



ANGUILLA

A BILL FOR

BRIBERY ACT, 2023

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BRIBERY ACT, 2023

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I Assent

Dileeni Daniel-Selvaratnam
Governor

Date

ANGUILLA

No. /2023

A BILL FOR

BRIBERY ACT, 2023

[Gazette Dated: , 2023] [Commencement: Section 24]

An Act to make provisions about offences relating to bribery and to establish the National Anti-Corruption and Bribery Committee, and to make connected provision.

ENACTED by the Legislature of Anguilla

PART 1

PRELIMINARY

Interpretation

1. In this Act—

“commencement date” means the date this Act comes into operation;

PART 2

GENERAL BRIBERY OFFENCES

Offences of bribing another person

2. (1) A person (“P”) is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person; and

- (b) P intends the advantage—
 - (i) to induce a person to perform improperly a relevant function or activity, or
 - (ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

- (a) P offers, promises or gives a financial or other advantage to another person; and
- (b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.

(4) In case 1 it does not matter whether the person to whom the advantage is offered, promised or given is the same person as the person who is to perform, or has performed, the function or activity concerned.

(5) In cases 1 and 2 it does not matter whether the advantage is offered, promised or given by P directly or through a third party.

Offences related to being bribed

3. (1) A person (“R”) is guilty of an offence if any of the following cases applies.

(2) Case 3 is where R requests, agrees to receive or accepts a financial or other advantage intending that, in consequence, a relevant function or activity should be performed improperly (whether by R or another person).

(3) Case 4 is where—

- (a) R requests, agrees to receive or accepts a financial or other advantage; and
- (b) the request, agreement or acceptance itself constitutes the improper performance by R of a relevant function or activity.

(4) Case 5 is where R requests, agrees to receive or accepts a financial or other advantage as a reward for the improper performance (whether by R or another person) of a relevant function or activity.

(5) Case 6 is where, in anticipation of or in consequence of R requesting, agreeing to receive or accepting a financial or other advantage, a relevant function or activity is performed improperly—

- (a) by R; or
- (b) by another person at R’s request or with R’s assent or acquiescence.

(6) In cases 3 to 6 it does not matter—

- (a) whether R requests, agrees to receive or accepts (or is to request, agree to receive or accept) the advantage directly or through a third party;

(b) whether the advantage is (or is to be) for the benefit of R or another person.

(7) In cases 4 to 6 it does not matter whether R knows or believes that the performance of the function or activity is improper.

(8) In case 6, where a person other than R is performing the function or activity, it also does not matter whether that person knows or believes that the performance of the function or activity is improper.

Function or activity to which bribe relates

4. (1) For the purposes of this Act, a function or activity is a relevant function or activity if—

- (a) it falls within subsection (2); and
- (b) it meets one or more of conditions A to C.

(2) The following functions and activities fall within this subsection—

- (a) any function of a public nature;
- (b) any activity connected with a business;
- (c) any activity performed in the course of a person's employment;
- (d) any activity performed by or on behalf of a body of persons (whether corporate or unincorporate).

(3) Condition A is that a person performing the function or activity is expected to perform it in good faith.

(4) Condition B is that a person performing the function or activity is expected to perform it impartially.

(5) Condition C is that a person performing the function or activity is in a position of trust by virtue of performing it.

(6) A function or activity is a relevant function or activity even if it—

- (a) has no connection with Anguilla; and
- (b) is performed in a country or territory outside Anguilla.

(7) In this section “business” includes trade or profession.

Improper performance to which bribe relates

5. (1) For the purposes of this Act, a relevant function or activity—

- (a) is performed improperly if it is performed in breach of a relevant expectation; and
- (b) is to be treated as being performed improperly if there is a failure to perform the function or activity and that failure is itself a breach of a relevant expectation.

