections (2) and (3) and substituting the following:

“ (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 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 transactions 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.

(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.”.

(b) by repealing subsection (5) and substituting the following subsection:

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

(c) in subsection (7), by deleting the word “(12)” and substituting the word “(10)”;

(d) by repealing subsection (10); and

(e) in subsections (11) and (12), by inserting after the words “financial institution” the words “or listed business”.

Section 56 amended

31. Section 56 of the Act is amended—

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

“ (1) The Minister to whom responsibility for finance is assigned may make regulations prescribing the—

- (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;

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- (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;
- (f) the measures that may be taken by a Supervisory Authority to secure compliance with this Act or to prevent the commission of a 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.”; and

(b) by deleting in subsection (2), the word “affirmative” and substituting the word “negative”.

New sections 56A and 56B inserted

31A. The Act is amended by inserting after section 56 the following:

Supervisory Authority to submit report 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 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.

Section 57 amended

32. Section 57(1) of the Act is amended by inserting after the word “55” the words “and any regulations made under section 56”.

Section 58 amended

33. Section 58 of the Act is amended—

(a) by inserting after subsection (3), the following subsections:

“ (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.”; and

(b) in subsection (4), by inserting after the word “Minister”, the words “with responsibility for finance”.

34. Until regulations are made under section 56 for ^{Transitional} the selection of the Supervisory Authority, the FIU shall ^{provision} be the Supervisory Authority for the—

(a) financial institutions at paragraphs (d), (h), and (i) of the definition of “financial institution”; and

(b) listed business.

35. The Act is amended by deleting the First Schedule and substituting the following ^{First Schedule} Schedule: _{amended}

"FIRST SCHEDULE

*(Section 2)***LISTED BUSINESS**

	First Column	Second Column
	<i>Type of Business</i>	<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. 48:01	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.

List Business—Continued

	First Column	Second Column
	<i>Type of Business</i>	<i>Interpretation</i>
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.
Chap. 84:06	Jewellery	A business licensed under the Precious Metals and Precious 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

List Business—Continued

	First Column	Second Column
	<i>Type of Business</i>	<i>Interpretation</i>
		<p>(d) organization of contributions for the creation, operation or management of companies, legal persons or arrangements;</p> <p>(e) buying or selling of business entities.</p>
	An Art Dealer	An individual or company that buys and sells works of any category of art.”.
	Trust and Company Service Provider	<p>Any such person when he prepares for an when he carries out transactions for a client in relation to the following activities:</p> <p>(a) acting as a formation agent of legal persons;</p> <p>(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;</p> <p>(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;</p> <p>(d) acting as (or arranging for another person to act as) a nominee shareholder for another person.”.</p>

35. The Third Schedule to the Act is amended— Third Schedule
amended

(a) by deleting the heading thereof and substituting the following heading:

“SUSPICIOUS TRANSACTIONS/SUSPICIOUS
ACTIVITY REPORT”;

(b) in Part III, by inserting the words “transactions or” before the word “activity” wherever it occurs; and

(c) by deleting Part IV.

Passed in the House of Representatives this 3rd day of June, 2009.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House that is to say by the votes of 26 members of the House.

Clerk of the House

Passed in the Senate this 5th day of October, 2009.

Acting Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed in the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all members of the Senate that is to say by the votes of 21 members of the Senate.

Acting Clerk of the Senate

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

Clerk of the House