

Corruption Reports/Complaints Procedure

1.0 Making a Report/Complaint

Anyone who reasonably believes or suspects that there has been an act of corruption in breach of the Anti-Corruption Act (2019 Revision) (as amended) (the “Act”), should complete and submit a Report/Complaint Form as set out in Appendix 1 (the “Report/Complaint Form”) to the Anti-Corruption Commission (the “Commission”). Reports/complaints should be made as soon as reasonably practicable after becoming aware of the conduct in question.

2.0 Submission of Reports/Complaints

Reports/complaints should be submitted to the Commission via the Senior Investigating Officer of the Commission (the “SIO”) to the following contact details:-

Phone: +1 (345) 244-3685

Website: www.anticorruptioncommission.ky

E-mail: info@anticorruptioncommission.ky; or Richard.Oliver@gov.ky

Mailing Address: P.O. Box 391 KY1-1106

Physical Address: 4th Floor George Town Financial Center, #90 Fort Street, George Town, Grand Cayman

Should any member of the Commission receive a report/complaint it will be forwarded forthwith to the SIO.

Members of the public making reports/complaints are encouraged to use the Report/Complaint Form whenever possible. The SIO, or any member of the Commission, receiving a verbal report/complaint by telephone call or otherwise should also complete the Report/Complaint Form (or a functionally equivalent written document containing all material facts) and submit it to the Commission.

3.0 Confidentiality

The Commission will keep confidential any information that it receives or acquires during the course of its work or duties, except insofar as the disclosure of any such information is required to enable the Commission to exercise its functions under the Act or otherwise required by law or order of a competent court. It will ensure that it deals with information appropriately and uses it only for the proper purposes of the Commission.

4.0 Conflicts of Interest

The work of the Commission will not be compromised or affected by any personal interest of Members or staff. The public interest comes first on all such occasions. Conflicts of interest, or the perception that they have arisen or may arise, can do great damage to the reputation of the Commission and its staff. Members and staff will declare to the Commission any conflicts of interest or potential conflicts of interest immediately. The Commission has appropriate procedures for dealing with any such conflicts.

If, in the view of the Commission, there is any conflict of interest or perceived conflict of interest, the relevant Member or staff must recuse himself or herself from all consideration of the matter in question and shall not be entitled to any information regarding the disposition of the matter by the Commission.

5.0 Protection of Providers of Information

The Commission will make every effort to protect, as far as legally possible, the identity of those providing information to the Commission. The Commission will encourage a caller, if information is provided verbally, to identify himself or herself and provide contact details, as it may be necessary in the future to seek additional information or clarification of information received. Information provided by a caller in such a manner will also be submitted to the Commission in a Report/Complaint Form completed by the SIO.

6.0 Reports/Complaints Procedure

6.1 Receipt and Recording of Reports/Complaints

Upon the receipt of a report/complaint, the SIO will assign the report/complaint a case number and record the same, including the time, place and manner in which the report/complaint was received. The SIO will coordinate with the Commission's Secretariat Manager to ensure the maintenance of appropriate administrative records.

6.2 Urgent Reports/Complaints

If urgent action appears necessary to the person making the report/complaint, this should be made clear in the report/complaint.

A report/complaint will be considered urgent by the SIO if it requires, or may require, immediate action in order to detect, prevent or otherwise deal with an alleged offence.

When an urgent report/complaint is received, the Report/Complaint Form shall be submitted to the Commission forthwith, with a summary (as set out in Appendix 2) (the "Summary") and any information relating to the degree of urgency and risk (if any) noted therein.

If the report/complaint is considered urgent, the Commission may authorise an investigating officer to take immediate appropriate action, as required or permitted under the Act, to deal expeditiously with the matter as described in sections 6.4.1, 6.4.5 and 7 below.

6.3 Non-urgent Reports/Complaints

When a non-urgent report/complaint is received, the SIO shall place the matter on the next Commission meeting agenda along with the completed Report/Complaint Form and Summary.

6.4 Initial Assessment

In all cases, an initial assessment will be made by the Commission to determine whether the report/complaint (either individually or when combined with other reports/complaints or information received) discloses a potential offence under the Act and/or a related offence as provided under the Act, or whether further information is required.

