

ANTIGUA AND BARBUDA

No. of 2004

BILL FOR

AN ACT to provide for the prevention of corruption.

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ENACTED by the Parliament of Antigua and Barbuda as follows —

1. This Act may be cited as the Prevention of Corruption Act, 2004 and shall come into operation on a date appointed by the Minister by notice published in the *Gazette*. Short title and commencement.

2. In this Act, unless the context otherwise requires — Interpretation.

“advantage” means —

- (a) a gift, loan, fee, reward or commission consisting of money or of any valuable security or other property or interest in property of any description;
- (b) an office, employment or contract;
- (c) a payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

- (d) any other service, or favour including protection from any penalty or disability incurred or apprehended or from any action, or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted;
- (e) the exercise or forbearance from the exercise of any right, power or duty; or
- (f) an offer, undertaking or promise, whether conditional or unconditional, or any advantage within the meaning of paragraph (a), (b), (c), (d) or (e);

“agent” includes a person employed by or acting for another and any person serving under the Government or other public body or holding a public office;

“consideration” includes valuable consideration of any kind;

“principal” includes an employer;

“property” includes money, moveable and immovable property and things in action;

“public body” means any of the following —

- (a) the Government or the Barbuda Council;
- (b) a Ministry or Department of the Government;
- (c) the House of Representatives or the Senate;
- (d) a corporation established by an Act of Parliament for public purposes or any subsidiary company thereof registered under the Companies Act, 1995;
- (e) a board, commission, authority, committee or other body, whether paid or unpaid, and whether or not established by or under any law to perform public functions on behalf of the Government;

“public office” means an office in a public body;

“public official” means any member, office holder, or employee of a public body.

3. (1) A person commits an offence if he —

Offence of
corruption.

- (a) corruptly solicits or accepts, whether directly or indirectly, property or a benefit or advantage for himself or another person for doing an act or for omitting to do an act in the performance of his functions as a public official;
- (b) in the performance of his duties as a public official performs or omits to perform any of his duties in a public body for the purpose of obtaining any property, a benefit or advantage for himself or any other person;
- (c) offers or grants directly or indirectly to a public official any property or a benefit or advantage, for doing or omitting to do any act in the performance of his functions as a public official;
- (d) fraudulently uses or conceals any property or other benefit derived by an act or omission to act under paragraphs (a), (b) or (c);
- (e) allows his private interest to conflict with his public duties or to improperly influence his conduct in the performance of his functions as a public official;
- (f) improperly uses for his benefit or that of a third party any classified or confidential information that he has obtained in his duties as a public official;
- (g) communicates to another person any classified or confidential information obtained in the performance of his duties as a public official with a view to assisting that person to obtain any property, benefit or advantage; or

- (h) improperly uses for his benefit or that of a third party, any property belonging to a public body to which he has access as a result of or in the course of the performance of his functions as a public official.

(2) A person who aids in or procures the commission of an act of corruption or who counsels another, attempts or conspires to commit an act of corruption under subsection (1) commits an offence.

Unlawful assistance in regards to contracts an offence.

4. (1) A person who, without lawful authority or reasonable excuse, offers an advantage to a public official as an inducement to or reward for or otherwise on account of such public official giving assistance or using influence in, or having given assistance or useful influence in —

- (a) the promotion, execution or procuring of —
 - (i) any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance; or
 - (ii) any subcontract to perform any work, provide any service, do anything or supply any article material or substance required to be performed, provided, done or supplied under any contract with a public body; or
- (b) the payment of the price, consideration or other money stipulated or otherwise provided for in the contract or subcontract referred to in paragraph (a),

commits an offence.

(2) A public official who without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in —

- (a) the promotion, execution or procuring of; or

- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract referred to in subsection (1),

commits an offence.

5. (1) An agent who accepts or obtains, or agrees to accept or attempts to obtain from any person, for himself or for any other person, any advantage as an inducement to or reward for or otherwise on account of his —

Corrupt transactions by agents.

