

CORRUPTION ACT 2008

Arrangement of Sections

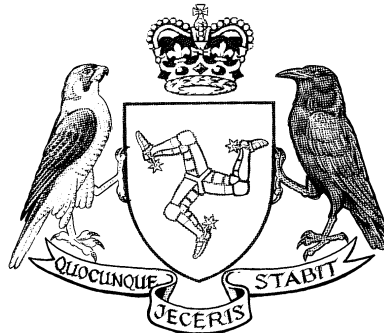
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Isle of Man } Signed in Tynwald: 15th July 2008
 tu Wit } Received Royal Assent: 16th July 2008
 Announced to Tynwald: 16th July 2008

AN ACT

to amend the law relating to the prevention of corruption and for connected purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows:—

1. (1) A person commits an offence if that person —
- (a) gives an advantage to or procures an advantage for any person; or
 - (b) offers or agrees to give an advantage to or to procure an advantage for any person,

General
corruption
offences

with the intention of influencing that person or another person to exercise a function improperly, or as a reward for so exercising a function.

- (2) A person commits an offence if that person —
- (a) obtains an advantage for that person or another person; or
 - (b) solicits or agrees to obtain an advantage for that person or another person,

upon the basis that it will or may influence that person or another person to exercise a function improperly or as a reward for so exercising a function.

Corrupt
transactions
involving
agents

- 2.** (1) A person commits an offence if that person —
- (a) gives an advantage to or procures an advantage for any person; or
 - (b) offers or agrees to give an advantage to or to procure an advantage for any person,

with the intention of influencing that person or another person to exercise a function improperly, or as a reward for so exercising a function, in each case in that or the other person's capacity as an agent in relation to the affairs of the principal of that agent.

(2) A person commits an offence if, in the capacity as an agent in relation to the affairs of the principal of that agent, that person —

- (a) obtains an advantage for that person or for another person; or
- (b) solicits or agrees to obtain an advantage for that person or another person,

upon the basis that it will or may influence that person or another person to exercise a function improperly or as a reward for so exercising a function.

- (3) For the purposes of this section, it is immaterial if —
- (a) the agent's functions have no connection with the Island and are conducted in a country or territory outside the Island;
 - (b) the principal's affairs or business have no connection with the Island and are conducted in a country or territory outside the Island.

Bribery of
foreign public
officials

- 3.** A person commits an offence if that person —
- (a) gives an advantage to or procures an advantage for any person; or
 - (b) offers or agrees to give an advantage to or procure an advantage for any person,

with the intention of influencing that person or another person to exercise a function improperly, in each case in that or the other person's capacity as a foreign public official.

4. Where in proceedings against a person for an offence under section 1 or 2 of this Act involving the exercise of a function on behalf of a public body, it is proved that that person has given or obtained an advantage for that person or another person, the advantage shall be deemed to have been given or obtained upon the basis that it would or might influence that person or another person to exercise a function improperly, or as a reward for so exercising a function, unless evidence is adduced on the balance of probabilities which casts doubt on the presumed fact.

Presumption
of corruption

5. (1) A person exercising a function on behalf of a public body who is offered or receives an advantage in circumstances which may constitute an offence under sections 1 or 2 of this Act, or under section 323 of the Criminal Code 1872, shall disclose as soon as reasonably practicable and in the prescribed manner —

Duty to report
public sector
corruption

[IV p.160]

- (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 person exercising a function on behalf of a public body who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under sections 1 or 2 of this Act, or under section 323 of the Criminal Code 1872, must disclose, as soon as reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

(3) For the purposes of subsections (1) and (2) —

- (a) “a person exercising a function on behalf of a public body” excludes a foreign public official;
- (b) “the prescribed manner” means —
 - (i) to a constable; or
 - (ii) where the employer of the person exercising the function on behalf of a public body has established a procedure for that person to make disclosures of the kind mentioned in subsections (1) or (2), in accordance with that procedure, and to a constable.

[c.21]

(4) In section 49 of the Employment Act 2006, after “sections 51 to 56” insert “, or in accordance with section 5(1) or 5(2) of the Corruption Act 2008”.

(5) Any provision of an agreement between a worker and the worker’s employer (whether or not a worker’s contract), including an agreement to refrain from instituting or continuing any proceedings under the Employment Act 2006 or any proceedings for breach of contract is void in so far as it purports to preclude any worker from a protected disclosure.

(6) For the purposes of subsection (5) —

- (a) the expression “protected disclosure” has the same meaning as in section 49 of the Employment Act 2006; and
- (b) the expressions “worker”, “employer” and “worker’s contract” have the same meaning as in section 58 of that Act.

Failure to
report public
sector
corruption

6. (1) A person who fails to comply with section 5 commits an offence.

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

Interfering
with duty to
report public
sector
corruption

7. A person who intentionally takes any 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 5 commits an offence.

Corruption
committed
outside the
Island

8. (1) This section applies if —

- (a) a resident of the Island does or omits to do anything in a country or territory outside the Island; and
- (b) the act or omission would, if done or made in the Island, constitute a corruption offence.

