



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

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Minister: The Attorney General and
Minister of Legal Affairs

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The Civil Asset Recovery and Management and Unexplained Wealth Bill, 2019

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Links: The links to the Bill, and its progress can be found on the Bill's home page through the Parliament's website, www.ftparliament.org

BACKGROUND

1. **The Civil Asset Recovery and Management and Unexplained Wealth Bill, 2019¹** (hereinafter referred to as “the Bill”) aims to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property.
2. Civil asset recovery has been used as a mechanism in other countries to address organised crime.
3. The Bill proposes the recovery of wealth accrued by criminal activity through the use of the remedies of:
 - restriction in dealings with civil assets,
 - restriction and forfeiture of criminal property,
 - management of criminal property,
 - unexplained wealth orders.
4. The Bill was introduced in the House of Representatives by the Attorney General and Minister of Legal Affairs on March 22, 2019.

KEY FEATURES OF THE BILL

Definition of Key Terms

5. The following key definitions are contained in **Clause 3** of the Bill:
 - “*cash*” includes coins and notes in any currency, postal orders, cheques of any kind including travellers’ cheques, bankers’ drafts, bearer bonds, bearer shares and bearer negotiable instruments² and other bearer negotiable instruments in any currency.
 - “*criminal conduct*” means conduct which constitutes an offence in Trinidad and Tobago or if it occurs in a country outside of Trinidad and Tobago would constitute an offence in that country.

¹ <http://www.ttparliament.org/legislations/b2019h06.pdf>

² A bearer negotiable instrument is a non-cash monetary instrument which may contain the instruction 'pay to the bearer.' The bearer is the person in possession of the bearer negotiable instrument. Common examples of bearer negotiable instruments are cheques, promissory notes, traveller's cheques, bearer bonds, money orders and postal orders: <http://www.austrac.gov.au/travellers/travelling-or-out-australia/reporting-bearer-negotiable-instruments-faqs>

- *“criminal property”* means property which constitutes a benefit to a person from criminal conduct and which the alleged offender knows or suspects it constitutes a benefit.
- *“instrumentality of crime”* or *“instrumentalities”* includes any property used or intended to be used in connection with the commission of a criminal offence and any property that is used in the financing of terrorism or terrorist acts.
- *“Listed asset”* means any of the following items of property that falls within one of the following descriptions of property, namely:
 - *precious metals* – gold, silver or platinum;
 - *precious stones* – diamonds, rubies or sapphires;
 - *watches*;
 - *artistic works* – falling under section 5 of the Copyright Act;
 - *computers and electronics*;
 - *face-value vouchers* – in a physical form which represents the right to receive goods or services to the value of the amount stated on it; and
 - *postage stamps*.
- *“property”* means assets, of any kind whether tangible or intangible, moveable or immovable, listed assets and includes cash.
- *“recoverable property”* means criminal property, terrorist property or an instrumentality of a crime.
- *“associated property”* means that part of the property which is not part of recoverable property and –
 - is an interest in the recoverable property;
 - is any other interest in the property in which the recoverable property subsists;
 - the share of the other owner of the property where it is held in common ownership; or
 - the remainder of a larger part of the property which is not a separate part.
- *“reasonable living expenses”* under the proposed legislation includes:
 - mortgage or rent payments;
 - allowances for food, medicine and medical treatment;
 - any payments due as a result of an order of the High Court;
 - provision for the reasonable living expenses of dependents including educational expenses; and

- provision for taxes, insurance premiums and public utilities.
- “*Unexplained Wealth Order*” means an order of the High Court made by which the respondent is required to pay to the State the assessed difference between the total value of his wealth and his lawfully acquired wealth.

Application of the Bill

6. **Clause 4** provides that upon the coming into force of the Act it shall apply to all recoverable property whether or not the criminal conduct relative to the recoverable property occurred before or after the coming into force of the Act.

Standard of Proof

7. **Clause 5** of the Bill proposes that the standard of proof required to be used under the proposed Act would be the standard as in civil proceedings which is “on a balance of probabilities.”

Orders *in rem*

8. **Clause 6** of the Bill provides that Property Restriction Orders and Civil Asset Forfeiture Orders granted under the proposed Act are orders *in rem*³ against assets believed to be or which are criminal property, terrorist property or instrumentalities of crime. An order *in rem* is made against the actual property and determines the rights of the person as it relates to the property, rather than against the person himself.

Criminal property which may be recovered

9. **Clause 7** of the Bill prescribes the types of property which are recoverable under the proposed Act namely; criminal property, terrorist property or an instrumentality of crime. This includes the portion of such property that may be mixed with other property.
10. **Clause 7** also provides for property to be recovered from a person who has obtained the property through criminal conduct and from a person who had the instrumentality for the purpose of criminal conduct. It further sets out how recoverable property that is disposed of or converted is to be treated, and when recoverable property ceases to be recoverable under the proposed Act.

³ “in rem” means involving or determining the status of a thing and therefore the rights of persons generally with respect to that thing. – Black’s Law Dictionary, 9th Edn.

Part II: The Civil Asset Recovery and Management Agency

11. **Clauses 8 to 19** of the Bill propose the establishment of the Civil Asset Recovery and Management Agency (hereinafter “the Agency”) and provide for matters related to its operation.
12. **Clause 8** establishes the Civil Asset Recovery and Management Agency as a body corporate with responsibility for the recovery, management and disposal of criminal property under the proposed Act.

