

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE ANTI-CORRUPTION LAW (2014
REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Anti-Corruption Law (2014 Revision) (“the principal Law”) in order to, among other things, change the composition, staffing and procedures of the Anti-Corruption Commission (“the Commission”), change certain definitions and to clarify the provisions relating to conflicts of interests.

Clause 1 contains the short title and the commencement provisions.

Clause 2 amends the definitions of “government entity”, “Police Force” and “public officer”. Clause 2 also deletes the definition of “constable” and defines “public function” and “investigating officer”.

Clause 3 amends the principal Law by inserting new sections 3A to 3E. Section 3A replaces paragraph 11 of the Schedule and provides for the appointment of staff of the Anti-Corruption Commission which would include a manager and other public officers. Section 3B provides that the Governor may approve the secondment of public officers to the office of the Anti-Corruption Commission.

Section 3C provides that the public officers to be appointed will include investigating officers who will investigate complaints of corruption made to the Commission. Section 3D provides that the investigating officers will have the power to arrest persons suspected to have committed an offence. Section 3E provides that the manager, on behalf of the Commission, may appoint consultants and experts to assist the Commission in the performance of its functions.

Clause 4 amends section 4(2) of the principal Law to provide that the Commission may enter into a written agreement or arrangement with any local law enforcement authority in order to obtain assistance in carrying out its duties under this legislation.

Clause 5 amends the principal Law by inserting a new section 4A which would give the Commission authority to delegate any of its powers, duties and functions to the Commissioner of Police. The Commissioner would also be able to sub-delegate in accordance with terms and conditions set out in the delegation by the Commission.

Clause 6 repeals and replaces section 19 of the principal Law which deals with conflicts of interest. This was required in order to clarify the persons to whom the conflict of interest provisions would apply.

Clause 7 amends section 20 of the principal Law by deleting references to the word “constable”. It is proposed that the Police Service would only have those powers under the legislation which are delegated under section 4A.

Clauses 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 amend sections 25, 28, 29, 30, 31, 32, 34, 37, 42 and 45 of the principal Law respectively in order to transfer the powers and duties of a constable to an investigating officer. Clause 12 also corrects a minor typographical error in section 31.

Clause 18 amends section 46 of the principal Law in order to provide that regulations required under the legislation will be made by the Cabinet and not by the Governor in Cabinet.

Clause 19 amends section 53 of the principal Law to substitute “Deputy Governor” for “Chief Secretary” which latter post no longer exists.

Clause 20 makes several amendments to the Schedule. The amendments include changes to the composition of the Commission. It is proposed that the Commission would no longer be comprised of any public officers but the Commission may invite the Auditor General or the Commissioner of Police to attend any meeting of the Commission to report on their work which relates to anti-corruption matters.

Another amendment relates to the tenure of office of the members of the Commission. The tenure is currently five years and it is proposed to reduce this to three years or less. The members will also only be eligible for re-appointment for one further term.

Also clause 20 amends the Schedule by repealing paragraph 11 which contains provisions relating to the staff of the Commission. It is necessary to repeal paragraph 11 in light of the new section in clause 3.

Clause 21 contains transitional provisions.

THE ANTI-CORRUPTION (AMENDMENT) BILL, 2016

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 2 of the Anti-Corruption Law (2014 Revision) - interpretation
3. Insertion of new sections - appointment of staff of the Commission, etc.
4. Amendment of section 4 - powers, duties and functions of the Commission under this Law
5. Insertion of new section - delegation of powers, duties and functions of the Commission
6. Amendment of section 19 - conflicts of interests
7. Amendment of section 20 - duty of a public officer and member of the Legislative Assembly to whom a bribe is offered, etc.
8. Amendment of section 25 - false statements to the Commission
9. Amendment of section 28 - operations of the Commission
10. Amendment of section 29 - arrest without a warrant
11. Amendment of section 30 - order to make material available
12. Amendment of section 31 - authority for search
13. Amendment of section 32 - translation of seized documents
14. Amendment of section 34 - resisting or obstructing a constable
15. Amendment of section 37 - protection of informers
16. Amendment of section 42 - security of the Islands and access to documents, etc.
17. Amendment of section 45 - savings
18. Amendment of section 46 - Regulations
19. Amendment of section 53 - Annual report
20. Amendment of the Schedule
21. Transitional provisions

CAYMAN ISLANDS

A BILL FOR A LAW TO AMEND THE ANTI-CORRUPTION LAW (2014 REVISION); AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Anti-Corruption (Amendment) Law, 2016.

Short title and
commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.