- (2) In subsection (1), “relevant expectation”—
- (a) in relation to a function or activity which meets condition A or B, means the expectation mentioned in the condition concerned; and
 - (b) in relation to a function or activity which meets condition C, means any expectation as to the manner in which, or the reasons for which, the function or activity will be performed that arises from the position of trust mentioned in that condition.
- (3) Anything that a person does (or omits to do) arising from or in connection with that person’s past performance of a relevant function or activity is to be treated for the purposes of this Act as being done (or omitted) by that person in the performance of that function or activity.

Expectation test

6. (1) For the purposes of sections 4 and 5, the test of what is expected is a test of what a reasonable person in Anguilla would expect in relation to the performance of the type of function or activity concerned.

(2) In deciding what such a person would expect in relation to the performance of a function or activity where the performance is not subject to the law of Anguilla, any local custom or practice is to be disregarded unless it is permitted or required by the written law applicable to the country or territory concerned.

- (3) In subsection (2), “written law” means law contained in—
- (a) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned; or
 - (b) any judicial decision which is so applicable and is evidenced in published written sources.

PART 3

BRIBERY OF FOREIGN PUBLIC OFFICIALS

Bribery of foreign public officials

7. (1) A person (“P”) who bribes a foreign public official (“F”) is guilty of an offence if P’s intention is to influence F in F’s capacity as a foreign public official.

- (2) P must also intend to obtain or retain—
- (a) business; or
 - (b) an advantage in the conduct of business.
- (3) P bribes F if, and only if—
- (a) directly or through a third party, P offers, promises or gives a financial or other advantage—

- (i) to F, or
 - (ii) to another person at F's request or with F's assent or acquiescence; and
- (b) F is neither permitted nor required by the written law applicable to F to be influenced in F's capacity as a foreign public official by the offer, promise or gift.
- (4) References in this section to influencing F in F's capacity as a foreign public official mean influencing F in the performance of F's functions as such an official, which includes—
- (a) any omission to exercise those functions; and
 - (b) any use of F's position as such an official, even if not within F's authority.
- (5) "Foreign public official" means an individual who—
- (a) holds a legislative, administrative or judicial position of any kind, whether appointed or elected, of a country or territory outside Anguilla (or any subdivision of such a country or territory);
 - (b) exercises a public function—
 - (i) for or on behalf of a country or territory outside Anguilla (or any subdivision of such a country or territory), or
 - (ii) for any public agency or public enterprise of that country or territory (or subdivision); or
 - (c) is an official or agent of a public international organisation.
- (6) "Public international organisation" means an organisation whose members are any of the following—
- (a) countries or territories;
 - (b) governments of countries or territories;
 - (c) other public international organisations;
 - (d) a mixture of any of the above.
- (7) For the purposes of subsection (3)(b), the written law applicable to F is—
- (a) the law of Anguilla, where the performance of the functions of F which P intends to influence would be subject to the law of Anguilla;
 - (b) where paragraph (a) does not apply and F is an official or agent of a public international organisation, the applicable written rules of that organisation;
 - (c) where paragraphs (a) and (b) do not apply, the law of the country or territory in relation to which F is a foreign public official so far as that law is contained in—

- (i) any written constitution, or provision made by or under legislation, applicable to the country or territory concerned, or
 - (ii) any judicial decision which is so applicable and is evidenced in published written sources.
- (8) For the purposes of this section, a trade or profession is a business.

PART 4

FAILURE OF COMMERCIAL ORGANISATIONS TO PREVENT BRIBERY

Failure of commercial organisations to prevent bribery

8. (1) A relevant commercial organisation (“C”) is guilty of an offence under this section if a person (“A”) associated with C bribes another person intending—

- (a) to obtain or retain business for C; or
- (b) to obtain or retain an advantage in the conduct of business for C.

(2) But it is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct.

(3) For the purposes of this section, A bribes another person if, and only if, A—

- (a) is, or would be, guilty of an offence under section 2 or 7 (whether or not A has been prosecuted for such an offence); or
- (b) would be guilty of such an offence if section 17(2)(c) and (4) were omitted.

