

Policies and Procedures Manual

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Preface

The Anti-Corruption Commission (the “Commission”) was created by the Anti-Corruption Law 2008, which came into force on 1 January 2010 and is now the Anti-Corruption Act (2019 Revision) (as amended) (the “Act”).

The Commission comprises a chairman (the “Chairman”) and not less than four other members of the public (“Members”), none of whom can be public officers and all of whom “in the opinion of the Governor are of high integrity and are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities”. It has an investigative branch, led by a Senior Investigating Officer (the “SIO”).

The Commission is responsible for the administration of the Act and the investigation of corruption. If, following an investigation, it appears to the Commission that an offence has been committed, the matter is referred to the Director of Public Prosecutions (the “DPP”) for disposition.

The Commission’s Mission Statement 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”.

The composition and functions of the Commission are set out in the Act.

The introduction and passage of the Act, and the establishment of the Commission under it, demonstrate the Cayman Islands government’s recognition of the existence of corruption and its willingness to put in place legislative support to identify and prosecute acts of corruption.

The Commission is authorised by law to work alongside partner agencies, at both local and international levels, to achieve the goals of the Act, the OECD Convention Against Bribery and the United Nations Convention against Corruption (which was extended to the Cayman Islands in 2020).

Communication and transparency are essential components of the kind of open and corruption-free society that the Act seeks to encourage. The people of the Cayman Islands must have confidence in the Commission operating as an active and responsive weapon against corruption, including not only responding to reports and investigating complaints but also engaging with the community in ways directed towards the prevention and early detection of corruption. They must also have confidence in the independence and personal integrity of Members and the performance of their duties as such in a disinterested manner.

Purpose of this Manual

The purpose of this manual is to act as an operational guide for Members and those members of staff of the Commissions Secretariat (the “Secretariat”), who provide investigatory and administrative support to the Commission in order for it to fulfil its mandate (“Staff”). It also sets out the functions, processes, legal framework and remit of the Commission.

This manual seeks to ensure that the Commission complies with the Act in its operation, and that it is fully engaged in the manner envisaged by both the UN Convention and the OECD Convention and as expected by the Cayman Islands public.

The Jakarta Principles

In the past, several references have been made by chairs of the Commission in their annual reports to its assessment against the internationally-recognised standards of the Jakarta Principles for Anti-Corruption Agencies, a set of sixteen recommendations designed to ensure the independence and effectiveness of anti-corruption agencies such as the Commission (the “Jakarta Principles”), as analysed and commented on in the Colombo Commentary by the United Nations Office on Drugs and Crime (the “Colombo Commentary”). Both the Jakarta Principles and Colombo Commentary are available on the Commission’s website.

At present the Commission satisfies some, but not all, of the recommendations of the Jakarta Principles. In the Commission’s annual report dated September 2023, its Chairman remarks that for all the recommendations to be implemented there would need to be legislative changes, and, ultimately, changes to the current operations of the Commission. As an example, the Commission does not yet have an express statutory mandate to tackle corruption through “prevention, education and awareness-raising”, as recommended by principle 1 of the Jakarta Principles.

This manual is intended to be a ‘live’ document that will be updated as needed, either for general purposes or to meet the recommendations in the Jakarta Principles, as time passes and if and when any necessary legislative changes are made. It remains the ultimate aim of the Commission, so far as is practicable, to satisfy the recommendations of the Jakarta Principles and the Colombo Commentary.

Website

With the exception of any passages that are sensitive and/or relate to operational matters, in the interest of transparency this manual will be posted on the Commission’s website.

Adoption of this Manual; Amendment(s)

This manual has been adopted by resolution of the Members. Any amendments to it will be made likewise and posted on the Commission’s website.

The Commission will undertake periodic reviews of this manual and note them in its annual report to the Governor under Section 1.4 below.

Part A: Roles, Responsibilities and Administrative Matters

1.1 Role

The Commission was created by the Anti-Corruption Law 2008, which came into force on 1 January 2010 and is now the Anti-Corruption Act (2019 Revision) (as amended). The Commission is responsible for the administration of the Act.

