

2020-11-24

OBJECTS AND REASONS

This Bill would provide for the establishment of an Anti-Corruption and Anti-Terrorism Agency to investigate acts of corruption and terrorism and would provide for related matters.

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BARBADOS

A Bill entitled

An Act to provide for the establishment of an Anti-Corruption and Anti-Terrorism Agency to investigate acts of corruption and terrorism and to provide for related matters.

ENACTED by the Parliament of Barbados as follows:

PART 1

Preliminary

Short title

1. This Act may be cited as the *Anti-Corruption and Anti-Terrorism Agency Act, 2020*.

Definitions

2. In this Act,

“Agency” means the Anti-Corruption and Anti-Terrorism Agency established by section 4;

“annual plan” means the plan referred to in section 27;

“Committee” means the Anti-Corruption and Anti-Terrorism Agency Oversight Committee established by section 34;

“complaint” means a complaint made under section 37;

“corruption” means an offence under any enactment relating to corruption;

“Director-General” means the Director-General of the Agency appointed under section 14;

“document” includes

(a) anything on which there is writing;

(b) a map, plan, drawing or photograph; and

(c) any information recorded or stored by means of any tape recorder, computer or other device, and any material subsequently derived from the information so recorded or stored;

“foreign intelligence department” means the body in a country, other than Barbados, which performs in that country, functions similar to those of the Agency;

“functions” includes powers and duties;

“intelligence officer” means an officer who is involved in the collection, compilation, analysis, processing and dissemination of information relevant to activities to combat corruption and terrorism;

“law enforcement agency” means a person or authority with functions relating to the investigation and prosecution of offences of corruption and terrorism and includes a foreign intelligence department;

“officer” means an employee or agent of the Agency;

“positive vetting” means an investigation of the background and character of an applicant for a post in the public service where that post involves access to secret information;

“strategic partners” means

- (a) the Director of Public Prosecutions;
- (b) the Chief of Staff, Barbados Defence Force;
- (c) the Commissioner of Police;
- (d) the Revenue Commissioner;
- (e) the Comptroller of Customs;
- (f) the Chief Immigration Officer;
- (g) the Director of the Financial Intelligence Unit;
- (h) the Chairman of the Integrity Commission;
- (i) the Registrar of the Supreme Court; and
- (j) the Superintendent of Prisons; and

“terrorism” means any offence under the *Anti-Terrorism and Counter-Proliferation of Weapons of Mass Destruction Act, Cap. 158*.

PART II

Anti- Corruption and Anti-Terrorism Agency

Principal objects of Act

- 3.** The principal objects of this Act are to
- (a) establish an Agency which will have sufficient operational independence and autonomy and be dedicated to combating corruption and terrorism in collaboration with strategic partners and law enforcement agencies, whether within or outside Barbados;
 - (b) promote and strengthen measures for the prevention, detection, investigation and prosecution of corruption and terrorism;
 - (c) enhance public confidence so that perpetrators of corruption and terrorism will be brought to justice without undue delay; and
 - (d) promote and protect public safety and national security.

Establishment of the Agency

- 4.(1)** The Anti-Corruption and Anti-Terrorism Agency is hereby established.
- (2) The Agency shall be a body corporate to which section 21 of the *Interpretation Act*, Cap. 1 shall apply.

Functions of the Agency

- 5.** Subject to the provisions of this Act, the functions of the Agency shall be to
- (a) carry out efficient and effective activities to combat corruption and terrorism whether by itself or in collaboration with strategic partners and law enforcement agencies, whether within or outside Barbados;

- (b) implement measures for the prevention, detection, reduction and mitigation of the consequences of corruption and terrorism;
- (c) receive complaints in relation to alleged or suspected acts involving corruption and terrorism;
- (d) investigate alleged or suspected acts involving corruption and terrorism;
- (e) prosecute offences relating to corruption and terrorism;
- (f) gather, store, process, analyse and disseminate information that is relevant to activities to combat corruption and terrorism;
- (g) collaborate, co-operate, and co-ordinate intelligence and other activities with any other person or authority, whether within or outside Barbados, in order to prevent, detect, reduce or investigate corruption and terrorism; and
- (h) carry out such other functions as may be conferred on the Agency by this Act or any other enactment.

Investigation and prosecution

6. The same individual shall not perform the functions of investigation and prosecution under this Act.

Acceptance of responsibility for investigation by Agency

7. Where, either before or after the commencement of an investigation, the Commissioner of Police or the head of a law enforcement agency, other than the Director-General, forms a view that the investigation should be conducted by the Agency, the Commissioner of Police or the head of that law enforcement agency may refer the investigation to the Agency and the Director-General shall determine whether to accept responsibility for the investigation and inform the Commissioner of Police or the head of the law enforcement agency, as the case may be, of his decision.

Agency's investigation powers

8.(1) The Agency may investigate any corruption and terrorism or any suspected offence which appears to the Agency on reasonable grounds to involve corruption or terrorism or to relate thereto where it appears to the Director-General

- (a) that the crime
 - (i) is transnational in nature; or
 - (ii) poses a significant threat to national security or public safety; or
- (b) that there is good reason to do so for the purposes of investigating the affairs, or any aspect of the affairs, of a person.

(2) The Director-General may, by notice in writing, require the person under investigation or any other person to produce at such place as may be specified in the notice

- (a) any specified documents; or
- (b) any documents of a specified description,

which appear to the Director-General to relate to any matter relevant to the investigation.

(3) Where documents referred to in subsection (2)

- (a) are produced, the Director-General may
 - (i) take copies or extracts from them; and
 - (ii) require the person who produced them to provide an explanation of any of them; or
- (b) are not produced, the Director-General may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) A person who, without reasonable excuse, fails to comply with a requirement imposed on him under this section is guilty of an offence and liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 2 years or to both.

