

**THE FINANCIAL INVESTIGATIONS DIVISION
ACT, 2008**

(Act of 2008)

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SCHEDULE.

A BILL
ENTITLED

AN ACT to Provide for the establishment of a Department of Government to be known as the Financial Investigations Division for the investigation of financial crimes and for connected matters.

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BE IT ENACTED by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and House of Representatives of Jamaica, and by the Authority of the same, as follows:—

PART I. Preliminary

1. This Act may be cited as the Financial Investigations Division Act, 2008, and shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and
commence-
ment.

Interpretation. **2.** In this Act, unless the context otherwise requires—

“authorized officer” means—

- (a) the Chief Technical Director;
- (b) any officer of the Division who is authorized as such by the Chief Technical Director for the purposes of this Act;
- (c) any member of the Jamaica Constabulary Force so designated by the Commissioner of Police,

and includes any other person acting in aid of the Chief Technical Director or such officer or member acting in the execution of his office or duty;

“benefit” includes any property, service or advantage, whether direct or indirect;

“Chief Technical Director” means the person appointed as such under section 7;

“competent authority” means the person designated as such by the Minister for the purposes of this Act;

“credit union business” means the business of the taking of deposits and withdrawable shares by a credit union from its members, and the provision of credit facilities by a credit union to its members and any other business that may be so designated by the Minister in writing;

“designated non-financial institution” means a person or category of persons who is—

- (a) not primarily engaged in carrying on financial business; and
- (b) designated as a non-financial institution for the purposes of this Act by the Minister by order subject to affirmative resolution;

“document” has the same meaning as in section 31B of the Evidence Act;

“Division” means the Financial Investigations Division established under section 3;

“Executive Agency” means a public body, which is designated as an Executive Agency pursuant to the Executive Agencies Act;

“financial crime” means any offence involving money or other benefits and includes any offence involving fraud, dishonesty, money laundering or the financing of terrorist activities;

“financial institution” means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society licensed under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act and which carries on credit union business;
- (e) a person licensed under the Bank of Jamaica Act to operate an exchange bureau;
- (f) a person licensed under the Securities Act as a dealer or an investment adviser;
- (g) a person who—
 - (i) engages in insurance business within the meaning of the Insurance Act;
 - (ii) performs services as an insurance intermediary within the meaning of the Insurance Act,

but does not include an insurance consultant or an adjuster;

- (h) approved money transfer and remittance agents and agencies as defined in section 2 of the Bank of Jamaica Act; and
- (i) such other person or category of persons as may be designated by the Minister by order, subject to affirmative resolution, to be a financial institution for the purposes of this Act;

“foreign financial intelligence department” means the body in a country other than Jamaica which performs in that country, functions similar to those of the Division;

“functions” includes powers and duties;

“Government company” means a company registered under the Companies Act, being a company in relation to which, the Government or an agency of the Government, by the holding of shares in the company or by other financial input, is in a position to influence the policy of that company;

“interest” in relation to any property means a legal or equitable interest in the property, or a right, power or privilege in connection with the property;

“Judge” means a Judge of the Supreme Court;

“property” includes money and all other property, real or personal, including things in action and other intangible or incorporeal property;

“public body” means—

- (a) any Ministry or Department, Executive Agency, or other agency of Government;
- (b) a Government company or statutory body;
- (c) any person that provides services of a public nature, specified by the Minister, by order subject to affirmative resolution, as a public body for the purposes of this Act.

PART II. Financial Investigations Division
Establishment and Functions

3. There is hereby established for the purposes of this Act, a department of Government to be known as the Financial Investigations Division.

Establishment of Financial Investigations Division.

- 4.—(1) Subject to the provisions of this Act, the Division shall—
- (a) advise the Minister on matters of policy relating to the detection, prevention and control of financial crimes;
- (b) collect, request, receive, process, analyze and interpret—
- (i) information relating to financial crimes; and
 - (ii) transaction reports and any other reports made to or received by the Division under this Act or any other enactment;
- (c) subject to section 9, take such action as it considers appropriate in relation to information and reports referred to in paragraph (b);
- (d) where the Chief Technical Director considers it necessary, disseminate information and reports referred to in paragraph (b) to the competent authority, the Attorney-General, the Commissioner of Police, any of the Revenue Commissioners under the Revenue Administration Act or the Director of Public Prosecutions;
- (e) investigate, or cause to be investigated—
- (i) at the request of the Director of Public Prosecutions, the Commissioner of Police or any other public body; or
 - (ii) on the initiative of the Chief Technical Director, any person who is reasonably suspected of being involved in the commission of any financial crime;

Functions of Division.

