

2019-12-16

OBJECTS AND REASONS

This Bill would provide for the prevention, investigation and prosecution of acts of corruption.

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BARBADOS

A Bill entitled

An Act to provide for the prevention, investigation and prosecution of acts of corruption.

ENACTED by the Parliament of Barbados as follows:

PART I

PRELIMINARY

Short title

1. This Act may be cited as the *Prevention of Corruption Act, 2019*.

Interpretation

2. In this Act

“advantage” includes

- (a) money and any gift, loan, fee, reward, bonus, commission, discount, rebate, valuable security or other property or interest in property of any description;
- (b) any status, honour, office, contract, employment or agreement to render services in any capacity;
- (c) any forbearance to demand any money or money's worth or other valuable thing;
- (d) any avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage or any protection from any disability or penalty apprehended or incurred from any action or proceedings of a civil, criminal or disciplinary nature, whether or not already instituted;
- (e) any discharge, liquidation, payment or release of any loan, obligation or other liability, whether in whole or in part;
- (f) any residential or hotel accommodation;
- (g) any exercise, or forbearance from the exercise, of any duty, power or right;
- (h) any real or pretended aid, vote, consent, influence or abstention from voting;

- (i) any other service, favour, right or privilege; and
- (j) any offer, promise or undertaking, whether conditional or not, of any advantage within the meaning of paragraph (a), (b), (c), (d), (e), (f), (g), (h) or (i);

“agent” means a person employed by, or acting for, another and includes a trustee, an administrator and an executor;

“disclosure order” means an order made under section 15(1);

“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 public official” means a person who

- (a) holds an administrative, executive, judicial or legislative office of a foreign State, whether appointed or elected; or
- (b) exercises a public function for a foreign State including a public function for a public agency or public enterprise of a foreign State;

“foreign State” means a State other than Barbados;

“income” includes

- (a) money or money’s worth derived from whatever source or acquired in Barbados or elsewhere, whether directly or indirectly; and
- (b) all receipts by way of salary, fees, wages, requisitions, profits, grants, emoluments, rents, interest, commissions, bonuses, pensions, annuities or benefits;

“induce” includes to persuade, encourage, coerce, intimidate, threaten or cause a person to perform an act, and “inducement” has the corresponding meaning;

“investigative officer” means a member of the Police Force or such other person as may be by authorised by any other enactment to conduct an investigation into an offence under this Act;

“liability” means any obligation of a person to pay money or to provide goods or services in Barbados or elsewhere;

“official of a public international organisation” means a person who is authorised by a public international organisation to act on its behalf;

“persons exercising public functions” includes

- (a) all specified persons in public life;
- (b) public officers;
- (c) members, chief executive officers, managers, directors and employees of state-owned enterprises; and
- (d) all other persons who hold a legislative, executive, administrative or judicial office in the Government of Barbados, whether appointed or elected, permanent or temporary, paid or unpaid;

“principal” includes an employer;

“private sector entity” means an entity that is not a public authority and is not under the direct control of the Government;

“privileged material” means

- (a) communications between an attorney-at-law and his client, or any person representing his client, made in connection with the giving of legal advice to the client;
- (b) communications between an attorney-at-law and his client, or any person representing his client, or between such an attorney-at-law or

his client, or any such representative, and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

- (c) material enclosed with or referred to in such communications and made
 - (i) in connection with the giving of legal advice; or
 - (ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when the communications or material are in the possession of a person who is entitled to such possession and are not held with the intention of furthering a criminal purpose;

“property” means

- (a) assets of every kind, whether situated in Barbados or elsewhere and whether real or personal, tangible or intangible and includes money; and
- (b) legal documents or instruments in any form, including electronic or digital, evidencing title to or interest in assets referred to in paragraph (a) such as bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit;

“public authority” includes

- (a) the House of Assembly and the Senate;
- (b) the Cabinet;
- (c) the judiciary;
- (d) any ministry, department, agency, organ, unit or other authority of Government;
- (e) a state-owned enterprise; and
- (f) any person exercising public functions;

“public international organisation” means an organisation, the members of which are

- (a) countries or territories;
- (b) governments of countries or territories;
- (c) other public international organisations; or
- (d) a combination of countries, territories, governments and other public international organisations;

“public officer” has the meaning assigned to it by section 2 of the *Public Service Act*, Cap. 29;

“specified person in public life” has the meaning assigned to it by section 2 of the *Integrity in Public Life Act, 2019* (Act 2019-);

“state-owned enterprise” has the meaning assigned to it by section 2 of the *Integrity in Public Life Act, 2019* (Act 2019-).