Search warrant: documents

9.(1) Where a magistrate is satisfied by information on oath, in relation to any documents, that there are reasonable grounds to believe

(a) that

- (i) a person has failed to comply with an obligation under this section to produce such documents;
- (ii) it is not practicable to serve a notice on the person under investigation; or
- (iii) the service of such a notice in relation to the documents would seriously prejudice the investigation; and

(b) that the documents are on premises specified in the information,

the magistrate may issue a warrant authorising any constable to enter any premises specified in the warrant, using such force as may be necessary for the purpose, and search such premises, and take possession of any documents appearing to be documents of the description specified in the information, or to take in relation to any documents so appearing, any other steps necessary for preserving, and for preventing interference with, the documents.

(2) Unless it is not practicable in the circumstances, a constable executing a warrant issued under subsection (1) shall be accompanied by an appropriate person.

(3) An appropriate person who accompanies a constable may, under supervision of the constable, exercise the powers conferred on the constable under subsection (1).

- (4) In this section “appropriate person” means
- (a) a member of the staff of the Agency; or
 - (b) some other person, not being a member of the staff of the Agency, authorised by the Director-General to accompany the constable.
- (5) A statement made by a person in response to a requirement imposed by virtue of this section may only be used in evidence against him
- (a) on a prosecution for an offence under subsection (14); or
 - (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.
- (6) The statement referred to in subsection (5) may not be used against that person by virtue of paragraph (b) of that subsection, unless
- (a) evidence relating to it is adduced; or
 - (b) a question relating to it is asked,

by or on behalf of that person in the proceedings arising out of the prosecution.

(7) Any evidence obtained by the Director-General for use by a foreign intelligence department shall be given to the Minister responsible for Foreign Affairs for forwarding to the foreign intelligence department.

(8) Where any evidence obtained by the Director-General for use by a foreign intelligence department consists of

- (a) a document, the original or a copy shall be forwarded; and
- (b) any other article, the article or a description, photograph or other representation of it, shall be forwarded,

as may be necessary in order to comply with the request of the foreign intelligence department.

(9) The references in subsections (7) and (8) to evidence obtained by the Director-General include references to evidence obtained by him by virtue of the

exercise by a constable, or by an appropriate person, in the course of a search authorised by a warrant issued under subsection (1).

(10) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court, except that an attorney-at-law may be required to furnish the name and address of his client.

(11) A person shall not under this section be required to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on any banking business, unless the person to whom the obligation of confidence is owed consents to the disclosure or production.

(12) Without prejudice to the power of the Director-General to assign functions to members of the staff of the Agency, the Director-General may authorise any competent investigator, other than a constable, who is not a member of the Agency to exercise on his behalf all or any of the powers conferred by this section, but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(13) No person shall be bound to comply with any requirement imposed by a person exercising powers by virtue of any authority granted under subsection (12) unless he has, if required to do so, produced evidence of his authority.

(14) A person who, in purported compliance with a requirement under this section,

- (a) makes a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

- (15) A person guilty of an offence under subsection (14) is liable
- (a) summary conviction, to a fine of \$50 000 or to imprisonment for a term of 3 years or to both; and
 - (b) on conviction on indictment, to a fine of \$150 000 or to imprisonment for a term of 5 years or to both.
- (16) Where a person
- (a) knows or suspects that an investigation by the Agency or by a law enforcement agency into corruption or terrorism is being or is likely to be carried out; and
 - (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,

he is guilty of an offence, unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

- (17) A person guilty of an offence under subsection (16) is liable on conviction on indictment, to a fine of \$250 000 or to imprisonment for a term of 10 years or to both.

**Application of the *Proceeds and Instrumentalities of Crime Act, 2019*
(Act 2019-17)**

10. The *Proceeds and Instrumentalities of Crime Act, 2019* (Act 2019-17) shall apply to this Act with such modifications and adaptations as are necessary to give effect to this Act; and references in that Act to

- (a) “prosecutor” and “senior police officer” shall be construed as references to the “Director-General”;
- (b) “Recovery Agency” shall be construed as references to “the Agency”;
and

- (c) “money laundering” shall be construed as references to “corruption” or “terrorism” as the case may require.

Co-operation with other bodies

11.(1) A law enforcement agency in Barbados shall take reasonable steps to cooperate with the Agency in the exercise of its functions under this Act.

(2) Subject to subsection (3), the Agency shall take reasonable steps to cooperate with any strategic partner or law enforcement agency in the exercise of any function conferred on the strategic partner or law enforcement agency under this Act or any other enactment.

(3) Where, after consultation with the Director-General, it appears to the Minister that it is appropriate for the Agency to provide specified assistance to another law enforcement agency, the Minister may direct the Director-General to provide specified assistance to that law enforcement agency and the Director-General shall take reasonable steps to comply with the directions of the Minister.

Agency subject to oversight by Committee

12.(1) The Agency shall be subject to the authority and directions of the Committee.

(2) The Committee shall have oversight of the Agency.

Ministerial direction

13.(1) Subject to the provisions of this Act, the Minister may, after consultation with the Director-General, give to the Director-General such policy directions relating to the exercise of his functions as appear to the Minister to be in the public interest, and the Director-General shall give effect to those directions.

(2) Subject to subsection (3), the Minister shall approve the strategic plan for the Agency.

- (3) In approving the strategic plan for the Agency, the Minister shall consult
- (a) the Committee;
 - (b) the Director-General;
 - (c) the strategic partners; and
 - (d) any other person whom the Minister considers it appropriate to consult.