- (f) promote public awareness and understanding of financial crimes, and the importance of their elimination from the society;
- (g) formulate and implement management guidelines and policies and an annual plan approved by the Minister for the control and prevention of financial crimes;
- (h) establish a database and databank for the purpose of detecting and monitoring financial crimes;
- (i) engage in the compilation and publication of statistics on—
 - (i) reports that are made to it under this Act or any other enactment;
 - (ii) the prosecution of financial crimes;
 - (iii) investigations carried out by it;
 - (iv) the conviction of persons for financial crimes;
 - (v) judicial orders in connection with proceedings relating to financial crimes;
 - (vi) such other matters as the Chief Technical Director may consider appropriate;
- (j) manage, safeguard, maintain and control any property seized or restrained or forfeited under this Act or any other enactment, in connection with proceedings relating to financial crimes;
- (k) carry out such other investigations and perform such functions and enter into any transactions that—
 - (i) are assigned to it under this Act or any other enactment;
 - (ii) in the opinion of the Chief Technical Director, are necessary or incidental to the proper performance of its functions.

(2) Subject to the provisions of this Act, the Division may, for the purpose of carrying out its functions—

- (a) provide and receive information relating to the commission of a financial crime;
- (b) provide information on typologies, statistics and other materials relating to financial crimes to—
 - (i) public bodies; and
 - (ii) such other persons as the Chief Technical Director considers appropriate;
- (c) after consultation with the competent authority, give guidance to financial institutions and designated non-financial institutions regarding their obligations under this Act or any other enactment; and
- (d) consult with and seek assistance from such persons as the Chief Technical Director considers appropriate.

(3) The Chief Technical Director and officers of the Division who are so authorized in writing by the Chief Technical Director shall, for the purpose of carrying out the provisions of this Act, have such powers, authority and privileges as are given by law to members of the Jamaica Constabulary Force.

5. The conferral of powers of investigation upon the Division by this Act shall not be construed as affecting the exercise of any investigatory functions conferred upon any other authority whether such functions are similar to these powers or not. Other investigatory powers not affected.

6. The Minister may, after consultation with the Chief Technical Director, give to the Division such directions of a general character as to the policy to be followed in the exercise of its functions as appear to the Minister to be necessary in the public interest, and the Division shall give effect to the directions. Policy directions.

Administration

Appointment
of Chief
Technical
Director and
staff.

7. For the due administration of the Financial Investigations Division, the Governor-General may appoint—

- (a) a Chief Technical Director, who shall be responsible for the day-to-day administration and operation of the Division; and
- (b) such other officers and agents as may be necessary for the efficient operation of the Division.

Delegation
of functions.

8.—(1) The Chief Technical Director may delegate, in writing, the exercise of any function conferred upon him by or under this Act to such person or persons as he thinks fit, but such delegation shall not affect the exercise of such function by the Chief Technical Director.

(2) Any act done pursuant to a function delegated under subsection (1) shall have the same effect as if done by the Chief Technical Director.

Obligation
for secrecy.

9.—(1) Every person having an official duty or being employed in the administration of this Act shall—

- (a) regard and deal with as secret and confidential, all information, books, records or documents relating to the functions of the Division; and
- (b) upon assuming such duty or employment, make and subscribe a declaration to that effect before a Justice of the Peace.

(2) Every person who had an official duty or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information, books, records or other documents relating to the functions of the Division.

(3) Any person to whom information is communicated pursuant to this Act shall regard and deal with such information as secret and confidential.

(4) Every person referred to in subsection (1), (2) or (3) having possession of or control over any information, book, record or other

document, who at any time communicates or attempts to communicate any such information or anything contained in such book, record or document to any person, otherwise than pursuant to—

- (a) powers under this Act or any other enactment;
- (b) a court order;
- (c) an arrangement entered into for the exchange of information under section 11,

commits an offence.

(5) For the purposes of this section, “information” includes information from which a person can be identified and which is acquired by the Division in the course of carrying out its functions.

Reports and Information

10.—(1) Subject to subsections (3) and (4), the Chief Technical Director shall, as the need arises, report to the Minister on— Reports.

- (a) the exercise of the functions conferred upon the Chief Technical Director under this Act;
- (b) any matter that could materially affect public policy or the strategic direction of the Division; and
- (c) any other matter requested by the Minister as information which the Minister considers necessary.

(2) The Chief Technical Director shall, within six months after the end of each financial year or within such longer period as the Minister may in special circumstances approve, cause to be made and transmitted to the Minister a report dealing generally with the activities of the Division during the preceding financial year.

(3) The Minister shall cause a copy of the report together with the annual statement of accounts and the auditors’ report thereon to be laid in the House of Representatives and the Senate.

(4) The Chief Technical Director shall not disclose any information pursuant to this section that would directly or indirectly identify any person who provided a report to the Division, or a person about whom a report was provided under this Act.

Agreements
and arrange-
ments.

11.—(1) Subject to the provisions of this Act, the Chief Technical Director may, with the approval of the Minister, enter into a contract, memorandum of understanding or other agreement or arrangement with—

- (a) a public body in Jamaica; or
- (b) a foreign financial intelligence department or association of such departments,

regarding the exchange of information with the Division relevant to the investigation or prosecution of a financial crime.

