

FACT SHEET 2018

Establishment and Mandate

Formation: 1 January 2010

Legal basis: Anti-Corruption Law (2018 Revision) (the “Law”)

The Law gives effect to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and to the United Nations Convention Against Corruption. The Law covers a broad range of local corruption offences by public officials, private individuals and entities. It extends to bribery of foreign public officials outside the Cayman Islands. Offences under the Law are extraditable.

Mission Statement

The mission of the Anti-Corruption Commission is “To enhance the stability, prosperity and reputation of the Cayman Islands by sustaining the confidence and trust of the community in the integrity and good governance of its government and public institutions through fighting corruption with just, fair and effective investigations.”

Principal powers, duties and functions under the Law

The Commission is responsible for the administration of the Law and shall:

- receive, consider and investigate reports to the Commission of corruption offences as set out in the Law (see Schedule 1 to the Report/Complaint Form contained in Appendix 1);
- receive and (including from overseas anti-corruption agencies) request, analyse and disseminate disclosures of information concerning corruption offences, or suspected offences; or required by any law in order to counter corruption; and
- detect and investigate suspected corruption offences, attempts to commit an offence, or conspiracies to commit an offence.

Additional powers, duties and functions under the Law

- Arrest any person who has committed or is suspected of having committed a corruption offence;
- Obtain evidence by search warrants with court approval;
- Freeze assets and confiscate proceeds of corruption offences with court approval;
- Refer the results of its investigations to the Director of Public Prosecutions (“DPP”) for disposition where it appears an offence has been committed;
- Assist with overseas investigations;

- Enter into assistance arrangements with overseas anti-corruption agencies with the consent of the Attorney General;
- Enter into assistance arrangements with any local law enforcement authority, for the discharge of performance of its powers, duties and functions;
- Advise the Governor on the Commission's work; and
- Submit an annual report to the Governor (available on our website).

To date, the Commission has entered into separate Memoranda of Understanding with the Royal Cayman Islands Police Service and the Financial Reporting Authority. In addition, the Commission is a signatory to a Multilateral Memorandum of Understanding by and between the Cayman Islands Monetary Authority, the Royal Cayman Islands Police Service, the Office of the DPP, the Cayman Islands Customs Department, the Cayman Islands Department of Commerce and Investment, and the Registrar of Companies.

Control, Oversight, and Policy Directions

The Governor has broad powers of oversight over the work of the Commission and may give to the Commission directions as to the policy to be followed in the exercise and performance of its functions. To date, the Governor has not issued any such directions.

The Commission may, after consultation with the Director of Public Prosecutions, issue guidelines setting out:

- (a) the forms and procedures for making a report of a corruption offence; and
- (b) the operational procedures in connection with disclosures made to the Commission.

To date, the Commission has issued the report/complaint form and media disclosure release. It is developing formal written policies and procedures.

Governance and Structure

In accordance with the Law, the Commission consists of not less than five members appointed by the Governor, one of whom is appointed the Chairman by the Governor.

The Commission is supported by the Commissions Secretariat comprising a Manager, a Senior Investigator, Investigators, Administrators/Analysts, an Office Administrator, and a Trainee Investigator. Appropriate safeguards are in place to ensure the security and confidentiality of the Commission's work and records.



Website Link

The Commission's website (www.anticorruptioncommission.ky) provides a source of information including minutes and reports. The site will be expanded to include policies and procedures as well as education and resources for preventing and reporting corruption in due course.

Appendix 1 – Report/Complaint Form

Part A – About you (OPTIONAL INFORMATION)

-
1. Name: Mr/Mrs/Miss/Ms: _____
 2. Physical Address: _____
 3. Mailing Address: P.O. Box _____ Postal Code: KY - _____
 4. Contact numbers: Work: _____ Cell: _____ Home: _____
 5. Email: _____

Part B – Your Report/Complaint

Whom are you reporting/complaining about (if known)?

1. Name: _____
2. Position: _____
3. Name of organisation: _____
4. Physical Address: _____
5. Mailing Address: P.O. Box _____ Postal Code: KY - _____
6. Contact numbers: Work: _____ Cell: _____ Home: _____
7. Email: _____

Why are you complaining to the Commission?

I believe or suspect the following offences (check all that apply) under the Anti-Corruption Law have been committed (see Schedule 1 for more information):

- Bribery of public officers and members of the Legislative Assembly
- Frauds on the Government
- Contractor subscribing to election fund
- Breach of trust by public officer or by a member of the Legislative Assembly
- Selling or purchasing office
- Influencing or negotiating appointments or dealing in offices
- False claims by public officers
- Abuse of office
- False certificates by public officers or by members of the Legislative Assembly
- Conflicts of interests
- Duty of a public officer and member of the Legislative Assembly to whom a bribe is offered etc.
- Secret commissions
- Bribing a foreign public officer
- False statements to the Commission
- Conspiracy, etc. to commit an offence under the Law

What are you reporting/complaining about?