PART III

Administration

Appointment of Director-General

- 14.(1)** The Director-General shall administer the Agency.
- (2) The Director-General shall be appointed by the Governor-General by instrument in writing on the recommendation of the Prime Minister after consultation with the Leader of the Opposition.
- (3) The Director-General shall be appointed for a period of three years and shall be eligible for reappointment.

Disqualification for appointment as Director-General

- 15.(1)** Subject to section 22, a person is not qualified for appointment as Director-General if the person
- (a) is a member of
 - (i) the Senate; or
 - (ii) the House of Assembly;
 - (b) is bankrupt; or
 - (c) has been convicted of an offence involving dishonesty or moral turpitude.

(2) A Director-General shall vacate his office if any circumstance arises that, if he were not Director-General, would, by virtue of subsection (1), cause him to be disqualified for appointment as Director-General.

Functions of the Director-General

16.(1) The Director-General

- (a) is responsible for the day to day administration and operation of the Agency and shall have the sole operational command and superintendence of the Agency;
- (b) shall determine the policy priorities of the Agency in accordance with the strategic plan and the annual plan;
- (c) shall determine the operational priorities for the Agency and those priorities may relate to
 - (i) matters to which current strategic priorities also relate; or
 - (ii) other similar matters;
- (d) shall establish and implement practices for internal disciplinary procedures.

(2) The Director-General shall consider ,

- (a) operational priorities referred to in subsection (1)(c);
- (b) the strategic priorities referred to in sub-paragraph (i) of subsection (1)(c); and
- (c) the strategic plan.

(3) The Director-General may decide

- (a) which operations are to be conducted by the Agency; and
- (b) how the operations are to be conducted.

- (4) When executing duties under this Act, the Director-General and any officer designated by him shall, for that limited purpose only, be vested with the powers, privileges and immunities of a member of the Royal Barbados Police Force.
- (5) The Director-General shall not designate an officer under subsection (4), unless the Director-General is satisfied that the officer
- (a) is capable of effectively exercising the powers; and
 - (b) has received adequate training in respect of the exercise of those powers.
- (6) The Director-General may modify or withdraw a designation of an officer by giving notice in writing of the modification or withdrawal to the officer.
- (7) For the purposes of the exercise of the powers conferred under subsection (4) on the Director-General or an officer designated by him, the Director-General may make arrangements for the Agency to use premises or facilities used in connection with those functions.

Delegation of functions

- 17.(1)** The Director-General may delegate, in writing, the exercise of any function conferred upon him by or under this Act, other than the power of delegation, to such officer of the Agency, hereinafter called "the delegate", as he thinks fit.
- (2) A delegation under subsection (1) shall not affect
- (a) the exercise of the delegated function by the Director-General; or
 - (b) the responsibility of the Director-General in relation to acts of the delegate carried out in lawful exercise of the delegated function.
- (3) Any act done by or in relation to the delegate pursuant to the delegated function shall have the same effect as if it were done by or in relation to the Director-General.

(4) For the avoidance of doubt, a delegation under subsection (1) shall, in addition to conferring authority to exercise the delegated function, also subject the delegate to the same obligations as would apply under this Act to the Director-General's exercise of such function, and accordingly, the delegate shall be liable for any wrongful act or omission of the delegate occurring in the exercise of that authority.

(5) The Director-General may, in writing, revoke a delegation made under subsection (1).

Removal of Director-General

18. The Director-General may be removed from office

- (a) for inability to discharge the functions of the office, whether arising from infirmity of body or mind;
- (b) for incompetence;
- (c) for misconduct;
- (d) if he becomes bankrupt;
- (e) if he is convicted of any offence involving dishonesty or moral turpitude;
- (f) if he fails,
 - (i) without reasonable excuse, to carry out any function conferred or imposed on him under this Act; or
 - (ii) breaches his contract of employment.

Resignation

19. The Director-General may at any time resign his office by notice in writing addressed to the Governor-General and transmitted through the Minister, and the resignation shall take effect from the date on which the Minister receives the instrument or the date specified in the instrument, whichever is earlier.

Filling of vacancy in office of Director-General

20.(1) Where a vacancy arises in the office of Director-General, a suitable person may be designated to act in that office during such vacancy until an appointment is made.

(2) Where, by reason of illness, absence from Barbados or other sufficient cause, the Director-General is unable to perform his functions under this Act, the Governor-General shall, on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, appoint a person to act in the office of Director-General.

Appointment and remuneration of staff and persons contracted *ad hoc*

21.(1) The Director-General, shall appoint such staff as may be necessary for the efficient operation of the Agency.

(2) Staff appointed under subsection (1) shall include

(a) investigating officers, who shall investigate, in the manner specified by or under this Act, any allegation that involves corruption or terrorism; and

(b) prosecuting officers, who shall, subject to the powers conferred on the Director of Public Prosecutions by section 79 of the *Constitution*, institute, undertake and have the conduct of prosecutions in respect of corruption and terrorism.

(3) The Director-General may contract *ad hoc* such persons as may be necessary to provide technical services as the Agency may require from time to time.

(4) Except as provided in subsection (2)(b), any prosecuting officer appointed thereunder, shall not be subject to the direction or control of any person in relation to the conduct of his prosecutorial functions under this Act.

- (5) No salary in excess of the prescribed rate of salary shall be assigned to any post within the Agency without the prior approval of the Minister.
- (6) No appointment shall be made to any post within the Agency to which a salary in excess of the prescribed rate of salary is assigned without the prior approval of the Minister.
- (7) [For the purposes of subsections (5) and (6), the "prescribed rate" means such rate as the Minister responsible for the Public Service may, by order, prescribe.]
- (8) The Governor General may, subject to such conditions as he may impose, approve the appointment of any public officer to any office within the Agency and a public officer so appointed shall, while so employed, in relation to any pension, gratuity or other allowance and in relation to any other rights as a public officer, be treated as continuing in the service of the Crown.
- (9) The Agency may, with the approval of the Minister,
- (a) enter into arrangements respecting schemes, whether by way of insurance policies or otherwise; and
 - (b) make regulations, for medical benefits, pensions, gratuities and other retiring benefits or disability or death benefits relating to staff of the Agency, and

such arrangements or regulations may include provisions for the grant of benefits to the dependants of the staff.