(2) Subject to subsection (1), the Chief Technical Director may exchange with a foreign financial intelligence department information necessary to enable that department to exercise regulatory functions, including the conduct of civil, criminal or administrative investigations and proceedings to enforce laws, regulations and rules administered by the department.

(3) The Chief Technical Director may decline to facilitate the exchange of information unless the foreign financial intelligence department undertakes to make such contribution towards the costs of the exercise as the Chief Technical Director considers appropriate.

(4) Nothing in the foregoing provisions of this section authorizes a disclosure by the Chief Technical Director unless—

- (a) the Chief Technical Director is satisfied that the foreign financial intelligence department is subject to adequate legal restrictions on further disclosures, including the provision to the Chief Technical Director of—
 - (i) an undertaking of confidentiality on the part of the foreign financial intelligence department; or
 - (ii) an undertaking by the foreign financial intelligence department not to disclose the information provided, without the consent of the Chief Technical Director; or

- (b) the Chief Technical Director is satisfied that the assistance requested by the foreign financial intelligence department is required for the purposes of that department's functions, including the conduct of civil, criminal or administrative investigations or proceedings to enforce laws administered by the department.

(5) Where, in the opinion of the Chief Technical Director, it appears necessary, in relation to any request for information received from a foreign financial intelligence department, to invoke the jurisdiction of a Supreme Court Judge, the Chief Technical Director shall—

- (a) immediately notify the Attorney-General of the particulars of the request; and
- (b) send the Attorney-General copies of all documents relating to the request,

and the Attorney-General shall be entitled to appear or take part in any proceedings in Jamaica, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(6) Where, pursuant to a request for the exchange of information, the Chief Technical Director in accordance with this Act, supplies information to a requesting party, the information supplied shall be deemed to be lawfully given under this Act; and every person liable to be proceeded against on the ground that such information was unauthorized or unlawfully given, or that he was otherwise acting illegally or improperly, for any such reason only, is hereby acquitted, freed, discharged and indemnified against all persons whatsoever and whomsoever, from liability arising from the supply of that information.

(7) Subject to the provisions of this Act, the Minister may enter into any agreement or arrangement in writing with—

- (a) the Government of a foreign State;
- (b) an international organization; or
- (c) a foreign financial intelligence department or an association of such departments,

regarding the exchange of information relevant to the investigation or prosecution of a financial crime.

(8) The Minister may make regulations concerning the exchange of information relevant to the investigation or prosecution of a financial crime.

Savings for mutual assistance.

12. Nothing in this Act shall affect the provision of assistance under the Mutual Assistance (Criminal Matters) Act.

Protection of persons exercising functions under this Act.

13.—(1) No civil or criminal action, suit or other proceedings for breach of confidentiality may be brought, nor any professional sanction for such breach may be taken, against any person, who in good faith (under this Act or any other enactment) provides or transmits information requested by the Division or submits a report to the Division.

(2) No action, suit or other proceedings may be brought or instituted—

- (a) personally against the Chief Technical Director or any other officer of the Division; or
- (b) against any financial institution or designated non-financial institution, or any director or employee thereof,

in respect of any act done or omission made in good faith, in the course of carrying out the provisions of this Act.

PART III. Enforcement Production and Inspection Orders

Interpretation for Part III.

14.—(1) In this Part—

- (a) references to any information, document or other matter being subject to legal professional privilege mean that the information, document or other matter would in legal proceedings be protected from disclosure by virtue of any rule of law relating to the confidentiality of communication between an attorney-at-law and his client or made in connection with or in contemplation of those proceedings;

(b) “excluded material” means—

- (i) medical records;
- (ii) human tissue or fluid which has been taken for the purposes of diagnosis or medical treatment and which a person holds in confidence.

15.—(1) Where the Chief Technical Director has reasonable grounds for suspecting that a person has possession or control of any information, book, record or document which is relevant to an investigation of a financial crime, an authorized officer may apply to a Judge in Chambers or Resident Magistrate in accordance with subsection (2) for an order under subsection (3) in relation to the person suspected of having possession or control of the information, book, record or document. Production and inspection orders.

(2) An application under subsection (1) shall be made without notice and shall be in writing and be accompanied by an affidavit stating the grounds on which the application is made.

(3) Where an application is made under subsection (1), the Judge or Magistrate, if satisfied that in all the circumstances of the case there are reasonable grounds for making the order, may make an order requiring the person to—

- (a) produce to the authorized officer named in the order, any information, book, record or document of the kind referred to in subsection (1) that is in the person’s possession or control;
- (b) make any such information, book, record or document that is in the person’s possession or control available to the authorized officer, as the case may be, for inspection; or
- (c) answer questions either at once or, at such time and place as may be specified in the order.