2. The Anti-Corruption Law (2014 Revision), in this Law referred to as “the principal Law”, is amended in section 2 as follows -

Amendment of section 2
of the Anti-Corruption
Law (2014 Revision) -
interpretation

- (a) by deleting the definition of “constable”;
- (b) by deleting the definitions of “government entity”, “Police Force” and “public officer” and by substituting the following definitions -

“government entity” includes a ministry, portfolio, the Cabinet Office, Office of the Director of Public Prosecutions, the Office of the Complaints Commissioner, the Office of the Information Commissioner, the Audit Office, the Legislative Assembly, a statutory body, statutory authority and a government company;

(2014 Revision)

“Police Service” means the Royal Cayman Islands Police Service referred to in the Police Law (2014 Revision); and

“public officer” includes -

- (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, a mediator, 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;
 - (d) a member or employee of a statutory tribunal or commission of inquiry;
 - (e) a member, director or employee of a government company or statutory authority;
 - (f) a member, director or employee of a not for profit association controlled by the government; and
 - (g) a person appointed, selected or otherwise engaged to perform a public function; and
- (c) by inserting the following definitions in their appropriate alphabetical sequence -

“investigating officer” means a person appointed by the Governor in accordance with section 3A to investigate complaints under this Law and to carry out such other duties as may be provided in this Law; and

“public function” may include any activity performed a single time or continually, whether or not payment is received therefor, which is carried out by -

- (a) a person for, or on behalf of or under the direction of a government entity; or
- (b) a body, whether a government entity or a private body, providing services to the public.

Insertion of new sections
- appointment of staff of
the Commission, etc.

3. The principal Law is amended by inserting after section 3 the following sections -

“Appointment of staff of the
Commission

3A. (1) The Governor shall, appoint and employ at such remuneration and on such terms and conditions as are provided by law, a manager and such other public officers as the

Governor thinks are necessary for the proper carrying out of the provisions of this Law.

(2) The duties of the manager shall include -

- (a) organising and attending the meetings of the Commission;
- (b) recording the proceedings of the Commission and keeping the minutes of each meeting in proper form;
- (c) accepting and acknowledging complaints made to the Commission;
- (d) generally assisting the Commission in the performance of administrative duties relating to the work of the Commission as the Commission may require; and
- (e) supervising administratively the staff of the Commission.

Governor's power to make secondments

3B. The Governor may, subject to such conditions as he may impose, approve of the appointment of any public officer in the service of any government entity by way of secondment to any office with the Commission; and any public officer 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.

Investigating officers

3C. (1) Public officers appointed under sections 3A and 3B may include investigating officers who shall have the function of carrying out investigations in relation to any matter, whether or not involving an alleged offence, in respect of which the Commission exercises function under this Law or any other law.

(2) Subject to subsection (3),

investigating officers shall, for the purpose of performing their duties under this Law, have all the powers and immunities of constables acting generally in the ordinary course of their duty but shall not carry a firearm.

(3) An identity card in a form provided by the Commission and signed by the chairman shall be issued to each investigating officer and shall be evidence of the investigating officer's appointment.

(4) An investigating officer shall, if requested to do so, produce his identity card for inspection to any person in relation to whom the investigating officer is about to exercise, is exercising or has exercised a power under this Law.

(5) An investigating officer has the powers specified in this Law but, for the avoidance of doubt, is not a member of the Police Service and is not subject to-

(2014 Revision)

- (a) direction or control by the Commissioner of Police; or
- (b) the Police Law (2014 Revision) or regulations made under that Law.

(6) An investigating officer shall be supervised in the performance of his investigatory duties by a senior investigating officer appointed under this Law.

Powers of arrest

3D. (1) In carrying out functions under this Law, an investigating officer has the powers of a constable to arrest any person whom the investigating officer reasonably suspects has committed a corruption offence or any other offence which the investigating officer reasonably suspects is related to such corruption offence and which is punishable by imprisonment under this Law or under any

other Law.

(2) After making an arrest, the investigating officer shall deliver the person arrested to the custody of the Police Service to be further dealt with according to law.

Appointment of consultants and experts

3E. (1) The manager, acting on behalf of and with the approval of the Commission, may appoint consultants and experts to assist the Commission in the performance of its functions.

(2) The consultants and experts appointed under subsection (1) may be paid such remuneration as the Commission may, after consultation with the Governor, approve.

(3) Any remuneration paid pursuant to subsection (2) shall be paid out of the revenue of the Islands.”.

4. The principal Law is amended in section 4(2) by inserting after paragraph (e) the following paragraph -

Amendment of section 4
- powers, duties and functions of the Commission under this Law

“(ea) may enter into any agreement or arrangement, in writing, with any local law enforcement authority, where it considers it necessary or desirable to do so for the discharge or performance of its powers, duties and functions;”.

