



# MEMORANDUM



**FROM:** DIRECTOR, FINANCIAL INTELLIGENCE UNIT  
ANTI-MONEY LAUNDERING AUTHORITY

**TO:** Permanent Secretary, Office of the Attorney-General  
Clerk of Parliament

**REF:** 002/054/5

**DATE:** August 24, 2018

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**Subject:** **Comments on the Integrity in Public Life Bill, 2018**

Reference is made to the matter at caption.

2. Kindly find enclosed comments on the mater at caption.
3. The Director does not regard it necessary for the FIU to appear before the Select Committee.
4. Please be guided accordingly.

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Mrs. Shelley A. Nicholls-Hunte  
Director

Enc.



## **Comments on the Integrity in Public Life Bill, 2018**

### **Part III Investigations**

Section 18 relating to Obstruction of Investigative Officer states that a person who obstructs the investigative officer is liable on summary conviction to a fine of \$5,000 or imprisonment for 6 months or both. This penalty is low.

In the Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23 (MLFTA)- Section 42 states that the penalty for anyone who obstructs the FIU, a Police Officer, authorized officer, etc is liable on summary conviction to a fine of \$50,000 or imprisonment for 2 years or both.

### **Part VI - Gifts**

The Director FIU proposes that in relation to Section 45 (1), the word “benefit” be added after “gift”. The section refers to a gift worth \$1000. To cover a wider range of practical scenarios where a benefit may be given, for example, a level of freeness worth \$1000 or more. Practical examples may be the giver making a service, a product, or an item available on a regular basis for a specific period of time or an infinite period of time as an act of corruption.

Additionally - the gift or benefit may not be solely a one-time occasion valuing \$1000. It may be a series of gifts or benefits totalling \$1000. The Director proposes the inclusion of such terminology to express this.

Section 45(7) (b)- With respect to this subsection, the Director queries the rationale for the inclusion of the Minister of Finance. The Director suggests that the gift be given to the Commission as the report is made to the Commission. If the consideration for the inclusion of the Minister of Finance is for accounting purposes, the Director submits that the gift (money) should go to the Commission and thereafter to the Ministry of Finance.

## **Part VII - Acts of Corruption and Other Contraventions of the Act**

Section 51 - The Director proposes the inclusion of extortion in this section. Extortion like bribery is a type of corruption. In a bribery scenario, a giver is providing something of value in exchange for a benefit offered by the recipient. With extortion, the recipient is not typically offering to provide anything of benefit to the giver. Instead the individual is threatening to take an action or engage in conduct that will harm the giver if he or she does not provide something of value usually of a significant amount or comply with the recipient's demands. Currently, none of the paragraphs explicitly refer to the element of duress, threat of harm, etc as would be included with extortion.

Section 51- The Director suggests that paragraphs (j) and (k) make reference to the Employment Sexual Harassment (Prevention) Act, 2017 as necessary and once applicable.

### **Section 54- Offences & Penalties in respect of acts of corruption.**

The penalties seem rather low and may not be necessarily viewed locally in the minds of the public or by international organizations, like the FATF, OECD as sufficiently dissuasive sanctions or as sufficiently punitive.

It is respectfully submitted that if the culture of anti-corruption in Barbados is being redefined, then the low penalties will not assist this thrust. The Director refers to the Money Laundering and Financing of Terrorism (Prevention and Control ) Act (MLFTA) 2011-23. Section 6 refers to the offense of engaging in money laundering and a penalty of \$200,000 on summary conviction or imprisonment for 5 years or both and on indictment, a penalty of \$2,000,000.00 or 25 years imprisonment or both. For aiding and abetting, the the penalty is, o summary conviction \$150,000 or imprisonment for 4 years or both and on indictment \$1,500,000.00 and imprisonment for 15 years or both. The United Nations Convention Against Corruption (UNCAC) or Merida Convention also requires the stipulation of dissuasive sanctions.

One must also note that other offences such as a failure by a financial institution or non-financial business or professional entity to file a report to the FIU relating to suspicious or unusual activity or proceeds of crime, etc may attract a penalty of \$100,000 on indictment. Non- Financial Business or Professional entity based on the Second Schedule MLFTA relates to accountants, attorneys-at-law, dealers in precious metals and stones, real estate agents and trust and company service providers. In other words, individuals as members of the DNFBPs and not merely a legal entity or arrangement may be liable on indictment to \$100,000.00.

