
First Session Tenth Parliament Republic of
Trinidad and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 8 of 2011

[L.S.]

AN ACT to amend the Financial Intelligence Unit of
Trinidad and Tobago Act, 2009

[Assented to 5th May, 2011]

WHEREAS it is enacted *inter alia*, by subsection (1) of ^{Preamble} section 13 of the Constitution, that an Act of Parliament to which this 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 of Parliament 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:

Enactment	ENACTED by the Parliament of Trinidad and Tobago as follows:
Short title	1. This Act may be cited as the Financial Intelligence Unit of Trinidad and Tobago (Amendment) (No. 2) Act, 2011.
Act inconsistent with the Constitution	2. This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.
Interpretation Act No. 11 of 2009	3. In this Act, “the FIU Act” means the Financial Intelligence Unit of Trinidad and Tobago Act, 2009.
Long title repealed and substituted	4. The long title to Act is repealed and substituted as follows: “AN ACT to establish the Financial Intelligence Unit of Trinidad and Tobago, for the implementation of the Recommendations of the Financial Action Task Force on money laundering and the financing of terrorism and for related matters”.
Section 2 amended	5. The FIU Act is amended in section 2— (a) in the definition of the term “law enforcement authority”, by deleting all the words occurring after the word “or” and substituting the following paragraphs: “(a) Comptroller of Customs and Excise;

(b) Chairman of the Board of Inland Revenue;

(c) Chief Immigration Officer; or

(d) any other body lawfully vested with coercive powers of a police constable appointed under the Police Service Act, 2006;”;

Act. No. 7 of
2006

(b) by inserting in the appropriate alphabetical sequence the following definitions:

“financing of terrorism” has the meaning assigned to it in the Anti-Terrorism Act;

Chap. 12:07

“Foreign Financial Intelligence Unit” means a competent authority which, in a country outside Trinidad and Tobago, exercises functions similar to those of the Financial Intelligence Unit under this Act;

“non-regulated financial institution” means—

(a) a society registered under the Co-operative Societies Act;

Chap. 81:03

(b) a person who carries on postal services; or

(c) a Building Society registered under the Building Societies Act; and

Chap. 33:04

“Permanent Secretary” means the Permanent Secretary in the Ministry with responsibility for finance”.

Section 3 amended

6. The FIU Act is amended in section 3 by deleting—

- (a) the word “(1)”, occurring after the word “3”;
- (b) the words “under this Act and any other written law” and substituting the words “under section 8”; and
- (c) subsection (2).

Section 3A inserted

7. The FIU Act is amended by inserting after section 3 the following section:“Staff of the
FIU

3A. (1) The staff of the FIU shall include the Director and Deputy Director and such other officers required for the performance of its functions.

(2) The Director and Deputy Director and other officers on the establishment of the FIU, shall be appointed by the Public Service Commission.

(3) The Permanent Secretary may appoint—

- (a) other members of staff, after consultation with the Director; and
- (b) consultants and experts, on the advice of the Director,

on a contractual basis and shall be guided by any guidelines for contractual employment issued by the Chief Personnel Officer, from time to time.

(4) The Public Service Commission may, with the approval of such other Service Commissions as may be necessary, assign, transfer or transfer on secondment suitably qualified public officers to the office of Director, Deputy Director or any other public office on the establishment of the FIU.”.

8. The FIU Act is amended in section 6 by inserting Section 6 amended after the words “Oath of Office” the words “and of Secrecy”.

9. The FIU Act is amended by deleting the heading— Part III with
Heading removed
and reinserted

“PART III

FUNCTIONS AND POWERS OF THE FIU”

occurring after section 6 and inserting that heading after section 7.

10. The FIU Act is amended in section 11(b) by deleting Section 11 amended the word “15” and substituting the word “12”.

11. The FIU Act is amended by repealing section 12 Section 12 repealed
and substituted and substituting the following section:

“Order for
disclosure

12. (1) Where a financial institution or listed business fails or refuses to provide any information or refuses to produce any documents required by the FIU under sections 8(3) and 11, the FIU may apply to the High Court, for an Order to require the financial institution or listed business to disclose the information requested by the FIU.

(2) Before an application to the Court is made under subsection (4), the FIU shall give notice in writing to the non-regulated financial institution or listed business of its intention to do so.

(3) An application made by the FIU under subsection (1) shall be heard *in camera*.

(4) A financial institution or listed business which refuses to comply with an Order of the Court, under subsection (1), commits an offence and is liable on conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.”.