(4) See section 9 for the meaning of a person associated with C, and see section 11 for a duty on the Governor to publish guidance.

(5) In this section—

“partnership” means—

- (a) a partnership within the Partnership Act R.S.A. c. P5;
- (b) a limited partnership registered under the Limited Partnerships Act R.S.A. c. L70
- (c) or a firm or entity of a similar character formed under the law of a country or territory outside Anguilla;

“relevant commercial organisation” means—

- (a) a body which is incorporated or formed under the law of Anguilla and which carries on a business (whether in Anguilla or elsewhere);
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business in Anguilla;

- (c) a partnership which is formed under the law of Anguilla and which carries on a business (whether in Anguilla or elsewhere); or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in Anguilla;

and, for the purposes of this section, a trade or profession is a business.

Meaning of associated person

9. (1) For the purposes of section 8, a person (“A”) is associated with C if (disregarding any bribe under consideration) A is a person who performs services for or on behalf of C.

(2) The capacity in which A performs services for or on behalf of C does not matter.

(3) Accordingly A may (for example) be C’s employee, agent or subsidiary.

(4) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances and not merely by reference to the nature of the relationship between A and C.

(5) But if A is an employee of C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

Guidance about commercial organisations preventing bribery

10. (1) The Governor shall publish guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing as mentioned in section 8(1).

(2) The Governor may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) In determining whether a relevant commercial organisation has committed an offence under section 8, a court shall consider whether the organisation followed any such relevant guidance.

(4) Publication under this section is to be in such manner as the Governor considers appropriate to bring the guidance to the attention of persons likely to be affected by it.

(5) Expressions used in this section have the same meaning as in section 8.

PART 5

REPORTING BRIBERY

Duty of public officials to report bribery

11. (1) A public official who is offered or receives an advantage in circumstances which may constitute an offence under this Act must disclose as soon as reasonably practicable and in accordance with subsection (3)—

- (a) the existence and nature of the advantage, or the offer of it; and

- (b) the name, if known, of the person by whom it was given or procured or offered or who agreed to give or procure it.

(2) A public official who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that a person has committed, is committing or is about to commit an offence under this Act must disclose, as soon as reasonably practicable and in accordance with subsection (3), that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

(3) Disclosures under this section shall be made—

- (a) to a police officer; or
- (b) where the employer of the person exercising the function on behalf of a public authority has established a procedure for making such disclosures—
 - (i) in accordance with that procedure, and
 - (ii) to a police officer.

(4) In this section, “public official” means—

- (a) a public officer;
- (b) a Member of the House of Assembly; and
- (c) any other person carrying out a function of a public nature, but does not include a foreign public official (as defined in section 7).

Failure to report bribery

12. (1) A person who fails to comply with section 11 commits an offence.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he reasonably believed that if the required disclosure had been made, serious physical harm would be done to himself or to another person.

Interfering with duty to report bribery

13. A person who intentionally takes action harmful to any person, including interference with a person’s lawful employment or occupation, on the ground that a person has made or may make a disclosure in accordance with section 11 commits an offence.

PART 6

PROSECUTION AND PENALTIES

Consent to prosecution and time limit for summary prosecution

14. (1) No proceedings for an offence under this Act may be instituted except by or with the consent of the Attorney-General.

(2) Notwithstanding section 90 of the Magistrate's Code of Procedure Act, R.S.A. c. M5, summary proceedings for an offence under this Act shall be brought within three years of the commission of the offence.

Penalties

15. (1) An individual guilty of an offence under this Act is liable—

- (a) on summary conviction, to a fine not exceeding \$500,000 or to imprisonment for a term of 10 years, or to both;
- (b) on conviction on indictment, to an unlimited fine or to imprisonment for a term of 15 years, or to both.

(2) Any other person guilty of an offence under this Act (other than an offence under section 8) is liable—

- (a) on summary conviction, to a fine not exceeding \$500,000;
- (b) on conviction on indictment, to an unlimited fine.