Civil Asset Trustee and Deputy Civil Asset Trustee

13. **Clause 9** provides that the Agency would comprise a Civil Asset Trustee and two Deputy Civil Asset Trustees:
 - The Civil Asset Trustee and one of the Deputy Civil Asset Trustees shall be Attorneys-at-law of at least ten (10) years’ standing appointed by the President on the advice of the Judicial and Legal Services Commission.
 - The Second Deputy Trustee shall be appointed by the President, on the advice of the Prime Minister and Leader of the Opposition.
14. **Clause 9** also prescribes the qualifications of the Trustees, which includes expertise in the areas of asset recovery, asset management and finance and audit.
15. **Clause 10** of the Bill provides for the terms of appointment of the Civil Asset Trustee for seven years and Deputy Civil Asset Trustee for a six years term. The clause also provides that the Trustees may be eligible for reappointment. Further, the Salaries Review Commission shall review the salaries and other conditions of service of the Trustees.
16. The criteria which would render a person ineligible for appointment as a Civil Asset Trustee or Deputy Civil Asset Trustee are set out in **Clause 11** (bankruptcy, being of unsound mind and a record of criminal conviction).
17. **Clauses 12 and 13** provide for the resignation and revocation of appointment of the Civil Asset Trustee or Deputy Civil Asset Trustee. The President may revoke the appointment of the Trustee if the Trustee is declared bankrupt, becomes of unsound mind, is incapable of performing his duties, is convicted of an indictable offence, misbehaves in office, brings his office into disrepute or for any other reasonable cause.

Functions and Powers of the Agency

18. **Clause 14** of the Bill provides for the functions and powers of the Agency:
- securing the detention, custody and preservation of property vested in it under a Property Restriction Order or Civil Asset Forfeiture Order or seized or forfeited by the State under any written law
 - managing and realizing the value of property vested in it
 - removing, taking possession of, preserving, storing or managing criminal property,
 - complying with the terms of an order of the court related to any property,
 - incurring expenditure for acquiring criminal property,
 - selling criminal property and discharging liabilities
 - extinguishing rights of criminal property.
19. **Clause 15** of the Bill provides for disclosure of interests. It requires a Trustee, who has a direct or indirect interest in a matter under consideration by the Agency, to disclose the fact of his interest at the earliest opportunity and prohibits his participation in the consideration of the matter. Failure to comply with this provision may result in a fine of up to five hundred thousand dollars (\$500,000.00) and a term of imprisonment of up to five (5) years on summary conviction.
20. **Clause 16** of the Bill provides for the immunity of the Trustee. It provides for the protection of Trustees against personal liability for anything done in good faith during the operations of the Agency. No civil or criminal proceedings shall lie against a Trustee who, in good faith, discloses information as permitted under the proposed legislation.

Property Manager

21. **Clause 17** provides for the appointment of a Property Manager by the President in her own discretion. The Property Manager shall be responsible for taking possession of, preserving, managing, disposing of, or otherwise dealing with any property which is subject to any proceedings under the proposed Act. The terms and conditions of the Property Manager are to be set by the Salaries Review Commission.
22. Further, the President may revoke the appointment of the Property Manager if the Property Manager:
- is declared bankrupt,
 - becomes of unsound mind,
 - is incapable of performing his duties,

- is convicted of an indictable offence,
 - misbehaves in office,
 - brings his office into disrepute, or
 - for any other reasonable cause.
23. **Clause 18** of the Bill provides protection for the Property Manager in respect of any act done by him in good faith in the performance of his duties.
24. The Agency is empowered to employ staff, and engage experts, advisors and consultants as necessary and to assist in the conduct of its responsibilities pursuant to **Clause 19**. The clause provides for employees of the Agency to be protected from personal liability for anything done in good faith during the operations of the Agency.
25. **Clause 19** also provides that employees and experts engaged by the Agency are required to disclose, in writing, any conflict of interest they may have with the activities of the Agency. The Bill proposes a penalty for a person who recklessly and knowingly fails to comply with this provision and imposes a fine of up to five hundred thousand dollars (\$500,000.00) and a term of imprisonment of up to five (5) years on summary conviction. The penalty for the same offence if committed by an expert, adviser or consultant engaged by the Agency is a fine of five hundred thousand dollars. (\$500,000.00)
26. Further, **Clause 19** requires that before an employee, expert, adviser or consultant commences duty under the proposed Act, he shall take an Oath of Secrecy.

Part III: Financial Provisions

27. **Clauses 20 to 29** of the Bill prescribe the relevant financial matters pertaining to the operations of the Agency.
28. **Clause 20** of the Bill defines the term “*Minister*” to mean Minister with responsibility for finance.

