

No. 21 of 2001

First Session Sixth Parliament Republic of Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Prevention of Corruption Act, to establish the
Anti-Corruption Commission and for matters relating thereto.

THE PREVENTION OF CORRUPTION (AMENDMENT) BILL, 2001

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The object of this Bill is to amend the Prevention of Corruption Act, No. 11 of 1987 (hereinafter referred to as “the Act”) to implement further and more effective measures for the prevention of corruption by—

- establishing a Commission for receiving and investigating allegations of corruption;
- increasing the number of corruption and corruption related offences;
- providing protection for informers or “whistleblowers”.

Clauses 1 and 2 of the Bill would provide the short title of the Bill and state that the Bill shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Clause 3 of the Bill would amend the Act by inserting a new heading entitled “PRELIMINARY”.

Clause 4 of the Bill would amend section 2 of the Act, the definition section, by introducing definitions of new terms and extending the definition of “public body” to include “any body whether public or private, providing public services”.

Clause 5 of the Bill would amend the Act by inserting, six new provisions, 2A to 2F, *inter alia*, to establish an Anti-Corruption Commission which would be charged with the responsibility for investigating allegations of corruption. The Commission would also be given certain powers to enable it to discharge its functions. The proposed new section 2A would establish the Commission and provide for its composition. The President would be empowered to appoint a Chief Commissioner, assistant commissioners and special investigators. The President would be required to consult with the Prime Minister and Leader of the Opposition before appointing the Chief Commissioner and with the Chief Commissioner before appointing the assistant commissioners and special investigators.

The proposed new section 2B would make provision for the qualification and disqualification of persons appointed to the Commission.

The proposed new section 2C would set out the functions of the Commission which would include receiving and investigating allegations of corruption and referring those matters to the Director of Public Prosecutions, which, in the opinion of the Commission, should be prosecuted.

The proposed new section 2D would confer certain powers on the Commission to, *inter alia*—

- require the production of books, records and other documents relating to the functions of any public or private body;
- require persons to provide information or to answer questions which the Chief Commissioner considers necessary.

Anyone failing to produce any such information or answer any such questions, or who makes a false statement is guilty of an offence. By the proposed new section 2E, the Commission would be empowered to appoint staff on such terms and conditions as it thinks fit to carry out its duties under the Act.

The proposed new section 2F would impose on all of the officers of the Commission a duty of confidentiality, breach of which attracts penal sanctions.

Clause 6 of the Bill would amend the Act by introducing, after section 2, a new heading entitled “OFFENCES, PENALTIES AND EVIDENCE”.

Clause 7 of the Bill would amend section 3 of the Act, by inserting a new subsection (3). This new provision would introduce a new offence of concealing a bribe received or given by or to a person for doing or forbearing to do anything in respect of any matter or transaction in which the State or a public body is concerned.

Clause 8 of the Bill would amend the Act by inserting, after section 5, seven new provisions, 5A to 5F.

The proposed new section 5A would create a new offence of “illicit enrichment”. Under this section, a presumption of corruption would arise where there is evidence of a significant increase in the standard of living of a person holding public office which is not commensurate with that person’s present or past known sources of income or assets. In determining whether there has been “illicit enrichment”, the court would be entitled to take into account property held by a third party in trust for or otherwise on behalf of the accused.

Under the proposed new section 5B, anyone who fraudulently deprives the State of revenue to which it is entitled would be guilty of an offence.

The proposed new section 5C would make bribery of persons performing public functions in a foreign State an offence.

By the proposed new section 5D, it would be an offence to offer or to accept bribes from a person holding public office as an inducement to or reward for giving assistance or using influence with respect to the procurement of contracts.

The proposed new section 5E would make it an offence for any person to resist or obstruct an officer of the Commission in the execution of his duties and by 5F it would be an offence for any person to make a false report to or to mislead an officer of the Commission.

By the proposed new section 5G, the Chief Commissioner and other officers of the Commission are conferred with immunity in respect of anything done or omitted to be done, in good faith, in the performance of their duties.

Clause 9(a) of the Bill would amend section 6 of the Act to provide that a person who commits an offence under sections 3, 4, 5, 5A, 5B, 5C and 5D of the Act would be liable—

on summary conviction, to a fine of five hundred thousand dollars and to imprisonment for ten years; and

on indictment, to a fine of one million, five hundred thousand dollars and to imprisonment for twenty years.

Clause 10 of the Bill would amend the Act by inserting a new provision, section 9A. The proposed new section 9A would provide for the protection of the identity of informers or “whistleblowers” who, in good faith, report acts of corruption.