### **Part X- Section 79 (1) & (2) Confidentiality of Information**

The penalty of \$5000 or imprisonment for 2 months or both seems low.

Section 48 MLFTA relates to confidentiality and the penalties for breach of confidentiality by the staff of the FIU and any other related person. There is a penalty of \$100,000.00 or 5 years imprisonment or both. All staff of the FIU sign a declaration to this effect on entry to the department. This should also be repeated periodically at certain milestones; work anniversary, etc.

There is also a separate tipping off offence at Section 43 MLFTA in terms of divulging information which should not be divulged. The penalty is \$50,000 or imprisonment for 2 years or both.

These sections are mentioned here to indicate the dissuasive sanctions of another Act of Parliament.

### **First Schedule**

#### **Section 4 - Appointment of Chairman-**

The Section states that the Governor- General appoints a Chairman of the Commission. Is this appointment on the advice of the Honourable Prime Minister after the consultation of the Leader of the Opposition?

The Director suggests that the Chairman in similar provisions of other legislative Acts of Integrity Commissions, is appointed on the advice of the Honourable Prime Minister after consultation with Leader of the Opposition.

This provision supports the notion/ principle that the Integrity Commission will possess operational independence and will not be at the whims and beck and call of the political party of the day. This is in keeping with Article 5(2) of the United Nations Convention Against Corruption (UNCAC) and Clause 4 (2) of the Integrity in Public Life Bill, 2018 . The latter states, *“In the exercise of its functions under this Act, the Commission may not be subject to the direction or control of any person or authority.”*

The Director submits that the involvement of both the Honourable Prime Minister and the Leader of the Opposition will support Clause 4(2) and assist in fostering and presenting a culture of transparency.

The Director has additionally reviewed the Integrity in Public Life legislation of the Commonwealth of Dominica. The insertion of the prerequisite for the staff of the Commission is an important focal point, *“..persons of high public standing and reputation for personal integrity.”*

### **FATF Recommendation 36**

One of the recommendations (Financial Action Task Force Recommendation 36) emanating from the Caribbean Financial Action Task Force Mutual Evaluation Report on Barbados’ anti-money laundering/counter-financing of terrorism (aml/cft) regime is that Barbados implement and ratify the United Nations Convention Against Corruption (the Merida Convention). Barbados received a Partially Compliant rating.

FATF Recommendation 36 requires that countries implement the following Articles of the Convention as a minimum:

Article 14 - Prevention of money laundering

Article 15- Bribery of national public officials

Article 16-bribery of foreign public officials and officials of public international organizations

Article 17-Embezzlement of public officials

Article 23 -Laundering of proceeds of crime

Article 24-Concealment

Article 26- Liability of legal persons (*Addendum - from FIU, not from UN -legal entities & not merely individuals may be guilty of the acts of corruption. Consideration of this fact and the importance of dissuasive penalties is highlighted here*)

Article 27 -Participation and attempt

Article 28-Knowledge, intent & purpose

Article 29- Statute of Limitations

Article 30 -Prosecution and sanctions

*Article 31-Freezing, seizure & confiscation (Addendum from FIU -this Bill should also contemplate the Anti-Terrorism (Amendment) Act, 2015-28 and the Proceeds and Instrumentalities of Crime Bill when passed and proclaimed apart from Acts referred to at Clause 49 of the Integrity in Public Life Bill*

Article 38- Cooperation with national authorities

Article 40- Bank Secrecy

Article 43- International Cooperation

Article 44- Extradition

Article 46- Mutual Legal Assistance

Article 48 - Law Enforcement Cooperation

## Article 50 - Special Investigative Techniques

*(Addendum from the FIU - controlled delivery, electronic and other surveillance, undercover operations and allow for the admissibility in fort the evidence derived therefrom. This is similar to FATF Recommendation 31 which stipulates that “competent authorities considering investigations should be able to use a wide range of investigative techniques for the investigation of money laundering, associated predicate offenses and terrorist financing including (a. undercover operations ; b. intercepting communications; c. Accessing computer systems; d. controlled delivery”).*