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

commits an offence.

(2) A person who gives or agrees to give or offers any property, benefit or advantage to an agent as an inducement to or reward for or otherwise on account of the agent —

- (a) doing or forbearing to do, or having done or forborne to do, an act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business,

commits an offence.

6. (1) A person in Antigua and Barbuda who offers or grants directly or indirectly to a public official of another State any property, benefit or advantage in connection with any economic or commercial transaction, in exchange for any act or omission in the performance of the public functions of that public official, commits an offence.

Corruption involving foreign public officials.

(2) In subsection (1), a “public official” means a person holding office in the Government or in a public body established by or under the control of the Government of a foreign State or territory.

Possession of unexplained property.

7. (1) A person who, being or having been a public official —

- (a) maintains a standard of living above that which is commensurate with his present or past official emoluments; or
- (b) is in control of pecuniary resources or property disproportionate to his present or past official emoluments,

unless he gives a satisfactory explanation to the court as to how he was able to maintain such standard of living or how such pecuniary resources or property came under his control, commits an offence.

(2) Where a court is satisfied in proceedings for an offence under subsection (1) (b) that having regard to the closeness of his relationship with the accused and to other circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property the resources or property shall, until the contrary is proved, be presumed to have been in the control of the accused.

Cap. 311.

(3) For the purposes of this section “official emoluments” include a pension or gratuity payable under the Pensions Act.

Penalty for offences.

8. (1) A person who commits an offence under sections 3, 4, 5, 6, or 7 is liable upon conviction on indictment to a fine of one hundred thousand dollars and to imprisonment for five years and, in addition to the penalty specified above, the court may do any or all of the following —

- (i) order the person convicted to pay the public body and in such manner as the Court directs, the amount or value of any property, benefit or advantage received by him;
- (ii) forfeit his right to claim any non-contributory gratuity or pension to which he would otherwise have been entitled;

- (iii) declare any right under any non-contributory pension scheme to which he is entitled to be forfeited.
- (iv) declare him to be disqualified from holding any public office for a period not exceeding seven years from the date of conviction for the offence;

9. Where, in any proceedings against a person for an offence under this Act, it is proved that any property, benefit or advantage has been given to or received by an agent by or from a person, or his representative, holding or seeking to obtain a contract from a public body, the property, benefit or advantage shall be deemed to have been given and received corruptly as an inducement or reward in terms of this Act unless the contrary is proved.

Presumption of corruption in certain cases.

10. (1) Where in any proceedings for an offence under this Act, it is proved that the accused accepted any property, benefit or advantage, whether for himself or for any other person, believing or suspecting or having grounds to believe or suspect that it was given as an inducement to or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act prohibited by this Act, it shall be no defence that —

Inability to do or forbear to do any act not a defence.

- (a) he did not actually have the power, right or opportunity so to do or forbear;
- (b) he accepted the money, article, benefit or advantage without intending so to do or forbear; or
- (c) he did not in fact so do or forbear.

(2) Where in any proceedings for an offence under this Act, it is proved that the accused offered any property, benefit or advantage to any other person as an inducement to or reward for or otherwise on account of that person's doing, or forbearing to do, or having done or forborne to do, any act prohibited by this Act, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had no such power, right or opportunity.

11. (1) Where a person is convicted of an offence under section 3, 4, 5, 6 or 7, the Court may, on application by the

Confiscation of assets.

prosecutor, and in addition to any penalty that may be imposed under section 8 —

- (a) order the confiscation of any property connected with the offence; or
- (b) in the case of an offence under section 7, order the payment to the Crown of an amount or value not exceeding the amount or value of property the acquisition of which by him was not explained to the satisfaction of the court.

(2) An order under subsection (1) shall not be made in respect of property held by a person other than the person convicted unless that other person has been given reasonable notice that such an order may be made and an opportunity to show cause why it should not be made.

