

# THIRD SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 5014 GIBRALTAR Thursday 1st December 2022

---

B. 24/22

## ANTI-CORRUPTION AUTHORITY BILL 2022

### ARRANGEMENT OF CLAUSES

Clause

#### PART 1 PRELIMINARY

1. Title and commencement.
2. Interpretation.

#### PART 2 ANTI-CORRUPTION AUTHORITY

3. Establishment of Anti-Corruption Authority.
4. The Anti-Corruption Authority to be a body corporate.
5. Meetings and proceedings.
6. Duties, powers and functions of the Anti-Corruption Authority.
7. Accounts and auditing.
8. Appointment of consultants and experts.
9. Immunity.
10. Indemnity.
11. Conflict of interest.
12. Confidentiality.
13. Policy and guidance.
14. Cooperation agreements.

#### PART 3 CORRUPT CONDUCT, REPORTS, RIGHTS AND POWERS

15. Corrupt conduct.
16. Detection and investigation.
17. Report of corrupt conduct.
18. Power to suspend.
19. Right to request information and documents.
20. Production order.
21. Order for entry.
22. Supplementary.
23. Warrant for search and seizure.
24. Applications under section 22.

- 25. Application to vary or discharge warrant.
- 26. Powers in relation to Ministers or officers of the Crown.
- 27. Appeals.
- 28. Referral to the Royal Gibraltar Police.

**PART 4  
PROTECTION MEASURES**

- 29. Right to interpreter or assistance.
- 30. Protection of persons making reports and assisting.
- 31. Employment protection.
- 32. Obligation to return material.

**PART 5  
SPECIFIC OFFENCES**

- 33. Abuse of office and bribery.
- 34. False or misleading statements.
- 35. Falsification, destruction, disposal, concealment.
- 36. Improper disclosure.
- 37. Disclosure of confidential information.
- 38. Corporate liability.

**PART 6  
MISCELLANEOUS**

- 39. Reports.
- 40. Regulations.

**SCHEDULE  
CORRUPT CONDUCT OFFENCES**

**B. 24/22**

# **BILL**

**FOR**

**AN ACT** to make provision for the establishment of the Anti-Corruption Authority and to provide it with powers of investigation and other duties, powers and functions for the investigation of corrupt conduct, and for connected purposes.

**ENACTED** by the Legislature of Gibraltar.

## **PART 1**

### **PRELIMINARY**

#### **Title and commencement.**

1.(1) This Act may be cited as the Anti-Corruption Authority Act 2022 and comes into operation on the day appointed by the Chief Minister by Notice in the Gazette.

(2) The Chief Minister may appoint different days for different provisions and for different purposes.

#### **Interpretation.**

2. In this Act, unless the context otherwise requires-

“the court” means the Magistrates’ Court;

“corrupt conduct” has the meaning given in section 15;

“Anti-Corruption Authority” means the Anti-Corruption Authority established under section 3;

“data protection legislation” has the meaning given in section 2(1) of the Data Protection Act 2004;

“document” means anything in which information of any description is recorded in any form and, in relation to information recorded otherwise than in a form in which it is visible and legible, references to its production include references to producing it in a form in which it is visible and legible or from which it can readily be produced in a visible and legible form;

“employee” means a person employed by the Anti-Corruption Authority for the proper exercise of its duties, powers and functions under this Act;

“excluded material” has the meaning given in section 2(1) of the Criminal Procedure and Evidence Act 2011;

“investigation” means an investigation into corrupt conduct under section 16(1);

“police officer” has the meaning given in section 2 of the Police Act 2006;

“practising lawyer” means a person admitted or entitled to practice as a barrister or solicitor under section 28 or 29 of the Supreme Court Act;

“premises” has the meaning given in section 2(1) of the Crimes Act 2011;

“public appointment” means a person who holds any office, place or position in any public authority whether the appointment is by way of election, appointment or selection;

“public authority” means-

- (a) government departments;
- (b) authorities, agencies, commissions, corporations or other bodies established by statute;
- (c) a person or body declared by the Chief Minister by order in the Gazette;

“public official” means a person-

- (a) who holds a public appointment; or
- (b) an employee or any person otherwise engaged by, or acting for or on behalf of, a public authority,

and without prejudice to the generality of the foregoing, paragraph (a) includes a Member of Parliament;

“report” means a report of corrupt conduct made to the Anti-Corruption Authority under section 17.

