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CHAPTER 88
PREVENTION OF BRIBERY

9 of 1976

An Act to make further and better provision for the prevention of bribery and corruption and for purposes incidental thereto or connected therewith.

[Assent 13th August, 1976]

[Commencement 2nd September, 1976]

PART I
PRELIMINARY

Short title.

[Ch88s1]1. This Act may be cited as the Prevention of Bribery Act.

Interpretation.

[Ch88s2]2. (1) In this Act, unless the context otherwise requires-

"advantage" means-

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, or favour (other than entertainment), 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 of forbearance from the exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise, whether conditional or unconditional, or any advantage within the meaning of any of the preceding paragraphs (a), (b), (c), (d) and (e);

"agent" includes a public servant and any person employed by or acting for another;

"child" includes a child who is illegitimate or adopted, and a step-child;

"court" means the Supreme Court or a magistrate's court, as the case may be;

"entertainment" means the provision of food or drink, for consumption on the occasion when it is provided, and of any other entertainment connected with, or provided at the same time as, such provision;

"Government" means the Government of The Bahamas;

"principal" includes-

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

"public body" means-

- (a) the Government;
- (b) a Ministry or Department of the Government;

- (c) the Senate or House of Assembly;
- (d) a corporation established by Act of Parliament for public purposes or any subsidiary company thereof registered under the Ch. 308. Companies Act;
- (e) any board, commission, authority, committee or other body, whether paid or unpaid, appointed by the Governor-General or a Minister of the Government;

"public servant" means a public officer and any employee or member of a public body, whether temporary or permanent and whether paid or unpaid.

(2) For the purposes of this Act-

(a) a person offers an advantage if he, or any other 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) a person solicits an advantage if he, or any other 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; and

(c) a person accepts an advantage if he, or any other 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

OFFENCES

Bribery.

[Ch88s3]3. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to a public servant as an inducement to or reward for or otherwise on account of that public servant's-

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; 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 body, shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;

(b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; 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 body, shall be guilty of an offence.

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

[Ch88s4]4. (1) Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on

account of such public servant's giving assistance or using influence in, or having given assistance or used 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 any thing or the supplying of any article, material or substance; or
 - (ii) any subcontract to perform any work, provide any service, do any thing 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, shall be guilty of an offence.

(2) Any public servant who, without lawful authority or reasonable excuse, solicits or accepts any advantages 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) shall be guilty of an offence.

Bribery for procuring withdrawals of tenders.

[Ch88s5]5. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of any thing or the supplying of any article, material or substance shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1), shall be guilty of an offence.

Bribery in relation to auctions.

[Ch88s6]6. (1) Any person who, without lawful authority or reasonable excuse, offers any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from, bidding at any auction conducted by or on behalf of any public body, shall be guilty of an offence.

Bribery of public servants by persons having dealings with public bodies.

[Ch88s7]7. Any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any public body, offers an advantage to any public servant employed in or by that public body, shall be guilty of an offence.

Corrupt transactions with agents.

[Ch88s8]8. (1) Any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his-

(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, shall be guilty of an offence.

(2) Any person who, without lawful authority or reasonable excuse, offers any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

(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 principals affairs or business, shall be guilty of an offence.

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

(a) in respect of which the principal is interested; and

(b) which contains any statement which is false or erroneous or defective in any material particular; and

(c) which to his knowledge is intended to mislead the principal, shall be guilty of an offence.

(4) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting or accepting of any advantage by his agent shall, without prejudice to the generality of the defence of lawful authority or reasonable excuse, constitute a reasonable excuse.

Giver and acceptor of advantage guilty notwithstanding that purpose not carried out, etc.

[Ch88s9]9. (1) If, in any proceedings for an offence under any section in this Part, it is proved that the accused accepted any 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 forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that-

(a) he did not actually have the power, right or opportunity so to do or forbear;

(b) he accepted the advantage without intending so to do or forbear; or

(c) he did not in fact so do or forbear.

