

# AML Sub-Committee of Bankers' Association of Trinidad And Tobago

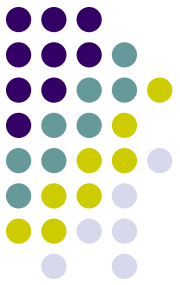
Anti-Money Laundering & Anti-  
Terrorist Financing Legislation in  
Trinidad and Tobago



18<sup>th</sup> January, 2011

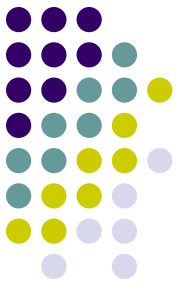
# Outline

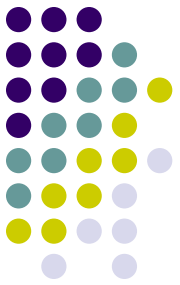
- What is Money Laundering?
- What is Terrorist Financing?
- AML & ATF Legislative Framework



# Outline

- What is Money Laundering?





# What is Money Laundering?

- Any act or attempt to disguise the proceeds of crime

or

- The legitimization of illicit proceeds derived from criminal activity

The proceeds of crime are the source of money or assets derived from criminal activity.

Money derived illegally from criminal activity is often referred to as “dirty” money. Through the use of the financial system, money is laundered or converted into legitimate assets referred to as “clean” money.



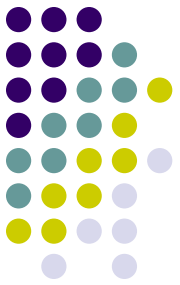
# Crimes Associated with Money Laundering

Under the Proceeds of Crime Act criminal activities are called specified offences and refer to –

- (a) an indictable offence committed in Trinidad and Tobago whether or not the offence is tried summarily;
- (b) any act committed or omitted to be done outside of Trinidad and Tobago, which would constitute an indictable offence in Trinidad and Tobago; or

For example -

- Kidnapping, Robbery, Prostitution



# Crimes Associated with Money Laundering

- (c) or an offence specified in the Second Schedule
  - The Income Tax Act
  - The Corporation Tax Act
  - The Value Added Tax Act, 1989
  - The Copyright Act 1987

For example

- Fraud
- Failure to keep proper books and records
- Providing false information

# Scope of Money Laundering



*International Monetary Fund* estimated in 1996 that

**USD1.5 trillion laundered annually**

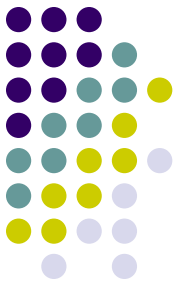


# Stages of Money Laundering

The 3 main recognizable stages in the money laundering process are:

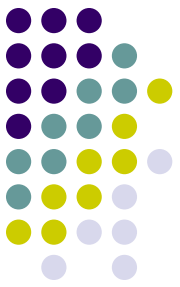
- **Placement**: placing the proceeds of crime in the financial system via deposits, purchases of cheques, money orders, etc.
- **Layering**: creating layers of financial transactions to disguise audit trail once proceeds are converted; and may include purchasing investment instruments, insurance contracts, wire transfers, money orders and letters of credit.
- **Integration**: placing laundered proceeds back into the economy. by way of investment in real estate, luxury assets and business ventures, until laundered funds are eventually disbursed back to the criminal

# Stages of Money Laundering



## *Example:*

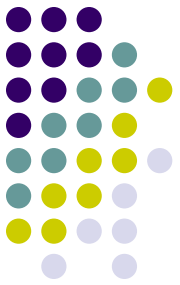
- **Placement**: A businessman's son is kidnapped. He agrees to pay the ransom demand in cash. The kidnapers break up the cash into smaller amounts and makes several deposits below the reporting threshold at different branches to an accomplice's savings account.
- **Layering**: The kidnapers' accomplice uses an internet banking facility to transfer the funds from his savings account to the kidnapers' account. Next day the kidnapers wire transfer the funds to a trust account held at an offshore jurisdiction.
- **Integration**: The funds in the trust account are then used to purchase property in the U.S. from Ms XYZ – a legitimate real estate developer with no known criminal ties.