## **PART 2**

### **ANTI-CORRUPTION AUTHORITY**

#### **Establishment of Anti-Corruption Authority.**

3.(1) There is established the Anti-Corruption Authority.

(2) The Anti-Corruption Authority-

- (a) is responsible for the administration of this Act;
- (b) must discharge the duties, powers and functions set out in this Act; and
- (c) has the authority and capacity to carry out the duties, powers and functions bestowed upon it under this Act.

(3) The Anti-Corruption Authority consists of the following members-

- (a) the Chairperson appointed by the Chief Minister;
- (b) four other persons appointed by the Chief Minister in consultation with the Leader of the Opposition and, who, in the opinion of the Chief Minister-
  - (i) are fit and proper persons;
  - (ii) possess the relevant knowledge and experience for fulfilling the duties, powers and functions under this Act; and
  - (iii) are residents of Gibraltar,

and may include retired judges, retired police officers, retired justices of the peace or stipendiary magistrates, chartered or certified accountants whether retired or not, or practising lawyers of 10 or more years call whether retired or not.

(4) The Chairperson is responsible for overseeing the work of the Anti-Corruption Authority and to ensure it operates in accordance with the provisions of this Act.

(5) The following persons are not eligible for appointment to the Anti-Corruption Authority-

- (a) public officials; and
- (b) other persons or category of persons as may be prescribed in regulations made by the Chief Minister from time to time.

(6) The appointment of any person to the Anti-Corruption Authority is for such a period and on such terms and conditions as specified in the instrument of appointment, and the period must not exceed 3 years.

(7) At the expiration of the period referred to in subsection (6), a person is eligible for re-appointment for a further period of up to 3 years or less in accordance with the terms and conditions in the instrument of appointment unless-

- (a) the person has resigned in accordance with subsection (8); or
- (b) the person has been removed under subsection (9).

(8) Any person appointed under subsection (3) (a) or (b) may at any time resign by delivering a letter to that effect to the Chief Minister, and from the date of receipt of that letter, that person ceases to be the appointed.

(9) The Chief Minister may at any time remove a person appointed under this section on any of the following grounds-

- (a) misconduct;
- (b) failure to carry out duties, powers and functions;
- (c) material breach of any term or condition of the instrument of appointment;
- (d) incapacity by physical or mental illness;
- (e) incompetence;
- (f) bankruptcy or where the person makes any arrangement with their creditors;
- (g) where there are reasonable grounds to suspect that the person may be involved in corrupt conduct or an offence under this Act;
- (h) conviction of a criminal offence punishable by a term of imprisonment;
- (i) absence from duties without the permission of the Anti-Corruption Authority;
- (j) otherwise unable or unfit to discharge the duties, powers and functions under this Act; or
- (k) for any other reason in the public interest with the consent of the Parliament expressed in a resolution that sets out the reasons for doing so,

and the removal becomes effective when it is published by Notice in the Gazette.

(10) The names of all persons appointed to the Anti-Corruption Authority and every change to any appointments under this section must be published by the Chief Minister by Notice in the Gazette.

(11) If any person appointed to the Anti-Corruption Authority is absent or unable to act for any reason other than the grounds under subsection (9), the Chief Minister may appoint another person to act in their place, for a period of time not exceeding 3 months, and this appointment must be made in compliance with this section.

(12) Where any member is removed under subsection (9), another person may be appointed by the Chief Minister to fill the position of that member removed under subsection (9), and this appointment must be made in the same manner as in the case of the original appointment and in compliance with this section.

(13) The Anti-Corruption Authority must manage its affairs and any remuneration and expenses payable to a member shall be a charge on the Consolidated Fund.

