

CAYMAN ISLANDS



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THE ANTI-CORRUPTION LAW, 2008

(LAW 11 OF 2008)

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SCHEDULE

CAYMAN ISLANDS

Law 11 of 2008.

I Assent

Stuart Jack

Governor.

3rd August, 2008

A LAW TO REPEAL THE PROVISIONS OF THE PENAL CODE RELATING TO CORRUPT PRACTICES; TO GIVE EFFECT TO THE OECD CONVENTION RELATING TO CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS OF 1997 AND TO THE UNITED NATIONS CONVENTION AGAINST CORRUPTION; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART I

PRELIMINARY

1. This Law may be cited as the Anti-Corruption Law, 2008 and shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

Short title and commencement

2. In this Law, unless the context otherwise requires-

Interpretation

“agent” includes -

- (a) a person who acts on behalf of another person with that other person's actual or implied authority (in which case the other person is the principal);
- (b) a public officer (in which case the Government or Government entity of or for which the officer acts is the principal);
- (c) an employee (in which case the employer is the principal);
- (d) a legal practitioner acting on behalf of a client (in which case the client is the principal);
- (e) a partner (in which case the partnership is the principal);
- (f) an officer of a corporation or other organisation, whether or not employed by it (in which case the corporation or other organisation is the principal); and
- (g) a consultant to any person (in which case that person is the principal);

“agent provocateur” means a person authorised under sections 40 and 41 to commit certain acts or to make certain omissions which would otherwise be offences under this Law;

“anti-corruption authority” means a central public body responsible for receiving and (as permitted) requesting, analysing and disseminating disclosures of any information -

- (a) concerning corruption offences; or
- (b) required by any law in order to counter corruption,

and includes a law enforcement agency;

“associate”, in relation to a person, means-

- (a) any person who is a nominee or an employee of such person;
- (b) any person who manages the affairs of such person;
- (c) any firm of which such person, or any nominee of his, is a partner or a person in charge or in control of its business or affairs;
- (d) any corporation within the meaning of the Companies Law (2007 Revision) of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than thirty per centum of the total issued capital of the corporation; or
- (e) the trustee of any trust, where-
 - (i) the trust has been created by such person; or
 - (ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of

the trust, amounts, at any time, to not less than twenty per centum of the total value of the assets of the trust;

“bank” has the meaning assigned by the Banks and Trust Companies Law (2007 Revision) or any other financial institution established or licensed under any other written law or any co-operative society registered or deemed to have been registered under the Co-operative Societies Law (2001 Revision);

“business” means any business, profession, trade, calling, manufacture or undertaking of any kind carried on in the Islands or elsewhere for profit;

“chief officer” means-

- (a) in the case of a ministry, the Permanent Secretary of that ministry;
- (b) (i) in the case of the Portfolio of Internal and External Affairs, such public officer in the Portfolio as may be designated by the Governor;
- (ii) in the case of the Portfolio of Legal Affairs, such public officer in the Portfolio as may be designated by the Governor;
- (iii) in the case of the Portfolio of Finance and Economic Developments, such public officer as may be designated by the Governor; and
- (iv) in the case of the Portfolio of the Civil Service, such public officer as may be designated by the Governor;
- (c) in the case of a statutory authority or a government company, the person appointed as chief officer (by whatever name called) by the board of that authority or company;
- (d) in the case of the Audit Office, the Auditor-General;
- (e) in the case of the judicial administration, the court administrator or such other suitable person as may be designated by the Chief Justice; and
- (f) in the case of the Office of the Complaints Commissioner, the Complaints Commissioner;

“Commission” means the Commission established under section 3 as the anti-corruption authority of the Cayman Islands;

“Complaints Commissioner” means the Complaints Commissioner appointed under section 49N of the Constitution;

“constable” means any member of the Police Force, and includes a recruit constable;

“corruption offence” means an offence under sections 10 to 23 inclusive;

“court” means any court of the Islands of competent jurisdiction;

“dealing” includes-

- (a) any purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, of extension of credit;
- (b) any agency or grant of power of attorney; or
- (c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part any property being conferred on any person;

“duty”, in relation to a foreign public officer, means any authority, duty, function or power that-

- (a) is conferred on the officer; or
- (b) that the official holds himself out as having;

“evidence” or “statement” means an assertion of fact, opinion, belief or knowledge, whether material or not and whether admissible or not;

“exercise” in relation to a function includes to perform a duty;

“foreign country” means a country other than the Islands and includes any organised foreign area or entity, such as an autonomous territory or a separate customs territory;

“foreign government body” means-

- (a) the government of a foreign country or of part of a foreign country;
- (b) an authority of the government of a foreign country;
- (c) an authority of the government of part of a foreign country;
- (d) a foreign local government body or foreign regional government body; or
- (e) a foreign public enterprise;

“foreign public officer” means-

- (a) an employee or officer of a foreign government body;
- (b) an individual who performs work for a foreign government body under a contract;
- (c) an individual who holds or performs the duties of an appointment, office or position under a law of a foreign country or of part of a foreign country;

- (d) an individual who holds or performs the duties of an appointment, office or position created by custom or convention of a foreign country or of part of a foreign country;
- (e) an individual who is otherwise in the service of a foreign government body (including service as a member of a military force or police force);
- (f) a member of the executive, judiciary or magistracy of a foreign country or of part of a foreign country;
- (g) an employee of a public international organisation;
- (h) an individual who performs work for a public international organisation under a contract;
- (i) an individual who holds or performs the duties of an office or position in a public international organisation;
- (j) an individual who is otherwise in the service of a public international organisation;
- (k) a member or officer of the legislature of a foreign country or of part of a foreign country; or
- (l) an individual who-
 - (i) is an authorised intermediary of a foreign public officer covered by any of the above paragraphs;
 - (ii) holds himself out to be the authorised intermediary of a foreign public officer covered by any of the above paragraphs; or
 - (iii) that is constituted by persons representing two or more countries, or representing the governments of two or more;

“function” of an agent includes any power;

“Government” means of the Government of the Islands;

“government company” means-

- (a) a company in which the Government has a controlling interest; and
- (b) in respect of each such company, includes all subsidiary entities of the company;

“government entity” means any body of the Government and includes a ministry, portfolio, statutory authority, and government company;

“member of a family”, in relation to a person, means-

- (a) a spouse of the person;
- (b) a brother or sister of the person (including half and step-brother or half and step-sister);

- (c) a brother or sister of the spouse of the person (including half and step brother or half and step-sister); or
- (d) any child of the person (including adopted and step-child);
- (e) any parent or grandparent of the person (including step and adopted parent and grandparent);
- (f) an aunt or uncle of the person; and
- (g) niece or nephew of the person;