Section 14 amended **12.** The FIU Act is amended in section 14, by deleting the word “three” and substituting the word “five”.

Section 15 amended **13.** The FIU Act is amended in section 15 by repealing subsection (3).

Section 17 amended **14.** The FIU Act is amended in section 17(1)(a) by—

- (a) deleting the words “Tobago,” and substituting the words “Tobago—”;
- (b) inserting the word “(i)” before the words “a list”; and
- (c) inserting the following subparagraph after subparagraph (i):
 - “(ii) a consolidated list of financial institutions or listed businesses against whom or which an order is in effect, declaring any such institution or business to be a listed entity under the Anti-Terrorism Act; and”.

Chap. 12:07

Part IIIA inserted **15.** The FIU Act is amended by inserting after section 18 the following new Part:

“PART IIIA

THE SUPERVISORY AUTHORITY

Interpretation
and
application

18A. For the purposes of this Part—

“monitor” means to observe for the purpose of compliance with this Act; and

“Supervisory Authority” means the FIU in relation to listed businesses as defined in the Act and non-regulated financial institutions.

Registration 18B. All listed businesses and non-regulated financial institutions shall register with the FIU, in accordance with the prescribed procedure.

Supervisory Authority to establish and maintain register 18C. The FIU shall establish and maintain a register of all listed businesses for which it is the Supervisory Authority.

Suspicious activity and suspicious transactions 18D. Where in the course of carrying out any of its functions as a Supervisory Authority, the FIU acquires knowledge or has reasonable grounds to suspect that a person is engaging or has engaged in money laundering or the financing of terrorism it shall request an investigation by the relevant law enforcement authority as soon as is reasonably practicable, but in any event before the expiration of seven working days.

Functions of the FIU under this Part 18E. (1) The FIU shall effectively monitor non-regulated financial institutions and listed businesses for which it is the Supervisory Authority and shall take the necessary measures to secure compliance with this Act and the following written laws:

Chap. 11:27 (a) the Proceeds of Crime Act;

Chap. 12:07 (b) the Anti-Terrorism Act;

L.N. No. 7 of 2010 (c) the Financial Obligations Regulations, 2010;

L.N. No. 12 of 2011 (d) the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011;

- (e) the regulations made under the Anti-Terrorism Act; and
- (f) any other written laws by which the recommendations of the Financial Action Task Force are implemented as well as guidelines issued in pursuance of this Act and the laws identified in paragraphs (a) to (e).

(2) The FIU may, from time to time, issue guidelines as to compliance with the written laws listed under subsection (1) which shall be published in the *Gazette* and at least one newspaper in daily circulation in Trinidad and Tobago.

Powers of the
FIU

18F. (1) In order to secure compliance with the written laws listed under section 18E, the FIU may take any of the following actions:

- (a) enter into the business premises of a non-regulated financial institution or listed business during working hours and with the consent of the owner or occupier of such premises in order to—
 - (i) inspect or take documents or make copies or extracts of information from such documents;
 - (ii) inspect premises; and
 - (iii) observe the manner in which certain functions are undertaken; and

(b) require any person on the premises to provide an explanation on any such information.

(2) Where a non-regulated financial institution or listed business refuses to give consent under subsection (1), a police officer above the rank of Sergeant may apply for a warrant to enter the premises referred to in subsection (1)(a) and to—

(a) seize or take copies of any documents which may be evidence of non-compliance with the laws listed under section 18(1)(a);

(b) inspect the premises; and

(c) observe the manner in which certain functions are undertaken.

Administrative
sanctions for
compliance

18G. (1) Notwithstanding any other action or remedy available under this Act, if in the opinion of the FIU, a non-regulated financial institution or listed business has violated or is about to violate the provisions of the Act, the Financial Obligations Regulations, 2010, the Anti-Terrorism Act, 2005, the Financial Intelligence Unit of Trinidad and Tobago Act, 2009, the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011 and any other guidelines issued by the FIU, it may issue a directive to such non-regulated financial institution or listed business to—

(a) cease or refrain from committing the act or violation, or pursuing the course of conduct; or

(b) perform such duties as in the opinion of the FIU are necessary to remedy the situation or minimize the prejudice.

(2) Before a directive is issued under this section, the non-regulated financial institution or listed business to whom the directive is to be issued, shall be served with a notice specifying—

- (a) the facts of the matter;
- (b) the directives that are intended to be issued; and
- (c) the time and place at which the non-regulated financial institution or listed business served with the notice may make representations to the FIU.

