



THE PARLIAMENT OF
TRINIDAD AND TOBAGO

BILL ESSENTIALS

Date Introduced: 4 December, 2020

House: House of Representatives

Minister: Attorney General and
Minister of Legal Affairs

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

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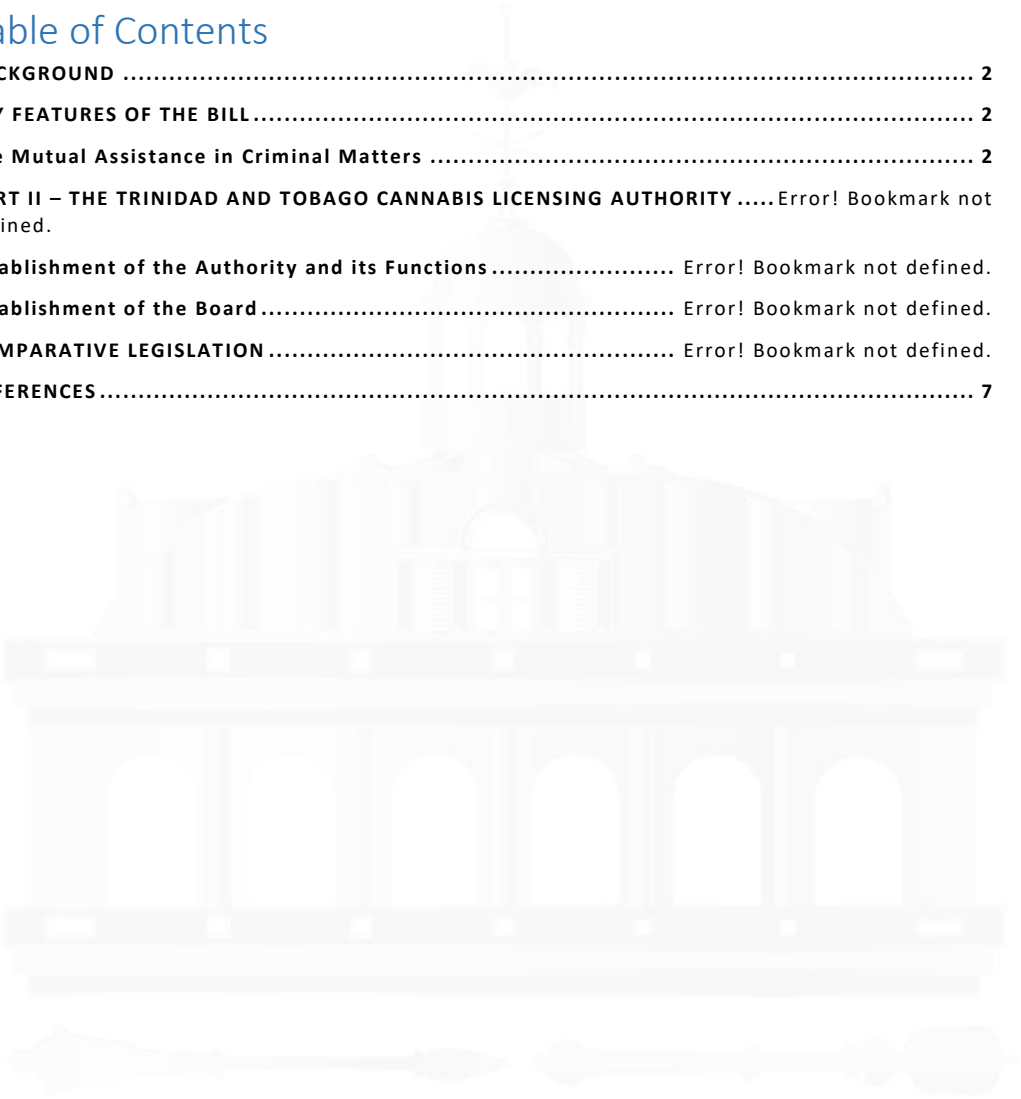
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The Miscellaneous Provisions (FATF Compliance) Bill, 2020