(4) An order under subsection (3) shall, subject to subsection (6), empower the authorized officer named in the order to enter the business premises of a person during office hours and carry out an audit or examination of any accounts, books, records or any other documents relating to that business.

(5) An order under subsection (3)—

- (a) shall not be made for production in respect of accounting records used in the ordinary business of a financial institution, including ledgers, day-books, cash books and account books;
- (b) does not require a person to produce, give access to or answer questions relating to any information, book, record or document which a person would be entitled to refuse to produce, give access to or answer questions in relation thereto on the grounds of legal professional privilege;
- (c) does not require a person to produce, give access to or answer questions relating to excluded material.

(6) Where an application in accordance with subsection (2) for an order under subsection (3) is made, the Judge or Magistrate before whom the application is made, may treat any information, book, record or document, relevant to identifying, locating or accessing the information, book, record or information specified in the order as matters in respect of which an order under subsection (3) may be made.

(7) Where any book, record or document is taken into the custody of the authorized officer pursuant to this section—

- (a) the person concerned shall, during any period in which they are in the custody of the authorized officer, be permitted upon request, to make copies thereof or to take extracts therefrom at such times as may be agreed between that person and the authorized officer; and
- (b) the authorized officer shall—
 - (i) give to the person to whom the order is addressed a receipt for the book, record or document and a copy of the document certified by a Justice of the Peace as a true copy of that book, record or document;
 - (ii) take such steps as may be necessary to ensure the safe keeping of such book, record or document; and

- (iii) return such book, record or document to the person concerned within thirty days after the date on which such book, record or document is taken into custody.

(8) An obligation to maintain secrecy or any restriction on the disclosure of information or the production of any book, record or document imposed on any person shall not—

- (a) be relied upon as a bar to a production or inspection order; or
- (b) excuse any person from producing or making available any book, record or document when required to do so by an order under this section on the grounds that the production or the making available of the book, record or document would be in breach of an obligation, whether imposed by law or otherwise, on the person not to disclose the existence or contents of the book, record or document.

(9) A person who is required by an order to produce a book, record or document to an authorized officer may apply to—

- (a) a Judge in Chambers (in any case); or
- (b) a Resident Magistrate,

for a variation of the order and if the Judge or Magistrate is satisfied that the document is essential to the business activities of that person, the Judge or Magistrate may vary the order to require the person to make the book, record or document available to the authorized officer for inspection.

(10) An application under subsection (9) shall be made without notice and shall be in writing and be accompanied by an affidavit stating the grounds on which the application is made.

(11) A person commits an offence if he—

- (a) refuses to comply with an order made under this section; or
- (b) knowingly provides false or misleading information in purported compliance with such order.

(12) The reference in this section to the business the premises of a person is a reference to the premises on which that person's trade, profession, business or employment is carried on.

Scope of powers under production order.

16. Where a book, record or document is produced or made available to an authorized officer pursuant to an order under section 15, the authorized officer may—

- (a) in the case of a book, record or document produced—
 - (i) inspect it;
 - (ii) take extracts from it; or
 - (iii) make copies of it; or
- (b) in the case of a book, record or document made available—
 - (i) inspect it;
 - (ii) take extracts from it; or
 - (iii) make copies of it.

Evidential value of information.

17.—(1) Where a book, record or document is produced or made available by a person pursuant to an order under section 15, the production or making available of—

- (a) the book, record or document; or
- (b) any information, document or thing obtained as a direct or indirect consequence of the production or making available of the book, record or document,

is not admissible against the person in any criminal proceedings, except a proceeding for an offence under section 15.

(2) For the purposes of subsection (1), proceedings on an application for a restraint order or monitoring order are not criminal proceedings.

Restraint Orders

Application for restraint order.

18.—(1) Where during the investigation of a financial crime the Chief Technical Director has reasonable grounds for suspecting that a person—

- (a) has committed, or is about to, or is likely to commit a financial crime;

- (b) was involved in the commission, or is about to be involved in the commission, of a financial crime; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a financial crime,

the Chief Technical Director may apply to a Judge in Chambers for an order (hereinafter referred to as a "restraint order") to restrain that person from completing any transaction or dealing relating to property, or to restrain a financial institution from carrying out a financial transaction or other financial dealings of any kind with the person.

(2) An application for a restraint order may be made without notice and shall be in writing.

19.—(1) Subject to this section, a restraint order may be made if the Judge is satisfied that a person referred to in section 18—

- (a) the Defendant has committed, or is about to, or is likely to commit, a financial crime;
- (b) was involved in the commission, or is about to be involved in the commission, of a financial crime; or
- (c) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of a financial crime.

(2) The maximum period for which a restraint order shall remain in effect is thirty days after the date when the order is served unless, before the expiration of that period, the Chief Technical Director applies to the Court pursuant to section 25 for an extension of the period of operation of the order.