Offering, soliciting or accepting an advantage

3. For the purposes of this Act, a person

- (a) offers an advantage where he, or any person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or in trust for any other person;
- (b) solicits an advantage where he, or any person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person;
- (c) accepts an advantage where he, or any person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

PART II

ACTS OF CORRUPTION - OFFENCES AND PENALTIES

Bribery of persons exercising public functions

4.(1) A person who offers an advantage to a person exercising public functions as an inducement to, or reward for, or otherwise on account of, the person exercising public functions'

- (a) performing or refraining from performing, or having performed or refrained from performing, any act in his capacity as a person exercising public functions;
- (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by another person exercising public functions in his or that other person's capacity as a person exercising public functions; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public authority,

is guilty of an offence.

(2) A person exercising public functions who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his

- (a) performing or refraining from performing, or having performed or refrained from performing, any act in his capacity as a person exercising public functions;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by another person exercising public functions in his or that other person's capacity as a person exercising public functions; or

- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public authority,

is guilty of an offence.

Bribery of a foreign public official

5.(1) A person who offers an advantage to a foreign public official as an inducement to, or reward for, or otherwise on account of, the foreign public official's acting or refraining from acting, or having acted or refrained from acting, in the exercise of his official functions, in order to obtain or retain any business or other advantage, is guilty of an offence.

(2) A foreign public official who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his acting or refraining from acting, or having acted or refrained from acting, in the exercise of his official functions, is guilty of an offence.

Bribery of an official of a public international organisation

6.(1) A person who offers an advantage to an official of a public international organisation as an inducement to, or reward for, or otherwise on account of, the official's acting or refraining from acting, or having acted or refrained from acting, in the exercise of his official functions, in order to obtain or retain any business or other advantage, is guilty of an offence.

(2) An official of a public international organisation who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his acting or refraining from acting, or having acted or refrained from acting, in the exercise of his official functions, is guilty of an offence.

Trading in influence

7.(1) A person who offers an advantage to another person as an inducement to, or reward for, or otherwise on account of, that other person's using his real or supposed influence, or having used influence, in order for the first mentioned

person or another person to obtain an advantage from a public authority, is guilty of an offence.

(2) A person who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his using his real or supposed influence, or having used influence, in order for another person to obtain an advantage from a public authority, is guilty of an offence.

Acquiring private interest in contract, agreement or investment in relation to public authority

8.(1) Subject to subsection (2), a person exercising public functions shall not acquire or hold a private interest in any contract, agreement or investment emanating from or connected with a public authority with which he is employed or which is made on account of such public authority.

- (2) Subsection (1) does not apply to a person exercising public functions
- (a) who acquires or holds an interest referred to in that subsection as a shareholder of a state-owned enterprise; or
 - (b) whose terms and conditions of employment do not prohibit him from acquiring or holding such an interest.

Bribery in relation to contracts and tenders

9.(1) A person who offers an advantage to a person exercising public functions as an inducement to, or reward for, or otherwise on account of, the person exercising public functions' giving assistance or using his real or supposed influence, or having given assistance or used influence, in

- (a) the promotion, procuring or execution of
 - (i) any contract with a public authority for the supply of any goods, services or works; or
 - (ii) any subcontract under a contract referred to in subparagraph (i); or

- (b) the payment of the price or other consideration stipulated or otherwise provided for in any contract or subcontract referred to in paragraph (a),

is guilty of an offence.

(2) A person exercising public functions who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his giving assistance or using his real or supposed influence, or having given assistance or used influence, in

- (a) the promotion, procuring or execution of; or
- (b) the payment of the price or other consideration stipulated or otherwise provided for in,

any contract or subcontract referred to in subsection (1)(a) is guilty of an offence.