Procedures relating to appointment

22.(1) The Director-General, officers of the Agency and members of the Committee shall be subject to positive vetting procedures before they are appointed.

- (2) A person shall not be eligible to be appointed to the office of Director-General or any other office under section 21 unless the person
- (a) has received adequate training in respect of the performance of the duties of the office;
 - (b) is capable of effectively performing the duties of the office; and
 - (c) is competent, diligent, of integrity, of sound judgment and impartial.

Oaths

23.(1) The Director-General shall, before assuming office, take and subscribe, before the Governor-General, the oath of office and oath of secrecy set out in Form 1 and Form 2, respectively, of the *First Schedule*.

(2) Every person, other than the Director-General having an official duty under this Act or being employed or otherwise connected with the administration of this Act shall, before assuming duty, take and subscribe before the Director-General the oath of office and oath of secrecy set out in Form 3 and Form 4, respectively of the *First Schedule*.

(3) Every person who had an official duty under this Act or was employed in the administration of this Act shall maintain, after such duty or employment is terminated, the confidentiality of all information or documents relating to the functions of the Agency.

(4) Any person to whom information is communicated pursuant to this Act shall regard and deal with the information as secret and confidential.

(5) Every person referred to in subsection (1), (2) or (3), having possession of or control over any information or document and who at any time communicates or attempts to communicate any such information or any thing contained in the document to any person, otherwise than pursuant to

- (a) his functions under this Act or any other enactment;
- (b) a court order; or

(c) an arrangement entered into for the exchange of information under section 33,

is guilty of an offence.

(6) For the purposes of this section, "information" includes information from which a person can be identified and which is acquired by the Agency in the course of carrying out its functions.

PART IV

Financial Provisions, Plans and Reports

Funds and resources of the Agency

24. The Funds and the resources of the Agency shall consist of such funds as may be appropriated for the purposes of the Agency by Parliament.

Accounts and audit

25.(1) The Agency shall keep proper records of its receipts, expenditure, assets and liabilities and its accounts shall be audited annually by an auditor appointed by the Director-General with the approval of the Minister and a statement of accounts so audited shall form part of the annual report submitted pursuant to section 29.

(2) The Director-General shall, at such time within each year as the Minister may direct, submit to the Minister a statement of accounts of the Agency in accordance with the provisions of subsection (1).

Expenses and remuneration

26. The expenses of the Agency, including the remuneration of the Director-General, officers and members of the Committee, shall be paid out of the funds of the Agency.

Annual plan

27.(1) Before the beginning of each financial year, the Director-General shall submit an annual plan to the Minister setting out how the Director-General intends that the functions of the Agency are to be exercised during that year.

(2) The annual plan for a financial year shall include

- (a) a statement of the strategic priorities for the Agency;
- (b) a statement of the operational priorities for the Agency and in relation to each of the strategic and operational priorities, an explanation of how the Director-General intends that effect may be given to the priority;
- (c) ways in which the Agency is to operate, including
 - (i) arrangements for publishing information about the exercise of the functions of the Agency and other matters relating to the Agency, including requirements about the type of information that should not be published; and
 - (ii) ways in which the Agency is to be administered, including with respect to governance and finance.

Director-General to consult in preparing annual plan

28. In preparing an annual plan, the Director-General shall consult

- (a) the strategic partners; and
- (b) any other persons whom the Director-General considers it appropriate to consult.

Estimates and operating plan

29. The Agency shall, in each financial year, before a date specified by the Minister, submit to the Minister for his approval

- (a) estimates of income and expenditure for the ensuing financial year; and

(b) the annual plan required by section 27.

Returns

30. The Agency shall furnish the Minister with such returns, accounts and other information as he may require with respect to the activities of the Agency, and shall afford him facilities for verifying the returns, accounts and other information in such manner and at such times as he may reasonably require.

Annual and other reports

31.(1) A copy of the annual report and audited financial statement of the Agency, approved by the Minister, shall be submitted to the Minister of Finance, no later than four months after the end of each financial year.

(2) The Minister of Finance shall cause a copy of the report together with the annual statement of accounts and the Auditor-General's report thereon to be laid in Parliament.

Report

32.(1) The Director-General shall, not later than 3 months after the end of each financial year, submit to the Minister a report relating generally to the execution of the functions of the Agency during the preceding financial year.

(2) The report referred to in subsection (1) shall contain the information set out in the *Second Schedule*.

(3) The Director-General may, at any time, submit to the Minister a report relating to any particular matter which in the opinion of the Director-General requires the special attention of the Minister.

(4) The report referred to in subsection (3) shall exclude any matter that would, if it were included, prejudice proceedings referred to therein.

(5) The Minister shall, not later than one month after receipt of a report submitted to him under subsection (1) or (3), lay the report in Parliament.

PART V

*Agreements and Arrangements***Agreements and arrangements with other agencies**

33.(1) Subject to the provisions of this Act, the Director-General may, with the approval of the Minister, enter into a contract, memorandum of understanding or other agreement or arrangement with a strategic partner or a law enforcement agency, whether within or outside Barbados, regarding the exchange of information with the agency relevant to the investigation or prosecution of offences relating to corruption or terrorism.

(2) Subject to subsection (1), the Director-General may exchange with a foreign intelligence department, information necessary to enable that department to exercise regulatory functions, including the conduct of civil, criminal or administrative investigations and proceedings to enforce laws administered by the department.