Clause 11 of the Bill would amend section 10 of the Act to insert a new provision which would state, for the avoidance of doubt, that the powers conferred on the Chief Commissioner and other officers of the Commission do not derogate from the existing powers of the Police and the Director of Public Prosecutions.

Clause 12 of the Bill would amend section 12 of the Act to include the new offences, to be established by the proposed new sections 5A, 5B and 5C, in the Second Schedule to the Summary Courts Act, so that such offences may be brought either summarily or on indictment.

Clause 13 of the Bill would amend the Proceeds of Crime Act by including in the list of “specified offences” to which Part I of that Act applies, the offences under sections 3, 4 and 5 of the Prevention of Corruption Act, as well as the new offences under this Bill. The provisions of the said Part I, in relation to confiscation, forfeiture, seizure, restraint and charging orders would therefore apply in respect of any bribes or illicit enrichment derived from an act of corruption under the Prevention of Corruption Act.

Clause 14 would provide for the commencement of the Bill upon Proclamation of the President.

BILL

AN ACT to amend the Prevention of Corruption Act, to establish the Anti-Corruption Commission and for matters relating thereto.

[, 2001]

WHEREAS it is provided by section 13(1) of the Preamble Constitution that an Act of Parliament to which that section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 of the Constitution and, if any Act does so declare, it shall have effect accordingly:

And whereas it is provided in the said section 13 of the Constitution that an Act of Parliament to which that section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House:

And whereas it is necessary and expedient that the provisions of this Act shall have effect notwithstanding sections 4 and 5 of the Constitution.

Enactment

ENACTED by the Parliament of Trinidad and Tobago as follows:—

Short title and commencement

1. (1) This Act may be cited as the Prevention of Corruption (Amendment) Act, 2001.

Act inconsistent with Constitution Chap. 3:01

(2) This Act shall have effect even though inconsistent with sections 4 and 5 of the Constitution.

Interpretation No. 11 of 1987

2. In this Act, “the Act” means the Prevention of Corruption Act.

No. 11 of 1987 amended

3. The Act is amended by inserting after section 1, the following new heading:

“PRELIMINARY”.

Section 2 amended

4. Section 2 of the Act is amended—

(a) by inserting after the definition of “agent”, the following definitions:

“ “Commission” means the Anti-Corruption Commission established under section 2A; “Chief Commissioner” means the person appointed under section 2A to be Chief Commissioner of the Commission; “document” includes any register, book, record, tape-recording, any form of computer input or output and any other material whether produced mechanically, electronically or manually or by any other means whatsoever;”; and

(b) by deleting the definition of “public body” and substituting the following definition:

“ “public body” includes—

(a) the Cabinet, the House of Representatives, the Senate, the Tobago House of Assembly;

(b) municipal and statutory authorities of all descriptions and all State Enterprises and Boards thereof; and

(c) any body whether public or private, providing public services;”.

New sections 2A to 2F inserted

5. The Act is amended by inserting, after section 2, the following new sections:

ESTABLISHMENT OF COMMISSION

2A. (1) There is hereby established for the purposes of this Act, a body to be known as the Anti-Corruption Commission.

(2) The President may appoint the following officers to the Commission:

(a) a Chief Commissioner, after consultation with the Prime Minister and Leader of the Opposition; and

(b) such number of assistant commissioners and special investigators of the Commission as he thinks fit, after consultation with the Chief Commissioner,

“Establishment of Commission

on such terms and conditions as are contained in this Act and in the instruments of appointment.

(3) The Chief Commissioner shall be appointed for a term not exceeding five years terminable at any time and shall be eligible for re-appointment at the expiration of the term.

(4) Where, for any reason, the Chief Commissioner is absent or incapacitated the President may, after consultation with the Prime Minister and Leader of the Opposition, appoint another person to act as Chief Commissioner for a term not exceeding six months.

Qualification and
disqualification for
appointment to Commission

2B. (1) Persons appointed to the Commission under section 2A shall possess the qualifications which the President deems necessary for the performance of the functions assigned to the Commission by this Act.

(2) No person shall be qualified to be appointed an officer of the Commission who—

(a) is a member of—

(i) the Senate;

(ii) the House of Representatives; or

(iii) a local authority; or

(b) is an undischarged bankrupt.

(3) A certificate of appointment signed by the Chief Commissioner shall be issued to every officer of the Commission and shall be evidence of his appointment under this Act.