# Red flags for Money Laundering

Red flag – activity that may be an indicator of Money Laundering

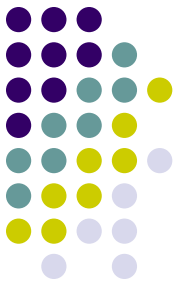
- Kidnappers make several deposits in cash below the reporting threshold with the total credits being a large amount
- Kidnappers use various branches instead of home branch
- Accomplice uses internet banking therefore no face to face contact with branch
- Back to back transactions that do not make economic sense
- Funds wired to a Trust Account – difficult to identify beneficial owners
- Offshore jurisdiction – may have secrecy laws making it difficult to trace funds



# Risks of ML to Banking Sector and Customers

## Ultimate Risk - Shut down of business!!

- Damage to reputation –
  - Loss of market share affecting profitability and share price
  - Damage to relationships with customers, peers, and other stakeholders such as correspondent banks
- Damage to credibility with regulators –
  - Intensive and costly investigative audit
  - Fines and penalties



# Impact on Society

## **Negative economic effects of money laundering**

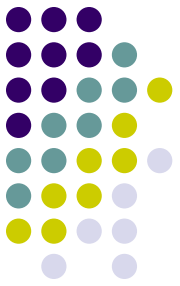
- Undermines the integrity and soundness of the banking and financial sector that is critical to economic growth
- Reduces productivity in the economy's real sector by diverting resources
- Distort the economy's international trade and capital flows to the detriment of long-term economic development
- The financial sector can inadvertently become part of the criminal network encouraging criminal activity

# Outline

- What is Money Laundering?
- What is Terrorist Financing?

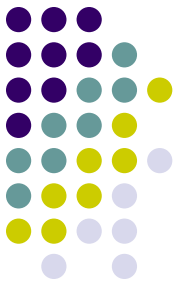


# What is Terrorist Financing?



- Terrorist financing is a financial crime that uses funds to support the agenda, activities or cause of a terrorist organization.
- The funds raised may be from legitimate sources, such as charitable organizations or donations from supporters, as well as criminal sources, such as drug trade, weapons smuggling, fraud, kidnapping and extortion

# The crime of terrorism



Anti Terrorism Act 2005 defines a terrorist act as:

“terrorist act” means—

an act whether committed in or outside of Trinidad and Tobago which causes or is likely to cause—

- (i) loss of human life or serious bodily harm;
- (ii) damage to property; or
- (iii) prejudice to national security or disruption of public safety including disruption in the provision of emergency services or to any computer or electronic system or to the provision of services directly related to banking, communications, infrastructure, financial services, public utilities, transportation or other essential infrastructure,

# The crime of terrorism continued

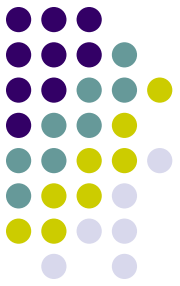


and is intended to—

- (iv) compel a government or an international organization to do or refrain from doing any act; or
- (v) intimidate the public or a section of the public, for the purpose of advancing a political, ideological or a religious cause; or

*(b)* an offence under any of the Conventions;

# Funding of Terrorism

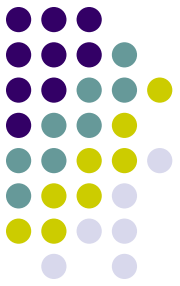


Property or money used to fund a terrorist act

As defined under the Anti Terrorism Act 2005 “terrorist property” means—

- (a) proceeds from the commission of a terrorist act;
- (b) property which has been, is being, or is likely to be used to commit a terrorist act; or
- (c) property which has been collected for the purpose of funding a terrorist act;

# Reporting requirements of financial institutions



Every financial institution shall report, every three months —

- if it is not in possession or control of terrorist property, that it is not in possession or control of such property; or
- if it is in possession or control of terrorist property, that it is in possession or control of such property, and the particulars relating to the persons, accounts and transactions involved and the total value of the property.
- every transaction which occurs within the course of its activities, in respect of which there are reasonable grounds to suspect that the transaction is related to the commission of a terrorist act.

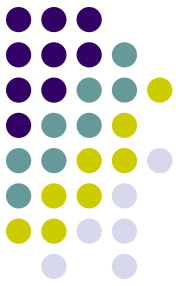
# Red Flags for Terrorist Financing



Red flag – activity that may be an indicator of Terrorist Financing

- Funds generated by a business owned by nationals of countries associated with terrorist activity
- Charitable organizations linked with countries associated with terrorist activity
- Frequent transfer of funds to countries linked to terrorist activity