(3) A person who offers an advantage to another person as an inducement to, or reward for, or otherwise on account of, the other person's withdrawal of a tender or refraining from tendering, for a contract with a public authority for the supply of any goods, services or works, is guilty of an offence.

(4) A person who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his withdrawal of a tender or refraining from tendering, for a contract referred to in subsection (3) is guilty of an offence.

Bribery in relation to auctions

10.(1) A person who offers an advantage to another person as an inducement to, or reward for, or otherwise on account of, that other person's refraining or having refrained from bidding at an auction conducted by or on behalf of a public authority, is guilty of an offence.

(2) A person who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his refraining or having refrained from, bidding at an auction conducted by or on behalf of a public authority, is guilty of an offence.

Corrupt transactions with agents

11.(1) A person who offers an advantage to an agent as an inducement to, or reward for, or otherwise on account of, the agent's

- (a) performing or refraining from performing, or having performed or refrained from performing, any act in relation to his principal's affairs or business; or
- (b) showing or refraining from showing, or having shown or refrained from showing, favour or disfavour to any person in relation to his principal's affairs or business,

is guilty of an offence.

(2) An agent who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his

- (a) performing or refraining from performing, or having performed or refrained from performing, any act in relation to his principal's affairs or business; or
- (b) showing or refraining from showing, or having shown or refrained from showing, favour or disfavour to any person in relation to his principal's affairs or business,

is guilty of an offence.

(3) An agent who, with intent to deceive his principal, uses any receipt, account or other document

- (a) in respect of which his principal is interested; and
- (b) which
 - (i) contains any statement which is false, erroneous or defective in any material particular; and
 - (ii) to his knowledge is intended to mislead his principal,

is guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting or accepting of an advantage by his agent shall constitute a defence to an offence under this section.

Bribery in the private sector

12.(1) A person who offers an advantage to a person who directs or works in any capacity for a private sector entity as an inducement to, or reward for, or otherwise on account of, the other person's acting or refraining from acting, or having acted or refrained from acting, in the exercise of his functions in such capacity, is guilty of an offence.

(2) A person who directs or works in any capacity for a private sector entity and who solicits or accepts an advantage as an inducement to, or reward for, or otherwise on account of, his acting or refraining from acting, or having acted or refrained from acting, in the exercise of his functions in such capacity, is guilty of an offence.

Penalties

13.(1) A person guilty of an offence under this Part is liable

- (a) on conviction on indictment, to a fine of \$1 500 000 or to imprisonment for 15 years or to both;
- (b) on summary conviction, to a fine of \$500 000 or to imprisonment for 10 years or to both,

and, without prejudice to any other law, to pay as a penalty, within such time as the court may specify, the amount or value of any advantage he is determined as having accepted.

(2) A penalty referred to in subsection (1) is recoverable as a fine.

Disqualification from holding public office

14. A person who is convicted of an offence under this Part shall, in addition to any other penalty prescribed by law, be disqualified from holding any public office for a period of 5 years from the date of conviction for the offence.

PART III

INVESTIGATIONS

Disclosure orders

15.(1) Where on an application made by an investigative officer, a judge in Chambers is satisfied that each of the requirements set out in subsection (3) is fulfilled, the judge may make an order authorising the officer to give to any person the officer considers has relevant information, notice in writing requiring the person, with respect to any matter relevant to the investigation for the purposes of which the order is sought, to

- (a) answer any question, either at a time specified in the notice or at once, at a place so specified;
- (b) provide any information specified in the notice, by a time and in a manner so specified;
- (c) produce any document, or any documents of a description, specified in the notice, either at or by a time so specified or at once, and in a manner so specified.

(2) An application for a disclosure order shall be made without notice and shall state that a person specified in the application is subject to an investigation under this Act.

(3) The requirements referred to in subsection (1) are that there are reasonable grounds for

- (a) suspecting that the person specified in the application has committed an offence under Part II; and
- (b) believing that
 - (i) information which may be provided in compliance with the order is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the order is sought; and
 - (ii) it is in the public interest for the information to be provided, having regard to the benefit likely to accrue to the investigation if the information is obtained.