(3) The Director-General may decline to facilitate the exchange of information unless the strategic partner, foreign intelligence department, or the law enforcement agency, as the case may be, undertakes to make such contribution towards the costs of the exchange as the Director-General considers appropriate.

(4) Nothing in subsections (1) to (3) authorises a disclosure by the Director-General, unless he is satisfied that the

- (a) strategic partner, the foreign intelligence department, or law enforcement agency is subject to adequate legal restrictions on further disclosures, including the provision to the Director-General of an undertaking of confidentiality on the part of the strategic partner, the foreign intelligence department, or the law enforcement agency not to disclose the information provided without the consent of the Director-General; or

(b) assistance requested by the strategic partner, the foreign intelligence department or the law enforcement agency is required for the purposes of the functions of the department or agency, including the conduct of civil, criminal or administrative investigations or proceedings to enforce laws administered by the department or the Agency.

(5) Where in the opinion of the Director-General, it appears necessary, in relation to any request for information received from a foreign intelligence department, a strategic partner or a law enforcement agency to obtain an order of the High Court, the Director-General shall

(a) immediately notify the Attorney-General of the particulars of the request; and

(b) send to the Attorney-General copies of all documents relating to the request

and the Attorney-General is entitled to appear or take part in any proceedings in Barbados, or in any appeal from such proceedings, arising directly or indirectly from any such request.

(6) Where pursuant to a request for the exchange of information, the Director-General in accordance with this Act supplies information to a requesting party, the information shall be deemed to have been lawfully given under this Act.

(7) Subject to this Act the Government may enter into any agreement or arrangement in writing with

(a) the Government of a foreign State;

(b) an international organisation; or

(c) a foreign intelligence department,

regarding the exchange of information relevant to the investigation or prosecution of an offence relating to corruption or terrorism.

(8) For the purpose of an agreement or arrangement under subsection (7), the Minister shall be satisfied, in relation to the entity or party to such agreement or

arrangement, as to the like matters as those of which the Director-General is required to be satisfied in relation to an agreement or arrangement with a foreign intelligence department under subsection (4).

(9) The Minister may make regulations concerning the exchange of information relevant to the investigation or prosecution of an offence relating to corruption or terrorism.

PART VI

Anti-Corruption and Anti-Terrorism Agency Oversight Committee

Establishment and objectives of Committee

34.(1) There is hereby established a Committee to be known as the Anti-Corruption and Anti-Terrorism Agency Oversight Committee.

(2) The objectives of the Committee are to

- (a) hold the Director-General and other officers of the Agency accountable to the public in the performance of their functions under this Act; and
- (b) provide independent oversight in relation to the handling of complaints made by any person pursuant to section 37.

(3) The *Third Schedule* shall have effect with respect to the constitution of the Committee and otherwise in relation thereto.

Functions of the Committee

35. The functions of the Committee are to

- (a) investigate any complaint relating to misconduct, abuse of power, breach of disciplinary procedures or unlawful conduct in respect of any act or omission by the Director-General or any other officer in relation to his functions under this Act;
- (b) monitor and investigate operations affecting members of the public;

- (c) review generally the performance by the Agency and its functions, and make recommendations to the Minister thereon;
- (d) cooperate with or seek assistance from other government institutions or entities on issues of intelligence oversight or on any matter under investigation; and
- (e) perform such other functions as may be necessary for promoting the objectives under section 34(2) for which the Committee is established.

Powers of the Committee

36.(1) The Committee

- (a) may investigate any aspect of the operations of the Agency or the conduct of the Director-General or any other officer of the Agency in relation to his functions under this Act;
 - (b) is entitled to have access to the records of the Agency and to make copies of such records;
 - (c) may require the Director-General to supply information or provide documents in respect of any matter relating to the operations of the Agency or the conduct of an officer.
- (2) Notwithstanding the provisions of any enactment to the contrary and subject to subsection (3), the Committee shall be the sole body responsible for receiving and investigating any complaint made pursuant to section 37 of this Act.
- (3) Without prejudice to subsection (2), the Minister acting on the advice of the Committee may, in such manner as he deems appropriate, seek the assistance of any law enforcement agency in the investigation of a complaint made pursuant to section 37 or any other matter which may be relevant to the investigation.

Complaint and conduct of investigation

37.(1) A person may make a complaint to the Committee in respect of any matter relating to the conduct of the Director-General or an officer carrying out functions under this Act.

(2) A complaint under subsection (1) may be made orally, subject to subsection (3), in writing, or in such form or manner as may be prescribed and shall be lodged with the Secretary of the Committee.

(3) Where a complaint is made orally it shall be reduced into writing by the Secretary not later than three days from the date on which the complaint was made.

(4) A complaint made under subsection (1) shall contain such particulars as may be prescribed.

(5) Upon receipt of a complaint the Committee shall forthwith

(a) request information or reports regarding the complaint from the Agency within a specified period; or

(b) without prejudice to paragraph (a), initiate such investigation as it may consider necessary, having regard to the nature of the complaint.

(6) For the purposes of an investigation under this section, the Committee shall have the powers, privileges and immunities conferred upon a Commissioner under the *Commissions of Enquiry Act*, Cap. 112 and the provisions of that Act shall apply to any person summoned by or appearing before the Committee as if the Committee were a commission of enquiry constituted under that Act.

(7) Where the Committee considers a complaint to be frivolous or vexatious, the Committee may refuse to conduct an investigation and shall, where practicable, state its refusal in writing to the complainant.

(8) The Committee may, upon receipt of new evidence, re-open any investigation which has been concluded, and may amend or withdraw any previous findings and recommendations.