(3) An order under subsection (1) shall not be made in respect of property held by a person other than the person convicted if that other person satisfies the Court in any proceedings to show cause under subsection (2) that he had —

- (a) acted in good faith as regards the circumstances in which the property came to be held by him; and
- (b) so acted in relation to the property that an order in the circumstances would be unjust.

(4) An order under subsection (1) may be made subject to such conditions as the Court thinks fit in all the circumstances of the case.

(5) An order made under subsection (1) may make provision for tracing and taking possession of property to which the order applies and for the disposal of such property by or on behalf of the Crown.

Appeal against
confiscation
order.

12. (1) Where an order is made under section 11 in respect of property held by a person other than the person convicted, that other person may within thirty days after the date of making the order, appeal against the order to the Court of Appeal.

(2) On appeal under this section the Court of Appeal may —

- (a) confirm the order, with or without modification; or
- (b) quash the order and make such other order (if any) under section 11 as it thinks appropriate.

(3) Proceedings under this section shall not operate as a stay of execution of an order unless the Court which makes the order or the Court of Appeal otherwise orders; and a stay of execution may be subject to such conditions as to costs, the giving of security or otherwise as the court or the Court of Appeal thinks proper.

13. (1) Where on an application *ex parte* by the prosecution, the court is satisfied that — Restraining order.

- (a) any property is due to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Act or against whom a prosecution for such an offence has been instituted; or
- (b) a third person is holding property for or on behalf of or to the order of a suspected person,

the court may make an order under this section (hereinafter referred to as a “restraining order”) restraining the property.

(2) In making a restraining order the court may —

- (a) impose such conditions; or
- (b) exempt such property from the operation thereof (including the periodic payment of money), as it thinks fit,

but the third party on whom a restraining order is served in accordance with subsection (4) shall not dispose of or otherwise deal with any property specified in the restraining order save in accordance with directions of the court.

(3) A restraining order shall, if so provided in the order, apply to the income from any property specified therein as it applies to the property itself.

(4) A restraining order shall be served on a third party to whom it is directed and on the person referred to in paragraph (a) of subsection (1) and may be served by delivering it personally or, where the court is satisfied that such person cannot be found or is not in Antigua and Barbuda, be served in such other manner as the court may direct on application *ex parte* by the prosecution.

(5) Where any property specified in a restraining order is immovable property, the order shall be deemed to be an instrument affecting land and shall be registered in the Land Registry in such manner as the Registrar of Lands thinks fit.

(6) Where a restraining order is made with respect to the property of a person against whom a prosecution for an offence under this Act has been instituted, the restraining order shall continue in force —

- (a) until the proceedings on such prosecution or appeal have been finally determined; and
- (b) if a confiscation order is made against that person under section 11, until that order has been set aside, complied with or enforced as the case may be.

(7) A third party on whom a restraining order has been served in accordance with subsection (4) commits an offence and is liable on conviction to a fine of one hundred thousand dollars or equivalent of the value of the property disposed of or otherwise dealt with, whichever is greater or to imprisonment for five years if, during the continuance in force of the restraining order, he knowingly disposes of or otherwise deals with any property specified in the restraining order otherwise than in accordance with directions of the court.

Variation and
revocation of
restraining
orders.

14. (1) The prosecutor at any time, apply *ex parte* to the court for the revocation of a restraining order.

(2) A person on whom a restraining order is served in accordance with section 13 may, at any time, apply to the court for an order revoking or varying the order.

(3) The court shall give to the prosecutor such notice of the day fixed for hearing of the application as the court may order.

(4) On the hearing of an application under subsection (2), the court may —

- (a) revoke the order if it is satisfied that undue hardship will be caused by its continuance in operation; or
- (b) vary the order in such manner as it thinks fit.