Civil Asset Recovery and Management Fund

29. The Civil Asset Recovery and Management Fund is established under **Clause 21**. The Fund which would comprise:
- monies appropriated by Parliament for the Agency;
 - money and property paid or provided to the Agency;

- fees, subsidies, donations, gifts, charges, rent, interest and other income derived from the investment of the funds of the Agency;
 - money derived from the disposal of, or dealing with real or personal property held and owned by the Agency;
 - monies borrowed by the Agency with the approval of the Minister for the purpose of meeting any of its obligations and for discharging its functions;
 - monies from the Seized Asset Fund used to defray the cost of management of recoverable property; and
 - all other monies lawfully received by or made available to the Agency with the approval of the Minister.
30. **Clause 22** of the Bill provides that the Civil Asset Recovery and Management Fund shall be applied in defraying the following expenditure:
- the acquisition of property by the Agency in the course of performing its functions or exercising its powers;
 - the remuneration, allowances, advances, loans, pensions and gratuities payable to staff, experts, advisers and consultants;
 - contributions to a pension fund plan;
 - capital and operating expenses, including maintenance and insurance of the property of the Agency;
 - management of criminal property under the control of the Agency;
 - starting, carrying on and defending any legal proceedings; and
 - any other expenditure authorized by the Agency in the performance of its functions.
31. **Clause 22** also allows the Agency to make provision for future expenditure for any of the prescribed expenses and to mandate that any additional monies required by the Agency be defrayed out of the Consolidated Fund.
32. **Clause 23** of the Bill provides for Estimates of Expenditure. It requires the Agency to prepare a budget for each financial year in accordance with International Financial Reporting Standards⁴ or in such other form as the Minister may direct and submit estimates to the Treasury by a date stipulated by the Minister, after obtaining his approval.

⁴ International Financial Reporting Standards (IFRS) set common rules so that financial statements can be consistent, transparent and comparable around the world. IFRS are issued by the International Accounting Standards Board (IASB). IFRS were established to create a common accounting language, so that businesses and their financial statements can be consistent and reliable from company to company and country to country: <https://www.investopedia.com/terms/i/ifrs.asp>

33. The clause requires the Agency to furnish information relative to the submitted estimates to the Minister as he may require, and stipulates that the estimates approved by the Minister would be the expenditure budget of the Agency and would be subject to the provisions of the Constitution and the Exchequer and Audit Act.
34. **Clause 24** of the Bill prescribes the financial year of the Agency as twelve (12) months beginning on the first day of October in any year to the thirtieth day of September in the following year. The Agency may vary its financial year with the approval of the Minister.
35. **Clause 25** of the Bill prescribes the requirements for the keeping of accounts by the Agency and would require it to ensure that all monies received are properly brought to account, all payments out of its money are correctly made and properly authorized and adequate control is maintained over the property and over the incurring of liabilities by the Agency.
36. The clause requires the Agency to prepare a report setting out the activities of the Agency and financial statements within three (3) months after the end of the financial year and a copy of such report and financial statements shall be forwarded to the Minister and shall be laid in Parliament as soon as possible thereafter.
37. **Clause 26** of the Bill provides for the audit of accounts of Agency, prescribing that they are Public Accounts for purposes of the Constitution. The Auditor General is empowered to notify the Minister and the Board of any irregularity of a sufficient nature that has been disclosed in an audit. The Auditor General would also be required to submit a copy of his report in accordance with the Constitution and submit a copy to the Minister.
38. **Clause 27** of the proposed legislation empowers the Minister to lend money to the Agency on terms and conditions as he may determine, out of the money appropriated by Parliament.
39. **Clause 28** of the Bill requires the Agency to submit an annual report to Parliament within three months after the end of the calendar year on the activities of the Authority for the previous year.
40. **Clause 29** of the Bill requires the Agency to apply the realized proceeds of property vested in it:

- Firstly, to any payment required to be made in respect of associated or joint property;
- Secondly, to the payment of legal expenses;
- Thirdly, to any fees payable to a liquidator of a company appointed by or supervised by the High Court; and
- Lastly, any other sums which remain to be paid to the Agency.

The clause requires that the sums that remain to be paid to the Agency be paid into the Seized Assets Fund. This shall be done in two circumstances, namely after the period that the order for compensation has been made or after the period within which an appeal may be made or determined, whichever happens later.

Part IV: Civil Asset Recovery

41. **Clauses 30 to 57** of the Bill prescribe for the process of Civil Asset Recovery.
42. **Clause 30** of the Bill provides for the interpretation of certain words and phrases used in the Part, namely “*FIU*” which refers to the Financial Intelligence Unit and “*property lawfully obtained*” which means property that has been acquired through legitimate activities, including inheritance and transfer.
43. **Clause 31** of the Bill would empower a police officer, customs officer or the Chairman of the Board of Inland Revenue to forward an investigative report to the Director of Public Prosecutions (“DPP”), where he has reasonable grounds to suspect that the investigation involves recoverable property.
44. Additionally, the clause empowers the DPP to refer a matter to the Agency for a Civil Asset Recovery Order to be made where he is of the view that there is insufficient evidence to pursue criminal charges for a specified offence, but there is sufficient evidence that the property is recoverable property and an application should be made for the property to be forfeited to the State.
45. **Clause 32** of the Bill requires the Agency to have an equity valuation⁵ done for the company that may be the subject of a Property Restriction Order or Civil Asset Recovery Order, in order to determine the debt load and equity of the company and a valuation of any other asset as far as possible, prior to applying for a Property Restriction Order or Civil Asset Recovery Order. Where such a valuation cannot be

⁵ The main purpose of an equity valuation is to estimate a value for a firm or its security: <https://www.investopedia.com/articles/investing/080913/equity-valuation-comparables-approach.asp>

done prior to an application, it must be done as soon as possible after an Order is made.