Steps after conduct of investigation

38. After conducting an investigation into a complaint made under section 37, the Committee may,

- (a) where in its opinion the investigation discloses evidence of a criminal offence by any officer of the Agency, recommend the prosecution of the officer concerned to the Director of Public Prosecutions;
- (b) where the investigation, in the opinion of the Committee, discloses misconduct, malfeasance or negligence in the performance of a duty by an officer, proceed in accordance with the prescribed disciplinary procedures;
- (c) where the investigation discloses any shortcomings in the processes or procedures employed by the Agency, recommend improvement or rectification thereof to the Minister.

PART VII*Protection of Officers***Protection of intelligence officers**

39. The Director-General may take such action as may be necessary to ensure the security, secrecy, safety, accommodation and financial requirements of an intelligence officer.

Protection of other person exercising functions under this Act

40.(1) No civil or criminal action, suit or other proceedings for breach of confidentiality may be brought nor any professional sanction for such breach may be taken against any person who in good faith, under this Act or any other enactment, provides or transmits information requested by the Agency or submits a report to the Agency.

(2) No suit or other proceedings may be brought or instituted personally against any officer in respect of any lawful act done or omission made in good faith, in the course of carrying out the provisions of this Act.

(3) Subsection (2) applies to persons contracted in accordance with section 21(3).

PART VIII

Offences

Offences

- 41.** A person is guilty of an offence who,
- (a) wilfully threatens or assaults an officer or any other person performing any function under this Act;
 - (b) without lawful justification or excuse
 - (i) obstructs or hinders an officer or any other person performing any function under this Act; or
 - (ii) wilfully refuses or neglects to carry out any duty required to be performed by him under this Act;
 - (c) wilfully makes any false statement to mislead or attempts to mislead an officer or any other person performing any function under this Act;
 - (d) knowingly makes any false declaration or false statement of a material nature in any information provided to an officer or any other person performing any function under this Act;
 - (e) knowingly furnishes to any officer or any other person performing any function under this Act a document that contains information which is false or misleading in any material particular;

- (f) without reasonable excuse fails to keep any record or other document required under this Act;
- (g) with intent to deceive
 - (i) impersonates an officer;
 - (ii) makes any statement or does any act calculated falsely to suggest that the person is an officer;
 - (iii) makes any statement or does any act calculated falsely to suggest that the person has powers as an officer that exceed the powers the person actually has.

General penalty

- 42.** A person guilty of an offence under section 23 or 41 is liable
- (a) in the case of an individual,
 - (i) on summary conviction to a fine of \$100 000 or to imprisonment for a term of 5 years or to both; and
 - (ii) on conviction on indictment to a fine of \$250 000 or to imprisonment for a term of 10 years or to both; and
 - (b) in the case of a body corporate,
 - (i) on summary conviction to a fine of \$150 000; and
 - (ii) on conviction on indictment to a fine of \$500 000.

Offences committed by a body corporate

- 43.** Where an offence under this Act is committed by a body corporate and is proved
- (a) to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate or any person who purported to act in that capacity; or

- (b) to be attributable to the failure of any such director, manager, secretary or other officer to exercise all such reasonable diligence as he ought in the circumstances to have exercised to prevent the offence, having regard to the nature of his functions and all the circumstances,

such director, manager, secretary or other officer, as well as the body corporate, is guilty of that offence and is liable to be proceeded against and punished in accordance with paragraph (a) or (b) of section 42, as the case requires.

PART IX

General

Code of Conduct

44. The Director-General and other officers of the Agency shall comply with such Code of Conduct as may be prescribed and a person who fails to comply with the Code of Conduct shall be liable to such disciplinary proceedings as may be prescribed.

Records

45. The Director-General may require any person to keep such documents relating to the functions of the Agency as may be prescribed.

Minister may vary monetary fines

46. The Minister may by order, subject to negative resolution, vary any monetary fines specified in this Act.

Regulations

47.(1) The Minister may make regulations generally for the proper administration of and for giving effect to the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), regulations made under this section may make provision
- (a) requiring equipment used by the Agency to satisfy specifications as to design and performance;
 - (b) setting out the practices and procedures to be adopted in relation to the investigation or prosecution of corruption and terrorism under this Act;
 - (c) prescribing a Code of Conduct for officers; and
 - (d) prescribing such other matters as are required by this Act to be prescribed.
- (3) For the purposes of subsection (2)(a), "equipment" includes
- (a) vehicles; and
 - (b) headgear and any other protective clothing.
- (4) Regulations made under this section shall be subject to negative resolution.

Enactments not affected

- 48.** Nothing in this Act shall affect
- (a) the provisions of the *Mutual Assistance in Criminal Matters Act*, Cap. 140A; or
 - (b) the *Official Secrets Act, 1911*, 1 & 2 Geo. 5, c. 28 and the *Official Secrets Act, 1920*, 10 & 11 Geo. 5, c. 75 of the United Kingdom Parliament in so far as they are applicable to Barbados.

Commencement

- 49.** This Act shall come into operation on a date to be fixed by Proclamation.

FIRST SCHEDULE

(Section 23(1) and (2))

FORM OF OATHS



Form 1

Anti-Corruption and Anti-Terrorism Agency Act, 2020
(Act 2020-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise the functions of Director-General of the Anti-Corruption and Anti-Terrorism Agency without fear or favour, affection or ill-will according to the Laws of Barbados. So Help Me God.

Dated this _____ day of _____, 20__ .

Signature

First Schedule - (Cont'd)



Form 2

Anti-Corruption and Anti-Terrorism Agency Act, 2020
(Act 2020-)

OATH OF SECRECY

I _____ Director-General of the Anti-Corruption and Anti-Terrorism Agency do swear/affirm that I will treat all documents, information and records of the Anti-Corruption and Anti-Terrorism Agency as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such documents, information or records. So Help Me God.