1.2 Principal Powers, Duties and Functions

Section 3 of the Act establishes the Commission and sets out its powers, duties and functions as follows:

- “(1) There is established for the purposes of this Act a body to be known as the Anti-Corruption Commission and the Commission is the anti-corruption authority of the Cayman Islands.
- (2) The Commission is responsible for the administration of this Act, has the powers, duties and functions set out in this Act and is a law enforcement agency in the Islands.
- (3) The provisions of the Schedule [*in this manual see section 2.1 et seq below* ()] shall have effect as to the constitution of the Commission and otherwise in relation thereto.”

Section 4 of the Act sets out the powers, duties and functions of the Commission, namely to:

- (a) receive and consider any report of the alleged or suspected commission of a corruption offence and investigate such report where the Commission has reason to suspect-
 - (i) the commission of an offence under the Act;
 - (ii) an attempt to commit an offence under the Act; or
 - (iii) any conspiracy to commit an offence under the Act; and
- (b) receive and (as permitted) request, analyse and disseminate disclosures of any information-
 - (i) concerning corruption offences under the Act or suspected offences; or
 - (ii) required by any law in order to counter corruption;
- (c) detect and investigate -
 - (i) any suspected offence under the Act;
 - (ii) any suspected attempt to commit an offence under the Act;
 - (iii) any suspected conspiracy to commit any offence under the Act; and

(d) do anything else that it is required or authorised to do under the Act or any other law or which is necessary to do for achieving the purpose of the Act.

The Commission is authorised by the remainder of Section 4 of the Act to undertake several further actions, for example in relation to the freezing of assets and the receiving and requesting of information, including information from overseas anti-corruption agencies. The Commission is also empowered to enter into agreements with local law enforcement authorities and other bodies, and, with the consent of the Attorney General (the “AG”), agreements with overseas anti-corruption agencies.

1.3 Control, Oversight, and Policy Directions

The Governor is responsible for:

- (a) general oversight of the anti-corruption policy of the Government;
- (b) overseeing and inspecting the work of the Commission;
- (c) reviewing annual reports submitted by the Commission;
- (d) promoting effective collaboration between regulators and law enforcement agencies; and
- (e) monitoring interaction and co-operation with overseas anti-corruption authorities.

The Governor can give the Commission directions as to the policy to be followed in the exercise and performance of its functions in relation to matters appearing to him/her to concern the public interest, and the Commission has to give effect to any such directions. To date the Governor has not issued any such directions.

The Commission is permitted by Section 28(1) of the Act to 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 under the Act.

The Commission is obliged by Section 28(2) of the Act to review any guidelines it issues under section 28(1), and has the power to amend or revoke them. Section 28(3) requires any such guidelines and amendments to be made available for inspection by the public without charge.

1.4 Additional Powers and Duties of the Commission.

Powers:

- arrest any person who has committed or is suspected of having committed a corruption offence and exercise powers of search upon arrest;
- obtain evidence by search warrants with court approval;
- confiscate proceeds of corruption offences with court approval;
- refer the results of investigations to the DPP for disposition where it appears an offence has been committed; and
- assist with overseas investigations.

Duties:

- advise the Governor on the Commission's work; and
- submit an annual report to the Governor.

1.5 Delegation

Section 4(A) of the Act allows the Commission to delegate any of its duties and functions under the Act to the Commissioner of the Royal Cayman Islands Police Service (the "Commissioner"), and the Commissioner to sub-delegate such duties and functions.

2.1 Composition

Paragraph 1(1) of the Schedule to the Act (the “Schedule”) provides that the Commission must comprise not less than five Members, people 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 the Act.

Members must be residents of the Islands and may include:

- (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.

The Governor appoints one of the Members as the Chairman for a period not exceeding three years (Schedule, para 1(2)). The Chairman sets the agenda for and chairs the Members’ meetings and oversees their participation in the activities of the Commission.