(3) A person guilty of an offence under section 8 is liable on conviction on indictment to an unlimited fine.

Forfeiture

16. (1) The court by or before which a person is convicted of an offence under this Act (“a bribery offence”) may make a forfeiture order in accordance with this section.

(2) Where a person is convicted of a bribery offence, the court may order the forfeiture of any property which, at the time of the offence, he had in his possession or under his control and which he used or intended to use for the purposes of the offence.

(3) Where a person is convicted of a bribery offence, the court may order the forfeiture of any property which wholly or partly, and directly or indirectly, is received by any person as a payment or other reward in connection with the commission of the offence.

(4) Where a person other than the convicted person claims to be the owner of or otherwise interested in anything which can be forfeited by an order under this section, the court shall give him an opportunity to be heard before making an order.

PART 7

OFFENCES - GENERAL PROVISIONS

Territorial application

17. (1) An offence is committed under this Act (other than an offence under section 8) in Anguilla if any act or omission which forms part of the offence takes place in Anguilla.

(2) Subsection (3) applies if—

- (a) no act or omission which forms part of the offence takes place in Anguilla;

(b) a person's acts or omissions done or made outside Anguilla would form part of such an offence if done or made in Anguilla; and

(c) that person has a close connection with Anguilla.

(3) Where subsection (2) applies proceedings for the offence may be taken in Anguilla.

(4) For the purposes of subsection (2)(c), a person has a close connection with Anguilla if, and only if, at the time the acts or omissions concerned were done or made, the person—

(a) had Anguillian status or was a permanent resident of Anguilla;

(b) was an individual ordinarily resident in Anguilla; or

(c) was a body corporate or partnership, incorporated, formed or registered under the law of Anguilla.

(5) An offence is committed under section 8 irrespective of whether the acts or omissions which form part of the offence take place in Anguilla or elsewhere.

(6) Where no act or omission which forms part of an offence under section 8 takes place in Anguilla, proceedings for the offence may be taken in Anguilla pursuant to this section.

Legitimate purpose defence for relevant bribery offences

18. (1) It is a defence for a person charged with a relevant bribery offence to prove that his conduct was necessary for the proper exercise of any function relating to the defence or security of Anguilla.

(2) In this section—

“relevant bribery offence” means—

(a) an offence under section 2 which would not also be an offence under section 7;

(b) an offence under section 3; or

(c) an inchoate offence relating to an offence falling within paragraph (a) or (b).

Offences by bodies corporate

19. (1) This section applies if an offence under this Act (other than an offence under section 8) is committed by a body corporate.

(2) If the offence is proved to have been committed with the consent or connivance of—

(a) a senior officer of the body corporate; or

(b) a person purporting to act in such a capacity;

the senior officer or person (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) But subsection (2) does not apply, in the case of an offence which is committed under this Act by virtue of section 17(2) to (4), to a senior officer or person purporting to act in such a capacity unless the senior officer or person has a close connection with Anguilla (within the meaning given by section 17(4)).

(4) In this section—

“director”, in relation to a body corporate whose affairs are managed by its members, means a member of the body corporate;

“senior officer” means a director, manager or other similar officer of the body corporate.

Offences under section 8 by partnerships

20. (1) Proceedings for an offence under section 8 alleged to have been committed by a partnership shall be brought in the name of the partnership (and not in the name of any of the partners).

(2) For the purposes of such proceedings rules of court relating to the service of documents have effect as if the partnership were a body corporate.

(3) A fine imposed on the partnership on its conviction for an offence under section 8 shall be paid out of the partnership assets.

(4) In this section, “partnership” has the same meaning as in section 8.

