

CAYMAN ISLANDS



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## **CONSULTATION DRAFT BILL**

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

## **EXPLANATORY NOTES**

This Bill seeks to give effect to the United Nations Convention Against Corruption and the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

### **THE UNITED NATIONS CONVENTION AGAINST CORRUPTION**

#### **BACKGROUND**

In its resolution 55/61 of 4 December 2000, the General Assembly recognised that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime (resolution 55/25, annex I) was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the Centre for International Crime Prevention, Office for Drug Control and Crime Prevention. The text of the United Nations Convention against Corruption was negotiated during seven sessions of the Ad Hoc Committee for the Negotiation of the Convention against Corruption, held between 21 January 2002 and 1 October 2003. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003.

#### **CONVENTION HIGHLIGHTS**

##### Prevention

Measures such as the establishment of anti-corruption bodies and enhanced transparency in the financing of election campaigns and political parties address both the public and private sectors. Requirements are also established for the prevention of corruption in the judiciary and in public procurement. The Convention calls on countries to actively promote the involvement of non-governmental and community based organisations, as well as other elements of civil society, to raise public awareness of corruption.

##### Criminalisation

Countries are required to establish criminal and other offences to cover a wide range of acts of corruption. This includes not only basic forms of corruption, such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and “laundering” of the proceeds of corruption.

### International cooperation

Countries agreed to cooperate in the fight against corruption, including prevention and investigation activities, and the prosecution of offenders. The Convention also binds countries to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court and to extradite offenders. Countries must also undertake measures to support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

### Asset recovery

This is an important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Measures include the prevention and detection of transfers of illicitly acquired assets, the recovery of property and the return and disposition of assets.

## **CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS**

### **BACKGROUND**

“Bribery in international business transactions raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.”. These considerations in 1997 prompted OECD member countries and a number of non-member countries to adopt the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (henceforth the Convention).

The Convention is an unusual international agreement in that it seeks to coordinate disparate legal systems in order to arrive at a minimum standard with respect to an important form of white-collar crime. It obliges signatory countries- which now include all 30 OECD member countries plus a growing number of non-members-to make the bribery of a foreign public official a crime under their laws.

The Convention is global in scope, with participating countries spread over five continents and accounting for 70 percent of world exports and over 90 percent of foreign direct investment; its provisions are binding on the participants and call for serious review process. The Convention criminalises acts of offering or giving bribes, but not of soliciting or receiving bribes; and it covers only bribery aimed

at public officials, not bribery of private sector representatives or political party officials.

### **MAIN PROVISIONS OF THE ANTI-FOREIGN BRIBERY CONVENTION**

The Convention includes the following provisions-

It defines a “foreign public official” as any person holding a legislative, administrative or judicial office of a foreign country, or exercising a public function for a foreign country, including for a public agency or enterprise, and any official or agent of an international organisation (Article 10). A company is deemed “public” if the state can exercise a dominant influence on it through any of the different means available, and the responsible person in such a company is considered to exercise a public function.

It recognises the responsibility of companies that pay bribes or benefit from the bribing (Article 2). As only certain legal systems allow for the criminal responsibility of legal persons such as firms, the Convention does not impose on signatories an obligation to introduce such a concept. However it obliges them to nonetheless establish liability of legal persons in the sense that they are subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions.

It permits signatory states to apply the legal criteria determining jurisdiction that are traditional to their own systems (Article 4). Civil law countries generally have jurisdiction over “nationals,” even if the offence is committed abroad; common-law countries generally exercise jurisdiction on a purely territorial basis. Non-criminal penalties are to ensure the necessary balance between national treatments.

It ensures that bribes paid to foreign public officials are covered by money laundering legislation in the same way as bribes to national public officials (Article 7). By imposing criminal responsibility on everyone involved in the handling of bribe money, it makes the hiding of such funds much more difficult.

It contains provisions intended to reinforce the preventive function of accounting requirements and of controls on them, in order to avoid the diversion of large sums of money from company accounts for bribery abroad (Article 8). Its proper implementation requires the application of criminal sanctions for grave omissions, such as forgery, falsification and fraud.