(2) If, in any proceedings for an offence under any section in this Part, it is proved that the accused offered any advantage to any other person as an inducement to or reward for or otherwise on account of that other person's doing, or forbearing to do, or having done or forborne to do, any act referred to in that section, 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.

Penalty for offences.

[Ch88s10]10. Any person guilty of an offence under this Part shall be liable-

(a) on conviction on information to a fine not exceeding ten thousand dollars or to imprisonment for a term not exceeding four years or to both such fine and imprisonment; and

(b) on summary conviction, to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment, and shall be ordered to pay to such person or public body and in such manner as the court directs, the amount or value of any advantage received by him, or such part thereof as the court may specify.

PART III

POWERS OF INVESTIGATION

Special powers of investigation.

[Ch88s11]11. (1) The Attorney-General, if satisfied that there are reasonable grounds for suspecting that an offence under this Act has been committed by any person, may, for the purposes of an investigation into such offence, authorise in writing any police officer of or above the rank of inspector or any public servant specified in such authorisation, on the production by him of the authorisation to request from any person, subject to that person obtaining the written consent of the person named or otherwise identified in such authorisation, the production of any accounts, books, documents, safe-deposit box or other article of or relating to such person which may be required for the purpose of such investigation and the disclosure of all or any information relating thereto, and to take copies of such accounts and books or of any relevant entry therein.

(2) Every authorisation given under subsection (1) shall be deemed also to authorise the police officer or public servant specified therein to request from any person information as to whether or not at any bank, company or other place there is any account, book, document, safe-deposit box or other article liable to investigation, inspection or production under such authorisation.

(3) Notwithstanding the provisions of any other law to the contrary, where any person who, having been lawfully requested under this section to disclose any information or to produce any accounts, books, documents, safe-deposit box or other article to a police officer or a public servant authorised under subsection (1), fails or neglects or by reason of the absence of consent required under subsection (1) is unable to comply with such request, the Attorney-General may apply to the Supreme Court for an order directing such person to comply with the request.

(4) Any person who falsely represents that an appropriate authorisation has been given under subsection (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Power to obtain information.

[Ch88s12]12. (1) In the course of any investigation into, or proceedings relating to, an offence alleged or suspected to have been committed by any person under this Act, the Attorney-General may by written notice request-

(a) such person to furnish to him a statutory declaration or, as the Attorney-General sees fit, a statement in writing, enumerating-

(i) the property, being property in such categories or classes of property movable or immovable, as may be specified in such notice, belonging to or possessed by, or which at any time during the year immediately preceding the date of

such notice or during such shorter period as may be specified in such notice belonged to or was possessed by, such person, his agents or trustees, specifying in respect of each property enumerated whether it is or was possessed jointly (and, if so, with whom) or severally; and specifying the date upon which each such property was acquired and whether by purchase, gift, bequest, inheritance or otherwise, and, where it was acquired by purchase, specifying the consideration paid therefor; and in respect of any property enumerated which has been disposed of, whether by sale, gift or otherwise, at any time during the year immediately preceding the date of the notice or such shorter period as aforesaid, specifying how and to whom the same was disposed of and, where it was disposed of by sale, specifying the consideration given therefor;

(ii) all expenditure incurred by such person in respect of himself, his spouse, parents or children with regard to living expenses and other private expenditure during any period specified in such notice (not, however, being a period commencing earlier than one year from the date of the notice);

(iii) all liabilities incurred by such person, his agents or trustees, at such time or during such period as may be specified in such notice (not, however, being a time or a period commencing earlier than one year from the date of the notice), and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

(b) such person to furnish to the Attorney-General a statement in writing of any money or other property sent out of The Bahamas by him or on his behalf during such period as may be specified in the notice;

(c) any other person to furnish to the Attorney-General a statement in writing enumerating the property, being property in such categories or classes of property, movable or immovable, as may be specified in such notice, belonging to or possessed by him, if the Attorney-General believes that such information may assist the investigation or proceedings;