(3) A restraint order may be made subject to such conditions as the Court thinks fit and, without limiting the generality of the foregoing, may make provision for meeting out of any property affected thereby or a specified part of the property, all or any of the following—

- (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants, if any);

- (b) the person's reasonable legal expenses other than legal expenses relating to an offence which falls within section 18 (1);
- (c) enabling the person to carry on any trade, business, profession or occupation.

Undertakings
by Crown.

20.—(1) Before making a restraint order, the Court may require the Crown to give such undertakings as the Court considers appropriate with respect to the payment of damages or costs, or both, in relation to the making and execution of the order.

(2) For the purposes of this section, the Chief Technical Director may, after consultation with the Attorney-General, on behalf of the Crown, give to the Court such undertakings with respect to the payment of damages or costs, or both, as are required by the Court.

Notice of
application
for restraint
order.

21. Before making a restraint order, the Court may require notice to be given to, and may hear, any person who, in the opinion of the Court, appears to have an interest in any property to which the order relates, unless the Court is of the opinion that giving such notice before making the order would result in the transfer, disposal, dissipation or reduction in the value of the property.

Service of
restraint
order.

22. A copy of a restraint order shall be served on a person affected by the order in such manner as the Court directs or as may be prescribed by rules of court.

Contra-
vention of
restraint
order.

23.—(1) A person who knowingly contravenes a restraint order by disposing of or otherwise dealing with property that is subject to the restraint order commits an offence.

(2) Where a restraint order is made against property and—

- (a) a transaction or dealing in contravention of the restraint order takes place; and
- (b) the transaction or dealing was not for sufficient consideration or in favour of a person who acted in good faith and without notice,

the Chief Technical Director may apply to the Court for an order that the transaction or dealing be set aside.

(3) The Court may, on the application of the Chief Technical Director under subsection (2)—

- (a) order the immediate repayment of any funds released; or
- (b) order that the transaction or dealing be set aside as from the date of the order under this subsection, and declare the respective rights of any persons who acquired interests on or after the day on which the transaction or dealing took place, and before the date of the order under this subsection.

24.—(1) A person who is aggrieved by the making of a restraint order may apply to a Judge in Chambers to vary or discharge the order and shall within 24 hours after making the application, serve notice on the Chief Technical Director to join in the proceedings. Notice and duration of restraint order.

(2) A restraint order remains in force until—

- (a) it ceases to be in force under section 19; or
- (b) it is varied or discharged by a Judge pursuant to an application made under subsection (1).

25. The Court may, on an *inter partes* application by the Chief Technical Director— Extension of restraint order.

- (a) extend, for such further period as the Court may specify, the period of operation of a restraint order; and
- (b) make such other order as the Court considers appropriate in relation to the operation of the order.

Account Monitoring Orders

26.—(1) A Judge in Chambers may, on an application made to him by an authorized officer, make an account monitoring order (hereinafter referred to as a “monitoring order”) if the Judge is satisfied that each of the requirements specified in subsection (2) for making the order is fulfilled. Monitoring orders.

(2) The requirements for making a monitoring order are that—

- (a) there are reasonable grounds for suspecting that the person specified in the application for the order—
 - (i) has committed or is about to commit a financial crime;

- (ii) was involved in the commission, or is about to be involved in the commission of, such an offence; or
 - (iii) has benefited directly or indirectly, or is about to benefit directly or indirectly, from the commission of that offence;
- (b) the account information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; or
 - (c) it is in the public interest for the account information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(3) An application for a monitoring order shall state that the order is sought—

- (a) for the purposes of an investigation into a financial crime, being carried on in relation to a person specified in the application; and
- (b) against a financial institution specified in the application in relation to the account information of the description so specified.

(4) For the purposes of this section, account information includes information relating to an account held at, or a financial transaction or other financial dealing conducted with, the financial institution specified in the application, by the person specified in the order, whether solely or jointly with another.

(5) A monitoring order—

- (a) is an order that the financial institution specified in the application for the order shall, for the period stated in order, provide account information of the description specified in the order to an authorized officer, in the manner and at or by the time or times stated in the order; and
- (b) shall specify accounts held, or financial transactions or other financial dealings conducted within a specified period, by

the person specified in the order at the financial institution so specified.

(6) The period referred to in subsection (5) (a) shall not exceed the period of ninety days beginning with the day on which the order is made:

Provided that the Judge may extend the period for a further ninety days, upon the application of an authorized officer, if satisfied that the circumstances so warrant.

(7) A financial institution that is notified of a monitoring order and knowingly—

- (a) contravenes the order; or
- (b) provides false or misleading information or documents in purported compliance with the order,

commits an offence.

27.—(1) A financial institution that is, or has been, subject to a monitoring order shall not disclose the existence or the operation of the order to any person except—

Monitoring orders not to be disclosed.

- (a) an officer or agent of the institution, for the purpose of ensuring that the order is complied with; or
- (b) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order.