Following the initial assessment, a report/complaint will be dealt with as follows:

1. Where the Commission reasonably suspects that an offence under the Act, or that a related offence under the Act has been committed, the Commission will proceed as set out at section 7 below. Details of offences under the Act are set out in Appendix 3.
2. Where the report/complaint does not fall within 1. above, but the Commission reasonably suspects that an offence under some other act or a regulatory breach has been committed, the Commission will refer the matter to the relevant investigatory agency/regulatory body.
3. Where the report/complaint does not fall within 1. or 2. above, but raises issues that, in the view of the Commission, should be brought to the attention of a Government department, statutory body or agency, the Commission may refer the matter to such Government department or statutory body or agency, as appropriate.
4. Where the report/complaint does not fall within 1., 2., or 3. above, no further action will be taken by the Commission. If further information of relevance to a report / complaint is later received by the Commission, it may review its decision in this regard.
5. Where the Commission determines that further information should be obtained before it can decide whether to proceed as outlined at 1., 2., 3. or 4. above, the Commission may direct such further enquiries to be made as appear reasonably necessary.

6. Where the Commission (after consultation with the Director of Public Prosecutions) is satisfied that a report/complaint is trivial, frivolous, vexatious or not made in good faith, or that investigation / further investigation would be unnecessary, improper or futile, the Commission may determine to take no further action.

The Commission has absolute discretion whether to inform the maker of a report/complaint that any action is (or is not) to be taken in relation to their report/ complaint. However, the Commission's policy is to inform any identifiable maker of a report/ complaint of its decision and to give brief reasons, unless the Commission considers there is good reason not to.

It is also within the absolute discretion of the Commission whether to inform a person that they have been the subject of a report/complaint (and of its decision whether to take any action with respect to any such report/complaint).

The Commission will not disclose the identity of any person making a report/complaint unless required to do so by law.

7.0 Investigations Procedure - Suspected Corruption/Related Offences

7.1 Procedure following decision

Where a decision has been taken by the Commission that a report/complaint falls into section 6.1 above, the Commission shall direct an investigating officer to carry out an investigation into the matter.

7.2 Powers of investigators and legal advice

The investigators may seek to clarify issues by gathering further information, and by utilising all their powers under the Act and under the Criminal Procedure Code. Additionally, legal advice may be sought from the Office of the Director of Public Prosecutions in the course of an investigation. Investigators have powers of arrest, powers of search upon arrest and the power (exercisable with the approval of the Court) to obtain search warrants/production orders to obtain evidence or information.

8.0 Records

The Commission will keep records of all aspects of the investigation. These records will be kept confidential, except when otherwise required or permitted by law or any competent court.

9.0 Referral to the Director of Public Prosecutions

The Commission will refer the results of its investigations to the Office of the Director of Public Prosecutions for disposition, where it appears that behaviour amounting to an offence under the Act, or any other offence, has been committed. This will include all relevant information and evidence known to the investigators.

Appendix 1 – Report/Complaint Form

Part A – Your Details

1. Name: _____
2. Physical Address: _____
3. Mailing Address: P.O. Box _____ Postal Code: KY - _____
4. Contact numbers: Work: _____ Mobile: _____ Home: _____
5. Email: _____

Part B – Your Report/Complaint *(Please identify the person against whom this report/complaint is made)*

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

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

ACC ANTI-CORRUPTION COMMISSION

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, i.e. were you there, or 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? (*note that we only investigate corruption offences as specifically defined under the Anti-Corruption Act. Please refer to our website for an explanation of these offences.*)

Part C – Further information

Are you making this report/complaint on behalf of someone else? YES NO

If yes, how and when did you become aware of the incident?

Do you have any documents, or other evidence, in your possession which supports your report/complaint? If so, please describe and attach.

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?

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

Telephone Mobile _____ Work _____ Home _____ Other _____

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 Act (2019 Revision) (as amended), 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 in person, via post or email to:

Senior Investigating Officer,
Anti-Corruption Commission
4th Floor, George Town Financial Centre
90 Fort Street, George Town
P.O. Box 391
Grand Cayman, KY1-1106
CAYMAN ISLANDS

info@anticorruptioncommission.ky or richard.oliver@gov.ky

For Official Use Only

Case Reference Number: _____

Date and Time Received: _____

Name of Secretariat Representative: _____

Date Placed on the Commission Agenda: _____

Report/Complaint Subject to Further Action: _____

Privacy Notice

The personal information collected on this form is for the purpose of processing a complaint pursuant to s.4 of the Anti-Corruption Act (2019 Revision) (as amended) (“Act”). Your personal data will be stored securely and may only be accessed by authorised employees.