Principle 4 of the Jakarta Principles states that the heads of national anti-corruption bodies, such as the Chairman, “be appointed through a process that ensures his or her apolitical stance, impartiality, neutrality, integrity and competence”. This can be interpreted as requiring a fully open, regimented and formalistic appointment process. It is felt though that such a procedure is impractical or unnecessary for a jurisdiction the size of the Cayman Islands and that, while in principle anyone may apply to be a Member, there is only a small pool of suitable candidates and those appointed are invariably known within government and private sector circles as persons of probity and integrity. In practice, appointments to the Commission are made by the Governor, after consultation with both the Premier and Leader of the Opposition.

No person may be appointed to hold office as a Member if he/she is a “public officer” (as defined by the Act) or any other category of person prescribed by Order of the Governor (Schedule, para 1(3)).

The names of all Members must be gazetted at the time of their appointment (Schedule, para 9); and the Governor, after consultation with the AG, may at any time revoke the appointment of a Member (Schedule, para 7).

2.2 Terms

Members hold office for a term of no more than three years. Members are eligible for re-appointment for one further term of no more than three years (Schedule, paras 2 and 3).

2.3 Indemnification and Immunity

Each Member is entitled to indemnification against all claims, damages, costs, charges or expenses incurred by him/her in the discharge or purported discharge of his/her functions under the Act unless caused by his/her bad faith (Schedule, para 15).

Neither the Commission nor any Member is liable in damages for anything done or omitted in the discharge or purported discharge of his/her respective functions unless that act or omission was in bad faith (Section, para 14).

2.4 Remuneration of Members

Although Members are all volunteers, they are entitled to a small stipend (Schedule, para 10) for attending meetings, as fixed by Cabinet from time to time.

2.5 Acting Appointments

If any Member is absent or unable to act, the Governor may appoint any person to act in his/her place and in the case of those so appointed, such appointment must be made in the same manner and from among any of the categories of persons as would be required in the case of a substantive appointment (Schedule, para 5).

2.6 Concerns

It is expected that if there are concerns (or internal complaints) regarding any Member or the Chairman, reasonable steps should be taken within the Commission to address them, including in consultation with the Secretariat if and to the extent necessary or appropriate.

If the concerns are not resolved by the Commission, or if the concerns are of such seriousness that the Commission considers immediate referral to the Governor is warranted, the Chairman (or any other Member if the Chairman is the object of the concern) shall bring the matter to the attention of the Governor.

3.1 Meetings

The Commission meets on an as-needed basis for the carrying out of its functions, although efforts are made to hold Members' meetings every two months or so. All such meetings are held in private.

The agenda for a meeting is in such form as the Chairman determines, provided it sets out what will be discussed at that meeting. It should be distributed to Members within a reasonable time before the meeting.

Meetings are usually attended by the Chairman and Members, as well as representatives from the Secretariat's Investigative Team and Administrative Team. Sometimes guests such as the Governor, the Commissioner, the AG, the Auditor General, the DPP and/or the Ombudsman might attend at the invitation of the Chairman to discuss subjects of mutual interest.

Meetings are normally divided into two phases of discussion: first, administrative matters, and secondly, specific cases, including decisions on action to be taken on them.

Where questions arise on the former which require legal advice, the Commission may seek that advice from outside counsel, the DPP or the AG. Where they arise on the latter (i.e. on specific cases), the Commission will usually seek it from the DPP.

3.2 Meeting Minutes

There is an obligation on the Commission to prepare and maintain minutes of all their meetings (Schedule, para 13(4)). Minutes are taken by the Secretariat for approval first by the Chairman and then the Members, and should be posted on the Commission's website within ten business days of such approval.

Any information that is sensitive and exempt under the Freedom of Information Act or other relevant legislation will be redacted prior to approval of the minutes.

Minutes of meetings record only that a resolution was passed and not whether it was done so unanimously or by a majority or with a casting vote under 3.6 below.