15. If a Judge in Chambers is satisfied on an *ex parte* application made by the Director of Public Prosecutions and supported by evidence on affidavit that there is reasonable cause to believe that a person has committed an offence under this Act, the Judge may make an order directing the Chairman of the Integrity Commission or the Government, as the case may be, to release to the Director of Public Prosecutions for his examination the relevant documents filed by the accused pursuant to section 16 of the Integrity in Public Life Act, 2004.

Documents may be released to D.P.P.

16. No prosecution shall be brought under the provisions of this Act unless the consent of the Director of Public Prosecutions is obtained.

Consent of the Director of Public Prosecutions.

17. A person shall not be exempt from liability under this Act by reason of the invalidity of his appointment or election of himself or another person as a public official.

No exemption for invalidity of appointment, etc.

18. A person who maliciously makes a false allegation or maliciously provides false information related to an act of corruption commits an offence and is liable on indictment to a fine of \$100,000.00 or to imprisonment for a term of five years or to both.

Making false allegations etc.

19. Notwithstanding anything in this Act or any other law, an offence under this Act shall be deemed to have been committed in Antigua and Barbuda if —

Jurisdiction.

- (a) the offence is committed in the territory of another State including on board a ship or aircraft registered, licensed or otherwise subject to the jurisdiction of that other State;
- (b) regardless of where the offence was committed the person who committed the offence is —

5. Clause 7 seeks to create two types of offences, in relation to persons holding public office. These offences consist of maintaining a standard of living above that which is commensurate with the present or past emoluments of the accused person, or being in control of pecuniary resources or property disproportionate to the present or past official emoluments of the person alleged to have committed the offence. A satisfactory explanation as to how the accused was able to maintain that standard of living or as to how the pecuniary resources or property came under his control or where acquired is admissible in evidence as a defence to the charge.

6. Clause 8 of the Bill sets out the penalty for offences of corruption.

7. Under clause 9 of the Bill, the offence of corruption is presumed if money is paid to or received by an agent by or from a person holding or seeking to obtain a contract from a public body. The defence of the inability of the accused to do or lack of authority to perform the act for which the property, benefit or advantage was received is not recognised under the Bill as a defence.

8. In addition to the penalties proposed in clause 8 for an offence under clause 5, it is further proposed to empower the Director of Public Prosecutions to apply to the Court for an order to confiscate the property found at the trial to be in control of the accused and the amount or value not exceeding the pecuniary resources or property for which the accused is unable to explain. The Bill confers on the person whose property or pecuniary resources is confiscated the right to appeal against the order.

9. Provision is made in the Bill to protect from wanton dissipation, property or pecuniary resources in the control of a suspected person or a person on trial. To achieve this objective, the Director of Public Prosecutions is authorised to seek an order from the Court restraining the person under investigation from disposing of any such property or pecuniary resources under his control. In making a restraining order, the Court is given the discretion to impose conditions or exempt the property. The person against whom a restraining order is made is vested with a right to apply to the Court to have the order revoked or varied.

10. Clause 15 empowers the Director of Public Prosecutions to apply to the Court for release to him for investigation the declaration filed by any person whom a judge is satisfied, on application *ex parte* by the Director of Public Prosecutions, that reasonable grounds exist to believe that that person has committed an offence against any of the provisions of the Bill.

11. Clause 18 makes it an offence for a person to maliciously make a false allegation of an act of corruption or to provide false information relating to an act of corruption.

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12. Clause 19 of the Bill seeks to extend the provisions of this Bill to acts of corruption committed outside Antigua and Barbuda. The court is given jurisdiction to try offences committed in a State other than Antigua and Barbuda if the accused is a citizen or resident of Antigua and Barbuda or is present in Antigua and Barbuda after the commission of the offence.

Dated this 14th day of May, 2004.

Justin L. Simon,
Attorney General
and Minister of Justice and Legal Affairs.

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ANTIGUA AND BARBUDA

THE PREVENTION OF CORRUPTION ACT, 2004

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