PART 8

NATIONAL ANTI-CORRUPTION AND BRIBERY COMMITTEE

National Anti-Corruption and Bribery Committee

21. (1) There shall be established a committee, to be known as the National Anti-Corruption and Bribery Committee (“NACAB Committee”), for the purpose of—

- (a) advising the Governor on the development of policies for the detection and prevention of corruption and bribery, and on the development of effective mechanisms to enable the relevant authorities in Anguilla to co-ordinate with each other concerning the development and implementation of policies and activities to combat corruption and bribery;
- (b) reviewing the operation of this Act and reporting to the Governor as to its effectiveness and any suggested amendments, within five years of the commencement date; and
- (c) periodically evaluating the existing legislative and administrative measures in place in Anguilla to combat corruption and bribery, and advising the Governor on their adequacy for that purpose.

(2) The Commissioner of Police shall be the Chairman of the NACAB Committee, or may nominate the Deputy Commissioner to serve as Chairman in his place.

(3) Subject to subsection (4), the other members of the NACAB Committee shall be the following persons—

- (a) the Attorney-General;
- (b) the Permanent Secretary with responsibility for Finance;
- (c) the Director of the Financial Intelligence Unit;
- (d) the Chief Procurement Officer;
- (e) the Internal Auditor;
- (f) the Accountant General; and
- (g) such other persons as the Governor may from time to time appoint.

(4) Each member of the Committee listed in paragraphs (a) to (g) of subsection (3) may nominate a person of appropriate seniority to serve on the NACAB Committee in his place.

(5) The NACAB Committee—

- (a) shall meet as often as may be necessary to carry out its duties; and
- (b) may regulate its own procedure.

(6) The Governor shall lay a copy of the report submitted under subsection (1)(b), and any other reports submitted by the NACAB Committee, before the House of Assembly, as soon as is reasonable practicable.

PART 9

MISCELLANEOUS PROVISIONS

Application and transitional provision

22. (1) This Act shall apply in relation to offences committed wholly on or after the commencement date.

(2) No person shall be charged with any of the superseded offences committed wholly on or after the commencement date.

(3) In this section, “superseded offence” means an offence listed in Schedule 1.

Consequential amendments

23. (1) Schedule 2 (which contains consequential amendments) has effect.

(2) The Governor may by Order make such supplementary, incidental or consequential provision as he considers necessary for the purposes of this Act or in consequence of this Act.

(3) The power to make an order under this section—

- (a) is exercisable by statutory instrument subject to the affirmative resolution procedure;
- (b) includes power to make transitional or saving provision;
- (c) may, in particular, be exercised by amending, repealing, revoking or otherwise modifying any provision made by or under any enactment.

Commencement

24. This Act shall come into operation on such day as the Governor appoints by Notice in the *Gazette*.

Citation

25. This Act may be cited as the Bribery Act, 2023.

SCHEDULE 1

(Section 22)

SUPERSEDED OFFENCES**Criminal Code, R.S.A. c. C140**

1. (1) Section 98 (official corruption).
- (2) Section 99 (extortion by public officers).
- (3) Section 100 (public officers receiving property to show favour).
- (4) Section 123 (compounding of offences).

Quarantine Act R.S.A. c. Q5

2. Section 7(1)(c) (offering or taking a bribe in connection with powers and duties under the Act).

House of Assembly (Powers and Privileges) Act, R.S.A. c. H15

3. (1) Section 12 (acceptance of bribe by member).
- (2) Section 9(1)(a) (bribery of member).

Elections Act, 2019

4. Section 82(1) (bribery).
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SCHEDULE 2

(Section 23(1))

CONSEQUENTIAL AMENDMENTS**Criminal Code R.S.A. c. C140**

1. (1) The provisions of section 98 of the Criminal Code Act R.S.A. c. C140 (official corruption) become subsection (1), and the following new subsection is inserted—

“(1A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2023.”.

(2) The provisions of section 99 of the Criminal Code (extortion by public officers) become subsection (1), and the following new subsection is inserted—

“(1A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act, 2023.”.

(3) The provisions of section 100 of the Criminal Code public officers receiving property to show favour) become subsection (1), and the following new subsection is inserted—

“(1A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2016.”.

(4) The provisions of section 123 of the Criminal Code (compounding of offences) become subsection (1), and the following new subsection is inserted—

“(1A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2023.”.