Property Restriction Order

46. “*Property restriction orders*” are introduced at **Clause 33** of the Bill. Upon referral of a matter by the DPP, the clause empowers the Agency to apply to the High Court for a Property Restriction Order to prohibit a person from dealing with recoverable property until an application can be made to forfeit the property in accordance with the proposed Act.
47. The matters that the Civil Asset Trustee must consider in making an application to the Court, namely whether the recoverable property can be identified, is provided in the clause. It also provides that an application may be made *ex parte*⁶ without notice and may be heard *in camera*. An application for a Property Restriction Order may be made *ex parte* to ensure that property is not hidden or dissipated before a Property Restriction Order is issued.
48. **Clause 34** of the Bill provides for the grant of the Property Restriction Order and empowers the High Court to make such an order where it is satisfied that there are reasonable grounds to believe that the property is recoverable property or associated property. The application can also be made in relation to associated property where the Agency has not identified the person who holds it and has taken all steps to do so.
49. The standard for the granting of a Property Restriction Order is set at this level because if it is set too high, the Agency will rarely be able to satisfy the test, and there would be a serious risk that the assets that should be forfeited would be lost.
50. **Clause 34** provides for the High Court to direct the Agency to take possession of any recoverable property and manage or deal with any property and require any person to give up possession of the property to the Agency. The clause provides that the Property Restriction Order may authorize the Agency to seize, take possession and deliver up for safekeeping or otherwise secure the recoverable property and to manage or otherwise deal with the recoverable property.

⁶ “*ex parte*” means on or from one party only without notice to or argument from the adverse party – Black’s Law Dictionary, 9th Edn.

51. The Property Restriction Order may require a person having possession of recoverable property to give possession to the Agency. It may also require the property or part of the property be dealt with in a particular manner (for instance not sold, transferred, mortgaged etc.) including by encumbrances and may order the preservation, management or disposition of the recoverable property.
52. **Clause 34** also stipulates a period of fourteen (14) days within which notice of a Property Restriction Order must be served on all persons known to the Agency and any person claiming to have an interest in the property affected by the Order.
53. Further, **Clause 34** empowers the High Court to exclude property from the order or make exclusions on the prohibitions on dealing with the property. Furthermore, the clause prohibits the State from using any property that is the subject of a Property Restriction Order.
54. Where a Property Restriction Order is made, the High Court may in the order make provision for meeting out of the property, reasonable living expenses, expenses incurred in defending a criminal charge, expenses to enable a person to carry on a trade or business, fees and service charges. The clause specifies that the High Court must ensure that any exclusion to allow a person to meet legal expenses is limited to reasonable legal expenses and specifies the amount to be released for legal expenses.
55. **Clause 34** provides that no arrangements out of the recoverable property are to be made if there are unrecoverable assets from which provision for financial arrangements can be made for the purposes of meeting reasonable living expenses, legal expenses or expenses necessary to carry out a trade or business.
56. **Clause 34** prescribes that where a Property Restriction Order has been made and the Agency has been directed to manage any recoverable property, the Agency may do anything that is reasonably necessary to preserve the recoverable property and its value, for example insuring the property, employing, or terminating the employment of, persons if the property concerned is a business.
57. **Clause 35** empowers the High Court to vary or set aside, in the interest of justice, a Property Restriction Order on the application of a person who has an interest in the property or the Agency. Before varying or setting aside a Property Restriction Order the High Court shall to give any person who may be affected by its decision an opportunity to be heard.

58. The power of the High Court to vary the Property Restriction Order includes the power to make exclusions from the prohibition on making withdrawals from the account to which the Property Restriction Order applies to meet reasonable living or legal expenses or to carry on any trade, business profession or occupation.
59. The clause makes it clear that the High Court is not to exclude property or an amount from the recoverable property unless it is satisfied that the person cannot meet the expenses out of property he owns that is not the subject of the Property Restriction Order.
60. **Clause 35** provides that where the High Court varies a Property Restriction Order, the High Court may stay any action, execution or other legal process in respect of the property under the Order and no distress may be levied against the property except with the leave of the court.
61. **Clause 36** of the Bill provides for the High Court to require persons to whom a Property Restriction Order applies, to bring the property and documents relating to the property in his possession to a place specified by the Agency or to place it in the custody of the Agency or do anything required by the Agency for the preservation of the property or documents.
62. **Clause 37** of the proposed legislation provides for third party rights where a Property Restriction Order has been made by the High Court. The High Court is empowered to make such further orders to revoke the Property Restriction Order or to carry out the order on the application of the Agency, anyone with an interest in the property or claiming an interest in the property.
63. **Clause 38** empowers the High Court to make any further order in addition to a Property Restriction Order, including an order for the seizure, taking into possession, preservation, management or disposition of recoverable property and to authorize a police officer to seize property in order to prevent recoverable property from being removed from Trinidad and Tobago.
64. It provides the circumstances under which an order for search and seizure may be granted. Additionally, **Clause 38** provides that where property which is not the subject of the order is found, but which may have been included in the order if its existence was known, the police officer may seize the recoverable property and such seizure may be authorized once the police officer gives notice to the High

Court within forty-eight (48) hours of the seizure and a record of the seizure of the property is left with the occupier of the premises.