*In Barbados’ Mutual Evaluation Report, the assessors stated , “There are no measures permitting the use of a wide range of investigative techniques.” Countries have been cautious in legislating for the above items for evident reasons. The Merida Convention in the above Article has made specific stipulations, a mere excerpt of which is aforementioned. The input of the Commissioner of Police of the Royal Barbados Police Force on this matter will be useful. Comments of the Commissioner of Police will also be relevant to Barbados’ Mutual Evaluation process.*

## Article 51- Asset Recovery Reciprocity Between States

### Article 52 - Prevention & detection of transfers of proceeds of crime

### Article 53 - Measures for direct recovery of property

### Article 54- Mechanisms for recovery of property through international cooperation in confiscation

### Article 55 - International cooperation for the purposes of confiscation

### Article 57 - Return and disposal of assets

*Article 58 - Financial Intelligence Unit (Addendum- FIU- the establishment of an adequately resourced and maintained FIU to be responsible for its core function of receiving, analyzing and disseminating to the competent authorities reports of suspicious financial transactions. )*



## **Other General Comments**

In 2015, Mrs. Shelley Nicholls-Hunte, Director, Financial Intelligence Unit had the opportunity to attend a training course in Singapore on Singapore's Anti-Corruption Strategies. The course was part of the Singapore Cooperation Programme, which is one of the vehicles used by Singapore to share its capacity-building successes with and offer technical assistance to developing countries.

The objectives of the course, which was held at the Singapore Civil Service College, were:

- To provide a bird's eye view of Singapore's anti-corruption ethos
- To demonstrate the relationship between the macro strategy and Corrupt Practices Investigations Bureau (CPIB)'s operational environment
- To understand how Singapore exchanged its high level of corruption in the public and private sectors to achieving the ranking of one of the top five least corrupt countries according to Transparency International Corruption Perception Index
- To review the operations of the CPIB
- To explore the transplantability of Singapore's anti-corruption model and other international models

Tours were made of the Attorney-General's Chambers (AGC) and the CPIB.

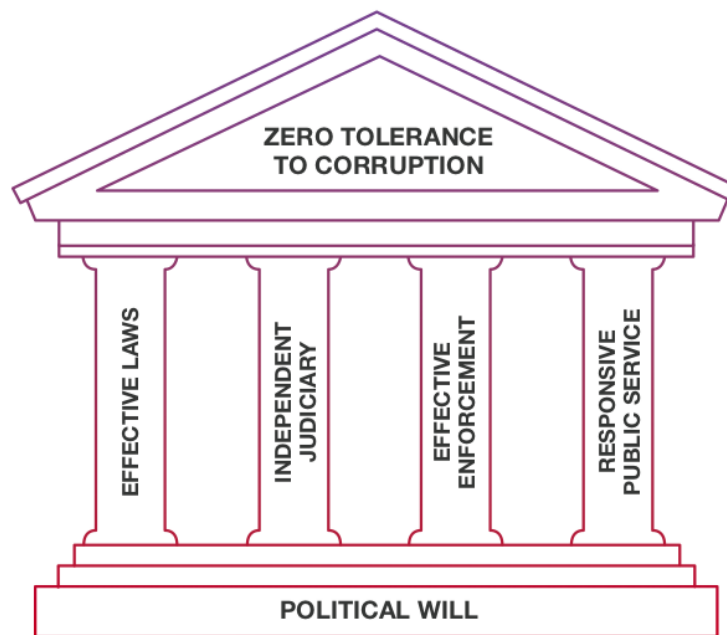
The course participants were employees of anti-corruption agencies, police, tax departments, Ministry of Foreign Affairs, Office of the Prime Minister, Office of the Ombudsman and from the Financial Intelligence Unit (Barbados) from several countries including Bhutan, Botswana, Bulgaria, Cambodia, Fiji, Georgia, Indonesia, Kenya, Kiribati, Lesotho, Maldives, Mongolia, Morocco, Namibia, Palestine, the Philippines, Samoa, Saudi Arabia, Seychelles, Solomon Islands, South Africa, Sri Lanka, Tanzania, Trinidad and Tobago and Zimbabwe.