(14) Expenses incurred by the Anti-Corruption Authority in the discharge of its functions shall be payable out of the Consolidated Fund.

**The Anti-Corruption Authority to be a body corporate.**

4.(1) The Anti-Corruption Authority is a body corporate with perpetual succession under the name of the Anti-Corruption Authority and has a common seal that must be officially and judicially noted.

(2) The common seal of the Anti-Corruption Authority may only be affixed to a document in the presence of-

(a) the Chairperson; or

(b) any other person authorised by the Anti-Corruption Authority for that purpose,

and in both cases, one other member of the Anti-Corruption Authority.

(3) The documents referred to in subsection (2) must be signed by two persons so present as witnesses to the sealing, and the acts of sealing and witnessing must be recorded in a register to be kept for that purpose.

(4) The Anti-Corruption Authority may sue and be sued in its corporate name.

(5) Service of any process or notice on the Anti-Corruption Authority may be effected by leaving it at, or sending it by registered post to, the offices of the Anti-Corruption Authority.

**Meetings and proceedings.**

5.(1) The Anti-Corruption Authority must meet at any times as may be expedient for the carrying out of its duties, powers and functions under this Act, and these meetings must be held at the dates and times as the Chairperson may determine.

(2) The quorum of all meetings of the Anti-Corruption Authority is three members.

(3) Any matters arising at a meeting of the Anti-Corruption Authority must be decided by way of majority of the members present and voting at the meeting, and in the case of an equality of votes, the Chairperson has a casting vote.

(4) The validity of anything done by the Anti-Corruption Authority is not affected by-

(a) a vacancy; or

(b) a defective appointment of any person.

(5) Subject to this Act, the Anti-Corruption Authority has the power to regulate its own procedure.

**Duties, powers and functions of the Anti-Corruption Authority.**

6.(1) The Anti-Corruption Authority has the following duties, powers and functions-

- (a) to establish, operate and supervise the processes for the investigation of corrupt conduct under this Act, whether the investigation originates from a report made to it or otherwise;
- (b) to receive and consider any report made to it by any person relating to corrupt conduct;
- (c) subject to this Act, to detect and investigate corrupt conduct and-
  - (i) ensure that any suspected concerns of corrupt conduct is investigated in a proper manner and without undue delay;
  - (ii) exercise the powers as may be assigned to it under this Act to investigate any suspected corrupt conduct;
  - (iii) analyse the results of any investigation and form opinions in relation to those results;
  - (iv) transmit the results of any investigation and any information or material gathered to the Royal Gibraltar Police for further investigation or charge;
- (d) to employ persons as may be necessary for it to exercise its duties, powers and functions under this Act;
- (e) to establish the period, terms and conditions of employment of any persons as may be employed under subsection (d);
- (f) to appoint persons as consultants or experts for the proper discharge of its duties, powers and functions under this Act;
- (g) to collect, compile and report on matters as are prescribed under this Act;
- (h) to disseminate or exchange information as permitted under this Act or under any other enactment concerning corrupt conduct;
- (i) to purchase, lease or otherwise acquire any freehold or leasehold land required for the purpose of its duties and functions under this Act and dispose of any land no longer required for these purposes; and



(j) to have, exercise and perform other duties, powers and functions as may be assigned to it by this Act.

(2) The powers under subsections (1) (b) and (c) includes the power, to investigate any corrupt conduct-

(a) that occurred wholly or partly before the commencement of this Act;

(b) where some or all of the elements necessary to constitute corrupt conduct occurred wholly or partly before the commencement of this Act; and

(c) irrespective of whether any person involved in the corrupt conduct is or was at the material time a public official.

(3) The Anti-Corruption Authority must in the exercise of its duties, powers and functions-

(a) ensure high standards of integrity and independence;

(b) act at all times independently, impartially and fairly; and

(c) regard the protection of the public interest and the prevention of corrupt conduct as its paramount concern,

but nothing in this Act must be regarded as imposing on the Anti-Corruption Authority any obligation to exercise any duty, power or function conferred by this Act where section 16(1) or 17(1) applies.