“members of the Legislative Assembly” includes the elected and official members of the Cabinet;

“office” includes an office or appointment under the Government;

“official member of the Cabinet” means the Chief Secretary, the Attorney-General and the Financial Secretary;

“overseas anti-corruption authority” includes an overseas body having authority, duties, functions or powers similar to those of the Commission, whether called an anti-corruption authority or not;

“person” and “owner” and other like terms when used with reference to property include corporations of all kinds and any other association of persons capable of owning property, and also when so used includes the Crown;

“Police Force” means the Royal Cayman Islands Police Force referred to in the Police Law (2006 Revision);

2006 Revision

“possession” includes not only having in one’s own personal possession, but knowingly having anything in the actual possession or custody of any other person, or having anything in any place (whether belonging to or occupied by oneself or not) for the use or benefit of oneself or any other person; and if there are two or more persons and any one of them or more of them with the knowledge and consent of the rest has or have anything in his or their custody or possession, it shall be deemed and taken to be in the custody and possession of each and all of them;

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

“public international organisation” means-

- (a) an organisation-
 - (i) of which two or more countries, or the governments of two or more countries, are members; or

- (ii) that is constituted by persons representing two or more countries, or representing the governments of two or more countries; or
- (b) an organisation established by, or a group of organisations constituted by-
 - (i) organisations of which two or more countries, or the governments of two or more countries, are members; or
 - (ii) organisations that are constituted by the representatives of two or more countries, or the governments of two or more countries; or
- (c) an organisation that is-
 - (i) an organ of, or office within, an organisation described in paragraph (a) or (b);
 - (ii) a commission, council or other body established by an organisation so described or such an organ; or
 - (iii) a committee, or subcommittee of a committee, of an organisation described in paragraph (a) or (b), or of such an organ, council or body;

“public office” means, subject to the next following definition, an office of emolument in the public service;

“public officer ” means-

- (a) a person holding public office whether temporarily or permanently by appointment, or by the operation of any law;
- (b) a judge, a magistrate, an arbitrator, an umpire, an assessor, a member of a jury or a referee in any proceeding or matter with the sanction of any court or in pursuance of any law;
- (c) a Justice of the Peace; and
- (d) a member of any statutory body, a tribunal or a commission of inquiry in pursuance of any law;

but does not include a member of the Legislative Assembly;

“public service” means the service of the Crown in a civil capacity in respect of the government of the Islands; and

“share” includes stock.

PART II

ADMINISTRATION

Establishment of the Commission

3. (1) There is established for the purposes of this Law a body to be known as the Anti-Corruption Commission and the Commission is the anti-corruption authority of the Cayman Islands.

(2) The Commission is responsible for the administration of this Law and has the powers, duties and functions set out in this Law.

(3) The provisions of the Schedule shall have effect as to the constitution of the Commission and otherwise in relation thereto.

Powers, duties and functions of the Commission under this Law

4. (1) In carrying out its responsibilities under this Law the Commission shall-

- (a) receive and consider any report of the commission of a corruption offence and, subject to this Law, investigate such report;
- (b) receive and (as permitted) request, analyse and disseminate disclosures of any information-
 - (i) concerning corruption offences under this Law or suspected offences; or
 - (ii) required by any law in order to counter corruption;
- (c) detect and investigate-
 - (i) any suspected offence under this Law;
 - (ii) any suspected attempt to commit an offence under this Law; and
 - (iii) any suspected conspiracy to commit any offence under this Law; and
- (d) do anything else that it is required or authorised to do under this Law or any other law or which is necessary to do for achieving the purpose of this Law.

(2) Without limiting the foregoing and notwithstanding any other Law to the contrary, the Commission-

- (a) shall receive all disclosures of information (including information from any overseas anti-corruption authorities) which-
 - (i) concern any corruption offences;
 - (ii) are relevant to its responsibilities as an anti-corruption authority;
- (b) may, subject to subsection (3)-

- (i) where information is disclosed to it under this Law; or
- (ii) upon receipt of a request from an overseas anti-corruption authority,

order any person to refrain from dealing with a person's bank account or other property for a period not exceeding twenty-one days if it is satisfied that there is reasonable cause to believe that the information or the request, as the case may be, relates to proceeds or the suspected proceeds of a corruption offence;

- (c) may, in writing, require the provision by any person of information (excluding information coming to a professional legal adviser in privileged circumstances) for the purpose of clarifying or amplifying information disclosed to it under this Law;
- (d) shall retain a record for a minimum of five years of-
 - (i) all information received or disseminated by it; and
 - (ii) any agreement entered into under paragraph (e);
- (e) may, with the consent of the Attorney-General, enter into any agreement or arrangement, in writing, with an overseas anti-corruption authority which it considers necessary or desirable for the discharge or performance of its responsibilities and functions;
- (f) shall collect, compile and annually publish, in such manner as it shall determine, statistical information relating to-
 - (i) disclosures made to it concerning proceeds or suspected proceeds of corruption offences;
 - (ii) any onward disclosures of such financial information by it; and
- (g) shall have, exercise and perform such other responsibilities, powers, functions and duties as may be assigned to it by this or any other Law.

(3) The power conferred by subsection (2)(b) is not exercisable unless the Grand Court, upon application by the Commission, makes an order under this subsection permitting the exercise of that power.

(4) Any person who, without reasonable excuse, fails or refuses to provide such information as is required by subsection (2)(c) is guilty of an offence and liable on summary conviction to a fine of fifty thousand dollars or to imprisonment for a term of two years or to both.

(5) An aggrieved person may, upon notice to the Attorney-General, apply to a judge in chambers to discharge an order made by the Grand Court under subsection (3), but such order shall remain in full force and effect until-

- (a) the judge in chambers determines otherwise; or

- (b) the expiration of the period during which a person is required, by an order made under subsection (2)(b), to refrain from dealing with another person's bank account or property,

whichever is sooner.

(6) For the purposes of subsection (2)(c), any information comes to a professional legal adviser in privileged circumstances if it is communicated or given to him -

- (a) by, or by a representative of, a client of his in connection with the giving by the adviser of legal advice to the client;
- (b) by, or by a representative of, a person seeking legal advice from the adviser; or
- (c) by any person-
 - (i) in contemplation of, or in connection with, legal proceedings; and
 - (ii) for the purpose of those proceedings.

(7) If, upon completion of an investigation by the Commission, it appears to the Commission that a person has committed a corruption offence or any other offence discovered during the investigation, it shall refer the matter and all relevant information and evidence to the Attorney-General who shall deal with the matter as he sees fit.