Quarantine Act R.S.A. c Q5

2. (1) Section 7 of the Quarantine Act R.S.A. c. Q5 (obstruction etc. of, and offering or taking a bribe in connection with, powers and duties under the Act), is amended by deleting subsection (1)(c) and substituting the following—

“(c) who offers or gives a bribe to any officer or person in connection with his powers or duties under this Act, or who, being such officer or person, demands, solicits or takes a bribe in connection with his powers or duties under this Act; or

(d) who assaults, resists, wilfully obstructs, or intimidates any officer or other person acting under the authority of this Act, or who otherwise obstructs the execution of this Act;”.

(2) The Act is amended by inserting the following new subsection after subsection (2)—

“(2A) No person shall be charged with an offence under subsection (1)(c) committed wholly on or after the commencement date of the Bribery Act, 2023.”.

House of Assembly (Powers and Privileges) Act R.S.A. c. H15

3. (1) The provisions of section 12 of the House of Assembly (Powers and Privileges) Act, R.S.A. c. H15 (acceptance of bribe by member) become subsection (1), and the following subsection is inserted—

“(1A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act, 2023.”

(2) Section of the Act is amended by inserting the following new subsection after subsection (2)—

“(2A) No person shall be charged with an offence under subsection (1)(a) committed wholly on or after the commencement date of the Bribery Act, 2023.”.

Elections Act, 2019

4. (1) Section 82 of the Elections Act, 2019, is amended by inserting the following new subsection after subsection (3)—

“(3A) No person shall be charged with an offence under subsection (1) committed wholly on or after the commencement date of the Bribery Act 2023.”.

Barbara Webster-Bourne
Speaker

Passed by the House of Assembly this day of , 2023.

Lenox J. Proctor
Clerk of the House of Assembly

OBJECTS AND REASONS

(The objects and reasons do not form part of the Bill)

Clause 2 describes the offence of bribery as it applies to the person doing the bribing. Case 1 deals with circumstances in which the offer, promise or giving is made (either directly or through a third party) with the intention that it induces a person to perform improperly a relevant function or activity or that it rewards a person for such a performance. Case 2 deals with circumstances in which the offer, promise or gift of an advantage is made to a person in the knowledge or belief that the acceptance of the advantage would constitute the improper performance of a relevant function or activity.

Clause 3 describes the offence of bribery as it relates to the person who is receiving, or potentially receiving a bribe. There are four cases describing the relevant behaviour.

Clause 4 defines the relevant functions or activities to which an improper performance relates. It ensures that the law of bribery applies to public and private functions without discriminating between the two. It encompasses activities performed outside Anguilla and activities with no link to Anguilla. Bribery general offences cover any function of a public nature, any activity connected with a business, including trade or profession, any activity performed in the course of a person's employment, or any activity performed by or on behalf of a body of persons either corporate or unincorporated.

Clause 5 defines what will amount to an improper performance on the functions or activities explained in section 4. The section covers improper performance of current functions but also covers past functions. The definition of an improper performance embraces both breaches of the relevant expectation through both acts and omissions.

Clause 6 provides that the expectation is that a reasonable person in Anguilla would expect of a person performing such a function or activity. When an allegation is one of bribery overseas, in so deciding what a reasonable person in Anguilla would expect by way of performance a court must disregard any local custom or practice, unless it is permitted by "written law," either statutory or judge made.

Clause 7 The offence under this clause is an active bribery only offence and does not criminalise the passive conduct on the part of the official, but is broad in scope. An offence is committed if a person, directly or indirectly, promises or offers or gives any financial or other advantage to a foreign public official with the intention of influencing the performance of their official function. The offence is provided with a wide definition of a foreign public official, which embraces any person who hold any legislative, administrative or judicial post, or anyone carrying out a public function, whether appointed or elected. The offence catches omissions as well as acts and covers advantages that are intended to influence the use of an official position even where that is not formally within the authority of a person holding that post.