# Terrorist Financing vs. Money Laundering



## Terrorist Financing

## Money Laundering

Motivation

Ideological

Profit Seeking

Source of funds

Illegal activity  
Legitimate funds

Illegal activity

Transaction value

Small

Large

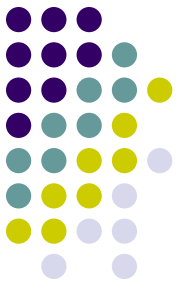
Money trail

Used for terrorist act

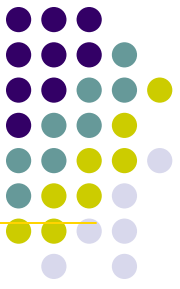
Used for benefit of  
persons who  
generated it

# Outline

- What is Money Laundering?
- What is Terrorist Financing?
- AML & ATF Legal/Regulatory Framework



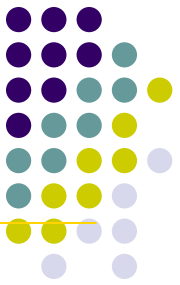
# AML & ATF Legislative Framework



- **Global/Regional Initiatives** – organizations such as the Financial Action Task Force (**FATF**) and the Caribbean Financial Action Task Force (**CFATF**) are committed to the global fight against money laundering and terrorist financing. These organizations make recommendations and set standards for national governments and regulators.
- **National Laws** – Governments across the world have introduced laws designed to prevent criminal money or terrorist funds from entering or continuing through the financial system.
- **Local Regulators** – Introduce laws and guidelines for financial institutions to follow. These regulators set and enforce the standards that help protect the reputation of the financial system in their jurisdiction or country.
- **Financial institutions** - responded to the threat of money laundering and terrorist financing by creating policies and procedures to help their employees to comply with local laws and regulations.

# International Action - ML

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The Financial Action Task Force (**FATF**)

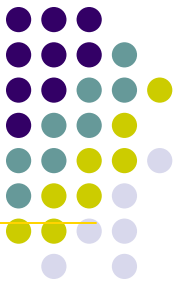
Established in 1989 by the G-7 countries to examine the effectiveness of anti-money laundering measures worldwide.

**FATF 40 Recommendations** focused mainly on requirements for financial institutions to:

- Report unusual and suspicious activity.
- Conduct due diligence to establish and verify the identity of customers.
- Maintain an overall comprehensive anti-money laundering program.

# International Action - TF

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The Financial Action Task Force (**FATF**)

In 2001 established **9 Special Recommendations** focused on the role that governments and financial institutions have to play in suppressing terrorism and terrorist financing, in particular

- Report suspicious transactions linked to terrorism.
- Impose anti-money laundering requirements on alternative remittance systems.
- Strengthen customer identification measures in international and domestic wire transfers.
- Ensure that entities, in particular non-profit organizations, cannot be misused to finance terrorism.
- Freeze and confiscate terrorist assets.

# Regional Action

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The Caribbean Financial Action Task Force (**CFATF**) is an organization of states and territories of the Caribbean basin which have agreed to implement common counter-measures against money laundering.

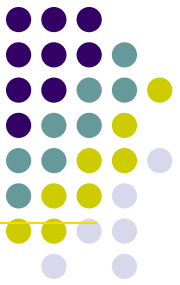
**19 Recommendations** that address money laundering from a regional perspective and which complement the worldwide standards embodied in the FATF 40 Recommendations.

## **CFATF Main Activities:**

- Self assessment of the degree of implementation of the FATF and CFATF recommendations.
- Mutual evaluations of members.
- Coordination of and participation in training and technical assistance programs.
- Twice-yearly plenary meetings for technical representatives and an annual ministerial council meeting.

# Local Action

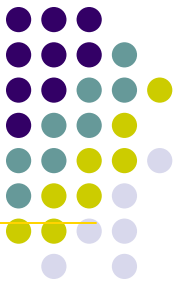
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- **Government of Trinidad & Tobago** – the government has adopted legislation to prevent money laundering and terrorist financing
- **Central Bank Trinidad and Tobago** – CBTT has issued guidance on money laundering prevention and monitors compliance with the law and takes action against entities it regulates that fail to comply.
- **The Financial Intelligence Unit** – responsible for the implementation of the AML policies of the FATF.
- **Financial Institutions** – Financial institutions have introduced policies and procedures to address regulatory risks.

# Local Legislative Framework

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## **Proceeds of Crime Act (POCA) 2000 and Proceeds of Crime (Amendment) Act 2009**

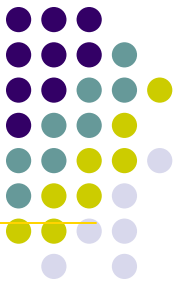
- Defines offence of money laundering and sets out reporting requirements and thresholds. Outlines circumstances in which financial institutions or its employees can be found guilty and sets out penalties.