5. The principal Law is amended by inserting after section 4 the following section -

Insertion of new section
- delegation of powers, duties and functions of the Commission

“Delegation of powers, duties and functions of the Commission

4A. (1) The Commission may delegate any of its powers, duties and functions under this Law to the Commissioner of Police in accordance with this section.

(2) The Commissioner of Police may sub-delegate a power, duty or function delegated under subsection (1) but only in accordance with the terms and conditions of a delegation under subsection (1).

(3) Subject to subsection (2), a sub-

delegation under this section may be made to a specified person or person of a specified group or to the holder or holders for the time being of a specified office or offices, and various powers may respectively be delegated to different persons.

(4) A delegation under this section -

- (a) shall be in writing;
- (b) may be made on such terms and conditions as the Commission thinks fit; and
- (c) may be amended or revoked at any time by written notice from the Commission.

(5) Except to the extent that the terms and conditions of the delegation otherwise provide, the Commissioner of Police or a sub-delegate may exercise any power, duty or function in the same manner and with the same effect as if the power, duty or function had been conferred on the Commissioner of Police or the sub-delegate directly and not by delegation.

(6) A delegation under this section shall not affect or prevent the exercise of any of the powers, duties and functions of the Commission nor shall any such delegation affect the responsibility of the Commission for the actions of the Commissioner of Police or a sub-delegate; and once a decision is made, the decision shall, for all purposes, be as good as having been made by the Commission.”.

Amendment of section
19- conflicts of interests

6. The principal Law is amended by repealing section 19 and by substituting the following section-

“Conflicts of interests

19. (1) Where a government entity proposes to deal with a company, partnership or other undertaking in which -

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

associate, of any person specified
in paragraphs (a) or (b),

has a direct, indirect or beneficial interest in such
company, partnership or undertaking; or

- (d) any person specified in
paragraphs (a), (b) or (c) 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 in relation to a government
entity -

- (a) a public officer of the entity;
- (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 the
government entity 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 or decisions 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.”.

Amendment of section 20 - duty of a public officer and member of the Legislative Assembly to whom a bribe is offered, etc.

7. The principal Law is amended in section 20 as follows -

- (a) in subsection (1), by deleting the words “or a constable”;
- (b) in subsection (3), by deleting the words “or to a constable”; and
- (c) in subsection (5), by deleting the words “or a constable”.

Amendment of section 25- false statements to the Commission

8. The principal Law is amended in section 25 as follows -

- (a) in subsection (1) -
 - (i) by deleting the words “a constable” and by substituting the words “an investigating officer”; and
 - (ii) by deleting the words “such constable” and by substituting the words “such investigating officer”;
- (b) in subsection (2) -
 - (i) by deleting the words “a constable” wherever they appear and by substituting the words “an investigating officer”; and
 - (ii) by deleting the words “such constable” and by substituting the words “such investigating officer”.

Amendment of section 28- operations of the Commission

9. The principal Law is amended in section 28 as follows -

- (a) by deleting subsection (4) and by substituting the following subsection-

“(4) Where the Commission has reason to suspect the commission of an offence under this Law following a report made under this Law or information otherwise received by it, the Commission shall direct an investigating officer to carry out an investigation and for such purpose the investigating officer may exercise all the powers of investigation provided for under this Law and the Criminal Procedure Code (2014 Revision).”;

- (b) in subsections (5) and (6), by deleting the words “a constable” and by substituting the words “an investigating officer”; and
- (c) in subsection (7) -
 - (i) by deleting the words “a constable” and by substituting the words “an investigating officer”; and
 - (ii) by deleting the words “the constable” and by substituting the words “the investigating officer”.

(2014 Revision)

Amendment of section 29 - arrest without a warrant

10. The principal Law is amended in section 29 by deleting the words “A constable” and by substituting the words “An investigating officer”.

Amendment of section 30 -order to make material available

11. The principal Law is amended in section 30 as follows -

- (a) in subsection (1), by deleting the words “A constable” and by substituting the words “An investigating officer”;