Your personal data will be shared only as required in order to establish a proceeding before the Anti-Corruption Commission (ACC), to enable the ACC to exercise our functions under the Act or otherwise required by law or order of a competent court. The ACC will ensure that we deal with personal data appropriately and use it only for the purposes of collection.

We will share your data if we are required to do so by law – e.g., if court ordered, or if your complaint is required to be referred to another agency, e.g. the Attorney General’s Chambers, the Royal Cayman Islands Police, or the Director of Public Prosecutions; however, we will make every effort to inform you before this happens and will only disclose the minimum amount of data required to fulfill the request.

We will never rent, sell or share your information with third parties for marketing purposes or purposes other than those described in the paragraph immediately above. Our full Privacy Notice can be reviewed on our website at <https://anticorruptioncommission.ky>.

Any questions regarding this privacy notice and/or our privacy practices should be sent by email to the Information Manager at info@anticorruptioncommission.ky. Information about your data rights and any complaints regarding the processing of your personal information can be found at <https://ombudsman.ky/data-protection>.

Appendix 2 – Summary of Report/Complaint

Part A – Report/Complaint Details

Case Reference Number: _____

Date and Time Received: _____

Name of Secretariat Recipient: _____

Part B – Subject(s) of Report/Complaint

1. Name: _____

2. Position: _____

3. Name of organisation: _____

1. Name: _____

2. Position: _____

3. Name of organisation: _____

Part C – Summary of Report/Complaint

Part D – Assessment of Report by SIO

Does the matter fall under the remit of the Act? YES NO UNCLEAR

If yes, set out the potential offence(s) with reference to the Act.

Does the content of the report indicate any urgency and/or risk? YES NO

Please provide a summary of assessment.

Part E – Referral by SIO to Commission

Summary prepared by: _____

Date summary prepared: _____

Action Taken: Placed on the Commission Agenda _____ Date: _____

Urgently forwarded to Commission _____ Date: _____

Part F – Commission Decisions

Report/Complaint Subject to Further Action: YES NO

Rationale:

Appendix 3 – Offences under Part III and VIII of the Anti-Corruption Act (2019 Revision) (as amended).

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

Bribery of public officers and members of Parliament

10. (1) A public officer or a member of Parliament 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 Parliament 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 Parliament;
- (C) a member of the family of a public officer;
- (D) a member of the family of a member of Parliament; or
- (E) any person for the benefit of a public officer, a member of Parliament or another person; or

(ii) being a public officer or a member of Parliament, 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 Parliament 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 Parliament or a public officer of a government entity with which he deals, or to any member of the family of a member of Parliament or a public officer, or to any one for the benefit of the member of Parliament 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 Parliament, 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 Parliament 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)(ii)(A) or (B); 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 Parliament 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)(ii)(A) or (B); 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 Parliament; 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 Parliament,

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 Parliament

13. A public officer or a member of Parliament 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 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.

False certificates by public officers or by members of Parliament

18. A public officer or a member of Parliament 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 Parliament; 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 Parliament 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 Parliament; or
- (c) a member of the family, or an associate, of either the public officer or the member of Parliament,

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

(3) A public officer or member of Parliament 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 Parliament to whom a bribe is offered etc.

20. (1) A public officer or a member of Parliament to whom any loan, reward, advantage or other benefit is given, promised, or offered, in contravention of any provision of this Act shall, at the earliest opportunity thereafter, 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 Act 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 Parliament who has reasonable cause to believe that another public officer or a member of Parliament 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 Act, shall, at the earliest opportunity thereafter, 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 Parliament.

(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.

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 Act, 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 Act, 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

ACC ANTI-CORRUPTION COMMISSION

(b) is not consistent with any other statement previously made by such person to any other person having authority or power under any act, 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 Act, subsequently thereto makes any other statement to any person having authority or power under any act, 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 Parliament while others can be committed by any member of the public.

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