(d) any other person whom the Attorney-General believes to be acquainted with any facts relevant to such investigation or proceedings to furnish to him all information in his possession respecting such matters as are specified in the notice or, as the Attorney-General sees fit, to appear before the person specified in the notice and to answer orally on oath or affirmation any questions relevant thereto; and, on demand by such other person, to produce or deliver or otherwise furnish to him the original or a copy of any document in his possession or under his control which, in the opinion of such person, may be relevant to such investigation or proceedings; for the purposes of this paragraph such person shall have authority to administer any oath or take any affirmation;

(e) the person in charge of any public body or any department, office or establishment of any public body to produce or furnish to him any document or a copy, certified by the person in charge, of any public body to produce or furnish to him any document or a copy, certified by the person in charge, of any document which is in his possession or under his control;

(f) the manager of any bank, subject to the manager obtaining the written consent of such person, to give to him copies of the accounts of such person or of his spouse, parents or children at the bank as shall be named in the notice.

(2) Without prejudice to the generality thereof, the powers conferred by paragraph (d) of subsection (1) include the power to request information from, and to request the attendance for the purpose of answering questions of-

(a) any person, or any employee of any person, who has acted for or is acting for any party to any particular land or property transaction; and

(b) any person, or any employee of any person, who was concerned in the passing of any consideration, brokerage, commission or fee, or in the clearing or collection of any cheque or other instrument of exchange, respecting any particular land or property transaction,

as to any of the following matters, that is to say-

(i) the full names (including aliases) and addresses of any of the persons referred to in paragraphs (a) and (b) and any other information in his possession which may be helpful in identifying or locating any such person;

(ii) any consideration, brokerage, commission or fee paid or received in respect of or in connection with any such land or property transaction; and

(iii) the terms and conditions of any such land or property transaction.

(3) A notice under subsection (1) shall be served on the person to whom it is addressed either personally or by sending it by registered post to his post office box (if known) or in care of the Post Office (for general delivery).

(4) Notwithstanding the provisions of any other law to the contrary, where any person, other than the person referred to in paragraphs (a) and (b) or subsection (1), on whom a notice under subsection (1) is served fails or neglects, or by reason of the absence of consent required under subsection (1)(f) is unable, to comply with the terms of that notice within such time as may be specified therein or within such further time as the Attorney-General may, in his discretion, authorise, the Attorney-General may apply to the Supreme Court for an order directing such person to comply with the terms of the notice.

Powers of search, and to obtain assistance.

[Ch88s13]13. (1) Any police officer of or above the rank of inspector and any public servant conducting an investigation into an offence alleged or suspected to have been committed under this Act-

(a) may apply to any public servant or any other person for assistance in the exercise of his powers or the discharge of his duties under this Act;

(b) may for the purpose of such investigation, with the written consent of the Attorney-General and after obtaining a warrant from a magistrate and with such assistance as may be necessary, enter and search any office, registry or other room of or used by a public body:

Provided that the Governor-General may by order exempt any office, registry or room from entry and search under the provisions of this paragraph.

(2) Any person who-

(a) when requested under paragraph (a) of subsection (1) to render assistance, without reasonable excuse neglects or fails to render such assistance; or

(b) obstructs or resists any police officer or public servant in the exercise of the powers of entry and search conferred by paragraph (b) of subsection (1),

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

PART IV

EVIDENCE

Custom not to be a defence.

[Ch88s14]14. In any proceedings for an offence under this Act, it shall not be a defence to show that any such advantage as is mentioned in this Act is customary in any profession, trade, vocation or calling.

Admissibility of accused's declarations and statements.