(8) Statistical information published pursuant to subsection (2)(f) shall, without charge, be made available by the Commission for inspection at such place as he may determine.

Mutual assistance

5. The Commission-

2004 Revision

- (a) may disclose any information received under this Law in relation to corruption, to the Cayman Islands Monetary Authority established by section 5 of the Monetary Authority Law (2004 Revision), or to such other institutions or person in the Islands as may be designated in writing by the Attorney-General; and
- (b) may disclose to any overseas anti-corruption authority any information relating to conduct which constitutes a corruption offence or would constitute a corruption offence if it had occurred in the Islands in order to-
 - (i) report the possible commission of an offence;
 - (ii) initiate a criminal investigation respecting the matter disclosed;
 - (iii) assist with any investigation or criminal proceedings respecting the matter disclosed; or
 - (iv) generally give effect to the purpose of this Law.

6. The Governor shall be responsible for-
- (a) the general oversight of the anti-corruption policy of the Government;
 - (b) overseeing and inspecting the work of the Commission;
 - (c) reviewing annual reports submitted by the Commission under section 9;
 - (d) promoting effective collaboration between regulators and law enforcement agencies; and
 - (e) monitoring interaction and co-operation with overseas anti-corruption authorities.
7. The Governor, in his discretion, may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to the Governor to concern the public interest and the Commission shall give effect to any such directions.
8. Notwithstanding the provisions of any other Law, the Commission shall not be required to provide any information, documents or evidence except in accordance with the provisions of this Law or in compliance with an order made by the Grand Court.
9. The Commission shall-
- (a) advise the Governor on the work related to this Law and in particular on matters that could affect public policy or the priorities to be set by the Commission; and
 - (b) prepare and submit to the Governor on or before 30 September in each year an annual report reviewing the work related to this Law and containing such other information as the Governor in his discretion shall require.

Oversight by the Governor

Issue of policy directions to the Commission

Commission restricted from providing information

Annual report of Commission

PART III

OFFENCES

10. (1) A public officer or a member of the Legislative Assembly who directly or indirectly-
- (a) solicits;
 - (b) accepts or obtains; or
 - (c) agrees to accept or obtain,
- for himself or any other person, any loan, reward, advantage or other benefit with intent-
- (d) to interfere with the administration of justice;

Bribery of public officers and members of the Legislative Assembly

- (e) to procure or facilitate the commission of an offence; or
- (f) to protect from detection or punishment a person who has committed or who intends to commit an offence,

commits an offence.

(2) Any person who gives or offers to a public officer or to a member of the Legislative Assembly any loan, reward, advantage or other benefit, with intent that the public officer should do anything mentioned in subsection (1)(d),(e), or (f) commits an offence.

(3) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of fourteen years.

Frauds on the
Government

11. (1) A person commits an offence where-

- (a) directly or indirectly-
 - (i) he gives, offers or agrees to give or offer to-
 - (A) a public officer;
 - (B) a member of the Legislative Assembly;
 - (C) a member of the family of a public officer;
 - (D) a member of the family of a member of the Legislative Assembly; or
 - (E) any person for the benefit of a public officer, a member of the Legislative Assembly or another person; or
 - (ii) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from any other person for himself or another person, a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-
 - (iii) the transaction of business with or any matter or business relating to the Government; or
 - (iv) a claim against the Government or any benefit that the Government is authorised or is entitled to bestow,

whether or not, in fact, the public officer or member of the Legislative Assembly is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;

- (b) having dealings of any kind with the Government, he pays a commission or reward to or confers an advantage or benefit of any kind on a member of the Legislative Assembly or a public officer of a government entity with which he deals, or to any

member of the family of a member of the Legislative Assembly or a public officer, or to any one for the benefit of the member of the Legislative Assembly or the public officer, with respect to those dealings, unless he has the consent in writing of the chief officer of the government entity with which he deals, the proof of which lies on him;

- (c) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from a person who has dealings with the Government a loan, reward, advantage or other benefit directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the chief officer of the government entity that employs him or of which he is an official, the proof of which lies on him;
- (d) having or pretending to have influence with the Government, with a member of the Legislative Assembly or a public officer, he demands, accepts or offers or agrees to accept for himself or another person a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-
 - (i) anything mentioned in paragraph (a)(iii) or (iv); or
 - (ii) the appointment of any person, including himself, to an office;
- (e) he gives, offers or agrees to give or offer to a member of the Legislative Assembly or a public officer a loan, reward, advantage or other benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-
 - (i) anything mentioned in paragraph (a)(iii) or (iv); or
 - (ii) the appointment of any person, including himself, to an office; or
- (f) having made a tender to obtain a contract with the Government-
 - (i) he gives, offers or agrees to give or offer to another person who has made a tender or to a member of that person's family, or to another person for the benefit of that person, a reward, advantage or other benefit as consideration for the withdrawal of the tender of that person; or
 - (ii) he demands, accepts or offers or agrees to accept from another person who has made a tender a loan, reward, advantage or other benefit as consideration for the withdrawal of his tender.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of ten years.

- Contractor subscribing to election fund
12. (1) A person who, in order to obtain or retain a contract with the Government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes or gives, or agrees to subscribe or give, to any person any loan, reward, advantage or other benefit-
- (a) for the purpose of promoting the election of a candidate or a class or party of candidates to the Legislative Assembly; or
 - (b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Legislative Assembly,
- commits an offence.
- (2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of ten years.
- Breach of trust by public officer or by a member of the Legislative Assembly
13. A public officer or a member of the Legislative Assembly who, in connection with the duties of his office, commits fraud or a breach of trust is liable on conviction on indictment to imprisonment for a term of five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.
- Selling or purchasing office
14. A person who-
- (a) purports to sell or agrees to sell an appointment to or a resignation from a public office, or a consent to any such appointment or resignation, or receives or agrees to receive a reward or profit from the purported sale thereof; or
 - (b) purports to purchase or gives a loan, reward, advantage or other benefit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so,
- commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.
- Influencing or negotiating appointments or dealing in offices
15. A person who-
- (a) receives, agrees to receive, gives or procures to be given, directly or indirectly, a loan, reward, advantage or other benefit as consideration for cooperation, assistance or exercise of influence to secure the appointment of any other person to a public office;
 - (b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from a public office, in expectation of a direct or indirect loan, reward, advantage or other benefit; or

- (c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to-
 - (i) the filling of vacancies in public offices;
 - (ii) the sale or purchase of public offices; or
 - (iii) appointments to or resignations from public offices,

commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

16. A public officer who-

False claims by public officers

- (a) is employed in such a capacity as to require him or enable him to furnish returns or statements relating to any sum payable or claimed to be payable to himself or to any other person, or relating to any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person; and
- (b) makes a return or statement relating to any such matter which is, to his knowledge, false in any material particular,

commits an offence.