65. **Clause 39** of the Bill provides for a Property Restriction Order or a further order made by the High Court to expire ninety (90) days after the date on which notice of the order is given.
66. According to **Clause 40** of the Bill, the Agency must give notice of the grant of a Property Restriction Order to public or private institutions such as financial institutions and publish a notice of the order in the *Gazette* and for two (2) days within a two-week period in two newspapers in daily circulation in Trinidad and Tobago.
67. **Clause 41** of the Bill makes provision for the informing of specified agencies of Property Restriction Order. For instance informing the Registrar General where the Property Restriction Order deals with land. It allows the Agency to apply to the Registrar General for a restriction prohibiting or restricting dealings with the land. Further, the clause allows the Agency to apply to the Commissioner of Transport for a restriction prohibiting dealings with a motor vehicle and the agency responsible for the registration of ships for a restriction prohibiting dealings with a ship.
68. **Clause 42** of the Bill empowers the Attorney General to request the assistance of another country under Part VI to prohibit a person from dealing with the property, and assist in the management of the property, where a Property Restriction Order is granted in respect of property which is located in another country.
69. **Clause 43** of the proposed legislation provides for the compensation of a person whose property is the subject of a Property Restriction Order, and the High Court determines that the property is not recoverable. The clause would require such a person to apply to the High Court for compensation within three months beginning with the date of the decision of the High Court that the property is not recoverable, or the date on which an application for leave to appeal is withdrawn or refused, or the proceedings concluded. The amount of compensation to be paid under this section is the amount the High Court thinks reasonable.

Civil Asset Forfeiture Order

70. **Clause 44** of the Bill empowers the Agency to apply to the High Court for a Civil Asset Forfeiture Order to forfeit the property specific to the Property Restriction Order.
71. A Civil Asset Forfeiture Order is an order against assets which removes the legal ownership in the property and vests it in the State. As an order *in rem*, the property itself is the defendant, not the owner or a person who has an interest in the property.
72. Once an application for a Civil Asset Forfeiture Order is made, the Agency is required to serve a copy of the application on any person whom the Agency has reason to believe has an interest in the recoverable property and any person claiming an interest in the recoverable property may appear and adduce evidence at the hearing of the application. The High Court may direct the Agency to provide such notice to any person, that the High Court deems appropriate, who appears to have an interest in the recoverable property.
73. **Clause 45** of the Bill empowers the High Court to grant a Civil Asset Forfeiture Order where it is satisfied on a balance of probabilities that recoverable property should be forfeited.
74. The clause provides for matters to be considered by the Court when making a Civil Asset Forfeiture Order. It provides that it is not necessary to show that the property is derived from a particular offence, as long as it can be shown that the property is criminal property, instrumentality of crime or terrorist property.
75. The clause provides that the remedy of civil forfeiture may still be appropriate even where a person has been acquitted in a criminal process associated with the criminal conduct, or the proceedings have otherwise terminated without conviction as civil asset forfeiture is directed at an asset, not a person. It is therefore not related to the conviction or acquittal of a person.
76. The clause further provides that the order could apply to all criminal property, instrumentalities of criminal or terrorist property whether it is described in the order or not, and whether it was transferred to the person after the making of the order and provides for notice to be given to persons affected by the order.

77. The clause prohibits the High Court from making an order if it is of the opinion that the right of the Agency to recover property has been satisfied by a previous order or if a consent order is made. Moreover, the clause provides for how the Court may treat with two or more related items of recoverable property and provides for property seized in accordance with the order to be dealt with in accordance with the direction of the High Court.
78. **Clause 46** of the Bill requires where a Civil Asset Forfeiture Order is made, the Order shall require the Agency to give notice of the orders to public or private institutions, persons who have an interest in the property and to publish a notice of the Order in the Gazette for two (2) days within a two-week period in two newspapers in daily circulation in Trinidad and Tobago and on the website of the Agency.
79. **Clause 47** of the Bill provides for rights of pre-emption⁷, providing that the order would have effect in relation to any property despite any provision which would otherwise prevent, penalize or restrict the vesting of the property, and providing that a right of pre-emption, return or other similar right would not operate or become exercisable as a result of the vesting of any property under a Civil Asset Forfeiture Order.
80. **Clause 48** of the Bill deals with associated property and joint property. The clause requires a person who holds associated property or is the excepted joint owner of property, with the permission of the Agency, to apply to the High Court for a Civil Asset Forfeiture Payment Order to allow for a payment to the Agency and the vesting, creating or extinguishing of any interest in the property.
81. **Clause 49** of the Bill empowers the High Court to make a consent order to stay any proceedings for a Civil Asset Forfeiture Order, on terms agreed by the parties for the disposal of the proceedings.
82. **Clause 50** of the Bill provides that where the High Court is satisfied on a balance of probabilities that the property that is the subject of the application is recoverable property, but that a person is a legitimate owner, the High Court shall make any order it considers necessary to protect that person's interest in the property.

⁷ "Pre-emption rights" are contractual rights under which a party has the first opportunity to buy an asset before it is offered to a third party: <http://www.businessdictionary.com/definition/preemption-right.html>

83. A legitimate owner, in the case of criminal property, is a person who was the rightful owner before the criminal conduct occurred and who was deprived of the property by the criminal conduct or who acquired the property in good faith and for fair value after the criminal conduct and did not and could not have reasonably known the property was criminal property.
84. In respect of instrumentalities, the legitimate owner is the person who has done all that can reasonably be done to prevent the property from being used as an instrumentality for crime. Where the property is terrorist property, the person who can satisfy the High Court that he would be the legitimate owner if the property fell under the aforementioned areas for criminal property and instrumentalities.
85. **Clause 51** of the Bill provides that a person who might otherwise claim as a legitimate owner is not protected if the person has absconded from justice.