Functions and powers of
Commission

2C. (1) The Commission shall be responsible for—

(a) receiving and investigating any complaint made to it regarding an act of corruption;

(b) investigating on its own initiative any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;

(c) receiving and investigating any matter referred to it by the Integrity Commission for investigation and where the Commission has reason to suspect that a person in public life has committed an offence under this Act, it shall refer the matter to the Integrity Commission together with a report of its findings;

(d) to assist any law enforcement agency in investigations involving dishonest conduct;

- (e) investigating any suspected contravention of the fiscal, revenue or customs laws of the country;
- (f) protect informers by ensuring that the identity of such persons remain anonymous;
- (g) communicating to appropriate authorities the result of its investigations; and
- (h) referring matters to the Director of Public Prosecutions with a report of the findings of the Commission, where, in the opinion of the Commission, such matters should be prosecuted.

(2) The Commission shall have power to summons witnesses, require the production of documents and to do all such things as it considers necessary or expedient for the purpose of carrying out its functions.

2D.(1) For the performance of the functions of the Commission, the Chief Commissioner may—

(a) authorise any officer of the Commission to conduct an inquiry or investigation into any alleged or suspected offences under this Act;

(b) require any person in writing to produce, within a specified time, all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents relating to the functions of any public or private body;

(c) require any person, within a specified time, to provide any information or to answer any questions which the Chief Commissioner considers necessary in connection with any inquiry or investigation which the Commissioner is empowered to conduct under this Act.

(2) Any person who fails—

(a) to produce any matter required under subsection (1)(b) or (1)(c); or

(b) to provide any information, or to answer any questions, or wilfully provides any false information or makes any false statement in answer to a question under subsection (1)(c),

commits an offence.

Staff of the Commission

2E. (1) The Commission shall appoint and employ on such terms and conditions as it thinks fit such other staff and employees as may be necessary for the effective conduct of its functions under this Act.

(2) All expenses incurred by the Commission shall be a charge on the Consolidated Fund.

Duty as to secrecy

2F. (1) Every member of the Commission and every other person performing any function in the service or as an employee of the Commission shall regard and deal with as secret and confidential all information, letters and other documents and shall make and subscribe to an oath of secrecy to that effect before a Judge in Chambers.

(2) Every person required under subsection (1) to deal with matters specified therein as secret and confidential who at any time communicates or attempts to communicate such information or anything contained in such declarations, letters or other documents to any person—

(a) other than a person to whom he is authorised under this Act to communicate it; or

(b) otherwise than for the purposes of this Act,

commits an offence and is liable on summary conviction to a fine of two hundred and fifty thousand dollars and ten years imprisonment.”.

No. 11 of 1987 amended

6. The Act is amended by inserting after section 2, the following new heading :

“OFFENCES, PENALTIES AND EVIDENCE”.

Section 3 amended

7. Section 3 of the Act is amended by inserting after subsection (2), the following new subsection: “ (3) Every person who conceals any gift, loan, fee, reward or advantage derived from any act or forbearance to act in the circumstances referred to in subsections (1) and (2)

commits an offence.”.

New sections 5A to 5G inserted

8. The Act is amended by inserting after section 5, the following new sections:

“Offence of illicit enrichment

5A. (1) The Chief Commissioner or any officer of the Commission, authorised in writing, by the Chief Commissioner may investigate any person holding public office where there are reasonable grounds to suspect that that person—

(a) maintains a standard of living above that which is commensurate with his present or past known sources of income or assets; or

(b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets.

(2) Where a person fails to give a satisfactory explanation to the Chief Commissioner or the officer conducting an investigation under subsection (1), as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession, the significant increase in pecuniary or other resources shall be deemed to be illicit enrichment for the purposes of this section and that person shall be guilty of an offence.

(3) Where a court is satisfied in proceedings for an offence under subsection (2), having regard to the closeness of the relationship of the accused to any other person and to other relevant circumstances, there is reason to believe that that person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such resources or property as a gift or loan without adequate consideration from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

Offence to deprive
State of revenue

5B. A person is guilty of an offence under this Act if as a result of his fraudulent conduct he deprives the State of revenue to which it is entitled.

Bribery of foreign officials

5C. Any—

(a) citizen or resident of Trinidad and Tobago;

(b) corporation, whether sole or aggregate;

(c) any club, society or other body comprising one or more persons,

who offers or grants, directly or indirectly, to a person performing a public function in a foreign state, any gift, loan, fee, reward or advantage whatsoever, in connection with any economic or commercial transaction, as an inducement to or reward for, or

otherwise on account of that person doing or forbearing to do any act in the performance of his public functions, commits an offence.