(2) In such a case —

- (a) the act or omission constitutes the offence concerned;
- (b) proceedings for the offence may be taken in the Island;

- (c) the offence may be treated for incidental purposes as having been committed at a place in the Island.
 - (3) These offences are corruption offences —
 - (a) an offence under this Act or under section 323 (bribery etc.) of the Criminal Code 1872;
 - (b) an attempt, conspiracy or incitement to commit an offence specified in paragraph (a);
 - (c) aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a).
 - (4) A resident of the Island is —
 - (a) an individual who is ordinarily resident in the Island; or
 - (b) a body incorporated under the laws of the Island.
- 9.** (1) A person guilty of an offence under this Act is liable — Penalties
- (a) on conviction on information, to custody for a term not exceeding the term specified in subsection (2) or a fine or both;
 - (b) on summary conviction, to custody for a term not exceeding 6 months or a fine not exceeding £5,000 or both.
- (2) The maximum term of imprisonment on conviction on information is —
- (a) 2 years for an offence under section 6 or 7; and
 - (b) 7 years in any other case.
- 10.** (1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of — Offences by bodies corporate
- (a) a person who is a director, manager, secretary or other similar officer of the body corporate;
 - (b) a person purporting to act in any such capacity,
- the person is also guilty of the offence and liable in the same manner as the body corporate to the penalty provided for the offence.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to acts and defaults of a member in connection with the member's functions or management as if the member were a director of the body corporate.

Interpretation **11.** In this Act —

“advantage” includes —

- (a) any benefit whether direct or indirect;
- (b) any other act done or omission made at the request of another person and whether or not the nature or timing of the advantage is then known or the making of the request is express or implied, direct or indirect;

“agent” includes —

- (a) any person employed by or acting for another;
- (b) any person employed by, serving under, appointed by or acting for a public body;

“exercise a function” includes exercising or failing to exercise any duty or power irrespective of whether the function —

- (a) is or is not within the competence of the person exercising it;
- (b) is exercised in the Island or elsewhere;

“foreign public official” means any person —

- (a) holding a legislative, executive, administrative or judicial office of a country or territory outside the Island, whether appointed or elected;
- (b) exercising a function on behalf of a public body which exists in a country or territory outside the Island; or
- (c) who is an official of a public international organisation or who is authorised by such an organisation as its agent;

“improperly” means in breach of any duty, whether express or implied, and whether of a public or private nature, including any duty to act in good faith or impartially;

“official of a public international organisation” means an international civil servant;

“principal” includes an employer;

“public body” means any of the following —

- (a) the Crown;
- (b) Tynwald and either of its constituent branches;
- (c) a Department or Statutory Board;
- (d) a body the members, or any of the members, of which are appointed by, or whose appointment requires the approval of Tynwald;
- (e) a local authority;
- (f) any body which exists in a country or territory outside the Island and is equivalent to any body specified in paragraphs (a) to (e);
- (g) any other description of public body (including bodies existing in a country or territory outside the Island).

12. This Act applies to persons in the public service of the Crown as it applies to other persons. Application

13. The enactments specified in Schedule 1 are amended in accordance with that Schedule. Amendments

14. The enactments specified in Schedule 2 are repealed in accordance with that Schedule. Repeals

15. (1) This Act may be cited as the Corruption Act 2008. Short title and commencement

(2) This Act comes into operation on such day as may be appointed by order made by the Department of Home Affairs and different days may be so appointed for different provisions and for different purposes.

Section 13

SCHEDULE 1

AMENDMENTS

Criminal Code 1872 (IV p.160)

1. For section 323(2), substitute —

“(2) Section 8 of the Corruption Act 2008 applies in respect of this section.”.

Income Tax Act 1970 (XXI p.260)

2. After section 106(5)(e), insert —

“(f) if the disclosure is made in the prescribed manner under section 5 of the Corruption Act 2008.”.

Limitation Act 1984 (c.18)

3. In section 21(1)(a) (time limit for actions in respect of trust property), for “fraud or fraudulent breach of trust” substitute “fraud, fraudulent breach of trust or corrupt conduct”.

4. Section 30 (postponement of limitation period in case of fraud etc.) is amended as follows —

- (a) in subsection (1) after paragraph (a), insert —

“(aa) the action is based on the corrupt conduct of the defendant;
or”;

- (b) in subsection (1), after “discovered the fraud,” insert “corrupt conduct,”;

- (c) in subsection (3), after “fraud” insert “, corrupt conduct”;

- (d) in subsection (4)(a) —

- (i) after “case of fraud” insert “, corrupt conduct”;

- (ii) after “party to the fraud” insert “or corrupt conduct”;

- (iii) after “believe that the fraud” insert “, corrupt conduct”.

5. In section 36(1) (interpretation), after the definition of “bill of exchange” and “promissory note” insert —

““corrupt conduct” means conduct which constitutes an offence under the Corruption Act 2008 or under section 323 of the Criminal Code 1872;”.

Criminal Justice Act 1990 (c.1)

SCH. 1

6. In section 24 (Attorney General's investigation powers) —
- (a) in subsections (1)(a) and (15)(a), after “serious or complex fraud” insert “or serious or complex corruption”;
 - (b) after subsection (18) insert —

“(19) In this Part, any reference to “corruption” includes any offence under the Corruption Act 2008 or under section 323 of the Criminal Code 1872.”.

Police Act 1993 (c.11)

7. In paragraph 5(1)(b)(i) of Schedule 1, for “1986” substitute “2008”.

Criminal Justice Act 2001 (c.4)

8. For paragraph 4(1)(a) of Schedule 4, substitute —
- “(a) an offence under the Corruption Act 2008;”.

Section 14

SCHEDULE 2

REPEALS

<i>Reference</i>	<i>Short Title</i>	<i>Extent of repeal</i>
1986 c.18	Corruption Act 1986	The whole Act.
2003 c.6	Anti-Terrorism and Crime Act 2003	Section 73.