It lays down the obligation for signatory states to provide each other prompt and effective legal assistance, for criminal as well as non-criminal investigations and proceedings (Article 9). Signatories should facilitate mutual legal assistance and cannot invoke “bank secrecy” to deny such assistance.

It requires signatories to co-operate in a program of systematic follow-up to monitor and promote the full implementation of the Convention (Article 12).

### **THE ANTI- CORRUPTION BILL, 2007**

The legislative precedents used in the preparation of this Bill are as follows-

- (a) The Prevention of Corruption Act of Kenya;
- (b) The Criminal Code of Canada;
- (c) The Corruption of Foreign Public Officials Act of Canada 1999;
- (d) The Criminal Code of Australia;
- (e) The Corrupt Practices Act of Zambia;
- (f) The Anti-Corruption Act 1997 of Malaysia; and
- (g) The Foreign Corrupt Practices Act of the U.S.A.

#### **PART I**

Part I of the Bill contains clauses 1 and 2 which are preliminary provisions.

Clause 1 provides the short title and the commencement of the legislation.

Clause 2 sets out the definitions of various terms used in the legislation.

#### **PART II**

Part II of the Bill contains clauses 3 to 8 and deals with the administration of the legislation.

Clause 3 provides that the Commissioner of Police is responsible for the administration of the legislation.

Clause 4 set out the powers, duties and functions of the Commissioner under the legislation. The Commissioner is empowered, among other things, to-

- (a) receive and consider any report of the commission of a corruption offence and investigate such of the reports as he considers practicable;
- (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; and
- (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.

Clause 5 provides, among other things, that the Governor has general oversight of the anti-corruption policy of the Government and that he is responsible for overseeing and inspecting the work of the Commissioner.

Clause 6 provides that the Governor may give the Commissioner directions of policy under the legislation.

Clause 7 provides that, notwithstanding the provisions of any other Law, the Commissioner 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.

Clause 8 provides that the Commissioner shall-

- (a) advise the Governor on the work related to this legislation in particular on matters that could affect public policy or the priorities to be set by the Commissioner; 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 legislation and containing such other information as the Governor in his discretion shall require.

### **PART III**

Part III of the Bill contains clauses 9 to 24 and deals with anti-corruption offences.

Clause 9 deals with the bribery of members of the Legislative Assembly. A person who commits an offence under this clause is liable on conviction on indictment to imprisonment for a term of fourteen years.

Clause 10 deals with the bribery of public officers. A person who commits an offence under this clause is liable on conviction on indictment to imprisonment for a term of fourteen years.

Clause 11 deals with different frauds on the Government. For example, a person commits a fraud on the government if 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 public officer of a government entity with which he deals, or to any member of the public officer's family, or to any one for the benefit of 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.

Clause 12 provides that a person commits an offence where, in order to obtain or retain a contract with the Government, or as a term of any such contract, whether express or implied, he 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.

Clause 13 provides a public officer 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.

Clause 14 provides that it is an offence for a person to-

- (a) purport to sell or agree to sell an appointment to or a resignation from a public office, or a consent to any such appointment or resignation, or receive or agree to receive a reward or profit from the purported sale thereof; or
- (b) purport to purchase or give a loan, reward, advantage or other benefit for the purported purchase of any such appointment, resignation or consent, or agree or promise to do so.

Clause 15 deals with the offences of influencing appointments to public offices.

Clause 16 deals with false claims by public officers.

Clause 17 deals with the abuse of authority by a public officer.

Clause 18 deals with the provision of false certificates by public officers.

Clause 19 provides that a public officer is under a duty to report to the police the offer of any bribe to him.

Clause 20 deals with the giving and the accepting of secret commissions to agents.

Clause 21 deals with the bribing of foreign public officers.

Clause 22 contains saving provisions relating to clause 21.

Clause 23 provides that certain payments paid to government officers in the course of their duties are not to be considered as bribes.

Clause 24 deals with the offence of making a false statement to the Commissioner or to a constable in the course of his duty under this legislation.

#### **PART IV**

Part IV of the legislation deals with evidence under the legislation and contains clauses 25 and 26.