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BACKGROUND

1. **The Miscellaneous Provisions (FATF Compliance) Bill, 2020** (hereinafter referred to as “the Bill”) will be introduced in the House of Representatives by the Honourable Attorney General and Minister of Legal Affairs on December 4, 2020. The Bill seeks to amend the following pieces of legislation:
 -  **The Mutual Assistance in Criminal Matters Act, Chapter 11:24¹;**
 -  **The Proceeds of Crime Act, Chapter 11:27²;**
 -  **The Anti-Terrorism Act, Chapter 12:07³;**
 -  **The Interception of Communications Act, Chapter 15:08⁴;**
 -  **The Financial Intelligence Unit of Trinidad and Tobago Act, Chapter 72:01⁵;**
 -  **The Income Tax Act, Chapter 75:01⁶;**
 -  **The Central Bank Act, Chapter 79:02⁷;**
 -  **The Financial Institutions Act, Chapter 79:09⁸;**
 -  **The Companies Act, Chapter 81:01⁹;**
 -  **The Securities Act, Chapter 83:02¹⁰; and**
 -  **The Non-Profit Organisations Act, No.7 of 2019¹¹.**
2. The Bill, once passed, will come into effect on such date fixed by the President for proclamation.

KEY FEATURES OF THE BILL

Mutual Assistance in Criminal Matters

3. **Clause 3** of the Bill proposes to introduce a **new section 41** to the Mutual Assistance in Criminal Matters Act (MACMA), which makes it an offence for persons who are currently employed or have been previously employed in the Central Authority¹² to knowingly or recklessly disclose confidential information, which they have obtained as a result of their

¹ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.24.pdf

² https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.27.pdf

³ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/12.07.pdf

⁴ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/15.08.pdf

⁵ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/72.01.pdf

⁶ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/75.01.pdf

⁷ https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/79.02.pdf

⁸ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/79.09.pdf

⁹ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/81.01.pdf

¹⁰ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/83.02.pdf

¹¹ <http://www.ttparliament.org/legislations/a2019-07.pdf>

¹² **Section 3** of the Act makes it clear that the Central Authority is the Attorney General, who can designate any of his functions under the Act to any public officer or legal officer employed in the Ministry of the Attorney General and Legal Affairs.

employment. This offence is punishable on summary conviction by a fine of **two hundred and fifty thousand dollars (TTD \$250,000.00)** and imprisonment for a term of **three (3)** years.

The Proceeds of Crime Act

4. **Clause 4** proposes several amendments to the Proceeds of Crime Act (the “PCA”). **Clause 4(a)** inserts new subsections to section 57 of the PCA. **New subsection 57 (1A)** provides that contravention of the Regulations made under this section is an offence and the penalty is the administrative fine set out in the Regulations. Further, if the administrative fine is not paid, then the person who breaches the regulations is liable on summary conviction to a fine of **five hundred thousand dollars (TTD \$500,000.00)** and a further fine of **twenty-five thousand dollars (TTD \$25,000.00)** for each day the offence continues. The person is liable on conviction on indictment to a fine of **one million dollars (TTD \$1,000,000.00)** and a further fine of **fifty thousand dollars (TTD \$50,000.00)** for each day the offence continues.
5. **New subsection 57 (1B)** allows for the imposition of monetary penalties above the statutory cap¹³ imposed by the **Interpretation Act, Chapter 3:01**.¹⁴ A person who breaches the Regulations made under section 53 of the PCA may receive an administrative fine of up to **one hundred thousand dollars (TTD \$100,000.00)**. Moreover, he may be liable on summary conviction to a fine of **five hundred thousand dollars (TTD \$500,000.00)** and a term of imprisonment for **two (2) years**; or, on conviction on indictment, to a fine of **one million dollars (TTD \$1,000,000.00)** and a term of imprisonment of **seven (7) years**.
6. **Clause 4(d)** inserts after the new renumbered **section 58E(1)**, two new subsections, which empower the Minister to determine, by Order, that the monies in the Seized Assets Fund¹⁵, be used for purposes, other than community development; drug abuse treatment; rehabilitation projects; law enforcement; compensation under section 29; and restoration of monies by the President under section 42. This Order may be subject to the negative resolution of Parliament.