17. (1) A public officer or a member of the Legislative Assembly who does or directs to be done, in abuse of the authority of his office, any arbitrary act prejudicial to the rights of another commits an offence and is liable on summary conviction to imprisonment for a term of two years.

Abuse of office

(2) If the act under subsection (1) is done or directed to be done for purposes of a loan, reward, advantage or other benefit such person commits an offence and is liable on summary conviction to imprisonment for a term of three years.

18. A public officer or a member of the Legislative Assembly who is authorised or required by law to give any certificate relating to any matter by virtue whereof the rights of any person may be prejudicially affected, gives a certificate which is, to his knowledge, false in any material particular, commits an offence.

False certificates by public officers or by members of the Legislative Assembly

19. (1) Where-

Conflict of interests

- (a) a government entity of which a public officer or a member of the Legislative Assembly is a member, director or employee, proposes to deal with a company, partnership or other undertaking in which-
 - (i) the public officer;
 - (ii) the member of the Legislative Assembly; or

- (iii) a member of the family or an associate of either the public officer or member of the Legislative Assembly, has a direct or indirect interest; and
- (b) the public officer, the member of the Legislative Assembly, the member of the family or the associate holds more than ten per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

the public officer or the member of the Legislative Assembly shall forthwith disclose, in writing, to that government entity the nature of such interest.

(2) Where-

- (a) a public officer;
- (b) a member of the Legislative Assembly; or
- (c) a member of the family or an associate of either the public officer or the member of the Legislative Assembly,

has a personal interest in a decision which a government entity, of which the public officer or the member of the Legislative Assembly is a member, director or employee, is to take, that public officer or member of the Legislative Assembly shall forthwith disclose, in writing, to the government entity the nature of that personal interest.

(3) A public officer or member of the Legislative Assembly who fails to disclose an interest in accordance with subsection (1) or (2) and who votes or otherwise takes part in proceedings of the government entity relating to such interest commits an offence and is liable on conviction on indictment to imprisonment for a term of five years.

Duty of a public officer and member of the Legislative Assembly to whom a bribe is offered, etc.

20. (1) A public officer or a member of the Legislative Assembly to whom any loan, reward, advantage or other benefit is given, promised, or offered, in contravention of any provision of this Law shall report to the Commission or a constable such loan, reward, advantage or other benefit together with the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to him.

(2) A person who fails to comply with subsection (1) commits an offence and is liable on summary conviction to a fine of twenty thousand dollars or to imprisonment for a term of two years or to both.

(3) A person from whom any loan, reward, advantage or other benefit has been solicited or obtained, or an attempt has been made to obtain such loan, reward, advantage or other benefit, in contravention of any provision of this Law shall, at the earliest opportunity thereafter, report such soliciting or obtaining of, or attempt to obtain, the loan, reward, advantage or other benefit together with the

full and true description and, if known, the name of the person who solicited, or obtained, or attempted to obtain, the loan, reward, advantage or other benefit from him to the Commission or to a constable.

(4) A person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(5) A public officer or a member of the Legislative Assembly who has reasonable cause to believe that another public officer or a member of the Legislative Assembly has-

- (a) solicited;
- (b) accepted or obtained; or
- (c) agreed to accept or obtain;

any loan, reward, advantage or other benefit in contravention of any provision of this Law, shall report such belief to the Commission or a constable and shall provide the name, if known, of the person who gave, promised or offered such loan, reward, advantage or other benefit to the public officer or the member of the Legislative Assembly.

(6) A person who fails, without reasonable excuse, to comply with subsection (5) commits an offence and is liable on conviction on indictment to a fine of ten thousand dollars or to imprisonment for a term of two years or to both.

(7) A person who commits an act of victimisation against a person who has made a disclosure under subsection (1), (3) or (5) commits an offence and is liable on summary conviction to imprisonment for a term of two years.

(8) In this section, "victimisation" means an act-

- (a) which causes injury, damage or loss;
- (b) of intimidation or harassment;
- (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- (d) amounting to threats of reprisals.

21. (1) A person commits an offence who-

Secret commissions

- (a) gives, offers or agrees to give or offer to an agent any loan, reward, advantage or other benefit as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal; or

- (b) being an agent, demands, accepts or offers or agrees to accept from any person any loan, reward, advantage or other benefit as consideration for doing or forbearing to do, or for having done or forborne to do, any act relating to the affairs or business of his principal or for showing or forbearing to show favour or disfavour to any person with relation to the affairs or business of his principal; or
- (c) with intent to deceive a principal, gives to an agent of that principal, or, being an agent, uses with intent to deceive his principal, a receipt, an account or other writing-
 - (i) in which the principal has an interest;
 - (ii) that contains any statement that is false or erroneous or defective in any material particular; and
 - (iii) that is intended to mislead the principal.

(2) A person who commits an offence under this section is liable on conviction on indictment to imprisonment for a term of five years.

Bribing a foreign public officer

22. (1) Subject to sections 23 and 24, a person who, in order to obtain or retain an advantage in the course of business, directly or indirectly promises, gives, offers or agrees to give or offer a loan, reward, advantage, or benefit of any kind to a foreign public officer for his benefit or for the benefit of another person or to any person for the benefit of a foreign public officer-

- (a) as consideration for an act or omission by the foreign public officer in connection with the performance of the officer's duties or functions; or
- (b) to induce the foreign public officer to use his position to influence any acts or decisions of the foreign country or public international organisation for which the officer performs duties or functions,

commits an offence.

(2) A person who contravenes subsection (1) is liable on conviction on indictment to imprisonment for a term of fourteen years.

(3) Where it appears to the Attorney-General that any person to which this section applies, or an officer, director, employee, agent, or stockholder thereof, is engaged, or about to engage, in any act or practice which contravenes subsection (1), the Attorney-General may, in his discretion, apply to the Grand Court for an order to enjoin such act or practice, and the court may, if it is satisfied upon the evidence, that such person is so engaged or is about to be so engaged as alleged, order a permanent injunction or a temporary restraining order without requiring a bond.