Clause 25 provides that in any proceedings against a person for a corruption offence, it may be proved that at or about the time of the alleged offence, or at any time thereafter, the accused, or any member of his family or associate of his-

- (a) held any property for which he, his family member or associate, as the case may be, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control; or
- (b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it is to be acquired,

and the evidence in relation thereto shall be presumed to support any evidence relating to the commission of the corruption offence.

Clause 26 deals with the evidence of accomplices and agents provocateur.

#### **PART V**

Part V of the Bill deals with guidelines and operational procedures under the legislation. It contains clauses 27 to 34.

Clause 27 provides that the Commissioner may, after consultation with the Attorney-General, issue guidelines setting out the forms and procedures for making a report of a corruption offence and the operational procedures in connection with disclosures made to the Commissioner under this legislation.

Clause 28 provides that a constable may arrest without warrant a person who has committed or whom he reasonably suspects to have committed an offence to which the legislation applies.

Clause 29 deals with the provision of material to a constable for the purpose of an investigation.

Clause 30 deals with warrants to search premises for the purpose of an investigation.

Clause 31 deals with the translation of seized documents.

Clause 32 provides that 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 legislation, 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. However, nothing in this clause shall require a professional legal adviser to comply with any order under this clause 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.

Clause 33 deals with offences committed against a constable in the course of exercising any function under the legislation.

Clause 34 deals with mutual legal assistance under the legislation.

#### **PART VI**

Part VI contains clause 35 which provides that in any trial or proceedings for an offence under this legislation, 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**

Part VII contains clauses 36 to 50 and deals with general matters.

Clause 36 deals with the protection of informers.

Clause 37 provides that no written law or rule of law preventing proceedings in the Legislative Assembly being impeached or questioned in any court or place

out 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-

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

Clause 38 provides that a person does not commit a corruption offence unless-

- (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.

Clause 39 empowers the Governor to authorise the commission of what would otherwise be a corruption offence if the offence is necessary for the security of the Islands or the prevention or detection of indictable offences.

Clause 40 supplements clause 39.

Clause 41 provides that notwithstanding anything contained in this legislation neither the Commissioner nor a constable shall have access-

- (a) to any books, records, returns, reports or other documents or to enter upon any premises of the Government; or
- (b) to any books, records, returns, reports or other documents or to enter upon any premises other than those mentioned in paragraph (a),

if, in the opinion of the Governor, such access or entry is likely to-

- (c) prejudice the security of the Islands; and
- (d) 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.

Clause 42 provides that proceedings for a corruption offence shall not be instituted in the Islands except with the consent of the Attorney-General.

Clause 43 provides that every person convicted of an offence under this legislation 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.

Clause 44 is a savings clause.

Clause 45 gives the Governor in Cabinet power to make regulations for the purpose of this legislation.

Clause 46 provides for the repeal of sections 90 to 96 of the Penal Code (2007 Revision).

Clause 47 provides that this legislation applies in relation to acts or omissions done or made on or after the date of commencement of this legislation. 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 clause to have been done or made on the last of those days.

Clause 48 provides that this legislation binds the Crown.

Clause 49 deals with offences by bodies corporate.

Clause 50 deals with inchoate offences.

Clause 51 provides that, 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.

The Schedule 1 contains amendments to the Limitation Law (1999 Revision).

1999 Revision

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SCHEDULE 1

CAYMAN ISLANDS

**A BILL FOR 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 CORRUPT PRACTICES; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART I**

**PRELIMINARY**

Short title and commencement

1. This Law may be cited as the Anti-Corruption Law, 2007 and shall come into force on such date as may be appointed by order made by the Governor in Cabinet.

Interpretation

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

“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 39 and 40 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

2007 Revision

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

2007 Revision

“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);

2001 Revision

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

“business advantage” means an advantage in the conduct of business;

“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, the Deputy Chief Secretary;
- (ii) in the case of the Portfolio of Legal Affairs, the Solicitor General; and
- (iii) in the case of the Portfolio of Finance and Economic Development, the Deputy Financial Secretary;
- (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; and
- (e) in the case of the judicial department, the person so designated by the Governor;

2006 Revision

“Commissioner” means the Commissioner of Police appointed under the Police Law (2006 Revision);