Specific Requirements for certain types of property

86. **Clause 52** of the Bill specifies how land that is the subject of a Property Restriction Order is to be dealt with. The clause would require the person to whom the property relates or the occupant to maintain payment of taxes and debts that have the potential to encumber the land with a lien, including rates and loan payments.
87. **Clause 53** requires the Agency to ensure that any stocks, bonds and brokerage accounts that it intends to make the subject of a Civil Asset Recovery Order are valued and determine how best to preserve the value of the assets.
88. In relation to motor vehicles, airplanes or boats, **Clause 54** of the proposed legislation requires the Agency to maintain the property under an Order in a secure and appropriate storage facility. The Agency would also be empowered to sell the motor vehicle, airplane or boat with the permission of the court or permit the owner of the said property to retain use during the Civil Asset Recovery proceedings by posting a bond in the value of the property.
89. **Clause 55** of the Bill empowers the Agency to ask the High Court for permission to have the current manager of the business that is the subject of the order, to continue the operations under the control of a business manager contracted by the Agency or appointed by the High Court, and would set out the powers and responsibilities of the manager.

90. **Clause 56** provides for a reference to the cost incurred in storing or insuring the listed assets as required by Regulations made under the proposed legislation to include a reference to storing or insuring the entire listed assets.
91. **Clause 57** of the Bill allows the Agency to sell perishable or rapidly depreciating assets and place the proceeds into the Seized Assets Fund.

Unexplained Wealth Orders

92. **Clauses 58 to 67** of the Bill provide for Unexplained Wealth Orders.
93. **Clause 58** of the proposed legislation empowers the Chairman of the Board of Inland Revenue, a Customs and Excise officer or a police officer attached to the financial investigations unit of the Police Service to apply to the High Court for a Preliminary Unexplained Wealth Order, where there is a reasonable suspicion that the total wealth of the respondent exceeds the value of his lawfully obtained wealth and that the property is owned by the respondent or is under his effective control.
94. Such an order shall require a person (the respondent) to file a declaration and answer questions in relation to his assets. The clause prescribes the contents of an affidavit accompanying the application, and provides that it may be made *ex parte*.
95. **Clause 59** of the Bill provides for the declaration in the form set out as Form I in Schedule II.
96. An offence of making a false statement in any material particular on the declaration form is created under **Clause 60**. It prescribes a penalty on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) and to imprisonment of twenty (20) years.
97. **Clause 61** of the Bill empowers the court to make a Preliminary Unexplained Wealth Order where it is satisfied that there are reasonable grounds to suspect that the total wealth of the respondent exceeds the value of his wealth that was lawfully obtained. The Preliminary Unexplained Wealth Order would require the respondent to file a declaration and appear before the High Court to answer questions relative to his assets for the Court to decide whether to make an Unexplained Wealth Order. Notice of the making of the order shall be served on the respondent.

98. **Clause 62** of the Bill allows a person in respect of whom a Preliminary Unexplained Wealth Order is made to apply to the High Court for the order to be revoked within twenty-eight (28) days of notice of the order. The High Court may order an *inter partes*⁸ hearing within fourteen (14) days.
99. Such a person must give notice of his application and copies of any documents supporting the application to the person who originally made the application. The applicant would further be allowed to appear and adduce evidence at the hearing of any application made.
100. **Clause 63** of the Bill empowers the High Court to revoke a Preliminary Unexplained Wealth Order where it is satisfied that there are no grounds on which the order could be maintained.
101. **Clause 64** of the Bill empowers, the Chairman of the Board of Inland Revenue, a Customs and Excise officer or a police officer attached to the financial investigations branch to apply to the High Court for an Unexplained Wealth Order. An application must be accompanied by a supporting affidavit and any documents in support of the application.
102. **Clause 65** of the Bill empowers the High Court to make an Unexplained Wealth Order where there is a Preliminary Unexplained Wealth Order that has not been revoked in relation to a respondent, and it is satisfied that on a balance of probabilities that part of the wealth of the respondent was not lawfully obtained and the particular property is held and subject to the control of the respondent.
103. This Order may be granted regardless of whether there are other persons who also hold the property or if the property was obtained by the respondent before or after the coming into force of the proposed Act. The burden of proving the wealth of the respondent is lawfully acquired lies on the respondent
104. The clause goes on to require that the order of the High Court shall specify that the respondent shall pay the amount being his “unexplained wealth amount” into the Seized Assets Fund.
105. The clause also empowers the High Court to make an order upon application of the applicant to restrict the rights of the respondent or any named person to deal with

⁸ “inter partes” means between two or more parties – Black’s Law Dictionary, 9th Edn.

the property, if it is satisfied that the property would not be available without the restriction.

106. Under **Clause 65**, the court is also empowered to deduct an amount equal to the value of any property forfeited by the respondent under a Property Restriction Order, a Civil Asset Forfeiture Order or a Confiscation Order or Forfeiture Order under the Proceeds of Crime Act, from the amount it would require the respondent to make in the Unexplained Wealth Order.
107. **Clause 66** of the Bill requires the Chairman of the Board of Inland Revenue, a Customs and Excise officer or a police officer to give written notice of an application for an Unexplained Wealth Order to the respondent named in the order and any other person who it has reason to believe may have an interest in the property. The clause would also allow the respondent and any person who claims an interest in the property to appear and adduce evidence at the hearing of the application.
108. **Clause 67** of the proposed legislation provides for the enforcement of an Unexplained Wealth Order against a respondent, and provides that an amount payable is a civil debt due by the respondent to the State and the order is a judgment debt. The clause allows for an Unexplained Wealth Order to be exercisable against the estate of the respondent if it is made after his death.