The Director, FIU lays this context to state the following. One common thread running through the week-long course was the importance of engendering the anti-corruption culture in a country. This is not achieved alone by strong laws or enforcement measures to “scare” persons into compliance, though enforcement leading to prosecution is important. Rather, the importance of prevention was underscored ad nauseum. This is largely achieved through the education of the public on anti-corruption matters in creative ways, the importance of private sector entities’ creation and implementation of anti-corruption compliance programmes for each entity and the national thrust to fervently stress the importance of an anti-corruption culture in the public service. Participants, many of whom originated from countries with corruption challenges, were impressed with the systematic attempts made by Singapore to spread the anti-corruption gospel among its citizens.

The point was also made that the existing culture of many countries may unwittingly encourage corruption. A common example may be the culture of paying an additional sum to obtain an expedited service within a government agency without there being proper accounting systems for the collection and direction of the monies collected.

Participants were educated on the temple of anti-corruption control. The temple has 4 main pillars under the roof of the overarching principle of a zero tolerance to corruption. The pillars are effective laws, independent judiciary,

effective investigation and enforcement and an effective public service. The pillars rest on the base of political will.



Singapore's Corruption Control Framework

While the foregoing is not immediately germane to the Integrity in Public Life Bill, 2018, in order to change Barbados' ethos in relation to corruption, it must be reiterated that anti-corruption efforts is everyone's business. With every act or alleged act of public corruption or official corruption, there will be a public official or entity and a private official or entity, involved.

It is true that Barbados must proverbially "start somewhere" and that a model and novel yet natural way is that the country's leadership, the individuals with "power to wield" lead by example in the fight against corruption. The Director, however is concerned that as the name of the local Bill suggests, there is solely the present focus on the public official at the unfortunate sacrifice of the clarion call that private sector members and members of the public are also accountable and must play their part. It is noted that Parts VIII and IX of the Bill include other officers of government agencies, namely public officials. This matter may be rectified by a strong education culture of the Commission.

The articles of the UNCAC which must be at a minimum implemented to satisfy Recommendation 36 mostly relate to public officials. The point must however be made here that in a fairly brief timeframe after the ratification of the UNCAC and the commencement of the preparation for the Peer Review process, consideration must be quickly given to ensuring that the articles relating to countermeasures against corruption by private individuals and entities must also be implemented. The Director, FIU was also recently informed through the Ministry of Foreign Affairs and Foreign Trade about the Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC).

The fact that local private sector entities (and public sector entities and individuals) may run into trouble and into the cold, long arms of the United States' Foreign Corrupt Practices Act and the United Kingdom's Bribery Act, is also another reason that the anti-corruption sensitisation in Barbados must be unrelenting and a concerted and intense long-term effort. Both pieces of legislation purport to have global application.

One more point must be made. Apart from the pressure of international organisations on countries for compliance with and implementation of the Merida Convention (United Nations Convention Against Corruption), at this moment, Barbados is "sticking out" like a sore thumb in terms of being one of the few countries that has not ratified the same Convention. The United Nations Office on Drugs and Crime personnel advised that Barbados was "not in good company", with other countries such as North Korea and Syria in the same company.

Like other Financial Intelligence Units, the Barbados Financial Intelligence Unit, has been a member of the Egmont Group of Financial Intelligence Units since 2002. The Egmont Group in conjunction with the Interpretive Notes of FATF Recommendation 29 require the FIU to possess operational independence and to operate without undue political interference. To operate otherwise will undermine the trust built between the FIU and its main customers, the constituents of the financial sector, whether financial institutions or Designated

Non-Financial Businesses and Professions (DNFBPs.). It is realised that the FIU will be one of the domestic partners of the commission. It is in these parameters that the aforementioned comments are made with respect to the Integrity in Public Life Bill, 2018.

## **References**

- *Integrity in Public Life Act of Dominica*
- *Money Laundering and Financing of Terrorism (Prevention and Control) Act, 2011-23*
- *Caribbean Financial Action Task Force Mutual Evaluation Report of Barbados, February 2018*
- *Association of the Certified Financial Crime Specialists*
- *United Nations Convention Against Corruption*