¹³ S. 63 of the Interpretation Act, Chapter 3:01 states “ (1) Where a written law confers a power to make any statutory instrument there may be annexed to a breach of that statutory instrument a punishment by way of a fine not exceeding five hundred dollars.

(2) Where a written law confers power to make a statutory instrument an offence under that statutory instrument is punishable on summary conviction.”

¹⁴ https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/3.01.pdf

¹⁵ Established under section 58(1) of the PCA and comprising inter alia monies paid in satisfaction of a confiscation; forfeited cash; proceeds from the sale of forfeited real property and personalty; and proceeds of a charging order.

7. **Clause 4 (e)** substitutes and replaces **Regulation 42** of the **Financial Obligations Regulations**, allowing for administrative fines to be included as penalties to breaches of the Regulations.

The Anti-Terrorism Act

8. **Clause 5** of the Bill amends the Anti-Terrorism Act (“ATA”), by inserting similar provisions regarding confidentiality and penalties for breach of regulations, as proposed in **Clauses 3** and **4** of the Bill.

The Interception of Communications Act

9. **Clause 6 (b)** inserts the words “stored data”¹⁶ in **Section 18A (1),(2),(6) and (7)** of the Interception of Communications Act, allowing a constable to obtain a warrant or production order for stored data, as well as communications data and stored communication.

The Financial Intelligence Unit of Trinidad and Tobago Act

10. **Clause 7(a)** repeals the definition of “FIU” in **section 2** of the Financial Intelligence Unit of Trinidad and Tobago Act (“FIUTTA”) and replaces with a definition of “*FIUTT*” which means “*the Financial Intelligence Unit of Trinidad and Tobago established under section 3.*”
11. **Clause 7(d)** inserts a **new subsection 11(2)** to section 11 of FIUTTA, empowering the FIUTT to impose administrative penalties on listed business or non-regulated financial institutions it supervises for breaches of obligations.
12. Pursuant to **Clause 7(e)**, which inserts a new **subsections 15(3) and (4)** to the Act, the FIUTT is now mandated to transmit a copy of the report¹⁷ to the Police Complaints Authority for investigation, if the report regards a police officer.
13. **Clause 7(f)**, via the insertion of **new section 18BA** in the Act, provides for the deregistration of entities. Entities may apply for deregistration or they may be deregistered by the FIUTT. In order to be deregistered entities must not be performing duties which require it to be registered.

¹⁶ “stored data” means any data of whatever description stored on a device according to section 5 of the Interception of Communications Act. <http://www.ttparliament.org/legislations/a2020-13g.pdf>

¹⁷ According to section 15 (1) of the Act, “After the FIU has concluded its analysis or evaluation of a suspicious transaction or activity report, and where the Director is of the view that the circumstances warrant investigation, a report shall be submitted to the relevant law enforcement authority for investigation to determine whether a money laundering offence or the financing of terrorism has been committed, or whether the proceeds of crime are located in Trinidad and Tobago or elsewhere.”

14. **Clause 7(1)** introduces **new section 18I** to the Act, which empowers the FIUTT to impose administrative penalties on entities which violate the provisions of this Act, but also for violating the provisions of, *inter alia*, the Financial Obligation Regulations; the Anti-Terrorism Act; the Economic Sanctions Act or Orders made thereunder.
15. **Clause (7)(j)(ii)** repeals and replaces **subsection 27(4)** with provisions, which align with the PCA and ATA, regarding breach of regulations and consequent offences and penalties.

The Income Tax Act

16. **Clause 8** of the Bill repeals and replaces **section 4(4A) (c)** of the Income Tax Act to allow for the provision of witness statements to the Police Complaints Authority for the purposes of investigation of criminal offences involving police officers, police corruption and serious police misconduct.