Dated this _____ day of _____, 20__.

Signature

First Schedule - (Cont'd)



Form 3

Anti-Corruption and Anti-Terrorism Agency Act, 2020
(Act 2020-)

OATH OF OFFICE

I _____ do swear/affirm that I will exercise my functions as an employee/a person performing functions for the Anti-Corruption and Anti-Terrorism Agency without fear or favour, affection or ill-will according to the Laws of Barbados. So Help Me God.

Dated this _____ day of _____, 20__.

Signature

First Schedule - (Concl'd)



Form 4

Anti-Corruption and Anti-Terrorism Agency Act, 2020
(Act 2020-)

OATH OF SECRECY

I _____ employee/person performing a function for the Anti-Corruption and Anti-Terrorism Agency do swear/affirm that I will treat all documents, information and records of the Anti-Corruption and Anti-Terrorism Agency as secret and confidential and I shall not disclose or communicate to any unauthorised person or allow any unauthorised person to have access to any such documents, information or records. So Help Me God.

Dated this _____ day of _____, 20__ .

Signature

SECOND SCHEDULE*(Section 32(2))**Contents of Report of Agency*

1. The information referred to in section 32
 - (a) is a general description of the matters referred to the Agency;
 - (b) is subject to section 32(2), a general description of the matters investigated by the Agency;
 - (c) contains the following details with respect to matters investigated by the Agency;
 - (i) the number of investigations commenced but not completed during the financial year in question;
 - (ii) the average time taken to deal with complaints and the actual time taken to investigate any matter in respect of which a report is made.
 - (d) contains any recommendations for changes in the laws of Barbados, or for administrative action that the Agency considers should be made as a result of the exercise of its functions;
 - (e) states the general nature and extent of any information submitted under this Act by the Agency during the year to any other public body;
 - (f) includes the number of matters investigated by the Agency which have resulted in prosecutions or disciplinary action in that year;
 - (g) lists a description of its activities during that year in relation to any of its functions;
 - (h) states the number of convictions and acquittals, and where a charge is laid, the time taken to dispose of each matter;
 - (i) contains such other information as the Agency thinks relevant.

2. Notwithstanding paragraph (1), no details shall be provided by the Agency in relation to any matter under investigation by the Agency, or for which criminal proceedings have been instituted.

THIRD SCHEDULE*(Section 34(3))**Constitution and Procedure of Committee***Appointment of members and tenure**

1.(1) The Governor-General shall on the recommendation of the Prime Minister after consultation with the Leader of the Opposition appoint 7 persons to be members of the Committee.

(2) The members of the Committee shall be appointed by instrument in writing and shall comprise

- (a) a retired Judge;
- (b) a retired officer of the Royal Barbados Police Force, not below the rank of Assistant Commissioner of Police;
- (c) a retired officer of the Barbados Defence Force, not below the rank of Colonel; and
- (d) a minister of religion

each of whom shall hold office for a term of 5 years; and

- (e) 3 other members recommended by the Minister responsible for Defence and Security selected from persons with expertise in the following areas:
 - (i) financial matters;
 - (ii) anti-corruption matters; and
 - (iii) public procurement matters,

each of whom shall hold office for a term of 3 years.

(3) All members of the Committee are eligible for reappointment.

Appointment of Chairman

2.(1) The Governor-General shall appoint the Chairman from amongst the members of the Committee.

(2) Where the Chairman is absent or unable to act, the Governor-General may appoint another member to act temporarily as Chairman.

Removal of Chairman and members of the Committee

3. The Chairman and other members of the Committee shall be removed from office by the Governor-General upon the recommendation of the Prime Minister after consultation with the Leader of the Opposition, if any of them is absent from three consecutive meetings of the Committee

(a) without the leave of

(i) the Governor-General, in the case of the Chairman; or

(ii) the Chairman, in the case of any other member, or

without reasonable excuse; or

(b) becomes incapable of satisfactorily discharging the functions of his office whatever the cause.

Resignation of members of the Committee

4. A member may resign by giving written notice of resignation to the Chairman, and in the case of the Chairman, by giving written notice of resignation to the Governor-General.

Vacancy

5.(1) A vacancy in the membership of the Committee arises on

(a) the death or resignation of a member; or

(b) the removal from office of a member.

(2) Where a vacancy is created pursuant to sub-paragraph (1) a person may be appointed in accordance with paragraph 1(1) to fill the vacancy and the person so appointed shall hold office only for the unexpired portion of the term of the former member.

Gazetting of appointment etc.

6. The appointment, resignation, death or removal from office of a member shall be published in the *Official Gazette*.

Appointment of secretary and staff

7.(1) The Committee shall appoint a secretary whose duties shall be

- (a) to receive complaints made pursuant to section 37 of the Act;
- (b) to attend the meetings of the Committee;
- (c) to record the proceedings of the Committee and keep the minutes of such meetings in proper form;
- (d) generally to perform such duties connected with the work of the Committee as the Committee may require.

(2) The Committee may arrange for the use of the services of any officer or facilities of the Agency as it deems necessary for the performance of its functions.

Procedure

8.(1) The Committee shall meet as often as it considers necessary for the proper conduct of the affairs of the Committee, but shall meet not less than once per month.

(2) The Chairman or any other person appointed to act temporarily as Chairman shall preside at a sitting of the Committee.

(3) A quorum of the Committee shall be three members.

- (4) Decisions of the Committee shall be by a majority of votes of the members and the Chairman shall have an original vote and a casting vote in any case in which the voting is equal.
- (5) The Committee is not bound by rules of evidence and may inform itself in any way it considers appropriate but shall observe the rules of natural justice.
- (6) Proper records of all proceedings of the Committee shall be kept.
- (7) The Committee shall regulate its procedure.

