

**CAYMAN ISLANDS**



# **ANTI-CORRUPTION (AMENDMENT) BILL, 2022**

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**A BILL FOR AN ACT TO AMEND THE ANTI-CORRUPTION ACT (2019 REVISION) IN ORDER TO DESIGNATE THE ANTI-CORRUPTION COMMISSION AS A LAW ENFORCEMENT AGENCY IN THE ISLANDS; TO PROVIDE FOR ADDITIONAL POWERS OF INVESTIGATING OFFICERS; TO CLARIFY THE CIRCUMSTANCES IN WHICH THE COMMISSION SHALL INVESTIGATE REPORTS; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Portfolio of Legal Affairs (PLA)



## Memorandum of OBJECTS AND REASONS

This Bill seeks to amend the Anti-Corruption Act (2019 Revision) (the “principal Act”) in order to designate the Anti-Corruption Commission as a law enforcement agency in the Cayman Islands, to confer additional powers on investigating officers, to clarify the circumstances in which the Commission shall investigate reports, and to provide for incidental and connected purposes.

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

Clause 2 amends section 2 of the principal Act, among other things, to provide a definition of the words “financial year”.

Clause 3 amends section 3 of the principal Act to designate the Commission as a law enforcement agency in the Cayman Islands. The amendment is required in order to clarify the Commission’s role, since some overseas law enforcement agencies have raised a question as to the official status of the Commission as a law enforcement agency.

Clause 4 amends section 3A of the principal Act to enable the manager of the Commission’s staff to delegate, to a senior investigating officer, the duty of accepting and acknowledging complaints made to the Commission. The manager would still be able to perform this duty if desired, but delegation of the duty would ensure that evidence is dealt with by someone who is trained to deal with investigations.

Clause 5 amends the principal Act to insert a proposed new section 3DA. The proposed new section stipulates that an investigating officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the investigating officer has reasonable grounds to believe that the arrested person may present a danger to himself, herself or others.

The section also confers on an investigating officer power to search the arrested person and to enter and search, without a warrant, any premises in which the arrested person was when arrested, to the extent and for the purposes set out in the section.

Clause 6 amends section 4 of the principal Act to make it clear that the Commission is not legally bound to investigate every report that it receives. The amended section specifies the circumstances in which the Commission is required to investigate a report, including where the Commission has reason to suspect the commission of an offence under the principal Act or an attempt to commit an offence under the principal Act.

Clause 7 repeals section 17 of the principal Act and substitutes a new section 17 which reclassifies the offence of abuse of office as an indictable offence and increases the penalty attached to the offence.

Clause 8 amends section 20 of the principal Act to make it mandatory for a person to whom a loan, reward, advantage or other benefit is offered in contravention of the principal Act to report this to the Commission “at the earliest opportunity thereafter”.

Clause 9 repeals subsection (4) of section 22 of the principal Act. That subsection empowered the Commission to issue guidelines not later than six months after the date of the commencement of the principal Act. Since that period has now expired, subsection (4) is repealed.

Clause 10 amends the principal Act to insert a proposed new section 25A. The proposed new section makes it clear that a senior investigating officer has power to obtain communications data from service providers for the prevention or detection of crime or for the purposes of criminal proceedings.

Clause 11 amends section 28 of the principal Act to provide that the responsibility of declining to investigate a report and the responsibility of declining to proceed further with an investigation, rest with the Commission rather than with the investigating officer.

Clause 12 amends section 30(9) of the principal Act to correct an internal cross-referencing error. The clause also amends section 30(11) of the principal Act in order to tidy up the wording of the penalty for making a disclosure which is likely to prejudice an investigation.

Clause 13 amends the principal Act to insert a proposed new section 31A. The proposed new section 31A prescribes offences relating to making a disclosure which is likely to prejudice an investigation for which a warrant was issued under section 31.

Clause 14 amends a heading in Part VI of the principal Act in order to update a reference to the year of Revision of a particular Act.