The Central Bank Act

17. **Clause 9(a)** of the Bill proposes to prescribe a minimum term of three (3) years for the Governor of the Central Bank, by amending **section 7(2)** of the Central Bank Act (“CBA”).
18. **Clause 9(b)** empowers the Central Bank to impose administrative fines by inserting new **paragraph (dd)** to **section 36** of the CBA.

The Financial Institutions Act

19. **Clause 10** of the Bill repeals and replaces **section 55(4)(c)**¹⁸ of the Financial Institutions Act to allow for the provision of witness statements to the Police Complaints Authority for the purposes of investigation. This provision is also included in **clauses 8, 9(c) and 12(d)**.

The Companies Act

20. **Clause 11(e)** seeks to amend **section 337B** of the Companies Act requiring companies to issue notices to not only shareholders, but also persons whose liability is limited by guarantee or both shares and guarantees, requiring them to submit a declaration to the

¹⁸ <https://www.central-bank.org.tt/sites/default/files/page-file-uploads/the-miscellaneous-amendment-act-no-10-of-2020.pdf>

company, stating the capacity which the person making the declaration holds and indicating the person who is the beneficial owner.

The Securities Act














21. **Clause 12 (b)** amends **section 7(1)** of the Securities Act, introducing **new paragraph (ma)** which empowers the Commission to impose administrative fines or sanctions on persons under section 51(1) of the Securities Act, the Proceeds of Crime Act or Regulations made thereunder, the Anti-Terrorism Act or Regulations made thereunder, the Economic Sanctions Act or Orders made thereunder or any other written law for the prevention of money laundering, combatting the financing of terrorism and proliferation financing.

The Non-Profit Organisations Act

22. **Clause 13(a)** repeals the definition of “Regulation” in **section 3** of the Non-Profit Organisations Act and inserts the definition “**Supervisory Authority**” which means “*the competent authority responsible for ensuring compliance by financial institutions and listed business with requirements to combat money laundering.*”
23. **Clause 13(c)** makes clear that the word “Regulator” is to be deleted wherever it occurs in the Act and substituted with “Supervisory Authority.”

REFERENCES

KEY LEGISLATION

-  **Mutual Assistance in Criminal Matters Act, Chapter 11:24**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/11.24.pdf
-  **Proceeds of Crime Act, Chapter 11:27**
https://rgd.legalaffairs.gov.tt/laws2/alphabetical_list/lawspdfs/11.27.pdf
-  **The Anti-Terrorism Act, Chapter 12:07**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/12.07.pdf
-  **The Interception of Communications Act, Chapter 15:08**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/15.08.pdf
-  **The Financial Intelligence Unit of Trinidad and Tobago Act, Chapter 72:01**
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-  **The Central Bank Act, Chapter 79:02**
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-  **The Companies Act, Chapter 81:01**
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-  **The Securities Act, Chapter 83:02**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/83.02.pdf
-  **The Non-Profit Organisations Act, No.7 of 2019**
<http://www.ttparliament.org/legislations/a2019-07.pdf>
-  **The Interpretation Act, Chapter 3:01**
https://rgd.legalaffairs.gov.tt/laws2/Alphabetical_List/lawspdfs/3.01.pdf
-  **The Anti-Terrorism (Amendment) Act, No. 13 of 2018**
<http://www.ttparliament.org/legislations/a2018-13g.pdf>

**The Interception of Communications (Amendment) Act, 2020, Act No. 13 of 2020**

<http://www.ttparliament.org/legislations/a2020-13g.pdf>

**Miscellaneous Amendments Act, 2020, Act No. 10 of 2020**

<http://www.ttparliament.org/legislations/a2020-10g.pdf>

**The Companies (Amendment) Act, 2019, Act No. 6 of 2019**

<http://www.ttparliament.org/legislations/a2019-06g.pdf>



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