[Ch88s15]15. In any proceedings against a person for an offence under this Act-

(a) any statutory declaration or statement in writing furnished by him in compliance or purported compliance with the terms of a notice served upon him under paragraph (a) or (b) of subsection (1) of section 12 shall be admissible in evidence, and, if such person tenders himself as a witness, any such declaration or statement may be used in cross-examination and for the purpose of impeaching his credit;

(b) the fact of his failure in any respect to comply with the terms of a notice served on him under paragraph (a) or (b) of subsection (1) of section 12 may be adduced in evidence and made the subject of comment by the court and the prosecution.

Evidence of pecuniary resources or property.

[Ch88s16]16. (1) In any proceedings against a person for an offence under Part II, the fact that the accused was, at or about the date of or at any time since the date of, the alleged offence, or is in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court-

(a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or solicited any advantage; and

(b) as showing that such advantage was accepted or solicited 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 pecuniary resources or property, or to have obtained an accretion thereto, where such resources or property are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Burden of proof.

[Ch88s17]17. In any proceedings against a person for an offence under this Act, the burden of proving a defence of lawful authority or reasonable excuse shall lie upon the accused.

Presumption of corruption in certain cases.

[Ch88s18]18. Where, in any proceedings for an offence under section 3 or 4, it is proved that the accused gave or accepted an advantage, the advantage shall be presumed

to have been given and accepted as such inducement or reward as is alleged in the particulars of the offence unless the contrary is proved.

PART V

MISCELLANEOUS

Frivolous, false or groundless complaints to be reported to the Attorney-General.

[Ch88s19]19. At the conclusion of proceedings for an offence under this Act, the court may, if of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify in writing and transmit the certificate and the record of the proceedings to the Attorney-General.

Costs of acquittal.

[Ch88s20]20. Where a person is acquitted after trial before the Supreme Court for an offence under Part II, the court may award costs to that person, such costs to be taxed and paid out of the Consolidated Fund.

Offence of making a false report of the commission of offence, etc.

[Ch88s21]21. Any person who, during the course of an investigation into, or in any proceedings relating to, an offence alleged or suspected to have been committed under this Act, knowingly-

(a) makes or causes to be made a false report of the commission of an offence under this Act to-

(i) any police officer specified in an authorisation given under section 11; or

(ii) any public servant specified in an authorisation given under section 11; or

(b) misleads-

(i) any police officer specified in an authorisation given under section 11; or

(ii) any public servant specified in an authorisation given under section 11,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Offence to disclose identity, etc., of persons being investigated.

[Ch88s22]22. Any person who, without lawful authority or reasonable excuse, discloses to any 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 the fact that he is subject to such an investigation, or any details of such investigation, or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation, shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding five thousand dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

Consent of Attorney-General required for prosecution of offences under Part II.

[Ch88s23]23. (1) No prosecution for an offence under Part II shall be instituted except with the consent of the Attorney-General.

(2) Notwithstanding subsection (1) of this section a person may be charged with an offence under Part II and may be arrested therefor, or a warrant for his arrest may be

issued and executed, and any such person may be remanded in custody or on bail notwithstanding that the consent of the Attorney-General to the institution of a prosecution for the offence has not been obtained, but no such person shall be remanded in custody or on bail for longer than three days on such charge unless in the meantime the consent of the Attorney-General aforesaid has been obtained.

(3) When a person is brought before a magistrate before the Attorney-General has consented to the prosecution, the charge shall be explained to the person accused but he shall not be called upon to plead and the provisions of the Ch. 91. Criminal Procedure Code Act, shall be modified accordingly.

Alternative convictions, and amending particulars.

[Ch88s24]24. (1) If, on the trial of any person for any offence under Part II, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part II, the accused may, notwithstanding the absence of consent under section 23 in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

(2) If on the trial of any person for any offence under Part II there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence, and in such a case the court may, notwithstanding the absence of consent under section 23 in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and the parties shall be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to the provisions of subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the case for the prosecution is closed no further witness may be called by the prosecution other than such and on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

(4) Nothing in this section shall exclude the application of any other law whereby a person may be found guilty of an offence other than that with which he is charged.