(4) A person is not bound to comply with a requirement imposed by a notice given under a disclosure order unless evidence of authority to give the notice is produced to him.

(5) A person who

- (a) without reasonable excuse, fails to comply with a requirement imposed on him under a disclosure order; or
- (b) in purported compliance with a requirement imposed on him under a disclosure order
 - (i) makes a statement which he knows to be false or misleading in a material particular; or
 - (ii) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence.

(6) A person guilty of an offence under subsection (5) is liable

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for 3 years or to both; and

(b) on conviction on indictment, to a fine of \$150 000 or to imprisonment for 5 years or to both.

(7) Subject to subsection (8), a statement made by a person in response to a requirement imposed by a disclosure order may not be used in evidence against the person in criminal proceedings.

(8) Subsection (7) does not apply in the case of

(a) proceedings for contempt of court;

(b) a prosecution for an offence under subsection (6);

(c) a prosecution for an offence under the *Perjury Act*, Cap. 142; or

(d) a prosecution for another offence where, in giving evidence, the person makes a statement inconsistent with the statement mentioned in subsection (7).

(9) A statement may not be used by virtue of subsection (8)(d) against a person unless

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

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

(10) A disclosure order has effect notwithstanding any obligation as to confidentiality or any other restriction upon the disclosure of information imposed by any enactment, rule of law or otherwise.

(11) A disclosure order does not require a person to provide privileged material but an attorney-at-law may be required to produce the name and address of a client.

(12) An investigative officer may take copies of or extracts from any documents produced by a person in connection with complying with a requirement of a disclosure order.

(13) Any document produced in compliance with a disclosure order may be retained for so long as it is necessary to retain it, as opposed to copies of it, in connection with the investigation for the purposes of which the order was made.

(14) Notwithstanding subsection (13), where an investigative officer has reasonable grounds for believing that the document

(a) may need to be produced for the purposes of any legal proceedings;
and

(b) might otherwise be unavailable for those purposes,

the document may be retained until the proceedings are concluded.

(15) An investigative officer who applied for a disclosure order or any person affected by the order may apply to a judge in Chambers to vary or discharge the order, and the judge may do so where he considers it appropriate.

(16) For the purposes of subsection (1), “relevant information” is information, whether or not contained in a document, which the investigative officer considers to be relevant to the investigation.

Search and seizure warrants

16.(1) Where on an application made by an investigative officer, a magistrate is satisfied of the circumstances set out in subsection (3), the magistrate may issue a warrant authorising the officer to

(a) enter and search the premises specified in the application for the warrant; and

(b) seize and retain any material found on the premises which is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the application is made.

(2) An application for a search and seizure warrant shall

(a) specify the person subject to investigation;

(b) state that the warrant is sought for the purposes of the investigation;

- (c) specify the premises in respect of which the warrant is sought; and
 - (d) specify the material in respect of which the warrant is sought or, where the material cannot be identified at the time of the application, state that there are reasonable grounds for believing that there is material on the premises that
 - (i) relates to the person specified in the application or the question whether that person has committed an offence under Part II; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought.
- (3) The circumstances referred to in subsection (1) are that
- (a) a disclosure order in relation to material has not been complied with and there are reasonable grounds for believing that the material is on the premises specified in the application for the warrant; or
 - (b) there are reasonable grounds for suspecting that the person specified in the application for the warrant has committed an offence under Part II and
 - (i) the conditions specified in subsection (4) are fulfilled; or
 - (ii) the conditions specified in subsection (5) are fulfilled.
- (4) The conditions referred to in subsection (3)(b)(i) are that
- (a) there are reasonable grounds for believing that
 - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (ii) it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and