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

“corruption offence” means an offence under sections 9 to 24 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 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;
- (c) a brother or sister of the spouse of the person; or
- (d) any lineal ascendant or descendant of the person;

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

“overseas anti-corruption authority” includes an overseas body having authority, duties, functions or powers similar to those of the Commissioner, whether called an anti-corruption unit 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;

2006 Revision

“Police Force” means the Royal Cayman Islands Police Force referred to in the Police Law (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 organization” 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 ” includes-

- (a) a person holding public office whether temporarily, or permanently by appointment, by election or by the operation of any law;
- (b) an arbitrator, umpire or 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, tribunal or 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 OF THIS LAW**

Administration of this law by the Commissioner

3. The Commissioner is the anti-corruption authority for the purposes of this Law, is responsible for the administration of this Law and has the powers, duties and functions set out in section 4.

Powers, duties and functions of the Commissioner under this Law

4. (1) In carrying out his responsibilities under this Law the Commissioner shall-

- (a) receive and consider any report of the commission of a corruption offence and investigate such of the reports as he considers practicable;
- (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 he is required or authorised to do under this Law or any other law or which is necessary or expedient to do for achieving the purpose of this Law.

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

- (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 his responsibilities as an anti-corruption authority;
- (b) may, subject to subsection (3)-
  - (i) where information is disclosed to him 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 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 him under this Law;
- (d) shall retain a record for a minimum of five years of-
  - (i) all information received or disseminated by him; 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 he considers necessary or desirable for the discharge or performance of his responsibilities and functions;
- (f) shall collect, compile and annually publish, in such manner as he shall determine, statistical information relating to-
  - (i) disclosures made to him concerning proceeds or suspected proceeds of corruption offences;
  - (ii) any onward disclosures of such financial information by him; and
- (g) shall have, exercise and perform such other responsibilities, powers, functions and duties as may be assigned to him 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 Commissioner, 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 Commissioner, it appears to him that a person has committed a corruption offence or any other offence discovered during the investigation, he 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) The Commissioner may, to such extent and subject to such restrictions and conditions as he may think proper, by written instrument delegate any or all of his functions, duties and powers to any constable other than this power of delegation; and the Commissioner may, for the purposes of this Law, establish a unit or department within the Police Force to deal with matters arising under this Law.

(9) A delegation under subsection (8) is revocable at will and does not prevent the exercise by the Commissioner of any function so delegated.

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

Oversight by the  
Governor

5. 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 Commissioner;
- (c) reviewing annual reports submitted by the Commissioner under section 8;

- (d) promoting effective collaboration between regulators and law enforcement agencies; and
- (e) monitoring interaction and co-operation with overseas anti-corruption authorities.

6. The Governor, in his discretion, may give to the Commissioner directions as to the policy to be followed in the exercise and performance of his functions in relation to matters appearing to the Governor to concern the public interest, and the Commissioner shall give effect to any such directions.

Issue of policy directions to the Commissioner

7. Notwithstanding the provisions of any other Law the Commissioner 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.

Commissioner restricted from providing information

8. The Commissioner shall-

Annual report of Commissioner

- (a) advise the Governor on the work related to this Law in particular on matters that could affect public policy or the priorities to be set by the Commissioner; 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.

### PART III

#### OFFENCES

9. (1) A member of the Legislative Assembly who-

Bribery of legislative members.

- (a) accepts or obtains;
- (b) agrees to accept or obtain; or
- (c) or attempts to accept or obtain,

any loan, reward, advantage or other benefit for himself or another person in respect of anything done or omitted or to be done or omitted by him in his official capacity commits an offence.

(2) A person who gives or offers, corruptly, to a member of the Legislative Assembly any loan, reward, advantage or other benefit in respect of anything done or omitted to be done by him in his official capacity for himself or another person 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.

Bribery of public officers

10. (1) A public officer who-
- (a) accepts or obtains;
  - (b) agrees to accept or obtain; or
  - (c) attempts 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,
  - (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 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 public officer or to any member of the public officer's family, or to any one for the benefit of a public officer; or
    - (ii) being a public officer, 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 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 public officer of a government entity with which he deals, or to any member of the public officer's family, or to any one for the benefit of 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, 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 or with a minister of the Government 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 minister of the Government 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 subparagraph (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.