(2) Subject to subsection (3), a person referred to in subsection (1) (a) or (b) to whom disclosure of the existence or operation of a monitoring order has been made shall not—

- (a) disclose the existence or operation of the order, except to another person referred to in subsection (1), for the purpose of—
 - (i) ensuring that the order is complied with or obtaining legal advice or representation in relation to the order, if the disclosure is made by an officer or agent of the institution; or

(ii) giving legal advice or making representations in relation to the order, if the disclosure is made by an attorney-at-law; or

(b) make a record of, or disclose the existence or the operation of, the order in any circumstance even when he ceases to be a person referred to in subsection (1).

(3) Nothing in subsection (2) prevents the disclosure by a person referred to in subsection (1)(b) of the existence or operation of a monitoring order—

(a) for the purposes of, or in connection with, legal proceedings; or

(b) in the course of proceedings before a court.

(4) A person referred to in subsection (1)(b) shall not be required to disclose to any court the existence or operation of a monitoring order.

(5) An authorized officer shall not—

(a) disclose the existence or operation of a monitoring order to any person except—

(i) an officer or agent of the institution on which the order is served, for the purpose of ensuring compliance with the order; or

(ii) an attorney-at-law, for the purpose of obtaining legal advice or representation in relation to the order;

(b) make a record of, or disclose the existence or the operation of the order in any circumstance when he ceases to be a person referred to in section 26(1).

(6) A person who contravenes subsection (1), (2) or (5) commits an offence.

(7) A reference in this section to disclosing the existence or operation of a monitoring order to a person includes a reference to

disclosing information to the person from which that person could reasonably be expected to infer the existence or operation of the monitoring order.

Certification of Copies of Documents

28. Where, pursuant to any provision of this Part, an authorized officer makes copies of any book, record or other document, such copies shall, if certified by a Justice of the Peace as true copies, be admissible in evidence as proof of the matter therein recorded.

Certification of copies of documents.

Search Warrant

29.—(1) Where an authorized officer has reasonable grounds for suspecting that a person has committed a financial crime and that a book, record or other document to which section 15 relates is in any premises, the authorized officer may apply under subsection (2) to a Justice of the Peace, Resident Magistrate or Judge in Chambers for a warrant to search the premises.

Search warrant to facilitate investigations.

(2) Subject to subsections (3) and (4), a Justice of the Peace, Resident Magistrate or Judge in Chambers may, on an application made under subsection (1), issue a warrant authorizing the authorized officer named in the warrant with such assistance as may be necessary and reasonable to—

- (a) enter the premises;
- (b) search the premises for such book, record or other document; and
- (c) seize and detain any book, record or other document found in the course of the search that, in the opinion of the authorized officer, is likely to be of substantial value (whether by itself or together with other documents) to the investigation in respect of which the application is made.

(3) A Justice of the Peace, Resident Magistrate or Judge in Chambers shall not issue a warrant under subsection (2) unless he is satisfied that—

- (a) a production order has been made in respect of the book, record or other document and has not been complied with;

- (b) a production order in respect of the book, record or other document would be unlikely to be effective because there are reasonable grounds for suspecting that such a production order would not be complied with;
- (c) it is not practicable to communicate with any person having the power to grant entry to the premises;
- (d) entry to the premises will not be granted unless a warrant is produced; or
- (e) the relevant investigation might be seriously prejudiced unless the authorized officer is granted immediate access to the book, record or other document without notice to any person.

(4) A search warrant shall not be issued under subsection (2) unless—

- (a) the applicant or some other person has given the Justice of the Peace, Resident Magistrate or Judge in Chambers, either orally or by affidavit, any further information that the Justice of the Peace, Resident Magistrate or Judge in Chambers requires concerning the grounds on which the warrant is sought; and
- (b) the Justice of the Peace, Resident Magistrate or Judge in Chambers is satisfied that there are reasonable grounds for issuing the warrant.

(5) A search warrant issued under subsection (2) shall state—

- (a) the purpose for which it is issued, including a reference to the financial crime that has been, or is believed to have been, committed;
- (b) whether entry is authorized to be made at any time of the day or night or during specified hours of the day or night;
- (c) a description of the kind of book, record or other document authorized to be seized; and
- (d) the date, not being later than twenty-eight days after the day of issue of the warrant upon which the warrant ceases to have effect.

(6) A warrant issued pursuant to subsection (2) shall be deemed to authorize an authorized officer to seize and retain—

- (a) any book, record or other document although not of the kind specified in the warrant referred to in subsection (1), which is likely to be of substantial value (whether by itself or together with other books, records or documents) to the investigation for the purpose of which the warrant was issued; and
- (b) any book, record or other document that the authorized officer believes, on reasonable grounds, will afford evidence as to the commission of a financial crime.

(7) An authorized officer shall not seize—

- (a) any accounting records used in the ordinary business of a financial institution, including ledgers, day books, cash books and accounts books;
- (b) any document which is subject to legal professional privilege; or
- (c) any excluded material.