(4) Not later than six months after the date of the commencement of this Law, the Commission, after consultation with the Attorney-General and the Cayman Islands Monetary Authority, and after obtaining the views of all interested persons through public notice and comment procedures, shall determine to what extent compliance with this section would be enhanced and the business community would be assisted by further clarification of this section and may, based on such determination and to the extent necessary and appropriate, issue-

- (a) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Government's enforcement policy, the Commission determines would be in conformance with the provisions of this section; and
- (b) general precautionary procedures which persons may use on a voluntary basis to conform their conduct to the Government's enforcement policy regarding the provisions this section.

23. A person is not guilty of an offence under section 22 if the loan, reward, advantage or other benefit-

Savings provision
relating to section 22

- (a) is permitted or required under the laws of the foreign country or public international organisation for which the foreign public officer performs duties or functions; or
- (b) was made to pay the reasonable expenses incurred in good faith by or on behalf of the foreign public officer that are directly related to-
 - (i) the promotion, demonstration or explanation of the person's products and services; or
 - (ii) the execution or performance of a contract between the person and the foreign country for which the officer performs duties or functions.

24. (1) For the purpose of section 22, a payment is not a loan, reward, advantage or other benefit to obtain or retain an advantage in the course of business, if -

Facilitation payments

- (a) the value of the payment is small;
- (b) it is made to expedite or secure the performance by a foreign public officer of any act of a routine nature that is part of the foreign public officer's duties or functions, including-
 - (i) the issuance of a permit, licence or other document to qualify a person to do business;
 - (ii) the processing of official documents, such as visas and work permits;

- (iii) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and
 - (iv) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods; and
- (c) as soon as practicable after the payment and the act of a routine nature performed by the foreign public officer occurred, the person made a record of the payment and the act and either the following applies-
- (i) the person has retained that record at all relevant times; or
 - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction.

(2) For the purposes of this Law, an "act of a routine nature" does not include a decision to award new business or to continue business with a particular party, including a decision on the terms of that business, or encouraging another person to make any such decision.

- (3) A report under this section shall set out-
- (a) the value of the payment concerned;
 - (b) particulars of the act of a routine nature that was sought to be expedited or secured by the payment;
 - (c) the date or dates on which the payment was made and on which the act of a routine nature occurred;
 - (d) the identity of the relevant foreign public official; and
 - (e) the signature of the person who has made the report or some other means of verifying the person's identity.

False statements to the Commission

25. (1) Where a person makes or causes any other person to make to the Commission or to a constable, in the course of the Commission or such constable exercising any power conferred by this Law, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

- (a) is false or intended to mislead; or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under

any law, or otherwise, to receive, or require to be made, such other statement regardless whether or not the person making the statement is under any legal or other obligation to tell the truth,

he commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years or to both.

(2) Where a person, who has made a statement to the Commission or to a constable, in the course of the Commission or such constable exercising any power conferred by this Law, subsequently thereto makes any other statement to any person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement, regardless of whether or not the person making the statement is under a legal or other obligation to tell the truth that person, if such other statement-

- (a) is inconsistent with any statement previously made to the Commission or to a constable; and
- (b) is made wilfully,

he commits an offence and is liable on conviction to a fine of one thousand dollars or to imprisonment for a term of three months or to both.

(3) For the avoidance of doubt, it is declared that for the purposes of subsection (1)(b) and subsection (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under law to receive the statement so made.

PART IV

EVIDENCE

26. Where, in proceedings for an offence under this Law, it is established that the accused -

Evidence of pecuniary resources or property

- (a) was maintaining a standard of living which was not commensurate with his emoluments or other income;
- (b) was in control of property to an extent which is disproportionate to his emoluments or other income; or
- (c) held property for which he, a member of his family or his associate, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control,

that evidence shall be admissible to corroborate other evidence relating to the commission of the offence.

Evidence of accomplice

27. Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Law-

- (a) no witness shall be regarded as an accomplice by reason only of such witness having-
 - (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any loan, reward, advantage or benefit from any person;
 - (ii) given, promised, offered or agreed to give any loan, reward, advantage or benefit; or
 - (iii) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;
- (b) an agent provocateur shall not be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and
- (c) any statement, whether oral or written, made to an agent provocateur by such person shall be admissible as evidence at his trial.

PART V

GUIDELINES AND OPERATIONAL PROCEDURES

Operations of the Commission

28. (1) The Commission may, after consultation with the Attorney-General, issue guidelines setting out-

- (a) the forms and procedures for making a report of a corruption offence; and
 - (b) the operational procedures in connection with disclosures made to the Commission under this Law.
- (2) The Commission-
- (a) shall from time to time review any guidelines issued under subsection (1); and
 - (b) may, after consultation with the Attorney-General, issue an amendment or revocation of the guidelines.

(3) The Commission shall, without charge, make available for inspection at such offices as it may determine all guidelines issued under subsection (2) and all amendments to and revocations of the guidelines.

(4) Where a constable has reason to suspect the commission of an offence under this Law following a report made under this Law or information otherwise received by him, he shall cause an investigation to be made and for such purpose may exercise all the powers of investigation provided for under this Law and the Criminal Procedure Code (2006 Revision).

(5) A copy, which is certified by a constable, of a report or of an entry under this Law shall be admissible as evidence of the contents of the original and of the time, place and manner in which the report or entry was recorded.

(6) A constable may decline to conduct an investigation into any report alleging an offence under this Law or to proceed further with any investigation if the Commission after consultation with the Attorney-General is satisfied that-

- (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
- (b) the investigation would be unnecessary, improper or futile.

(7) In any case in which a constable declines to conduct an investigation or to proceed further with any investigation, the constable shall inform the complainant in writing of the decision but shall not be bound to assign reasons therefor.

29. A constable may arrest without warrant a person who has committed, or whom he reasonably suspects to have committed, an offence to which this Law applies. Arrest without warrant

30. (1) A constable may, for the purpose of an investigation into an offence to which this Law applies, with the assistance of the Attorney-General, apply to the Grand Court for an order in relation to particular material or to material of a particular description. Order to make material available

(2) If, on such an application, the court is satisfied that the conditions in subsection (4) are fulfilled, it may make an order that the person who appears to it to be in possession of the material to which the application relates shall-

- (a) produce it to a constable to take away; or
- (b) give a constable access to it,

within such period as the order may specify.

(3) The period to be specified in an order under subsection (2) shall be seven days, unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances of the application.

(4) The conditions referred to in subsection (2) are that-

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
- (b) there are reasonable grounds for suspecting that the material to which the application relates-
 - (i) is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made; and
 - (ii) does not consist of or include items subject to legal privilege; and
- (c) there are reasonable grounds for believing that it is in the public interest, having regard to-
 - (i) the benefit likely to accrue to the investigation if the material is obtained; and
 - (ii) the circumstances under which the person in possession of the material holds it,that the material should be produced or that access to it should be given.