Describe in detail the events that you want to make a report/complaint about. We need to know:

- What happened?
- When?
- Who was there?
- How did you become aware of this matter e.g. were you there, did someone tell you about it?
- When did you become aware of this matter?
- Why would you say that what happened was corrupt or wrong?

If you believe there is evidence which would support your report/complaint but which is not in your possession please describe this evidence, how you are aware of it, where it is held and by whom.

Are there any other people who may be aware of this matter and may be able to assist the Commission in investigating it? If so, who are they and how may they be contacted?

What do you want to happen as a result of making this report/complaint?

Have you reported, or complained about, this matter to any other person or agency? If so, to whom or to which agency? What was the outcome? Please attach any relevant correspondence.

Have you tried to resolve this matter in any other way? If yes, please give details and attach any relevant documents.

Are you willing for the Commission to contact you further regarding this matter? If so, how would you like the Commission to do this?

Telephone Cell _____ Work _____ Home _____

Mail P.O. Box _____ Postal Code: KY - _____

E-mail _____ Other _____

DECLARATION:

I hereby declare that the above information is true to the best of my knowledge and belief. I understand that providing false, misleading, or inconsistent information to an investigator acting on behalf of the Anti-Corruption Commission may amount to an offence for which the punishment, on conviction under section 25 of the Anti-Corruption Law (2016 Revision), may be a fine of up to KYD\$10,000 or a term of imprisonment of up to 3 years.

Signature: _____

Date: _____

Remember to:

- sign and date this document; and
- attach copies of any relevant documents.

Send your completed form to:
Manager, Commissions Secretariat
P.O. Box 391
Grand Cayman
CAYMAN ISLANDS KY1-1106
info@anticorruptioncommission.ky

Official Use Only

Case Reference Number: _____

Date and Time Received: _____

Name of Secretariat Representative: _____

Date Placed on the Commission Agenda: _____

Report/Complaint Accepted and Investigated: Yes No

Schedule 1 – Offences under Part III and VIII of the Anti-Corruption Law (2016 Revision)

Reports/complaints may be made to the Commission of the following alleged offences under sections 10-25 and 52 of the Law:-

Bribery of public officers and members of the Legislative Assembly

10. (1) A public officer or a member of the Legislative Assembly who directly or indirectly-

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

for himself or any other person, any loan, reward, advantage or other benefit with intent-

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

commits an offence.

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

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

Frauds on the Government

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

(a) directly or indirectly-

(i) he gives, offers or agrees to give or offer to-

- (A) a public officer;
- (B) a member of the Legislative Assembly;
- (C) a member of the family of a public officer;
- (D) a member of the family of a member of the Legislative Assembly; or
- (E) any person for the benefit of a public officer, a member of the Legislative Assembly or another person; or

(ii) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from any other person for himself or another person, a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-

- (A) the transaction of business with or any matter or business relating to the Government; or

- (B) a claim against the Government or any benefit that the Government is authorised or is entitled to bestow,
whether or not, in fact, the public officer or member of the Legislative Assembly is able to cooperate, render assistance, exercise influence or do or omit to do what is proposed, as the case may be;
- (b) having dealings of any kind with the Government, he pays a commission or reward to or confers an advantage or benefit of any kind on a member of the Legislative Assembly or a public officer of a government entity with which he deals, or to any member of the family of a member of the Legislative Assembly or a public officer, or to any one for the benefit of the member of the Legislative Assembly or the public officer, with respect to those dealings, unless he has the consent in writing of the chief officer of the government entity with which he deals, the proof of which lies on him;
- (c) being a public officer or a member of the Legislative Assembly, he demands, accepts or offers or agrees to accept from a person who has dealings with the Government a loan, reward, advantage or other benefit directly or indirectly, by himself or through a member of his family or through any one for his benefit, unless he has the consent in writing of the chief officer of the government entity that employs him or of which he is an official, the proof of which lies on him;
- (d) having or pretending to have influence with the Government, with a member of the Legislative Assembly or a public officer, he demands, accepts or offers or agrees to accept for himself or another person a loan, reward, advantage or other benefit as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-
- (i) anything mentioned in paragraph (a)(iii) or (iv); or
 - (ii) the appointment of any person, including himself, to an office;
- (e) he gives, offers or agrees to give or offer to a member of the Legislative Assembly or a public officer a loan, reward, advantage or other benefit of any kind as consideration for cooperation, assistance, exercise of influence or an act or omission in connection with-
- (i) anything mentioned in paragraph (a)(iii) or (iv); or
 - (ii) the appointment of any person, including himself, to an office; or
- (f) having made a tender to obtain a contract with the Government-
- (i) he gives, offers or agrees to give or offer to another person who has made a tender or to a member of that person's family, or to another person for the benefit of that person, a reward, advantage or other benefit as consideration for the withdrawal of the tender of that person; or
 - (ii) he demands, accepts or offers or agrees to accept from another person who has made a tender a loan, reward, advantage or other benefit as consideration for the withdrawal of his tender.