Clause 15 amends section 35 of the principal Act to provide that, when applying the Proceeds of Crime Act (2020 Revision) in a trial for an offence under the Anti-Corruption Act (2019 Revision), references to an “appropriate officer” or “senior appropriate officer” under the Proceeds of Crime Act (2020 Revision) shall be construed as including an investigating officer or senior investigating officer appointed under the Anti-Corruption Act (2019 Revision).



## CAYMAN ISLANDS



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ENACTED by the Legislature of the Cayman Islands.

**Short title and commencement**

1. (1) This Act may be cited as the Anti-Corruption (Amendment) Act, 2022.
- (2) This Act shall come into force on such date as may be appointed by Order made by the Cabinet and different dates may be appointed for different provisions of this Act and in relation to different matters.

**Amendment of section 2 of the Anti-Corruption Act (2019 Revision) - definitions**

2. The *Anti-Corruption Act (2019 Revision)*, in this Act referred to as the “principal Act”, is amended in section 2 as follows —
  - (a) by deleting the section heading and substituting the following section heading —

“**Interpretation**”; and

- (b) by inserting, after the definition of the word “**exercise**” the following definition —

“ “**financial year**” means a year ending on 31st December.”.

### **Amendment of section 3 - establishment of the Commission**

3. The principal Act is amended in section 3(2) by deleting the words “and has the powers, duties and functions set out in this Law” and substituting the words “, has the powers, duties and functions set out in this Act and is a law enforcement agency in the Islands”.

### **Amendment of section 3A - appointment of staff of the Commission**

4. The principal Act is amended in section 3A(2)(c), by inserting after the word “Commission” the words “, either personally or by delegating such duties to a senior investigating officer”.

### **Insertion of section 3DA - power of search upon arrest**

5. The principal Act is amended by inserting after section 3D the following section —

#### **“Power of search upon arrest**

**3DA.**(1) An investigating officer may search an arrested person, in any case where the person to be searched has been arrested at a place other than a police station, if the investigating officer has reasonable grounds to believe that the arrested person may present a danger to himself, herself or others.

- (2) Subject to subsections (3) to (5), an investigating officer shall also have power in that case —

(a) to search the arrested person for anything —

(i) which the arrested person might use to assist in escaping from lawful custody; or

(ii) which might be evidence relating to an offence; and

(b) to enter and search any premises without a warrant in which the arrested person was when arrested or immediately before the arrested person was arrested for evidence relating to the offence for which the arrested person was arrested.

- (3) The power to search conferred by subsection (2) is only a power to search to the extent that is reasonably required for the purpose of discovering any such thing or any such evidence.

- (4) The powers conferred by this section to search an arrested person —





- (a) are not to be construed as authorising an investigating officer to require an arrested person to remove any more of the arrested person's clothing in public than is reasonably necessary; and
  - (b) are to be construed as authorising a search of the arrested person's mouth.
- (5) An investigating officer may not search an arrested person in the exercise of the power conferred by subsection (2)(a) unless the investigating officer has reasonable grounds to believe that the arrested person may have concealed on his or her person, anything for which a search is permitted under subsection (2)(a).
- (6) An investigating officer may not search premises in the exercise of the powers conferred by subsection (2)(b) unless the investigating officer has reasonable grounds to believe that there is evidence for which the search is permitted under subsection (2)(b).
- (7) An investigating officer searching an arrested person in the exercise of the power conferred by subsection (1) may seize and retain anything the investigating officer finds, if the investigating officer has reasonable grounds to believe that the arrested person searched might use it to cause physical injury to himself, herself or any other person.
- (8) An investigating officer searching an arrested person in the exercise of the power conferred by subsection (2)(a) may seize and retain anything the investigating officer finds, if the investigating officer has reasonable grounds to believe —
- (a) that the arrested person might use it to assist himself or herself in escaping from lawful custody; or
  - (b) that it is evidence of an offence or has been obtained in consequence of the commission of an offence.
- (9) The search of an arrested person under this section shall be carried out by an investigating officer of the same gender as the arrested person.
- (10) This section is without prejudice to the court's power under section 31 to issue a warrant authorising a search of specified premises.”.