- (b) it would not be appropriate to make a disclosure order because
 - (i) it is not practicable to communicate with any person against whom the disclosure order could be made;
 - (ii) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer is able to secure immediate access to the material.
- (5) The conditions referred to in subsection (3)(b)(ii) are that
 - (a) there are reasonable grounds for believing where the material cannot be identified at the time of the application, that there is material on the premises specified in the application for the warrant that
 - (i) relates to the person specified in the application or the question whether he has committed an offence under Part II; and
 - (ii) is likely to be of substantial value, whether or not by itself, to the investigation for the purposes of which the warrant is sought; and
 - (b) there are reasonable grounds for believing that it is in the public interest for the material to be obtained, having regard to the benefit likely to accrue to the investigation if the material is obtained; and
 - (c) one of the following applies:
 - (i) it is not practicable to communicate with any person against whom a disclosure order could be made;
 - (ii) entry to the premises will not be granted unless a warrant is produced; or
 - (iii) the investigation might be seriously prejudiced unless an investigative officer arriving at the premises is able to secure immediate entry to them.

(6) A search and seizure warrant does not confer the right to seize privileged material.

Offence of tipping off etc.

17. A person who knows or suspects that an investigation into an offence under Part II has been, is being, or is about to be conducted, or that an order under this Part has been made or may be made and

- (a) divulges that fact or other information to another person whereby the investigation is likely to be prejudiced; or
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, any matter or thing that he knows or suspects is or is likely to be relevant to the investigation,

is guilty of an offence and is liable, on conviction on indictment to a fine of \$250 000 or to imprisonment for 10 years or to both.

PART IV

EVIDENCE

Evidence of unexplained property

18.(1) In proceedings against a person for an offence under Part II the fact that

- (a) the person
 - (i) was at or about the date of, or at any time since the date of, the alleged offence; or
 - (ii) is,

in possession, for which he cannot satisfactorily account, of property disproportionate to his known sources of income; or

- (b) the person had, at or about the date of, or at any time since the date of, the alleged offence, obtained an accretion to property for which he cannot satisfactorily account,

may be proved and may be taken by the court as corroborating the testimony of any witness giving evidence in such proceedings that the person solicited or accepted an advantage and showing that such advantage was solicited or accepted as an inducement or reward.

(2) For the purposes of subsection (1), a person accused of an offence under Part II shall be presumed to be or to have been in possession of property, or to have obtained an accretion thereto, where such property is or was held, or such accretion was obtained, by any other person who, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Presumption of corruption in certain cases

19. Where in any proceedings for an offence under section 4 or section 9(1) or (2), it is proved that the accused gave or accepted an advantage, the advantage shall be presumed to have been given or accepted as such inducement or reward as is alleged in the particulars of the offence unless, on a balance of probabilities, the contrary is proved.

Certain defences not available

20. Where, in any proceedings for an offence under any section of Part II, it is proved that

- (a) the accused accepted an advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to, or reward for, or otherwise on account of, his doing or

refraining from doing, or having done or refrained from doing, any act referred to in that section, it shall be no defence that

- (i) he did not actually have the power, right or opportunity so to do or refrain;
 - (ii) he accepted the advantage without intending so to do or refrain;
or
 - (iii) he did not in fact so do or refrain;
- (b) the accused offered an advantage to another person as an inducement to, or reward for, or otherwise on account of, that other person's doing or refraining from doing, or having done or refrained from doing, any act referred to in that section, believing or suspecting or having reason to believe or suspect that the other person had the power, right or opportunity so to do or refrain, it shall be no defence that the other person had no such power, right or opportunity;
- (c) the accused offered an advantage to another person as an inducement to or reward for or otherwise on account of that other person's doing or refraining from doing, or having done or refrained from doing, any act referred to in that section, it shall be no defence that the advantage is customary in any profession, trade, vocation or calling.

PART V

MISCELLANEOUS

Offences in respect of false complaints

21. A person who knowingly makes a false allegation or maliciously provides false information related to an offence under Part II is guilty of an offence and is liable

- (a) on summary conviction, to a fine of \$50,000 or to imprisonment for 3 years or to both; and
- (b) on conviction on indictment, to a fine of \$150 000 or to imprisonment for 5 years or to both.

Making of Regulations

22. The Minister may make Regulations for giving effect to this Act.

Repeal

23. The *Prevention of Corruption Act*, Cap. 144 and the *Prevention of Corruption Act, 2012* (Act 2012-31) are repealed.

Commencement

24. This Act shall come into operation on a day to be fixed by Proclamation.