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

Contractor subscribing to election fund

12. (1) A person who, in order to obtain or retain a contract with the Government, or as a term of any such contract, whether express or implied, directly or indirectly subscribes or gives, or agrees to subscribe or give, to any person any loan, reward, advantage or other benefit-

(a) for the purpose of promoting the election of a candidate or a class or party of candidates to the Legislative Assembly; or

(b) with intent to influence or affect in any way the result of an election conducted for the purpose of electing persons to serve in the Legislative Assembly,

commits an offence.

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

Breach of trust by public officer or by a member of the Legislative Assembly

13. A public officer or a member of the Legislative Assembly who, in connection with the duties of his office, commits fraud or a breach of trust is liable on conviction on indictment to imprisonment for a term of five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

Selling or purchasing office

14. A person who-

(a) purports to sell or agrees to sell an appointment to or a resignation from a public office, or a consent to any such appointment or resignation, or receives or agrees to receive a reward or profit from the purported sale thereof; or

(b) purports to purchase or gives a loan, reward, advantage or other benefit for the purported purchase of any such appointment, resignation or consent, or agrees or promises to do so,

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

Influencing or negotiating appointments or dealing in offices

15. A person who-

(a) receives, agrees to receive, gives or procures to be given, directly or indirectly, a loan, reward, advantage or other benefit as consideration for cooperation, assistance or exercise of influence to secure the appointment of any other person to a public office;

(b) solicits, recommends or negotiates in any manner with respect to an appointment to or resignation from a public office, in expectation of a direct or indirect loan, reward, advantage or other benefit; or

(c) keeps without lawful authority, the proof of which lies on him, a place for transacting or negotiating any business relating to-

(i) the filling of vacancies in public offices;

(ii) the sale or purchase of public offices; or

(iii) appointments to or resignations from public offices,

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

False claims by public officers

16. A public officer who-

(a) is employed in such a capacity as to require him or enable him to furnish returns or statements relating to any sum payable or claimed to be payable to himself or to any other person, or relating to any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person; and

(b) makes a return or statement relating to any such matter which is, to his knowledge, false in any material particular, commits an offence.

Abuse of office

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

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

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

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

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.

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

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

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

(3) A person from whom any loan, reward, advantage or other benefit has been solicited or obtained, or an attempt has been made to obtain such loan, reward, advantage or other benefit, in contravention of any provision of this Law shall, at the earliest opportunity thereafter, report such soliciting or obtaining of, or attempt to obtain, the loan, reward, advantage or other benefit together with the full and true description and, if known, the name of the person who solicited, or obtained, or attempted to obtain, the loan, reward, advantage or other benefit from him to the Commission.

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

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

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

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

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

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

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

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

Secret commissions

21. (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.

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

Bribing a foreign public officer

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

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

(b) to induce the foreign public officer to use his position to influence any acts or decisions of the foreign country or public international organisation for which the officer performs duties or functions,

commits an offence.

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

(3) Where it appears to the Director of Public Prosecutions 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 Director of Public Prosecutions may, in his discretion, apply to the Grand Court for an order to enjoin such act or practice, and the court may, if it is satisfied upon the evidence, that such person is so engaged or is about to be so engaged as alleged, order a permanent injunction or a temporary restraining order without requiring a bond.

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

(a) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Government's enforcement policy, the Commission determines would be in conformance with the provisions of this section; and

(b) general precautionary procedures which persons may use on a voluntary basis to conform their conduct to the Government's enforcement policy regarding the provisions this section.

Savings provision relating to section 22

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

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

Facilitation payments

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

- (a) the value of the payment is small;
- (b) it is made to expedite or secure the performance by a foreign public officer of any act of a routine nature that is part of the foreign public officer's duties or functions, including-
 - (i) the issuance of a permit, licence or other document to qualify a person to do business;
 - (ii) the processing of official documents, such as visas and work permits;
 - (iii) the provision of services normally offered to the public, such as mail pick-up and delivery, telecommunication services and power and water supply; and
 - (iv) the provision of services normally provided as required, such as police protection, loading and unloading of cargo, the protection of perishable products or commodities from deterioration or the scheduling of inspections related to contract performance or transit of goods; and
- (c) as soon as practicable after the payment and the act of a routine nature performed by the foreign public officer occurred, the person made a record of the payment and the act and either the following applies-
 - (i) the person has retained that record at all relevant times; or
 - (ii) that record has been lost or destroyed because of the actions of another person over whom the first-mentioned person had no control, or because of a non-human act or event over which the first-mentioned person had no control, and the first-mentioned person could not reasonably be expected to have guarded against the bringing about of that loss or that destruction.

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

- (3) A report under this section shall set out-
 - (a) the value of the payment concerned;

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

False statements to the Commission

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

- (a) is false or intended to mislead; or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement regardless whether or not the person making the statement is under any legal or other obligation to tell the truth, he commits an offence and is liable on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years or to both.

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

- (a) is inconsistent with any statement previously made to the Commission or to an investigating; and
- (b) is made willfully, 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.

It is noted that some of these offences can only be committed by a public officer or a member of the Legislative Assembly while others can be committed by any member of the public.

For more details visit our website at www.anticorruptioncommission.ky.