Protection of members

9. No action, suit, prosecution or other proceedings shall be brought or instituted personally against any member of the Committee in respect of an act done *bona fide* in pursuance, or execution, or intended execution of the provisions of this Act.

Disclosure of interest

10. Any member of the Committee who has any interest, directly or indirectly, in any matter brought before the Committee shall

- (a) as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a sitting of the Committee; and
- (b) not be present during the deliberations of the Committee on the matter or take part in the decision of the Committee with respect thereto.

Authentication of documents

11. All documents made by, and all decisions of the Committee, may be signed under the hand of the Chairman or any member of the Committee authorised to act in that behalf.

Remuneration

12. There shall be paid from the funds of the Agency to the Chairman and other members of the Committee, such remuneration, whether by way of

honorarium, salary or fees and such allowances as the Minister with responsibility for the Public Service may determine.

Read three times and passed the House of Assembly this
day of _____, 2020.

Speaker

Read three times and passed the Senate this _____ day of
, 2020.

President

ANTI-CORRUPTION AND ANTI-TERRORISM AGENCY BILL, 2020

EXPLANATORY MEMORANDUM

The Bill would provide for the establishment of an Anti-Corruption and Anti-Terrorism Agency.

PART I

Preliminary

- Clause 1:** states the short title by which the Act shall be cited.
- Clause 2:** provides for the definitions which aid in the interpretation of the Act.

PART II

Anti-Corruption and Anti-Terrorism Agency

- Clause 3:** provides for the principal objects of the Act.
- Clause 4:** provides for the establishment of the Agency.
- Clause 5:** states the functions of the Agency.
- Clause 6:** provides that the same person shall not perform the functions of investigation and prosecution.
- Clause 7:** states that the Commissioner of Police or the head of a law enforcement agency may refer an investigation to the Agency for the Director-General to determine whether to accept responsibility for the investigation.

- Clause 8:** confers investigatory powers on the Agency and creates offences where persons fail to comply with requirements made by the Director-General or give false or misleading information.
- Clause 11:** provides for the co-operation of the Agency with other bodies.
- Clause 12:** provides that the Agency shall be subject to the authority of the Anti- Corruption and Anti-Terrorism Agency Oversight Committee and the Committee shall have oversight of the Agency.
- Clause 13:** provides for Ministerial direction.

PART III

Administration

- Clause 14:** provides for the appointment of the Director General of the Agency.
- Clause 15:** provides for the disqualification for appointment as Director General.
- Clause 16:** provides for the functions of the Director General.
- Clause 17:** states that the Director General may delegate any function to officers of the Agency.
- Clause 18:** states the procedure for the removal of the Director General .
- Clause 19:** provides for the resignation of the Director General.
- Clause 20:** states the procedure for the filling of a vacancy in the office of the Director General.

- Clause 21:** provides for the appointment of staff and persons contracted *ad hoc*.
- Clause 22:** makes provision *inter alia* for positive vetting procedures before appointment.
- Clause 23:** provides for the obligation of secrecy.

PART IV

Financial Provisions, Plans and Reports

- Clause 24:** states that the funds and resources of the Agency shall consist of funds appropriated by Parliament.
- Clause 25:** states that the Agency shall keep proper records of receipts, expenditure, assets and liabilities and the accounts shall be audited annually.
- Clause 26:** provides for the expenses and remuneration of the Agency to be paid from the funds of the Agency.
- Clause 27:** states that the Director General shall submit an annual plan to the Minister setting out how the Director General intends that the functions of the Agency are to be exercised during the year.
- Clause 28:** provides that the Director General shall consult with the strategic partners and others in preparing the annual plan.
- Clause 29:** states that the Agency shall in each financial year submit estimates of income and expenditure and the annual plan to the Minister.
- Clause 30:** provides for the Agency to furnish returns to the Minister.

- Clause 31:** provides for a copy of the annual report and audited financial statement of the Agency to be submitted to the Minister.
- Clause 32:** provides that the Director General submit a report relating to the execution of the functions of the Agency.

PART V

Agreements and Arrangements

- Clause 33:** states that the Agency may enter into an agreement with strategic partners or law enforcement agencies whether within or outside Barbados regarding the exchange of information relating to the investigation or prosecution of offences relating to corruption and terrorism.

PART VI

Anti-Corruption and Anti-Terrorism Agency Oversight Committee

- Clause 34:** provides for the establishment and objectives of the Anti-Corruption and Anti-Terrorism Agency Oversight Committee.
- Clause 35:** provides for the function of the Committee.
- Clause 36:** provides for the powers of the Committee.
- Clause 37:** states the procedure for the making of a complaint and the conduct of an investigation.
- Clause 38:** provides for the steps to be taken after conducting an investigation.

PART VII

Protection of Officers

- Clause 39:** provides for the protection of intelligence officers.
- Clause 40:** provides that no suit may be brought personally against an officer in respect of a lawful act done or omission made in the course of carrying out the provision of the Act.

PART VIII

Offences

- Clause 41:** provides for offences.
- Clause 42:** provides a general penalty for offences under section 21 or 39.
- Clause 43:** provides for offences committed by a body corporate.

PART X

General

- Clause 44:** provides for a Code of Conduct.
- Clause 45:** provides for the Director General to require a person to keep documents.
- Clause 46:** makes provision for the Minister to amend monetary fines and the Schedules.
- Clause 47:** makes provision for the Minister to make regulations.
- Clause 48:** makes provision for savings of certain enactments.

Anti-Corruption and Anti-Terrorism
Agency Bill, 2020

Clause 49: provides for the Act to come into operation on a date to be fixed by proclamation.