(5) Where the court makes an order under subsection (2)(b) in relation to material on any premises it may, on the application of a constable, order any person who appears to it to be entitled to grant entry to the premises to allow a constable to enter the premises to obtain access to the material.

(6) The Chief Justice may make rules governing the procedure in relation to-

- (a) applications for the discharge and variation of orders under this section; and
- (b) proceedings relating to such orders.

(7) Where the material to which an application under this section relates consists of information contained in a computer-

- (a) an order under subsection (2)(a) shall have effect as an order to produce the material in a form in which it can be taken away and in which it is visible and legible; and
- (b) an order under subsection (2)(b) shall have effect as an order to give access to the material in a form in which it is visible and legible.

- (8) An order under subsection (2)-
- (a) shall not confer any right to production of, or access to, items subject to legal privilege;
 - (b) shall have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information whether imposed by the Confidential Relationships (Preservation) Law (1995 Revision) or any other law or by the common law; and
 - (c) may be made in relation to material in the possession of the Government.

1995 Revision

(9) Where, in relation to an investigation into an offence to which this Law applies, an order under subsection (2) has been made or has been applied for and has not been refused or a warrant under section 29 has been issued, whoever, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.

(10) In proceedings against a person for an offence under subsection (9), it is a defence to prove-

- (a) that he did not know or suspect that the disclosure was likely to prejudice the investigation; or
- (b) that he had lawful authority or reasonable excuse for making the disclosure.

(11) Whoever commits an offence under subsection (9) is liable-

- (a) on summary conviction, to a fine of five thousand dollars and to imprisonment for a term of two years; or
- (b) on conviction on indictment, to a fine and to imprisonment for a term of five years.

31. (1) A constable may, for the purpose of an investigation into an offence to which this Law applies, with the assistance of the Attorney-General, apply to the Grand Court for a warrant under this section in relation to specified premises.

Authority for search

(2) On such application the court may issue a warrant authorising the constable to enter and search the premises if it is satisfied that-

- (a) an order made under section 30(2) in relation to material on the premises has not been complied with;
- (b) the conditions in subsection (3) are fulfilled; or
- (c) the conditions in subsection (4) are fulfilled.

(3) The conditions referred to in subsection (2)(b) are that-

- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
 - (b) the conditions of section 30(4)(b) and (c) are fulfilled in relation to any material on the premises; and
 - (c) it would not be appropriate to make an order under section 31 in relation to the material because-
 - (i) it is not practicable to communicate with any person entitled to produce the material;
 - (ii) it is not practicable to communicate with any person entitled to grant access to the material or entitled to grant entry to the premises on which the material is situated; or
 - (iii) the investigation for the purposes of which the application is made might be seriously prejudiced unless a constable could secure immediate access to the material.
- (4) The conditions referred to in subsection (2)(c) are that-
- (a) there are reasonable grounds for suspecting that a specified person has carried on or has benefited from an offence to which this Law applies;
 - (b) there are reasonable grounds for suspecting that there is on the premises material relating to the specified person or to the offence which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the application is made, but that the material cannot at the time of the application be particularized; and
 - (c)
 - (i) it is not practicable to communicate with any person entitled to grant entry to the premises;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation for the purpose of which the application is made might be seriously prejudiced unless a constable arriving at the premises could secure immediate entry to them.

(5) Where a constable has entered premises in the execution of a warrant issued under this section, he may seize and retain any material, other than items subject to legal privilege, which is likely to be of substantial value (whether by itself or together with other material) to the investigation for the purpose of which the warrant was issued.

Translation of seized documents

32. (1) Where a constable finds, seizes, detains or takes possession of any book or document in the exercise of any power under this Law, and such book or document or any part thereof is in a language other than the English language, or

in any sign or code or the constable may require the person who had possession, custody or control of such book or document to furnish to him a translation in the English language of such book or document within such period as, in the opinion of the constable, would be reasonable having regard to the length of the book or document, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence under investigation, the Government may reimburse him for such reasonable expenses as he may have incurred in furnishing the translation.

33. (1) Notwithstanding any other law, a Judge of the Grand Court may, on application being made to him in relation to an investigation into any offence under this Law, order a professional legal adviser to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure pursuant to this Law.

Court orders to disclose information

(2) Nothing in subsection (1) shall require a professional legal adviser to comply with any order under that subsection to the extent that such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any pending proceedings.

34. A person who-

Resisting or obstructing a constable

- (a) refuses any constable access to any premises, or fails to submit to a search by a person authorised to search him under this Law;
- (b) assaults, obstructs, hinders or delays any constable in the execution of his duty under this Law;
- (c) fails to comply with any lawful demand, notice, order or requirement of a constable in the execution of his duty under this Law;
- (d) omits, refuses or neglects to give to a constable any information which may reasonably be required of him and which he is empowered to give;
- (e) fails to produce to, or conceals or attempts to conceal from, a constable, any book, document, or article, in relation to which such constable has reasonable grounds for suspecting that an offence under this Law has been or is being committed, or which is liable to seizure under this Law;

- (f) rescues or endeavours to rescue or causes to be rescued any thing which has been duly seized; or
- (g) destroys any thing to prevent the seizure thereof, or the securing of the thing,

commits an offence.

PART VI

APPLICATION OF THE PROCEEDS OF CRIMINAL CONDUCT LAW (2007 REVISION) TO THIS LAW

Orders of the court in
relation to the proceeds
of a corruption offence

2007 Revision

35. In any trial or proceedings for an offence under this Law, the court, in relation to the proceeds of a corruption offence, shall apply the provisions of the Proceeds of Criminal Conduct Law (2007 Revision) and may make such order as it considers appropriate in accordance with the provisions of that Law.

PART VII

EXTRADITION

Corruption offence
extraditable

36. For the avoidance of doubt, a corruption offence is an offence for which extradition may be granted or obtained under the extradition laws relating to the Islands.

PART VIII

GENERAL

Protection of informers

37. (1) Where a person discloses to the Commission or to a constable information concerning a corruption offence or the proceeds or suspected proceeds of a corruption offence, the disclosure shall not be treated as a breach of any restriction upon the disclosure of information by any enactment or otherwise and shall not give rise to any civil liability.

(2) Except as provided in this section, no complaint as to an offence under this Law shall be admitted in evidence in any civil or criminal proceeding and no witness shall be obliged or permitted to disclose the name or address of any informer or state any matter which might lead to his discovery.