## **Anti Terrorism Act 2005 and Anti Terrorism (Amendment) Act 2010**

- Defines and criminalizes acts of terrorism and terrorist financing. Sets minimum standards for financial institutions to abide by regarding reporting requirements and suspicion of terrorism
- Aims to create basic terrorism related offences and implement Trinidad and Tobago's international obligations.
- Allows for the seizure and forfeiture of terrorist property and funds, and affords police officers immunity from civil or criminal suit in relation to such seizure

# Local Legislative Framework

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## **CBTT Guideline on Combating Money Laundering and Terrorist Financing 2005**

- Guidelines for recordkeeping, client identification and reporting requirements for financial institutions.

## **Financial Intelligence Unit of Trinidad and Tobago Act 2010**

- Establish the FIU for the implementation of the anti-money laundering policies of FATF applicable to FIs and listed businesses

## **The Financial Obligations Regulations 2010**

- Requirements for KYC, internal controls, compliance, reporting, record keeping and training for FIs and listed businesses

# Local Legislative Framework

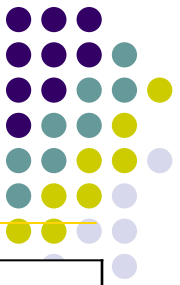
## Fines and Penalties - POCA



| <b>Activity</b>   | <b>Fines &amp; Penalties</b>                                       |
|---|--|
| <ul style="list-style-type: none"><li>● Knowingly assisting another to conceal, disguise, convert, transfer or dispose of property that is the proceeds of crime.</li></ul>   | A fine of up to \$25 million and/or up to 15 years of imprisonment |
| <ul style="list-style-type: none"><li>● Failing to report any knowledge or suspicion that a client is engaged in money laundering activities</li></ul>  | A fine of up to \$25 million and/or up to 15 years imprisonment    |
| <ul style="list-style-type: none"><li>● Failing to comply with record keeping requirements</li></ul>  | A fine of up to \$3 million and/or up to 7 years imprisonment      |
| <ul style="list-style-type: none"><li>● “Tipping Off” – Prejudicing an investigation by disclosing to any</li><li>● other person that information has been provided to the authorities about money laundering</li></ul> | A fine of up to \$25 million and/or up to 15 years imprisonment    |

# Local Legislative Framework

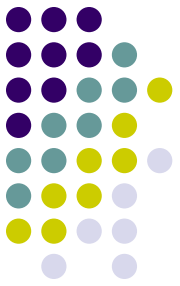
## Fines and Penalties - ATA



| <b>Activity</b>  | <b>Fines &amp; Penalties</b>                                    |
|--|---|
| <ul style="list-style-type: none"><li>● Knowingly facilitating the acquisition, retention, or control of terrorist property</li></ul>  | Imprisonment for up to 25 years                                 |
| <ul style="list-style-type: none"><li>● Directly or indirectly providing or making available financial or other related services intended to be used for the purpose of committing the commission of a terrorist act</li></ul> | Imprisonment for 20 years                                       |
| <ul style="list-style-type: none"><li>● “Tipping Off” – Prejudicing an investigation by disclosing to any other person that information has been provided to the authorities about terrorist financing.</li></ul>              | A fine of up to \$25 million and/or up to 15 years imprisonment |

# Local Legislative Framework

## New Requirements

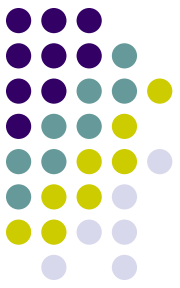


### The Financial Intelligence Unit:-

- Collection of financial intelligence
- Receives suspicious activity / transaction reports from FIs and listed businesses
- Sets reporting standards
- Can request additional information to support a submitted SAR within a specified time frame.
- Can instruct FIs or Listed Businesses in writing to suspend the processing of a transaction for no more than 3 working days.

# Local Legislative Framework

## New Requirements

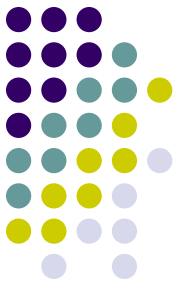


### Listed Businesses:-

- Have similar due diligence requirements as Financial Institutions
- Under First Schedule POCA Amendment Listed Businesses are the following
  - Real estate
  - Motor vehicle sales
  - Money or value transfer services
  - Gaming house
  - Pool betting
  - National lotteries on-line betting games
  - Jewellery
  - Private members clubs
  - Accountant, Attorney or other Independent Legal Profession
  - Art Dealer
  - Trust and Company Service Providers