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

6. The principal Act is amended in section 4 as follows —

- (a) in subsection (1), by repealing paragraph (a) and substituting the following paragraph —

- “(a) receive and consider any report of the alleged or suspected commission of a corruption offence and, subject to this Act, investigate such report where the Commission has reason to suspect —
  - (i) the commission of an offence under this Act;
  - (ii) an attempt to commit an offence under this Act; or
  - (iii) any conspiracy to commit an offence under this Act;”;and
- (b) in subsection (2)(ea) —
  - (i) by deleting the words “of arrangement” and substituting the words “or arrangement”;
  - (ii) by inserting after the words “local law enforcement authority” the words “or local body”; and
  - (iii) by deleting the words “of performance” and substituting the words “or performance”.

### **Repeal and substitution of section 17 - abuse of office**

7. The principal Act is amended by repealing section 17 and substituting the following section —

#### **“Abuse of office**

17. (1) A public officer or a member of the Parliament who intentionally does, or directs to be done, in abuse of the authority of his or her office, any arbitrary act prejudicial to the rights of another person commits an offence and is liable on conviction on indictment to imprisonment for a term of four years.
- (2) If a public officer or a member of the Parliament intentionally does, or directs to be done, the act under subsection (1) for the purposes of a loan, reward, advantage or other benefit, the public officer or the member of Parliament 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 Parliament to whom a bribe is offered etc.**

8. The principal Act is amended in section 20 as follows —

- (a) in subsection (1), by inserting after the words “this Act shall” the words “, at the earliest opportunity thereafter,”; and
- (b) in subsection (5) —
  - (i) in paragraph (c), by deleting the semi-colon and substituting a comma; and



- (ii) by inserting after the words “this Act, shall” the words “, at the earliest opportunity thereafter,”.

**Amendment of section 22 - bribing a foreign public officer**

9. The principal Act is amended in section 22 by repealing subsection (4).

**Insertion of section 25A - refusal of an ICT licensee to produce records to a senior investigating officer**

10. The principal Act is amended by inserting after section 25 the following section —

**“Refusal of an ICT licensee to produce records to a senior investigating officer**

**25A.** (1) An ICT licensee shall comply with a request of a senior investigating officer to produce any document, message, record, thing, statement or information, whether in electronic form or otherwise, relating to its ICT network, ICT service or the users thereof and required by a senior investigating officer appointed under this Act, upon the written request of a senior investigating officer, for the prevention or detection of crime or for the purposes of any criminal proceedings.

(2) Subject to subsection (3), an ICT licensee who —

- (a) without reasonable excuse, refuses or fails to produce any document, message, record, thing, statement or information, whether in electronic form or otherwise, relating to its ICT network, ICT service or the users of its ICT network or ICT service and required by a senior investigating officer appointed under this Act, upon the written request of a senior investigating officer appointed under this Act, for the prevention or detection of crime or for the purposes of any criminal proceedings;
- (b) without reasonable excuse, destroys or alters, or causes to be destroyed or altered, any document, message, record, thing, statement or information, whether in electronic form or otherwise, relating to its ICT network, ICT service or the users of its ICT network or ICT service and required, upon the written request of a senior investigating officer appointed under this Act, to be produced for the prevention or detection of crime or for the purposes of any criminal proceedings; or
- (c) knowingly gives false or misleading information to an investigating officer requiring the information, upon the written request of a senior investigating officer appointed under this Act, for the prevention or detection of crime or for the purposes of any criminal proceedings,

commits an offence and is liable, on summary conviction, to a fine of ten thousand dollars, or to imprisonment for a term of one year, or to both.

- (3) Subsection (2) applies to any document, including a reverse directory, message, record, thing, statement or information, whether in electronic form or otherwise, held by an ICT licensee and relating to its ICT network, ICT service or the users of its ICT network or ICT service, other than any such message transmitted earlier than 15th November, 2000.
- (4) For the purposes of this section —

“**ICT licensee**” means a person to whom a licence in respect of information and communications technology is granted under the *Information and Communications Technology Act (2019 Revision)*;

“**ICT network**” has the meaning assigned by section 2 of the *Information and Communications Technology Act (2019 Revision)*; and

“**ICT service**” has the meaning assigned by section 2 of the *Information and Communications Technology Act (2019 Revision)*.”.