Clause 8 creates an offence of failing to prevent bribery, which can only be committed by a relevant commercial organisation. The section also provides that the definition of business includes a trade or profession, including what is done during the course of a trade or profession. An offence is committed under this section if a person associated with the relevant organization bribes another person in order to retain or obtain business or advantage. It is not necessary for the person associated with the commercial organisation to be prosecuted. If the predicate facts are proved then the commercial organization in question is prima facie guilty of an offence, irrespective of the extent of knowledge, awareness or intent in respect of the facts at the corporate centre. The section therefore creates a form of strict liability.

Clause 9 sets out the meaning of "associated person" for the purpose of section 8. A person is associated with a commercial organisation if he or she performs services for it, regardless of the capacity in which they perform those services (i.e. as an employee, agent or subsidiary). The performance of services for a company cannot include the service of being involved in the bribe in question. The role of an associated person may also be fulfilled by another company, such as subsidiary of the commercial organization in question. The "associated" person could be a person holding a high managerial role in the commercial organization in question.

Clause 10 provides that the Governor must publish guidance about the procedures that relevant organisations can put in place to prevent associated persons committing bribery offences on their behalf for the purposes of section 8.

Clause 11 makes it a duty for a public official who is offered or receives an advantage under circumstances which may constitute an offence under the act to make a disclosure as soon as reasonably practicable. The disclosure should be made to a police officer and in situations where the employer has a procedure to making such disclosures in accordance with the procedure and to a police officer. A public official is a public officer, member of the House of Assembly and any other person carrying out a function of a public nature but does not include a foreign public official.

Clause 12 makes it an offence if a person fails to comply with section 11. It is a defence for the person to prove he had reasonable belief that if the disclosure was made serious harm would be done to him or someone else.

Clause 13 makes it an offence for a person who intentionally takes harmful action (which includes interference with the person's lawful employment), on the grounds that the person made a lawful disclosure pursuant to section 11.

Clause 14 provides that proceedings for bribery offences under this Act require the consent of the Attorney-General. Summary offences under this Act shall be brought within 3 years of the commission of the offence.

Clause 15 sets out the penalties for breaching the provisions of the Act.

Clause 16 allows the court to make a forfeiture order. Under the section, if a person is convicted of a bribery offence, the court may order the forfeiture of any property at the time of the offence, the person had in his possession or under his control and the property was used or intended to be used for the purposes of the offence. The court may order forfeiture in whole or in part of property received (directly or indirectly) from a person as a payment or reward in connection with the commission of the offence. A person (other than the person convicted) who claims to be the owner or has interest in anything forfeited, the court shall give an opportunity to be heard before making the order.

Clause 17 provides the jurisdictional provision of the Act. Where the conduct that would constitute an offence if it occurred in Anguilla in fact occurs outside Anguilla, the courts in Anguilla will have jurisdiction where the conduct is on the part of a person with "close connection" to Anguilla.

Clause 18 provides a statutory defence of defence or security when engaging in legitimate functions that may require the use of financial or other advantage, if it can be proven that a relevant bribery offence was necessary.

Clause 19 concerns the circumstances in which a company is convicted of an offence. It does not concern circumstances in which a commercial organization is convicted under section 8 of this Act.

Clause 20 clarifies the position on proceedings against partnerships under section 8 offences; how those proceedings should be brought and how any fines imposed on the partnership should be paid.

Clause 21 establishes a National Anti-Corruption and Bribery committee whose responsibilities include advising the Governor on the development of policies for the detection and prevention of corruption and bribery, reviewing the operation of the Act and reporting to the Governor and periodically evaluating the existing legislative and administrative measures. The Commissioner of Police is the Chairman and the Committee. The Governor is responsible for laying a copy of the report submitted by the Chair to the House of Assembly.

Clause 22 – makes application and transitional provision.

Clause 23 provides consequential amendments.

Clause 24 provides the commencement of this Act.

Clause 25 provides the citation of this Act.