3.3 Meeting Attendance

Members are expected to attend all meetings (usually at least six per year, plus any extraordinary meetings) and actively participate in the activities of the Commission. They may attend meetings by video conference if necessary.

3.4 Quorum

The quorum for any meeting is three Members (Schedule, para 13(2)).

3.5 Chairing of Meetings

If the Chairman is unable to attend any meeting of the Commission, the Members present and forming a quorum may choose an Acting Chairman for that meeting, and that temporary change of Chairman will be recorded in the minutes of the meeting.

3.6 Decision-Making

Decisions of the Commission are made by a majority of votes. In addition to an original vote, the Chairman has a casting vote in any case in which the voting is equal (Schedule, para 13(3)).

3.7 Confidentiality (generally)

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.

Members and Staff members are required to take all reasonable precautions to ensure that materials relating to Commission business, including any documentation and data on computers, tablets, etc, are kept secure and preferably under lock and key, or, in the case of materials on computers, password-protected.

As regards maintenance of data privacy and compliance by the Commission with the Data Protection Act (2021 Revision), the Commission has published a Privacy Notice on its website (see the “Privacy Notice” tab on page 1 of the site) setting out its policies and procedures.

3.8 Confidentiality when Dealing with Third Parties

Members and Staff members are required to maintain strict confidentiality in all matters relating to the business of the Commission and may not discuss them with anyone outside the Commission or the Secretariat, save as may be directed by the Chairman.

The Chairman is the official spokesperson of the Commission. If approached by third parties, including the press, with enquiries about the Commission and/or its work, Members and Staff members should refer them to the Chairman.

Given the nature of the Commission’s work, public comments, if any, in relation to operational matters such as investigations, arrests or charges will be very limited. The Commission’s policy is to state, in response to any enquiry from outsiders, including members of the press, that it neither confirms nor denies whether any investigation is under way or whether anyone is or is not the subject of an investigation.

Upon an arrest of a suspect, it is the Commission's policy to disclose his/her age and district of residence, but not his/her name or any other information.

Unless an approach falls within the last paragraph of 2.0 in Part B of this manual (in which case that paragraph will apply), if a Member or Staff member is approached personally by anyone offering or purporting to provide information regarding the commission or alleged commission of an offence under the Act, that Member or Staff member should (i) inform such person that if he/she wants the matter followed up by the Commission, he/she must follow the procedure for making a complaint by completing and filing a complaint form with the Commission, and (ii) forthwith report such conversation to the Chairman and the SIO.

3.9 Conflicts of Interest

The work of the Commission must not be compromised or affected by any personal interest of Commission Members or Secretariat 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. Members and Staff members must declare to the Commission any conflicts of interest or potential conflicts of interest immediately.

If, in the view of the Commission, any conflict of interest or perceived conflict of interest has arisen or might arise, the relevant Member or Secretariat 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. In particular, Members are referred to Section 3.15 below.

3.10 Reporting Requirements

The Commission must provide an annual report to the Governor relating to its work under the Act by 30 September each year. In addition to narrative sections explaining the role of the Commission and the legal background to its operations, it is expected that any such report will, at a minimum, contain a statement from the Chairman and relevant statistical information concerning the operations of the Commission during the year in question. The Commission is specifically required by section 4(2)(f) of the Act to collect and publish certain specified statistical information.

The Commission endeavors to develop and present appropriate key performance indicators and/or other metrics for inclusion in its annual report.

3.11 Administrative and Investigative Support

The operational support (in particular administrative and investigative) required to advance the mandate of the Commission is provided by the Secretariat, which falls under the Portfolio of the Civil Service.

