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Secretariat for Multidimensional Security

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PRESENTATION
LEGISLATIVE ADVANCEMENT IN ASSET FORFEITURE

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Trinidad and Tobago

CONTEXT

- Trinidad and Tobago is a twin island Republic with a population of 1.3 million (2015)
- It is the most southerly isle of the Caribbean and a mere 7 miles off the coast of Venezuela.
- Economy – Oil, Gas and Petrol Chemicals
- Mutual Evaluation Report 2015 – Enhanced Follow Up
- FATF Onsite Evaluation 9/1/2020

LEGISLATIVE FRAME WORK

Forfeiture in Trinidad and Tobago is authorised by two major pieces of legislation, namely;

- The Proceeds of Crime Act – Chapter 11:27 - Used primarily for the forfeiture of Cash
- The Civil Asset Management and Unexplained Wealth Order Act – No. 8 of 2019 – Established primarily for the forfeiture of property and other assets

POST CONVICTION FORFEITURE ORDERS (INSTRUMENTALITIES)

- 41. (1) Where a person is convicted of a specified offence and the Court by or before which he is convicted is satisfied that any property which was in his possession or under his control at the time of his apprehension—
 - (a) has been used for the purpose of committing a specified offence;
 - (b) has been used for the purpose of facilitating the commission of a specified offence; or
 - (c) was intended by him to be used for the purpose of committing a specified offence,

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

POST CONVICTION FORFEITURE ORDERS (CONFISCATION)

- Persons convicted of a Specified Offence may be deprived of their Criminal Benefit through a Confiscation Hearing.
- Sections 3 to Section 17 of the Proceeds of Crime Act (POCA) refers.
- Confiscated sums are usually subject to Restraint so that there is enough money or sufficient funds to satisfy the Confiscation Order.
- Sections 18 and 19 of POCA refers.

NON CONVICTION BASED FORFEITURE

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

NON CONVICTION BASED FORFEITURE

- (2) An application for an order under this section shall be made by the Director of Public Prosecutions or the Comptroller of Customs and shall be made in the prescribed form.
- (3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.
- (4) An order may be made under this section whether or not proceedings are brought against any person for an offence with which the cash in question is connected.

CURRENT STATISTICS

- To date the Trinidad and Tobago has forfeited **TT\$1,209,493.40**, **US\$2,383,563.00** and other currencies.
- Further, the Financial Investigation Branch currently has 35 forfeiture applications before the courts, with a value of **TT\$2,924,994.00**, **US\$200,929.00** and other currencies.
- The FIB continues to aggressively pursue the proceeds of crime as it has already surpassed its 2018 number of forfeiture applications, from 12 in 2018 to 14 for the period January to September 2019.

FATF – IMMEDIATE OUTCOME 8

- Criminals are deprived (through timely use of provisional and confiscation measures) of the proceeds and instrumentalities of their crimes (both domestic and foreign) or of property of an equivalent value. Confiscation includes proceeds recovered through criminal, civil or administrative processes;

ADVANCES IN LEGISLATION

Act No.8 of 2019

- AN ACT to provide for the establishment of the Civil Asset Recovery and Management Agency for the recovery of criminal property through the use of the remedies of restriction in dealings with civil assets restriction and forfeiture of criminal property and the management of criminal property, and unexplained wealth orders and matters incidental thereto
- This act changed the law by providing for;
 - i. Asset Recovery Orders
 - ii. Unexplained Wealth Orders

ACT No. 8 of 2019

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- 4. (1) Upon the coming into force of this Act, this Act shall apply to all recoverable property, irrespective of whether or not the criminal conduct relative to the recoverable property occurred before or after the coming into force of this Act.
 - 5. The standard of proof required to determine any question under this Act as to whether recoverable property should be subject to civil asset recovery shall be on the balance of probabilities.
 - 7. (1) Property which is criminal property, terrorist property or an instrumentality of crime (hereinafter referred to as “recoverable property”) is recoverable under this Act.