(3) Where any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding whatsoever contains any entry in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is held shall cause all such passages to be

concealed from view or to be obliterated so far as is necessary to protect the informer from discovery but no further.

(4) Where, in any proceeding relating to an offence under this Law, the court, after full inquiry into the case-

- (a) is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true; or
- (b) is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer,

the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

38. No written law or rule of law preventing proceedings in the Legislative Assembly being impeached or questioned in any court or place outside of the Legislative Assembly shall prevent any evidence of words, spoken, or acts performed, by a person alleged to have committed a corruption offence as a member of the Legislative Assembly being admissible-

Proceedings in the
Legislative Assembly

- (a) in proceedings for that offence against that person; or
- (b) in proceedings for a corruption offence which arises out of the same facts.

39. (1) A person does not commit a corruption offence unless-

Territorial requirements

- (a) the conduct constituting the alleged offence occurs-
 - (i) wholly or partly in the Islands; or
 - (ii) wholly or partly on board a Caymanian aircraft or a Caymanian ship; or
- (b) the conduct constituting the alleged offence occurs wholly outside the Islands and-
 - (i) at the time of the alleged offence, the person is a person having Caymanian status in accordance with the Immigration Law (2007 Revision); or
 - (ii) at the time of the alleged offence, the person is a resident of the Islands; or
 - (iii) at the time of the alleged offence, the person is a body corporate incorporated by or under a law of the Islands.

2007 Revision

(2) Notwithstanding section 43, a person may be arrested for, charged with, or remanded in custody or released on bail in connection with an offence against Part III before the Attorney-General's consent has been given.

Authorisations by the
Governor for the
security of the Islands

40. (1) Subsection (2) applies if, apart from that subsection, a person would commit a corruption offence in doing an act or making an omission.

(2) The person referred to in subsection (1) (“an agent provocateur”) does not commit a corruption offence if the act or omission done or made is authorised to be done or made by virtue of an authorisation given by the Governor.

(3) The Governor may give an authorisation under subsection (2) only if he is satisfied that the conditions in subsection (4) and (5) are met.

(4) The first condition is that-

- (a) any acts or omissions which may be done or made in reliance on the authorisation will be necessary for the security of the Islands or for preventing or detecting indictable offences; or
- (b) the operation in the course of which any such acts or omissions may be done or made will be necessary for the proper discharge of such a function.

(5) The second condition is that there are satisfactory arrangements in force to secure-

- (a) that no act or omission will be done or made in reliance on the authorisation beyond what is necessary for the security of the Islands or preventing or detecting indictable offences; and
- (b) that, in so far as any acts or omissions may be done or made in reliance on the authorisation, their nature and likely consequences will be reasonable, having regard to the purposes for which they are done or made.

(6) An authorisation under subsection (2) may in particular-

- (a) relate to one or more specified acts or omissions, to acts or omissions of a specified description or to acts or omissions done or made in the course of a specified operation;
- (b) be limited to one or more specified persons of a specified description; or
- (c) be subject to specified conditions.

(7) In this section, the word “specified” means specified in the authorisation.

Authorisations:
supplementary

41. (1) This section applies to an authorisation under section 40(2).

(2) An authorisation may be given only under the hand of the Governor and ceases to have effect at the end of a period of six months starting with the day on which it was given.

(3) Subsection (2) does not apply if the authorisation is renewed under subsection (4) before the day on which it would otherwise cease to have effect.

(4) The Governor may renew an authorisation for a period of six months starting on the day on which it would otherwise cease to have effect, if at any time before that day he considers it necessary for the authorisation to continue to have effect for the purpose for which it was given.

(5) Subsection (3) may apply more than once.

(6) A renewal under subsection (4) shall be made under the hand of the Governor.

(7) The Governor shall cancel an authorisation if he is satisfied that an act or omission authorised by virtue of it is no longer necessary.

42. Notwithstanding anything contained in this Law neither the Commission nor a constable shall have access to any books, records, returns, reports or other documents or to enter upon any premises of the Government if, in the opinion of the Governor, such access or entry is likely to-

Security of the Islands and access to documents, etc

- (a) prejudice the security of the Islands; or
- (b) involve the disclosure of any matters or deliberations of a secret or confidential nature of the Cabinet or of the Legislative Assembly or any sub-committee of either body.

43. Proceedings for a corruption offence shall not be instituted in the Islands except with the consent of the Attorney-General.

Consent to prosecution

44. Every person convicted of an offence under this Law for which no penalty is specifically provided shall be liable to a fine of five thousand dollars or to imprisonment for a term of two years or to both.

General penalty

45. Nothing contained in this Law shall derogate from the powers of a constable to investigate into any offence under this Law and to prosecute any person in respect of any such offence, so long as the provisions of this Law are complied with.

Savings

46. The Governor in Cabinet may make rules or regulations for the further, better and more convenient carrying out of the provisions of this Law, and

Regulations

without prejudice to the generality of this provision, the Governor in Cabinet may make rules for-

- (a) providing for the form of any notice, order, declaration or other matter under this Law; and
- (b) providing for the service or delivery of any notice, order, direction, instruction, requirement or other thing lawfully done under this Law.

2007 Revision

Abolition of existing offences, etc.

47. The Penal Code (2007 Revision) is amended by repealing sections 90 to 96.

Transitional provisions

48. Notwithstanding section 47, proceedings in respect of a offence or a suspected offence or relating to any matter provided for under sections 90 to 96 of the Penal Code (2007 Revision) which had commenced before the date of the commencement of this Law shall proceed and be determined after the date of the commencement of this Law as if the said sections continue to have effect.

2007 Revision

Application

49. (1) This Law applies in relation to acts or omissions done or made on or after the date of commencement of this Law.

(2) If an act or omission is alleged to have been done or made over a period of two or more days, or at some time in a period of two or more days, it shall be taken for the purposes of this section to have been done or made on the last of those days.

The Crown

50. (1) This Law binds the Crown, subject to subsection (2) and (3).

(2) No contravention by the Crown of a provision under this Law makes the Crown criminally liable.

(3) Notwithstanding subsection (2), the Grand Court may, on the application of a person appearing to the court to have an interest, declare unlawful an act or omission of the Crown which constitutes a contravention of a provision of this Law.

Offences by bodies corporate

51. (1) Where an offence under this Law, which has been committed by a body corporate, is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) shall apply in relation to the acts and defaults of a member in connection with his function of management as if he were a director of the body corporate.

52. Unless expressly provided otherwise the following are offences under this Law- Inchoate offences

- (a) an attempt, conspiracy or incitement to commit an offence under this Law; and
- (b) aiding, abetting, counselling or procuring the commission of an offence under this Law.