(4) Anything authorised or required by or under this Act to be done by the Anti-Corruption Authority may be done by any person appointed to the Anti-Corruption Authority or an employee who is authorised generally or specifically to act accordingly on its behalf in accordance with subsection (5).

(5) Any person appointed or an employee authorised under and in accordance with subsection (4), must, upon being authorised, be provided by the Anti-Corruption Authority with an instrument of authorisation and when exercising a power, must, if requested by any person affected, produce that instrument for inspection.

### **Accounts and auditing.**

7.(1) The Anti-Corruption Authority must keep proper books of accounts of its operations during each financial year and must also cause a statement of its accounts for each financial year to be prepared within 9 months (or any longer period as the Government allows) after the end of each financial year.

(2) The accounts of the Anti-Corruption Authority for each financial year must be audited and certified by the Principal Auditor as soon as practicable after the end of that financial year and must be submitted to the Principal Auditor for that purpose within 10 months after the end of the financial year to be audited.

(3) The Principal Auditor must, with reference to the accounts of the Anti-Corruption Authority, report-

- (a) whether the Principal Auditor has obtained all the information and explanations that to the best of the Principal Auditor's knowledge and belief were necessary for the purposes of the audit;
- (b) whether, in the Principal Auditor's opinion, proper books of accounts have been kept by the Anti-Corruption Authority, so far as appears from the Principal Auditor's examination of those books; and
- (c) whether the Anti-Corruption Authority has discharged its financial duties and obligations under the provisions of this Act.

(4) The Chief Minister must lay one copy of the audited accounts on the table of the Parliament as soon as practicable after the Chief Minister has received them.

(5) The Anti-Corruption Authority must furnish to the Government-

- (a) a copy of the estimates of income and expenditure, including capital expenditure, no later than the 15<sup>th</sup> day of January in each year; and
- (b) financial and statistical returns as it may from time to time require.

#### **Appointment of consultants and experts.**

8.(1) The Anti-Corruption Authority may engage or appoint consultants or experts having the necessary knowledge, skill or qualification to assist the Anti-Corruption Authority in the performance of its duties, powers and functions under this Act.

(2) The consultants or experts appointed or engaged under subsection (1) may be paid remuneration as the Anti-Corruption Authority may approve.

(3) Any consultants or experts appointed or engaged under subsection (1) must comply with the duties of confidentiality and other duties as may be contained in their contract of appointment, or in the absence of any provision in the contract, as provided for under this Act.

#### **Immunity.**

9. The Anti-Corruption Authority or any person appointed to, or engaged by, it or an employee is not liable in damages for anything done or omitted to be done in the discharge or purported discharge of the duties, powers and functions under this Act unless it is proved that the act or omission was in bad faith.

#### **Indemnity.**

10. The Anti-Corruption Authority must indemnify any person appointed to, or engaged by, it or an employee against all claims, damages, costs, charges or expenses incurred by that person in the discharge or purported discharge of their duties, powers and functions under this Act, except for claims, damages, costs, charges or expenses shown to have been caused by the bad faith of that person or employee.

**Conflict of interest.**

11.(1) A person appointed to, or engaged by, or employed by the Anti-Corruption Authority who has any disqualifying interest in any matter to be considered by the Anti-Corruption Authority and is present at a meeting of the Anti-Corruption Authority at which the matter is to be considered must, before the meeting or before the matter is considered, declare their disqualifying interest and must immediately withdraw from the meeting and take no further part in the proceedings of the Anti-Corruption Authority in relation to that matter.

(2) Any declaration and withdrawal under subsection (1) must be recorded by the Anti-Corruption Authority.

(3) For the purposes of subsection (1), a person must be treated as having a disqualifying interest if they have-

- (a) any direct or indirect professional, business or pecuniary interest in the matter to be considered by the Anti-Corruption Authority; or
- (b) any direct or indirect personal or political interest or association; and

in either (a) or (b), or both, that-

- (i) may have, or be seen to have, an influence on the conduct of that person;
- (ii) might be perceived to compromise their impartiality and independence; or
- (iii) may conflict with that person's duties, powers and functions under this Act.