CIVIL ASSET RECOVERY MANAGEMENT AND UNEXPLAINED WEALTH AGENCY

- 8. (1) There is hereby established an Agency to be known as the Civil Asset Recovery and Management Agency (hereinafter referred to as “the Agency”) which shall be responsible for the recovery, management and disposal of criminal property, terrorist property or an instrumentality under this Act.
- 17. (1) There shall be a Property Manager of the Agency who shall have responsibility for taking possession of, preserving, managing, disposing of, realising, or otherwise dealing with any property which is the subject to any proceedings under this Act.

CIVIL ASSET RECOVERY MANAGEMENT AND UNEXPLAINED WEALTH AGENCY

- (6) In exercising his powers as receiver, the Property Manager may—
 - (a) remove;
 - (b) take possession of;
 - (c) preserve;
 - (d) manage;
 - (e) modify;
 - (f) store;
 - (g) sell or otherwise dispose of; and
 - (h) deal with, the property in any manner that he thinks appropriate and proper

PROPERTY RESTRICTION ORDERS

- 33. (1) Upon referral of a matter by the Director of Public Prosecutions under section 31, the Agency shall apply to the High Court in the prescribed form for an order to be known as “a Property Restriction Order” to prohibit a person from dealing with recoverable property until such time as an application can be made to forfeit the recoverable property under this Act.

ASSET RECOVERY ORDERS

- 44. (1) Where a Property Restriction Order has been made under section 34 and the Agency is satisfied that an order should be made to forfeit the property specific to the Property Restriction Order, the Agency may apply to the High Court for an order (hereinafter referred to as a “Civil Asset Forfeiture Order”).
- (2) A Civil Asset Forfeiture Order is an order in rem against assets which are recoverable property, which removes the legal ownership in the property and vests it in the State

UNEXPLAINED WEALTH ORDERS

SECTIONS 58 - 67

- UWO's are a key part of the **Government's Campaign** to challenge illicit finance and give law enforcement the tools it needs to tackle high value money laundering.
- UWOs are intended to bolster the Proceeds of Crime regime, by making it easier for law enforcement agencies to seize assets suspected of representing criminal property

TWO (2) TYPES

- PUWO - Preliminary Unexplained Wealth Order requires the respondent to file a declaration and answer questions as required in relation to his assets.
- UWO's – Unexplained Wealth Orders are granted on a balance of probabilities that any part of the wealth of the respondent was not lawfully obtained or held.

USEFULNESS TO LAW ENFORCEMENT

- Requires the respondent to file a declaration
- The declaration is in a prescribe form
- False declarations are punishable by fine and imprisonment - liable on summary conviction to a fine of one hundred thousand dollars and to imprisonment of twenty years.
- A PUWO application is “ex PARTE”
- Burden of proof is on the respondent

USEFULNESS TO LAW ENFORCEMENT

- **In relation to a UWO and total wealth;**
 - it matters not whether there are other persons hold the property.
 - whether the property was obtained by the respondent before or after the coming into force of this Act. (retrospective application)
 - the grant of the UWO is on a balance of probabilities
 - the burden of proving the wealth of the respondent is lawfully acquired lies on the respondent.

WHAT MUST BE PROVED

- The total wealth of the respondent exceeds the value of his lawfully obtained wealth.
- The total wealth of the respondent is over five hundred thousand dollars (\$500,000.00)
- The property is owned by the respondent or is under his effective control
- The property was obtained through the commission of a specified offence

THE INVESTIGATOR

- Must know the respondent – identity
- Grounds for suspicion excess wealth– evidence; statements; documents
- Grounds for suspicion property owned – documents; evidence; surveillance

RECENT CASE LAW

- **NCA v MRS A [2018] EWHC 2534 (Admin)**

The high court's recent judgment in NCA v MRS a [2018] EWHC 2534 (Admin) may therefore mark a watershed moment in the development of UWOS. The judgment brings clarity to their use and, more importantly, gives confidence to enforcement agencies that such tools can be a practical means of combatting illicit wealth.

CONCLUSION

- The aforementioned act was assented to on April 23rd 2019.
- The provisions related to unexplained wealth and international co-operation have been proclaimed.
- All other sections will be proclaimed with the coming into force of the Civil Asset Management Agency. (Recruitment of the necessary personnel have since commenced)
- **In our view the passing of this act signals an important step in illustrating Trinidad and Tobago's commitment to depriving criminals of their CRIMINAL PROCEEDS**

MUCHAS GRACIAS

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