Property Outside of Trinidad and Tobago

109. **Clauses 68 to 70** of the Bill provide for Property Outside of Trinidad and Tobago.
110. **Clause 68** of the Bill allows the Attorney General by Order, subject to negative resolution of Parliament, to declare a treaty as having the force of law in Trinidad and Tobago. This Order shall be subject to such limitations, conditions, exceptions or qualifications as may be specified.
111. Under **Clause 69** the Attorney General is empowered to enter into an agreement with the government of any foreign State for the reciprocal sharing of the proceeds or disposition of property forfeited or disposed of under this Act, or property forfeited or disposed of by a foreign State. Proceeds received by Trinidad and Tobago are to be deposited into the Seized Assets Fund.

112. The clause also provides that the Attorney General may approach the High Court for an Order where there is no agreement with another State for the reciprocal sharing of proceeds forfeited under the proposed Act.
113. **Clause 70** of the Bill allows the Attorney General to seek assistance for the enforcement of a Property Restriction Order, a Civil Asset Recovery Order or an Unexplained Wealth Order where he reasonably suspects that the property is in a country with which Trinidad and Tobago has a treaty. The clause goes on to provide for the procedure for seeking the assistance of the other country.

Part VII: Asset Management

114. **Clauses 71 to 73** of the Bill provide for Asset Management.
115. **Clause 71** of the Bill provides for the appointment of a Property Manager to manage the property relative to the Property Restriction Order or a Civil Asset Forfeiture Order. The clause allows the Property Manager to request information from and receive information from relevant authorities in exercising his functions.
116. The Duties of the Property Manager are detailed at **Clause 72** of the Bill. The duties include preparing and filing with the High Court and Minister, a report identifying the location of the property where he takes control of it, and initiating and maintaining records of all property restrained, seized, forfeited and destroyed under the Act.
117. Additionally, the Property Manager shall file a report with the High Court and the Attorney General identifying the new location of property and value realized where it has been moved or sold.
118. **Clause 73** of the Bill provides for the realization of forfeited property through sale, destruction or otherwise by the Property Manager. The Agency and the Property Manager are empowered to realize the value of the property vested in it or him under a Civil Asset Forfeiture Order.

Part VIII: Miscellaneous

119. **Clause 74** of the Bill requires members of the Agency, employees and every person concerned with the administration of the proposed Act including experts engaged by the Agency, to treat documents, information or other matters as secret and

confidential, except where disclosures are made by the Agency or any other person pursuant to the provisions of the proposed Act or Regulations.

120. The clause provides a penalty for breach of confidentiality; on summary conviction to a fine of one hundred thousand dollars (\$100,000.00) or imprisonment for three (3) years and on indictment to a fine of one hundred and fifty thousand dollars (\$150,000.00) and to imprisonment for five (5) years.
121. **Clause 75** of the Bill empowers the Attorney General to make Regulations for the purpose of giving effect to anything required to be done under the proposed Act. Regulations made under this clause shall be subject to negative resolution of Parliament. The Attorney General may make Regulations in relation to procedures for storage, management or disposal and for the exchange of information.
122. **Clause 76** of the Bill provides for the consequential amendments to the **Proceeds of Crime Act, Chap. 11:27** and the **Integrity in Public Life Act, Chap. 22:01** as set out at **Schedule 3**.
123. **Schedule 1** of the Bill provides the Oath of Office and Secrecy.
124. **Schedule 2** of the Bill sets out Form 1: the Declaration of Assets and Form 2: the Status Report on Property Form.
125. **Schedule 3** of the Bill provides for consequential amendments to sections 58A, 58B, 58C, 58E and 58M of the **Proceeds of Crime Act** and section 8(1) of the **Integrity in Public Life Act**.

ASSET RECOVERY IN OTHER JURISDICTIONS

Ireland-Proceeds of Crime Act 1996

Standard of proof

- The standard of proof required is the civil standard (the balance of probabilities).

Who may apply?

- The Criminal Assets Bureau (CAB) may initiate investigations and other actions on its own motion, without need for external referral or recommendation.

- The objectives of the Criminal Assets Bureau (CAB) in Ireland are the identification of assets, wherever situated, which derive or are suspected to derive from criminal activity; the taking of action to deprive persons of such assets; and the carrying out of investigations in relation to such proceedings

Minimum property value

- Civil orders may be made against property worth at least €13,000 which is deemed to be the proceeds of crime, that is, obtained as a result of or in connection with the commission of an offence.

United Kingdom – Proceeds of Crime Act, 2002

Standard of proof

- The standard of proof required is the civil standard.
- If the High Court is satisfied that the property is recoverable, that is to say was obtained through unlawful conduct, it must make a recovery order.

Who may apply?

- The enforcement authority may take proceedings for a recovery order in the High Court. The authority may apply to the court for a property freezing order (whether before or after starting the proceedings).

Minimum property value

- The ***Proceeds of Crime Act, 2002*** provides that civil orders may be made against property worth at least £10,000 which is deemed to be the proceeds of crime that is, obtained through unlawful conduct.

No need for committal of an offence

- It is not necessary for proceedings to have been brought for an offence in connection with the property.
- Three civil orders may be brought against property in England and Wales: freezing, interim receivership and recovery orders.
- Freezing orders prevent a specified person from dealing with the property for a limited period, and they may be issued *ex parte*.
- The interim receivership order, which prevents the person from dealing with the property, and is founded on a good arguable case that the particular property is or includes recoverable property.