# Local Legislative Framework

## New Requirements

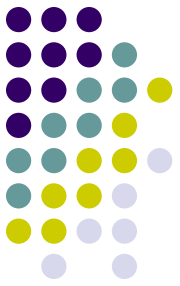


### Listed Businesses:-

- Have similar Compliance Program requirements as Financial Institutions
- Designate a manager or person employed at a managerial level as a Compliance Officer and have this appointment approved by the Supervisory Authority for that business such as the CBTT, SEC or FIU
- Conduct risk based due diligence and enhanced due diligence on special customers such as Politically Exposed Persons, MSBs, Foreigners, Beneficial Owners and Representatives

# Local Legislative Framework

## New Requirements



### Listed Businesses continued:-

- Develop, implement, co-ordinate and monitor a compliance programme that includes procedures and controls required to ensure adherence to the regulations and approved by the FIU
- Ensure the compliance programme is reviewed by internal and external auditors engaged by the listed business
- Make arrangements for the training of the directors and all members of its staff

# Local Legislative Framework

## New Requirements

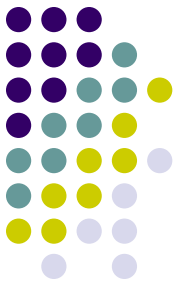


### Listed Businesses continued:-

- Receive and investigate reports of suspicious transactions or suspicious activities made by the staff of the listed business and report same to the FIU
- Develop internal reporting rules and maintain records of reports
- Function as the liaison official with the FIU

# Local Legislative Framework

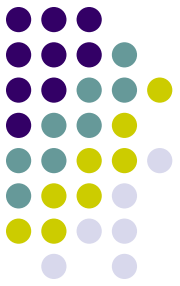
## New Requirements



### Financial institutions and listed businesses:-

- Customer Due Diligence –
  - one off or occasional transactions – additional identification requirements
  - money service businesses - additional identification requirements
  - beneficial owners - additional identification requirements
  - representative applicant - additional identification requirements

# Local Legislative Framework New Requirements

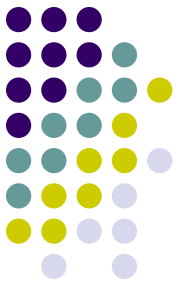


## Financial institutions and listed businesses:-

- Customer Due Diligence –
  - new business relationship – verification of ID, ID for shareholders >10%
  - foreign individual – verification of ID, reference from foreign bank
  - foreign corporation – evidence of existence of business, ID of owners, directors or partners
  - foreign politically exposed person (PEPs) – further due diligence, source of wealth, source of funds, senior management approval required prior to establishing relationship

# Local Legislative Framework

## New Requirements

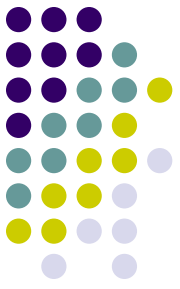


### Financial institutions and listed businesses:-

- Customer Due Diligence –
  - trusts – verification of trust, ID of trustee
  - Non face to face – implement special KYC policies
  - Wire transfers – include originator and recipient information such as name and address
  - Retrospective due diligence – conduct due diligence on all existing account within a timeframe agreed upon in consultation with the industry

# Local Legislative Framework

## What's next locally?



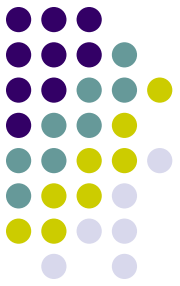
### FATF Recommendations - Trinidad and Tobago

In February 2010, Trinidad and Tobago made a high-level political commitment to work with the FATF and CFATF to address its strategic AML/CFT deficiencies. Trinidad and Tobago has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Trinidad and Tobago should continue to work on implementing its action plan to address these deficiencies, including by:

- 1) implementing adequate procedures to identify and freeze terrorist assets without delay (Special Recommendation III);
- 2) implementing adequate procedures for the confiscation of funds related to money laundering (Recommendation 3); and
- 3) ensuring a fully operational and effectively functioning FIU, including supervisory powers (Recommendation 26).

# Local Legislative Framework

## What's next internationally?



- make tax evasion a predicate crime of money laundering
- issue tougher AML standards on political figures to better monitor domestic and foreign political figures
- additional guidance on how to adopt a risk-based approach to AML compliance
- Additional requirements on the collection of detailed beneficiary information on wire transfers including addresses, dates of birth and relevant customer identification numbers

# AML Sub-Committee of Bankers' Association of Trinidad And Tobago

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Thank you!