53. Within six months of the end of each financial year, the Attorney-General and the Chief Secretary shall jointly prepare a report on the enforcement of this Law and the Attorney-General shall cause a copy of the report to be laid before the Legislative Assembly during the next session of the Legislative Assembly immediately following the completion of the report. Annual report

SCHEDULE Section 3

Constitution of the Commission

1. The Commission shall consist of the following members-

- (a) the Commissioner of Police;
- (b) the Complaints Commissioner;
- (c) the Auditor General; and
- (d) two other persons (“the appointed members”) appointed by the Governor and selected from the following categories of persons-
 - (i) retired judges of the Grand Court or the Court of Appeal;
 - (ii) retired policemen;
 - (iii) retired justices of the peace or magistrates; or
 - (iv) retired attorneys-at-law.

Tenure of office

2. The appointed members shall be appointed by instrument in writing and shall, subject to the provisions of this Schedule, hold office for a period of five years.

Re-appointment

3. The appointed members shall be eligible for re-appointment.

Chairman

4. The Commissioner of Police shall be chairman of the Commission and shall preside at all meetings of the Commission at which he is present, and in the case of the chairman's absence from any meeting, the members present and forming a quorum shall elect one of their number to preside at that meeting.

Acting appointments

5. If any member is absent or unable to act, the Governor may appoint any person to act in the place of that member and in the case of the appointed members such appointment shall be made in the same manner and from among any of the categories of persons as would be required in the case of the substantive appointment.

Resignation

6. An appointed member may at any time resign his office by instrument in writing addressed to the Governor and transmitted through the chairman and from the date of receipt by the Governor of such instrument, that person shall cease to be a member.

Revocation of appointment

7. The Governor after consultation with the Attorney-General may at any time revoke the membership of an appointed member.

Filling of vacancies

8. If any vacancy occurs in the membership of the appointed members such vacancy shall be filled by the appointment of another appointed member and such appointment shall be made in the same manner and from any of the categories of persons as would be required in the case of the original appointment.

Gazetting of membership

9. The names of all members of the Commission as first constituted and every change therein shall be published in the Gazette.

Remuneration

10. (1) The appointed members of the Commission shall be paid such allowances as the Governor may determine.

(2) The payment of such allowances shall be paid out of the revenue of the Islands.

Staff of Commission

11. (1) The Governor shall appoint and employ at such remuneration and on such terms and conditions as he thinks fit a secretary and such other officers and employees as he thinks necessary for the proper carrying out of the provisions of the Law.

(2) The Governor may, subject to such conditions as he may impose, approve of the appointment of any public officer or any constable above the rank of superintendent to any office with the Commission and any public officer or constable so appointed shall, in relation to pension, gratuity or other allowance, and in relation to other rights as a public officer, be treated as continuing in the service of the Government or of the Police Force as the case may be.

Seal and execution of documents

12. (1) The seal of the Commission shall be authenticated by the chairman or and one other member of the Commission authorised to act in that behalf and shall be judicially noticed.

(2) The Commission may, by resolution, appoint an officer of the Commission either generally or in a particular case to execute or sign on behalf of the Commission any agreement or other instrument not under seal in relation to any matter coming within the powers of the Commission.

Proceedings and meetings

13. (1) The Commission shall meet at such times as may be expedient for the carrying out of its functions and such meetings shall be held on such days and at such places as the Chairman may determine.

(2) A quorum of the Commission shall be three.

(3) The decision of the Commission shall be by a majority of votes and, in addition to an original vote, the chairman shall have a casting vote in any case in which the voting is equal.

(4) Minutes in proper form of each meeting of the Commission shall be kept.

(5) The validity of the proceedings of the Commission shall not be affected by any vacancy amongst the members thereof or by any defect in the appointment of any member thereof.

Immunity

14. Neither the Commission, nor any member or officer of the Commission, shall be liable in damages for anything done or omitted in the discharge or purported discharge of their respective functions under this Law unless it is shown that the act or omission was in bad faith.

Indemnity

15. The Commission shall indemnify a member against all claims, damages, costs, charges or expenses incurred by that member in the discharge or purported discharge of his functions under this Law, except claims, damages, costs, charges or expenses caused by the bad faith of that member.

Office of an appointed member not public office

16. The office of an appointed member shall not be a public office.

Disclosure of member's interests

17. (1) If a member has any pecuniary interest, direct or indirect, in any matter to be considered by the Commission and is present at a meeting of the Commission at which the matter is to be considered, he shall at or before the meeting or before the matter is considered, disclose the fact and shall leave the meeting for the duration of and not take part in the consideration or discussion of or vote on the matter.

(2) If any member fails to comply with subparagraph (1) he shall be guilty of an offence and liable -

- (a) on summary conviction to a fine of twenty thousand dollars or imprisonment for a term of two years, or both; or
- (b) on conviction on indictment to a fine of fifty thousand dollars or imprisonment for a term of three years, or both,

unless he proves that he did not know that the matter in which he had a pecuniary interest was the subject of consideration at that meeting.

(3) A disclosure under subparagraph (1) shall be recorded in the minutes of the Commission's meetings.

(4) No act or proceeding of the Commission shall be questioned on the ground that a member contravened this paragraph.

(5) This paragraph does not apply to an interest in a matter which a member has as a member of the public or to an interest in any matter in which the right to participate in any service is offered to the public.

Member's pecuniary interests

18. (1) For the purposes of paragraph 17, a member shall be treated as having an indirect pecuniary interest in a matter if -

- (a) he or any nominee of his is a member of a company or other body which has a direct or indirect pecuniary interest in the matter under consideration;
- (b) he is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in the matter under consideration; or
- (c) he or any partner of his is a professional adviser to a person who has a direct or indirect pecuniary interest in a matter under consideration.

(2) Subparagraph (1) does not apply to membership of, or employment by, any public body.

(3) In the case of married persons the interest of one spouse shall be deemed for the purpose of paragraph 17 to be also the interest of the other.

(4) The Governor may subject to such conditions as he may think fit appoint persons to act as members for any specified period, in any case in which the number of members disabled by paragraph 17 at any one time would be so great a proportion of the whole as to impede the transaction of business by the Commission.

Procedure

19. Subject to this Law, the Commission has the power in all respects to regulate its own procedure, including the manner in which matters subject to the determination of the Commission are to be determined by the Commission.

Passed by the Legislative Assembly this 30th day of June, 2008.

EDNA MOYLE

Speaker.

WENDY LAUER EBANKS

Clerk of the Legislative Assembly.