- The enforcement authority possess considerable powers concerning the entry of premises, the production of property and the investigation of suspected possession of "criminal" assets.

Compensation

- The enforcement authority is required to reimburse an applicant who has suffered loss as a result of an interim order where the property is not decided by the court to be recoverable.

New Zealand-Criminal Proceeds (Recovery) Act 2009

Standard of proof

- The standard of proof required is the civil standard (the balance of probabilities).

Who may apply?

- Civil forfeiture orders are made upon application by the Commissioner of Police to the High Court.
- In New Zealand, there is no separate agency with responsibility for the taking of civil restraint or forfeiture actions.

No need for committal of an offence

- It is not necessary for proceedings to have been brought for an offence in connection with the property.
- The Court must make an asset forfeiture order if satisfied on the balance of probabilities that the property is tainted, resulting in the property being vested in the Crown and in the custody and control of the Official Assignee.

The property

- The property which may be recovered is that which is acquired or derived from "significant criminal activity", which is behaviour that if proceeded against as a criminal offence would be punishable by a maximum term of imprisonment of five (5) years or more, or behaviour from which property or proceeds of a value of NZ\$30,000 or more have been acquired or derived.
- Civil orders may be subdivided into restraint and forfeiture orders.
- Restraint of property is not necessary before forfeiture.

No notice required

- A restraining order may be made, with or without notice to the respondent, in relation to "tainted" property acquired as a result of or derived from significant

criminal activity, requiring that it is not to be disposed of, or dealt with, other than is provided for in the order.

Duration of a restraining order

- A restraining order lasts for one year, or until the making or declining of a forfeiture order, whichever is earlier.

Queensland, Australia-Criminal Proceeds Confiscation Act 2002

Standard of proof

- Questions of fact in the proceeding must be decided on the balance of probabilities – sec. 8.

Who may apply?

- The proceedings may be started on behalf of the State by the commission, police officer or appropriate officer. For this Act an appropriate officer means the chairperson, a commission officer or the DPP – sec. 12.

No notice required

- A restraining order application may be made without notice to any person to whom it relates – sec. 28.

The orders

- The unexplained wealth order must state the value of the person's unexplained wealth required to be paid to the State. The value of the person's unexplained wealth must be assessed by the Supreme Court under division 2 – sec. 89H.
- In relation to applications for a forfeiture order, the commission must give written notice of the application to each person whose property is restrained under the restraining order and anyone else considers has an interest in the restrained property.
- The Supreme Court may order sale of a restrained property. The State may, when applying for the forfeiture order or at a later time, apply to the Supreme Court for an order directing the public trustee to sell all or part of the restrained property – sec. 46.

Undue hardship

- If the Supreme Court is satisfied the operation of a forfeiture order will cause hardship to a dependant of the person who will forfeit property under the order,

the court may order the State to pay to the dependant out of the proceeds of the sale of the property the amount the court considers necessary to prevent hardship to the dependant – sec. 62.

Refusal of order if not in the public interest

- In relation to Unexplained Wealth Orders, the Supreme Court may refuse to make the order if the court is satisfied it is not in the public interest to make the order – sec. 89G.

Ontario, Canada – Civil Remedies Act, 2001

Standard of proof

- The standard of proof is on the balance of probabilities – sec 16.

Who may apply?

- The Attorney General may apply to the Superior Court of Justice to make interlocutory orders for the preservation, management or disposition of any property that is the subject of proceedings– sec. 9.

Notice required

- The Attorney General shall give notice of the proceeding and of any interlocutory motion to be brought in respect of such proceeding or intended proceeding to persons in accordance with the rules of court as if such persons were parties to the proceeding – sec. 15.5.

Liability

- The Attorney General shall appoint a person to be the Director of Asset Management – Civil who shall be responsible for taking possession of and preserving, managing or disposing of or otherwise dealing with all property – sec. 15.
- No action or other proceeding may be commenced against the Attorney General, the Director of Asset Management – Civil, any employee of the Ministry of the AG or the Director for any act done in good faith in the performance of any duty under Part IV.1 or for any neglect or default in the performance or exercise in good faith of any such duty or power. – sec. 20.

REFERENCES

KEY LEGISLATION

- **The Civil Asset Recovery and Management and Unexplained Wealth Bill, 2019**
<http://www.ttparliament.org/legislations/b2019h06.pdf>
- **Proceeds of Crime Act, Chap. 11:27**
http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.27.pdf
- **Integrity in Public Life Act, Chap. 22:01**
http://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/22.01.pdf

LEGISLATION FROM OTHER JURISDICTIONS

- **United Kingdom Proceeds of Crime Act 2002 –**
<https://www.legislation.gov.uk/ukpga/2002/29/contents>
- **New Zealand Criminal Proceeds (Recovery) Act 2009 –**
<http://www.legislation.govt.nz/act/public/2009/0008/latest/whole.html>
- **Queensland Criminal Proceeds Confiscation Act 2002 –**
<https://www.legislation.qld.gov.au/view/whole/pdf/inforce/current/act-2002-068>
- **Ontario Civil Remedies Act, 2001 –**
<https://www.ontario.ca/laws/statute/01r28>

ARTICLES

- **Campbell, Liz "The Recovery of 'Criminal' Assets in New Zealand, Ireland and England: Fighting Organised and Serious Crime in the Civil Realm" (2010) 41(1) Victoria University of Wellington Law Review 15**



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