(8) An authorized officer may, upon request, make copies of any book, record or other document referred to in subsection (1) or take extracts therefrom.

(9) Any book, record or other document seized under a warrant may be retained for as long as it is necessary to retain it, in its original form, in connection with the investigation for the purposes of which, the warrant was issued:

Provided that if the Chief Technical Director has reasonable grounds for believing that the book, record or other document—

- (a) may need to be produced for the purposes of any legal proceeding; and
- (b) might otherwise be unavailable for those purposes,

the book, record or other document may be retained until the proceedings are concluded.

(10) In this section “premises” includes any place, and in particular any building, receptacle or vehicle.

PART IV. Offences and Penalties Generally

Offences and
penalties
generally.

30.—(1) A person commits an offence if that person—

- (a) wilfully delays, threatens, assaults or obstructs an authorized officer acting in the execution of his functions under this Act or any regulations made hereunder;
- (b) without reasonable excuse, refuses or neglects to answer any question or to furnish any information or to produce any book, record or other document required by this Act or any regulations made hereunder when required to do so by an authorized officer;
- (c) knowingly makes any false declaration or false statement of a material nature in any information provided under this Act or any regulations made hereunder;
- (d) knowingly furnishes to an authorized officer or other person performing any duty in relation to this Act or any regulations made hereunder, a document that to the knowledge of the first-mentioned person contains information which is false or misleading in any material particular;
- (e) without reasonable excuse, fails to keep any record or other document required by this Act or any regulations made hereunder.

Schedule.

(2) The offences specified in the first column of the Schedule shall incur the penalties specified in relation thereto in the second column of that Schedule.

(3) The Minister may amend the Schedule by order subject to affirmative resolution.

(4) Every offence under this Act or regulations made hereunder may be tried summarily before a Resident Magistrate.

(5) Where an offence under this Act committed by a body corporate is proved—

- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of

the body corporate or any person who was purporting to act in that capacity; or

- (b) to be attributable to the failure of any such director, manager, secretary or other officer or person to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other officer or person as aforesaid, as well as the body corporate shall be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(6) For the purposes of this section, a person shall be deemed to be a director of a body corporate if he occupies in relation thereto the position of a director, by whatever name called, or is a person in accordance with whose directions or instructions (not being directions or instructions in a professional capacity only) the directors and the body corporate or any of them act.

PART V. General

31. The Chief Technical Director may require any person to keep Records. such books, records, documents or things, relating to the functions of the Division, as may be prescribed.

32.—(1) The Minister may make regulations generally for the proper Regulations. administration of and giving effect to the provisions of this Act.

(2) Regulations made under subsection (1) may—

- (a) contain different provisions for different financial institutions or designated non-financial institutions and different categories of transactions; and
- (b) be limited to a particular type of financial institution or designated non-financial institution or a particular category of transaction.

(3) Regulations made under this section shall be subject to affirmative resolution.

Penalties
under
Regulations.

33. Regulations made under this Act may provide for the imposition of penalties on summary conviction before a Resident Magistrate of a fine not exceeding one million dollars or imprisonment for a term not exceeding twelve months or of both such fine and imprisonment.

Amendment
of other
Acts.

34. The Terrorism Prevention Act and the Proceeds of Crime Act are respectively amended in section 2(1)—

- (a) by inserting in the appropriate alphabetical sequence the following definition—

“credit union business” means the business of the taking of deposits and withdrawable shares by a credit union from its members and the provision of credit facilities by a credit union to its members, and any other business that may be so designated in writing by the Minister responsible for finance;

- (b) by inserting in paragraph (d) of the definition of “financial institution”, immediately after the words “Co-operative Societies Act” the words “and which carries on credit union business”.

SCHEDULE

(Section 30)

*Offences and Penalties*First Column
-----Second Column

Brief Description of Offence -----	Relevant Section -----	Penalty -----
Communicating or attempting to communicate information otherwise than pursuant to a court order or for the purposes of this Act or any other enactment.	9(3)	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
Communicating or attempting to communicate information to any person otherwise than for the purposes of this Act.	9(4)	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars.