- (b) in subsection (2)(a), by deleting the words “a constable” and by substituting the words “an investigating officer”; and
 - (c) in subsection (5), by deleting the words “a constable” and by substituting the words “an investigating officer”.
12. The principal Law is amended in section 31 as follows - Amendment of section 31- authority for search
- (a) in subsection (1), by deleting the words “A constable” and by substituting the words “An investigating officer”;
 - (b) in subsection (2), by deleting the words “the constable” and by substituting the words “the investigating officer”;
 - (c) in subsection (3)(c), by deleting the words “section 31” and by substituting the words “section 30”; and
 - (d) in subsections (4) and (5), by deleting the words “a constable” and by substituting the words “an investigating officer”.
13. The principal Law is amended in section 32(1) as follows - Amendment of section 32 - translation of seized documents
- (a) by deleting the words “a constable” and by substituting the words “an investigating officer”; and
 - (b) by deleting the words “the constable” and by substituting the words “the investigating officer”.
14. The principal Law is amended in section 34 as follows - Amendment of section 34- resisting or obstructing a constable
- (a) in the marginal note, by deleting the words “a constable” and by substituting the words “an investigating officer”;
 - (b) in paragraph (b), by deleting the words “any constable” and by substituting the words “any investigating officer”;
 - (c) in paragraphs (c) and (d), by deleting the words “a constable” and by substituting the words “an investigating officer”;
 - (d) in paragraph (e) -
 - (i) by deleting the words “a constable” and by substituting the words “an investigating officer”; and
 - (ii) by deleting the words “such constable” and by substituting the words “such investigating officer”.
15. The principal Law is amended in section 37(1) by deleting the words “a constable” and by substituting the words “an investigating officer”. Amendment of section 37 - protection of informers
16. The principal Law is amended in section 42 by deleting the words “a constable” and by substituting the words “an investigating officer”. Amendment of section 42 - security of the Islands and access to documents, etc.
17. The principal Law is amended in section 45 by deleting the words “a constable” and by substituting the words “an investigating officer”. Amendment of section 45- savings

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| Amendment of section
46- Regulations | 18. The principal Law is amended in section 46 by deleting the words “Governor in Cabinet” and by substituting the word “Cabinet”. |
| Amendment of section
53- Annual report | 19. The principal Law is amended in section 53 by deleting the words “Chief Secretary” and by substituting the words “Deputy Governor”. |
| Amendment of the
Schedule | 20. The principal Law is amended in the Schedule as follows - <ul style="list-style-type: none">(a) by repealing paragraph 1 and by substituting the following paragraph -<p style="margin-left: 40px;">“1. (1) The Commission shall consist of not less than five members appointed by the Governor and such members -</p><ul style="list-style-type: none">(a) shall be persons who, in the opinion of the Governor, are of high integrity and are able to exercise competence, diligence and sound judgement in fulfilling their responsibilities under this Law;(b) shall be residents of the Islands; and(c) may include -<ul style="list-style-type: none">(i) retired judges of the Grand Court or the Court of Appeal;(ii) retired police officers;(iii) retired justices of the peace or magistrates;(iv) chartered or certified accountants;(v) attorneys-at-law of ten or more years call or retired attorneys-at-law; and(vi) such other persons as the Governor considers qualified to be appointed.(2) The Governor, acting in his discretion, shall appoint one of the members to be chairman of the Commission for a period of three years or less.(3) A person shall not be qualified to hold office as a member of the Commission if he is a public officer or such other category of person as may be prescribed by Order of the Governor.”; |
- (b) in paragraph 2, by -
- (i) deleting the word “appointed” where it appears before the word “member”; and

- (ii) deleting the words “five years” and substituting the words “three years or less”;
- (c) by repealing paragraph 3 and by substituting the following -

“3. The members shall be eligible for re-appointment for one further term only and such term shall be for a period of three years or less.”;
- (d) in paragraph 4, by deleting the words “Commissioner of Police shall be chairman of the Commission” and by substituting the word “chairman”;
- (e) by repealing paragraph 5 and by substituting the following paragraph -

“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 such appointment shall be made in the same manner as would be required in the case of the substantive appointment.”;
- (f) in paragraph 6, by deleting the words “An appointed” and by substituting the word “A”;
- (g) in paragraph 7, by deleting the words “an appointed” and by substituting the word “a”;
- (h) in paragraph 8, by deleting the word “appointed” where it twice appears;
- (i) in paragraph 10(1), by deleting the word “appointed”;
- (j) by repealing paragraph 11;
- (k) in paragraph 13, by inserting after subparagraph (5) the following subparagraph -

“(6) The chairman may invite the Auditor General or the Commissioner of Police to attend any meeting of the Commission and to participate in such meeting or to provide information to the Commission on the areas of their work which relate to anti-corruption matters.”;
- (l) in paragraph 16 and the header to paragraph 16, by deleting the words “an appointed” and by substituting the word “a”; and
- (m) in paragraph 19, by inserting after the word “Commission” where it appears for the third time, the words “and the Commission may make rules for this purpose”.

21. The changes to the composition of the Commission as provided in this amending Law shall not affect any investigations or deliberations of the Commission which are ongoing under the principal Law on the date of the commencement of this amending Law; and any such investigations or

Transitional provisions

deliberations shall be continued and be dealt with under the principal Law as amended by this amending Law.

Made by the Legislative Assembly this day of , 2016.

Speaker

Clerk of the Legislative Assembly