### **Amendment of section 28 - operations of the Commission**

11. The principal Act is amended in section 28 as follows —

- (a) in subsection (1), by deleting the words “, after consultation with the Director of Public Prosecutions,”;
- (b) in subsection (2)(b), by deleting the words “, after consultation with the Director of Public Prosecutions,”;
- (c) in subsection (3), by deleting the words “subsection (2)” and substituting the words “subsection (1)”;
- (d) by repealing subsections (6) and (7) and substituting the following subsections —

“(6) Where, pursuant to subsection (4), the Commission directs an investigating officer to carry out an investigation, if, after consultation with the Director of Public Prosecutions, the investigating officer 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,

the investigating officer may recommend to the Commission that it decline to conduct an investigation into any report alleging an offence under this Act or to proceed further with any investigation.



- (7) Where, in accordance with subsection (6), the investigating officer wishes to recommend to the Commission that it decline to conduct an investigation into any report alleging an offence under this Act or to proceed further with any investigation —
- (a) the investigating officer shall —
    - (i) inform the Commission in writing of the recommendation; and
    - (ii) provide the Commission with the reasons for the recommendation and a statement indicating that the Director of Public Prosecutions was consulted prior to the recommendation being made; and
  - (b) the Commission, after reviewing the submissions referred to under paragraph (a) —
    - (i) may, in its discretion, follow the recommendation and, if it does so, the Commission may, in its discretion, inform the complainant or the subject of the complaint, in writing of its decision; and
    - (ii) shall not be bound to give reasons for its decision.”.

### **Amendment of section 30 - order to make material available**

**12.** The principal Act is amended in section 30 as follows —

- (a) in subsection (9), by deleting the words “section 29” and substituting the words “section 31”; and
- (b) in subsection (11), as follows —
  - (i) in paragraph (a), by deleting the words “to a fine of five thousand dollars and to imprisonment for a term of two years” and substituting the words “to a fine of five thousand dollars or to imprisonment for a term of two years, or to both”; and
  - (ii) in paragraph (b), by deleting the words “to a fine and to imprisonment for a term of five years” and substituting the words “to a fine or to imprisonment for a term of five years, or to both”.

### **Insertion of section 31A - offence in relation to an investigation under section 31**

**13.** The principal Act is amended by inserting after section 31 the following section —

**“Offence in relation to a warrant under section 31**

- 31A.**(1) Where, in relation to an investigation into an offence to which this Act applies, a warrant under section 31 has been issued, a person who, knowing or suspecting that the investigation is taking place, makes any disclosure which is likely to prejudice the investigation commits an offence.
- (2) In proceedings against a person for an offence under subsection (1), it is a defence for that person to prove —
- (a) that the person did not know or suspect that the disclosure was likely to prejudice the investigation; or
  - (b) that the person had lawful authority or reasonable excuse for making the disclosure.
- (3) A person who commits an offence under subsection (1) is liable —
- (a) on summary conviction, to a fine of five thousand dollars or to imprisonment for a term of two years, or to both; or
  - (b) on conviction on indictment, to a fine or to imprisonment for a term of five years, or to both.”.

**Amendment of Part heading of PART VI - application of the Proceeds of Crime Act (2018 Revision) to this Act**

- 14.** The principal Act is amended in Part VI, in the Part heading, by deleting the words “(2018 Revision)” and substituting the words “(2020 Revision)”.

**Amendment of section 35 - orders of the court in relation to the proceeds of a corruption offence**

- 15.** The principal Act is amended in section 35 as follows —
- (a) by renumbering section 35 as section 35(1);
  - (b) in section 35(1) as renumbered, by deleting the words “*Proceeds of Crime Act (2019 Revision)*” and substituting the words “*Proceeds of Crime Act (2020 Revision)*”; and



- (c) by inserting after section 35(1) as renumbered the following subsection —
- “(2) For the purposes of subsection (1), references to an “appropriate officer” or “senior appropriate officer” under the *Proceeds of Crime Act (2020 Revision)* shall be construed as including an investigating officer or senior investigating officer appointed under this Act.”.

**Passed by the Parliament the                      day of                      , 2022.**

*Speaker*

*Clerk of the Parliament*