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
		On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.
Refusing to comply with production or inspection order.	15 (10) (a)	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
Knowingly providing false or misleading information in purported compliance with order.	15 (10) (b)	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment;

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
		<p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Contravention of restraint order.</p>	<p>23 (1)</p>	<p>On summary conviction before a Resident Magistrate—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Contravention of monitoring order by institution.</p>	<p>26 (7) (a)</p>	<p>On summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine.</p>

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
Institution providing false or misleading information or documents in purported compliance with monitoring order.	26 (7) (b)	On summary conviction before a Resident Magistrate, to a fine not exceeding three million dollars. On conviction on indictment in a Circuit Court, to a fine.
Unauthorized disclosure of the existence of monitoring order.	27 (6)	On summary conviction before a Resident Magistrate— (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.
Making record of, or disclosure of monitoring order by authorized officers, etc.	27 (6)	On summary conviction before a Resident Magistrate— (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment;

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
		<p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Wilfully delaying, threatening, assaulting or obstructing an authorized officer acting in the execution of his functions.</p>	<p>30 (1) (a)</p>	<p>On summary conviction before a Resident Magistrate—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Without lawful excuse, refusing or neglecting to answer any question or to furnish information, etc. where required to do so by an authorized officer.</p>	<p>30 (1) (b)</p>	<p>On summary conviction before a Resident Magistrate—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not ex-</p>

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
		<p>ceeding one year or to both such fine and imprisonment;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Knowingly making any false declaration or false statement of a material nature in any information provided under this Act.</p>	<p>30 (1) (c)</p>	<p>On summary conviction before a Resident Magistrate—</p> <p>(a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment;</p> <p>(b) in the case of a body corporate, to a fine not exceeding three million dollars.</p> <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>

Offences and Penalties

First Column

Second Column

Brief Description of Offence	Relevant Section	Penalty
<p>Knowingly furnishing to authorized officer or other person performing duty, a document known to contain information which is false or misleading in any material particular.</p>	<p>30(1)(d)</p>	<p>.On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>
<p>Failure to keep any books, records or other documents required by this Act or regulations</p>	<p>30(1)(e)</p>	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>

Offences and Penalties

First Column
-----Second Column

Brief Description of Offence -----	Relevant Section -----	Penalty -----
Failure to produce record or other document to authorized officer.	30 (1) (f)	<p>On summary conviction before a Resident Magistrate—</p> <ul style="list-style-type: none"> (a) in the case of an individual, to a fine not exceeding one million dollars or imprisonment for a term not exceeding one year or to both such fine and imprisonment; (b) in the case of a body corporate, to a fine not exceeding three million dollars. <p>On conviction on indictment in a Circuit Court, to a fine or imprisonment or to both such fine and imprisonment.</p>

MEMORANDUM OF OBJECTS AND REASONS

The issue of financial crime is one that every country must address in a deliberate and effective manner. The expansion of business across borders, emerging technologies, and complex financial products and arrangements create opportunities for criminals to unlawfully appropriate and divert funds, launder money and otherwise disguise the proceeds of crime.

Financial crimes result in the loss of millions of dollars to the Jamaican economy. In addition, these crimes cause serious damage to the efficiency and reputation of our financial institutions and financial markets. These crimes are often very complex in nature and, may involve a wide range of illegal activities requiring responsive measures utilizing highly, trained investigators, attorneys-at-Law forensic accountants and analysts, and asset managers.

In recognition of the need to address this multi-dimensional problem comprehensively, this Bill seeks to establish a department of Government to be known as the Financial Investigations Division with responsibility for—

- (a) the investigation of financial, crimes, namely offences involving money or other benefits, including offences involving fraud, dishonesty, money laundering or the financing of terrorist activities; and
- (b) maintaining intelligence databases on, *inter alia*, the types of financial crimes and the methodologies used in committing these crimes; and
- (c) the compilation and publication of statistics on matters such as investigations, prosecutions, convictions and assets relating to financial crimes, for dissemination to other law enforcement agencies, regulators and policymakers.

The Bill further provides for—

- (a) the appointment of officers of the Division;
- (b) obligations for secrecy; and
- (c) the sharing of information with other law enforcement and financial regulatory agencies both within Jamaica and outside of Jamaica, within well defined parameters.

The Bill also provides the Division with several key investigatory powers, including those of making application to the Court for *inter alia* search warrants and monitoring orders.

AUDLEY SHAW
Minister of Finance and the Public Service.

SECTION 2 OF THE TERRORISM PREVENTION ACT
WHICH IT IS PROPOSED TO AMEND

2.—(1) In this Act, unless the context otherwise requires—

... ..

“financial institution” means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) an insurance company registered under the Insurance Act;

... ..

SECTION 2 OF THE PROCEEDS OF CRIME ACT
WHICH IT IS PROPOSED TO AMEND

2.—(1) In this Act—

... ..

“financial institution” means—

- (a) a bank licensed under the Banking Act;
- (b) a financial institution licensed under the Financial Institutions Act;
- (c) a building society registered under the Building Societies Act;
- (d) a society registered under the Co-operative Societies Act;
- (e) a person who—
 - (i) engages in insurance business within the meaning of the Insurance Act;
 - (ii) performs services as an insurance intermediary within the meaning of the Insurance Act,

but does not include an insurance consultant or an adjustor;

... ..

ABILL

ENTITLED

AN ACT to Provide for the establishment of a
Department of Government to be known as
the Financial Investigations Division for the
investigation of financial crimes and for
connected matters.

As introduced by the Honourable Minister of
Finance and the Public Service

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