5D. (1) Any person who whether directly or indirectly accepts or agrees to accept or offers to accept for himself or for any other person any gift, loan, fee, reward or, advantage or other valuable consideration from a person holding public office as an inducement or reward for or otherwise on account of the person holding public office giving assistance or using influence in, or having given assistance or used influence in—

Bribery for giving assistance, etc.,
with regard to contracts

(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 moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid,

commits an offence.

(2) Any person holding public office who solicits or accepts any gift, loan, fee, reward or, advantage as an inducement to or reward for or 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 such contract or subcontract as is referred to in subsection (1), commits an offence.

Resisting or obstructing officers

5E. Any person who resists or obstructs an officer of the Commission in the execution of his duty shall be guilty of an offence and liable to a fine of fifty thousand dollars and to a term of imprisonment for two years.

False reports to officers

5F. Any person who knowingly—
(a) makes or causes to be made to an officer of the Commission a false report of the Commission of any offence; or
(b) misleads an officer of the Commission by giving false information or by making false statements or accusations,

commits an offence and is liable on summary conviction to a fine of three hundred thousand dollars and to imprisonment for a term of five years.

Immunity of officers of Commission

5G. No action shall be brought against the Chief

Commissioner or any other officer of the Commission in respect of any act or thing done or omitted to be done in good faith in the exercise of their duties under this Act.”.

Section 6 amended

9. Section 6 of the Act is amended, in subsection (1)—

(a) by deleting the words “section 3” and substituting the words “this Act”;

(b) by deleting from the words “whether upon summary conviction” to the words “ten years” and substituting the words “on summary conviction to a fine of five hundred thousand dollars and to imprisonment for ten years and on indictment to a fine of one million, five hundred thousand dollars and to imprisonment for twenty years”.

New section 9A inserted

Protection of informers
or "whistle-blowers"

10. The Act is amended by inserting, after section 9 the following new section: "9A. (1) Except as provided in sub-

section (3), no witness in any proceedings in respect of an offence under this Act shall be obliged to disclose the name or address of any informer, or state any matter or answer any question if the answer thereto might lead to the discovery of the name or address of any informer.

(2) Where any book, document or paper which is in evidence and liable to inspection in any civil or criminal proceedings under this Act contains an entry in which any such informer or person is named or described or which might lead to his discovery, the court before which the proceedings are held, shall cause all such passages to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(3) If in any proceedings before a court for an offence under this Act, the court, after full inquiry into the case, is satisfied that an informer willfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings a court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer, the court may permit inquiry and require full disclosure concerning the informer."

Section 10 amended

11. Section 10 of the Act is amended—

(a) by inserting before the words "A person shall not be exempt", the word "(1)"; and

(b) by inserting the following new subsection: "(2) The powers conferred on the Commission, the Chief Commissioner or any other officer of the Commission by this Act are exercisable without prejudice to any powers conferred on the Police or the Director of Public

Prosecutions by any other enactment or at

Common Law.”.

Section 12 amended

12. Section 12 of the Act is amended by inserting after the word “5”, the words “5A, 5B, 5C and 5D”.

The Proceeds of Crime Act amended

13. The Proceeds of Crime Act is amended, in the Second Schedule, by inserting the following: “ 6. Offences under sections 3, 4, 5, 5A, 5B, 5C and 5D of the Prevention of Corruption Act.”.

Commencement

14. This Act shall come into force on such date as the President may, by Proclamation, appoint.

Passed in the House of Representatives this day of , 2001.

Clerk of the House

IT IS HEREBY CERTIFIED that this Act is
one the Bill for which has been passed

House that is to say by the votes of members of the
House.

Clerk of the House

I confirm the above.

in the House and at the final vote
thereon in the House has been
supported by the votes of not less than
three-fifths of all members of the

Speaker

Passed in the Senate this day of ,
2001.

Clerk of the Senate

IT IS HEREBY CERTIFIED that this Act is
one the Bill for which has been passed
in the Senate and at the final vote
thereon in the Senate has been
supported by the votes of not less than
three-fifths of all members of the
Senate that is to say by the votes of
members of the Senate.

Clerk of the Senate

I confirm the above.

President of the Senate

FIRST SESSION

SIXTH PARLIAMENT

REPUBLIC OF TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Prevention of Corruption Act, to establish the Anti-Corruption Commission and for matters relating thereto.

Received and read the First

time..... Second

time..... Third

time.....