(3) Where the non-regulated financial institution or listed business served with the notice referred to in subsection (2) fails to attend at the time and place stipulated by the said notice, the FIU may proceed to issue a directive in his absence.

(4) Where after considering any representations made in response to the notice referred to in subsection (2)—

- (a) the FIU determines that the matters specified in the notice are established, the FIU may proceed to issue a directive to the person served with the notice; or
- (b) the FIU determines that the financial institution or listed business should be afforded the

opportunity to take remedial action, the FIU shall proceed to issue the directive for remedial action to be taken within a specified time.

(5) A directive issued under subsection (4)(b), shall remain in force for a period of twenty-one days, during which the non-regulated financial institution or listed business may make representations to the FIU which shall hear or examine those representations as soon as possible, after they are received.

(6) Where at the expiration of the period stipulated under subsection (5), no representations are made, or representations are made and rejected thereafter, the FIU shall give notice to the non-regulated financial institution or listed business of its intention to take action under subsection (9).

(7) Where a non-regulated financial institution or listed business is aggrieved by the decision of the FIU under subsection (4), that financial institution or listed business may apply to a Judge to discharge the directive and shall serve notice on the FIU, to join the proceedings, save however, that the directives shall remain in force until the judge determines otherwise.

(8) A person who refuses to comply with an Order of the Court commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and to imprisonment for three years.

(9) Where a non-regulated financial institution or listed business to whom a directive is issued fails to comply with the said directive, the FIU may, in addition to any other action that may be taken under this Act, apply to the High Court for an Order requiring the non-regulated financial institution or listed business to comply with the directive, to cease the contravention or do anything that is required to be done.”.

Section 19 amended **16.** The FIU Act is amended in section 19, by deleting the words—

(a) “by the Minister:”; and

(b) “, is an FIU Officer” and substituting the words “or under this Act, is a FIU officer.”.

Schedule deleted and substituted **17.** The Schedule to the FIU Act is deleted and the following Schedule is substituted:

“SCHEDULE

OATH OF OFFICE AND SECRECY

I, AB, do solemnly and sincerely swear that I will treat all documents and reports filed with the FIU and all records and information relating thereto as secret and confidential and I shall not disclose or communicate to any unauthorized person or allow any such person to have access to any such document, reports, record or information. So help me God.”.

Validation **18.** All acts or things purportedly done in good faith by any person pursuant to the Proceeds of Crime Act, the Anti-Terrorism Act, the FIU Act, 2009, the Financial Obligations Regulations, 2010, the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011 or the Financial Obligations (Financing of Terrorism) Regulations, 2011 prior to the coming into operation of this Act, shall be deemed to have been lawfully and validly done, to the extent that it would

have been lawfully and validly done if the person had been lawfully and validly appointed.

19. Notwithstanding any law to the contrary, no legal proceedings or other action shall be filed or maintained against any person for any act or thing done in good faith prior to the coming into operation of this Act in the purported exercise of powers conferred under the Proceeds of Crime Act, the Anti-Terrorism Act, the FIU Act, 2009, the Financial Obligations Regulations, 2010, the Financial Obligations (Financing of Terrorism) Regulations, 2011 or the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011 where the act or thing done would have been lawfully and validly done, if the person had been lawfully and validly appointed. Immunity from legal proceedings

20. Any evidence obtained in good faith by any person during any investigation carried out in the purported exercise of the powers conferred under the Proceeds of Crime Act, the Anti-Terrorism Act, the FIU Act, 2009, the Financial Obligations Regulations, 2010, the Financial Intelligence Unit of Trinidad and Tobago Regulations, 2011, the Financial Obligations (Financing of Terrorism) Regulations, 2011 are deemed to have been lawful and valid, to the extent that such evidence would have been lawful and valid had it been obtained by a person lawfully and validly appointed. Saving of evidence L.N. No. 7 of 2011

Passed in the House of Representatives this 18th day of April, 2011.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the House of Representatives and at the final vote thereon in the House has been supported by the votes of not less than three-fifths of all the members of the House, that is to say by the votes of 36 members of the House.

Clerk of the House

Passed in the Senate this 26th day of April, 2011.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is one the Bill for which has been passed by the Senate and at the final vote thereon in the Senate has been supported by the votes of not less than three-fifths of all the members of the Senate, that is to say by the votes of 27 members of the Senate.

Clerk of the Senate