

## **Financial Watch: Combating ponzi schemes and other investment scams – Whose responsibility is it?**

Over the years, there has been an increase in the number of complaints from persons who have fallen victim to investment scams operating in Trinidad and Tobago. The more common scams are the ponzi scheme and the pyramid scheme. Investopedia defines a ponzi scheme an investment scam that pays early investors with money taken from later investors to create an illusion of big profits. A pyramid scheme relies on rewarding early investors to recruit more investors but collapses when the supply of potential investors dwindle. In both scams, investors funds are not invested in any productive activity or investment that can yield the promised return. In addition, the promised return is usually significantly above the average return obtained from other investments. **Therefore it is unrealistic and clearly a case of the offer being too good to be true!!** Advances in technology have made it possible for fraudsters to market these schemes online thereby allowing them to reach a limitless number of persons. In addition, investment scams tend to proliferate when the economy is depressed as persons seek quick relief from their economic pain. Unfortunately, these schemes and other “get rich quick schemes” leave a lot of suffering in their wake as many persons are robbed of their investments.

So how does one stop this scourge?? What is the responsibility of individuals? The regulatory authorities? Well much can be said about the need for individuals to take personal responsibility in their investment choices. This approach assumes that everyone is financially literate and is able to evaluate the benefits and RISKS associated with a financial product before making a decision to invest. However, the reality is that many persons, even in more advanced countries, are not financially literate. More importantly financial markets are characterized by information asymmetry and a lack of transparency. Often, persons that sell investment products have a better knowledge of the risks associated with the products than potential or existing investors. The lack of transparency in financial markets puts investors at a serious disadvantage as they may be exposed to unfair and harmful practices by the persons/entities that sell these products. **Hence the regulation of financial markets is vital in redressing this imbalance and safeguarding the interest of investors.**

In 1995 the Government of Trinidad and Tobago enacted the Securities Industry Act, which was proclaimed in 1997. This legislation established the Trinidad and Tobago Securities and Exchange Commission (TTSEC) and gave the agency lead responsibility for regulating the securities market. The legislation governing the securities market has been amended to bring it in line with international standards. The Securities Act of 2012, which replaced the 1995 legislation, has as its stated objective to *provide protection to investors from unfair,*

*improper or fraudulent practices; foster fair and efficient securities markets and confidence in the securities industry in Trinidad and Tobago; and to reduce systemic risk.*

In 2022 the Securities Act of 2012 was amended to explicitly include ponzi, pyramid and other fraudulent investment schemes under the regulatory oversight of the TTSEC. A new section (Section 165A) was inserted in the 2012 Act to provide *for the criminalizing of any prohibited schemes namely ponzi and pyramid-type schemes*. Under the amended Act, *it is now a criminal offence to establish, operate, advertise or participate in these prohibited schemes. It is also an offence to invite persons to join a prohibited scheme*. The Act establishes penalties where a person is convicted of these offences as follows:

Offence	Penalty
A person who establishes, operates a prohibited scheme	\$10,000,000 and imprisonment of 10 years
A person who knowingly participates in a prohibited scheme	\$5,000,000 and imprisonment of 5 years
A person who knowingly advertising or inviting another person to join a prohibited scheme	\$2,000,000 and imprisonment of 3 years

Source: TTSEC's website

While the TTSEC's website encourages the public to report information about these prohibited schemes, it is clear that the securities legislation has assigned the responsibility for oversight of the securities market and for enforcement action against breaches to the TTSEC. Therefore, the TTSEC is required to undertake its own market surveillance and is obligated to take effective action to protect investors from firms/individuals that sell prohibited schemes. In addition, the Securities Act requires all entities and their agents that engage in the promotion, marketing or sale of securities (including investment products) to be registered/licensed with the TTSEC unless an exemption is granted.

The most recent scandal engaging the attention of the public is an investment scheme in cryptocurrency and foreign exchange operated by Trillions Systems Limited (Trillions). Newspaper reports state that Trillions was set up in mid-2022 and to date has attracted over 3,000 persons who have invested millions. Many of these persons have complained that they are yet to get back their investment and the promised returns. Recently news broke that the

TTSEC is in the process of investigating this investment scheme operated by Trillions. Given that information about the Trillions scheme has been in the public domain for months, it is shocking that the TTSEC appears to have only now taken action against this company. It is equally shocking that Mr. Kerron Rose, the main man behind Trillions, would be allowed to engage in the tirade reported in the local news media in which he showed contempt for the laws of Trinidad and Tobago and the powers of the TTSEC and its ability to hold him accountable.

Several questions arise regarding this situation, chief among which is whether the TTSEC has acted appropriately. Additionally,

- i. Why has the TTSEC taken so long to act?
- ii. Was the scheme managed by Trillions registered with the TTSEC?
- iii. Is Mr. Rose or his company registered/licensed with the TTSEC to sell or manage securities?
- iv. Does the product offered by Trillions meet the criteria for a prohibited scheme?
- v. Has the TTSEC issued a cease and desist order to Trillions while its investigation is ongoing in order to halt the promotion of this investment scheme and to prevent the further sale to prospective investors?
- vi. What redress is open to investors if it is proven that the TTSEC failed to take early enforcement action against Trillions to protect investors?

Given the growing prevalence of ponzi schemes and other investment scams, how can we combat this scourge? The first line of defence is that investors must accept personal responsibility for their investment choices. This means that persons must take the time to become informed about investments and their risks. As a rule of thumb, prospective investors should:

- i. **Be skeptical.** If the investment promises high returns and little risk, approach with great skepticism. For example, if an investment promises a doubling of your funds within a short timeframe but the underlying investment risk is not disclosed, then it is likely to be a scam.
- ii. **Be suspicious of unsolicited offers.** For example, being offered an investment via unsolicited phone calls, at your favourite supermarket or online is a red flag.
- iii. **Check out the seller.** Verify if the seller of the investment is a reputable company and whether it has the requisite investment experience and expertise. The company and its agents should also be registered/licensed with the TTSEC.

- iv. **Verify if the investment product is registered with the TTSEC.** All securities/investment products should be registered with the TTSEC unless an exemption has been granted.
- v. **Understand the investment.** UNDERSTAND THE RISKS BEFORE YOU INVEST. Never put money in an investment you do not understand.
- vi. **Report wrongdoing.** If you think the investment is fraudulent or a scam, this should be reported to the TTSEC.

Given the legal mandate set out in the Securities Act of 2012 and the subsequent amendments, the TTSEC ultimately is responsible for ensuring the operation of fair and efficient securities markets and for protecting investors from the potentially devastating losses caused by prohibited schemes. **The TTSEC has an obligation to be proactive in its supervision of the market, to identify prohibited schemes and to take strong enforcement action against persons who engage in the sale of these schemes.** Moreover, the TTSEC has a role in promoting public education initiatives to assist persons in making sound investment decisions and identifying scams. **The failure by the TTSEC to take robust enforcement action against the sale of prohibited schemes such as ponzi and pyramid schemes could put investors at great risk.** This in turn could undermine public confidence and trust in the wider securities market. Further the lack of effective regulatory action against scams like Trillions may lead to calls by aggrieved investors for redress from the TTSEC. **Therefore, the TTSEC is the final bastion in the fight against investment scams and must take more decisive action in delivering on its mandate to protect investors.**

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