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 -

Contractor subscribing  
to election fund

- (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

13. A public officer 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 touching any sum payable or claimed to be payable to himself or to any other person, or touching 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 touching any such matter which is, to his knowledge, false in any material particular,

commits an offence.

17. (1) A public officer 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 liable on summary conviction to imprisonment for a term of two years.

Abuse of office

(2) If the act 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 who is authorised or required by law to give any certificate touching 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

19. (1) A public officer 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 Commissioner 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.

Duty of a public officer to whom a bribe is offered

(2) A person who fails to comply with subsection (1) commits an offence and shall on summary conviction be liable 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 Commissioner 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.

Secret commissions

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

- (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.

(3) 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

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

- (a) as consideration for an act or omission by the official in connection with the performance of the officer's duties or functions; or

- (b) to induce the officer to use his position to influence any acts or decisions of the foreign state or public international organisation for which the official 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 Commissioner, 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 Commissioner 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.

22. A person is not guilty of an offence under section 21 if the loan, reward, advantage or other benefit-

Savings provision relating to section 21

- (a) is permitted or required under the laws of the foreign state 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 state for which the officer performs duties or functions.

Facilitation payments

23. (1) For the purpose of section 21, a payment is not a loan, reward, advantage or other benefit to obtain or retain an advantage in the course of business, if 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-

- (a) the issuance of a permit, licence or other document to qualify a person to do business;
- (b) the processing of official documents, such as visas and work permits;
- (c) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and
- (d) 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.

(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.

False statements to the Commissioner

24. (1) Where a person makes or causes any other person to make to the Commissioner or to a constable, in the course of the Commissioner 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 Commissioner or to a constable, in the course of the Commissioner 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 Commissioner 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**

25. In any proceedings against a person for a corruption offence, it may be proved that at or about the time of the alleged offence, or at any time thereafter, the accused, or any member of his family or associate of his-

Evidence of pecuniary resources or property

- (a) held any property for which he, his family member or associate, as the case may be, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control; or
- (b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it is to be acquired,

and the evidence in relation thereto shall be presumed to support any evidence relating to the commission of the corruption offence.

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

Evidence of accomplice

- (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  
Commissioner

27. (1) The Commissioner 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 Commissioner under this Law.
- (2) The Commissioner-
- (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 Commissioner shall, without charge, make available for inspection at such offices as he 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 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).

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 Commissioner 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.

28. 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

29. (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 30 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 this section, 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.

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 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 29(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 29(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 29 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

31. (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.

32. (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.

33. 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 authorized 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.

- Other law enforcement agencies
- 2004 Revision
34. The Commissioner –
- (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.

**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**

**GENERAL**

- Protection of informers
36. (1) Where a person discloses to the Commissioner or to a constable information concerning proceeds or suspected proceeds of corruption offences 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 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 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.

37. No written law or rule of law preventing proceedings in the Legislative Assembly being impeached or questioned in any court or place out 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.

38. (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 41, 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

39. (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) 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

40. (1) This section applies to an authorisation under section 39(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.

41. Notwithstanding anything contained in this Law neither the Commissioner 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; and
- (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.

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

Consent to prosecution

43. 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

44. 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

45. 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.

Abolition of existing offences etc.

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

2007 Revision

(2) Schedule 1 contains consequential amendments to the Limitation Law (1999 Revision).

Application

47. (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

48. (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

49. (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.

50. 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.

51. 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

### **FIRST SCHEDULE**

(Section 46)

#### AMENDMENT TO THE LIMITATION LAW (1999 REVISION)

1. In the arrangement of sections relating to section 37 insert after the word “fraud” the words “corrupt conduct”.
2. In section 2 insert the following definition in its appropriate alphabetical order-  
  
“corrupt conduct” means an offence under the Anti-Corruption Law, 2007.
3. In section 27(1)(a) insert after the word “fraud” the words “,corrupt conduct”.
4. In the marginal note to section 37 and in section 37 insert after the word “fraud” wherever it appears the words “corrupt conduct”.

Passed by the Legislative Assembly this    day of    , 2007

Speaker.

Clerk of the Legislative Assembly