The support provided by the Secretariat includes:

- Ensuring proper management of its staff when undertaking work for the Commission.
- Providing administrative support to enable the effective execution of the Commission's functions, including but not limited to:
 - organising and attending meetings of the Commission and keeping the minutes;
 - monitoring incoming communications addressed to the Commission;
 - diarising the review of website materials at least annually;
 - diarising the preparation and delivery of the Commission's annual report.
- Ensuring that complaints are accepted/acknowledged on a timely basis
- Ensuring that suitable case management records are kept;
- Investigating reports of alleged cases of corruption as directed by the Commission and in accordance with the Act.
- Ensuring that new Members are appointed on a timely basis as and when required;
- Assisting with the development and implementation of systems, policies, and procedures in accordance with the legislative mandates of the Commission.
- Developing and implementing PR strategies and educational initiatives relevant to advancing the mandate of the Commission.
- Ensuring that the Commission's Secretariat has in place suitable freedom of information and data privacy policies and procedures in connection with the administration of the affairs of the Commission;
- Providing advice and guidance to the public on matters related to the remit of the Commission.
- Maintaining and keeping custody of all records and property of the Commission in accordance with this manual and applicable law.
- Procuring and/or making any arrangements for resources required to support the work of the Commission, including the use of office space for meetings and appropriate communication tools, to enable Commission Members to exercise their functions effectively.
- Providing the Commission with updates on the activities of the Secretariat as appropriate;
- Providing the training mentioned in Section 3.14, para 2, below.

The Commission itself does not employ any members of Staff, investigative or administrative. Nor does the Commission have control of its own budget. All members of Staff are civil servants and, accordingly, the scope and conduct of their employment duties, including the application of any disciplinary procedures, will principally be a matter for the Portfolio of the Civil Service in accordance with its established policies and procedures and HR processes. These are therefore largely outside the control of the Commission and the scope of this manual.

All personnel issues for members of Staff are dealt with in accordance with the Public Service Management Act. In the event that the Commission has concerns regarding the support being provided by the Secretariat or the conduct or performance of any Staff member, the Chairman will bring them to the attention of the Manager. In the event that the Commission has concerns

regarding the conduct or performance of the Manager, the Chairman will first approach the Manager to discuss them; and if they remain unresolved, the Chairman may then note concerns in writing and send them to the attention of the Chief Officer of the Portfolio of the Civil Service, and, if the Chairman considers it necessary, the Governor.

In carrying out their functions in relation to the affairs of the Commission, the Commission expects members of Staff to comply at all times with the provisions of the Act and the policies and procedures of the Commission set out in this manual in so far as they are of relevance to the activities of the Staff. The Secretariat is responsible for ensuring that all members of Staff are familiar with the terms of this manual and kept apprised of any amendments to it.

With a view to seeking to maintain or improve its effectiveness and bolstering its independence, the Commission will, on a collaborative basis, advocate for and seek to involve itself, to the extent possible, at least at the level of consultation, in matters such as budgets and the recruitment of senior members of Staff.

The Secretariat must at all times ensure that the decisions of the Commission are followed up and implemented.

3.12 The Manager

The Manager of the Commission is appointed pursuant to section 3A(1) of the Act. He/she is usually the Manager of the Secretariat and is responsible for ensuring that the duties specified in section 3A(2) of the Act as well as Section 3.11 above, are effectively undertaken by the Secretariat.

3.13 The SIO

The Act, and the powers and authorities granted to them under it, require the investigating officers to investigate suspected corruption in a diligent and professional manner. The SIO supervises his/her team of investigating officers pursuant to section 3C(6) of the Act.

The SIO is the initial contact point for the acceptance and acknowledgement of corruption complaints/reports and ensures an initial review of them in a timely manner as detailed in the corruption reporting procedures adopted by the Commission and set out in this manual.

The SIO routinely attends meetings of the Commission and provides Members with updates on investigations and may represent the Commission at external meetings as appropriate and/or as requested by the Commission.

3.14 Code of Conduct

Members are committed to increasing public trust in the Commission by adhering to the highest ethical standards. As part of the onboarding process, each Member formally adopts the Code of Conduct promulgated by the Commission for Standards in Public Life and agrees to uphold,

promote and be bound by seven “core principles”, known as the Nolan Principles (the “Nolan Principles”), which form the basis of a universal standard of good governance. That code and the Nolan Principles are posted on the Commission’s website. Any breach by a Member of the Standards in Public Life Code of Conduct would ordinarily be a matter for disclosure in the Commission’s annual report.

