



# OFFENSES THE PROFESSIONAL ACCOUNTANT SHOULD BE AWARE OF

Recommended by the Professional Accountants In Business  
Committee of ICATT.

The oversight role of the professional accountant in anti-corruption is increasing due to changes in financial reporting, the law and general public awareness. In Trinidad and Tobago, there have been numerous allegations levied against accounting professionals relating to fraud, corruption, bribery and dishonesty, or the facilitation of the same by the professional accountant. In addressing corruption and the role of the accountant, the United Nations Convention against Corruption (UNCAC) stated that the enhancement of the accounting and auditing standards in the private sector should be coupled with civil, administrative or criminal penalties.

In Trinidad and Tobago, there are several criminal penalties implemented by the government to deal with corruption. They are as follows:

- **Embezzlement, extortion, abuse of functions and illicit enrichment**

*Sections 18 and 19 of the Larceny Act Chapter 11:12* prohibits a person from stealing, embezzling, misappropriating or disposing of any property received or entrusted to them officially by virtue of employment *Section 19* refers specifically to public officials who are employed by the national postal service.

Further, *Section 23* makes it an offence for any person, in a position of an agent or factor, to benefit, whether by himself or for a third party, from the possession of goods or any document of title to goods without the authority of his principal. This offence carries a penalty of imprisonment for seven years.

*Section 31 to 33* prohibit extortion and imposes a penalty of a term of years of imprisonment depending upon the nature of the threats. Also, *Sections 34 and 35* prohibit a person from obtaining or receiving property under false pretences or in any other manner which may amount to an indictable offence. The penalty for these offences is a term of imprisonment ranging from five to 10 years.

Where a person has been found liable for stealing, taking, obtaining, extorting, embezzling, converting or disposing of, or in knowingly receiving, any property, under the Larceny Act, he/she may be required to restore the property to the lawful owner in accordance with *Section 42*.

- **Bribery/Corruption**

*Sections 3 and 4 of the Prevention of Corruption Act Chapter 11:11* prohibit a person from giving or receiving, whether on behalf of oneself or on the part of another, any gift, loan, fee, reward, or advantage whatsoever, as an inducement to, or reward for, or otherwise on account of, an agent doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which the State or a public body is concerned. A person convicted of such an offence may be liable for a range of penalties including restitution, a fine of five hundred thousand dollars or imprisonment for ten years.

- **Obstruction of justice**

*Section 7 of the Criminal Offences Act Chapter 11:01* makes it a crime for any person to commit an act to “obstruct, prevent, pervert or defeat the course of public justice.” Further, *Section 10 of the Perjury Act Chapter 11:14* makes it a crime for any person to incite or attempt to procure or suborn another person to make a false statement as a witness.

- **Money-laundering**

*Part II of the Proceeds of Crime Act Chapter 11:27* (“POCA”) address money-laundering in both criminal and preventive aspects, and cover all acts relating to concealing, disposing, transferring, converting and disguising proceeds of crime. Offences of attempt and conspiracy are addressed through common law.

Convictions for money-laundering may result in imprisonment ranging from three to ten years. Commission by an organized criminal group or a person using facilities provided by his or her professional activity results in aggravated penalties of ten to twenty years imprisonment.

In addition, all laundered funds may be confiscated and forfeited in accordance with *Part I* of the POCA.

- **Liability of legal persons**

*Section 16 of the Interpretation Act Chapter 3:01* extends criminal liability to corporations and unincorporated bodies or entities. Additionally, *Section 3 of the Criminal Procedure (Corporations) Chapter 12:03* grants jurisdiction to the court to commit a corporation or unincorporated body to trial, upon application of the prosecutor. Such liability does not prejudice the criminal liability of natural persons who commit the same offence.

The penalty includes fines or other monetary sums at the discretion of the court.

▪ **Participation and attempt**

*Section 2* of the *Accessories and Abettors Act Chapter 10:02* prohibits a person from person aiding, abetting, counselling or procuring the commission of any offence. A person charged under this Act may be tried and sentenced as a principal offender. *Section 65* of the *Interpretation Act* provides that that with regard to criminal offences, it shall be deemed criminal any *attempt* to commit that offence, subject to the imposition of the same penalties.

▪ **Tax Fraud/Avoidance**

Various provisions in the *Income Tax Act Chapter 75:01* create offences relating to the non-payment of taxes to the Board of Inland Revenue. Failure to comply with the provisions, undoubtedly, results in hefty fines and penalties.

▪ **Market manipulation**

*Division 5* of the *Securities Act 2012* prohibits insider trading while *Section 102* specifically creates an offence. The penalty for insider trading is a fine of ten million dollars or 10 years imprisonment. The Act also creates the following offences:

- False trading and artificial prices in a securities market: *Section 91*;
- Price rigging: *Section 92*;
- Dissemination of information containing a misrepresentation: *Section 93*;
- Securities market manipulation: *Section 94*;
- Use of fraudulent or deceptive devices: *Section 95*;
- Excessive trading: *Section 96*.

The Securities Exchange Commission, pursuant to *Section 150 to 153*, is empowered to conduct an investigation in relation to breaches of the legislation and take enforcement action.

The above list of offences which may affect the professional accountant is not exhaustive and he/she must be cognisant of their role in the prevention of corruption.

This article does not constitute legal advice and is intended for information purposes only.

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