The Manager will ensure that appropriate and proportionate training is given to Members and Staff members to familiarise them with the Act, this manual as it relates to them and all other relevant aspects of the Commission’s work as set out in this manual and in the Appendices.

3.15 Disclosure of Members’ Interests

If a Member has any interest, direct, or indirect, pecuniary or otherwise, in any matter to be considered by the Commission and is present at a meeting of the Commission at which the matter is to be considered, then he/she is required, at or before the meeting, or before the matter is considered, to disclose the fact and shall leave the meeting for the duration of and not take part in the consideration or discussion of or vote on the matter.

The Act imposes criminal penalties for failure to comply with that disclosure requirement.

Members must also comply with all applicable filings, including an annual declaration of their interests, required to be made by them in their capacity as Members pursuant to the Standards in Public Life Act. To assist Members, an internal guidance document on disclosure/conflict of interests has been prepared by the Commission and Members are directed to this.

Part B: Alleged Acts of Corruption

Reporting Alleged Acts of Corruption to the Anti-Corruption Commission

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 report the matter 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.

Reports may be made anonymously, but for several practical reasons that is discouraged unless absolutely necessary.

2.0 Submission of Reports/Complaints

To report an alleged act of corruption:

1. Complete the Report/Complaint Form set out in Appendix 1. An editable PDF version is also available on the Commission’s website: www.anticorruptioncommission.ky
2. Submit the completed Report/Complaint Form via email to the Commission’s email address: info@anticorruptioncommission.ky

In cases where the complainant considers the alleged act of corruption to be urgent, direct contact should be made with the Senior Investigating Officer (the “SIO”) to expedite the report process. To arrange a meeting with the SIO:

Call: +1 (345) 244-3685

E-mail: Thomas.Keaton@gov.ky

Visit the Office in-Person: 4th Floor George Town Financial Center, #90 Fort Street, George Town, Grand Cayman, KY1-1106

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 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 is 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 the Report/Complaint Form completed by the SIO.

4.0 Reports/Complaints Procedure

4.1 Receipt and Recording of Reports/Complaints

Upon the receipt of a report/complaint, the Secretariat 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.

4.2 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 (see 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 5.0.1, 5.0.5 and 6 below.

4.3 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.

5.0 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 6 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 determine whether to refer the matter to the relevant third-party 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 by the SIO's investigative team 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 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 or not 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.

6.0 Investigations Procedure - Suspected Corruption/Related Offences

6.1 Procedure following decision

Where a decision has been taken by the Commission that a report/complaint falls into section 5.0.1 above, the Commission shall direct an investigating officer to carry out an investigation into the matter.

6.2 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.

7.0 Referral to the Director of Public Prosecutions

The Commission will refer the results of its investigations to the Office of the DPP 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.

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.

The Commission is obliged by Section 4(2)(d) of the Act to retain records of all information received or disseminated by it and any agreements entered into by it pursuant to that section for a minimum of five years. The Secretariat accordingly has to maintain appropriate records to satisfy those requirements, including, without limitation, an appropriate case management system with up-to-date records of all complaints/reports submitted to the Commission (and all investigations commenced) and their status and ultimate disposition.

The Secretariat must also maintain up-to-date records of all memoranda of understanding and/or other agreements entered into by the Commission with other authorities, agencies and bodies.

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: _____

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 via email to:

info@anticorruptioncommission.ky.

If the matter is urgent, direct contact should be made with the Senior Investigating Officer (the “SIO”) to expedite the process. To arrange a meeting with the SIO:

Call: +1 (345) 244-3685

Email: Thomas.Keaton@gov.ky

Visit the office in person:

4th Floor George Town Financial Center

90 Fort Street

George Town

Grand Cayman

KY1-1106

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
- (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