(4) If a person fails to comply with subsection (1), that person commits an offence and is liable-

- (a) on summary conviction to a fine on level 5 of the standard scale or 12 months imprisonment, or both; or
- (b) on indictment to a fine or imprisonment for a term of 3 years, or both.

(5) It is a defence to subsection (4) for a person to prove that they had no knowledge they had a disqualifying interest in the matter to be considered by the Anti-Corruption Authority.

(6) No act or proceeding of the Anti-Corruption Authority is invalidated on the ground that a person with a disqualifying interest has contravened this section.

- (7) This section does not apply to an interest in any matter-
- (a) that the person has as a member of the public; or
  - (b) in which the right to participate by that person is offered to the public.

**Confidentiality.**

12.(1) For the purposes of this Act, “confidential information” means information in any form which, includes, but is not limited to, information which-

- (a) has been obtained by or on behalf of the Anti-Corruption Authority in the course of carrying out its duties, powers and functions under this Act;
- (b) has been provided by a public authority in confidence to the Anti-Corruption Authority; or
- (c) has been provided by the Government in confidence to the Anti-Corruption Authority.

(2) The Anti-Corruption Authority may only disclose confidential information to the extent that it appears necessary for the following purposes-

- (a) to facilitate the carrying out of a function, power or duty conferred upon it under this Act;
- (b) for the prevention or detection of crime or the prosecution of offenders;
- (c) for the purposes of any proceedings under this Act;
- (d) in connection with the compliance of any international obligation to which Gibraltar is subject;
- (e) by direction or order of the court or of the Supreme Court; or
- (f) where it is a matter of public knowledge and was made available to the public in circumstances or for purposes that are not precluded by this Act or any other enactment,

but for no other purpose.

- (3) Every person who is or has been-
- (a) appointed under section 3;
  - (b) employed by the Anti-Corruption Authority; or
  - (c) appointed to, or engaged by, the Anti-Corruption Authority to provide services,

must not disclose confidential information unless it is necessary for the purposes prescribed in subsection (2).

(4) The Anti-Corruption Authority must protect the confidential information that must be processed, if it includes personal data, in accordance with the data protection legislation.

**Policy and guidance.**

13.(1) The Anti-Corruption Authority must issue and publish guidance consisting of information and advice as it considers appropriate with respect to-

- (a) procedures and practices for the prevention of corruption;
- (b) the operation of this Act; and
- (c) any other matters about which it appears to be desirable to give information and advice.

(2) The Anti-Corruption Authority must, from time to time, issue and publish revisions to the guidance under this section.

(3) In preparing any guidance under this section, the Anti-Corruption Authority may consult such persons as it considers appropriate.

**Cooperation agreements.**

14.(1) In exercising its duties, power and functions under this Act, the Anti-Corruption Authority may conclude cooperation agreements with public authorities establishing procedures for exchange of information.

(2) When exchanging confidential information, the Anti-Corruption Authority must require the public authority-

- (a) to use this information only for the purposes for which the Anti-Corruption Authority has provided it; and
- (b) not to disclose this information without the Anti-Corruption Authority's express written agreement.

(3) The Anti-Corruption Authority may refuse to exchange confidential information under this section where-

- (a) it is not satisfied that the public authority is subject to confidentiality provisions that are at least equivalent to those under section 12;
- (b) the request is not made in accordance with the terms of any cooperation agreement made under this section;

- (c) in respect of the same person and the same or related corrupt conduct, an investigation under this Act has been commenced; or
- (d) it is necessary to protect the public interest or an essential national interest.

### **PART 3**

## **CORRUPT CONDUCT, INVESTIGATIONS, REPORTS, RIGHTS AND POWERS**

### **Corrupt conduct.**

15.(1) For the purposes of this Act, “corrupt conduct” means an offence listed in the Schedule.

(2) The Chief Minister may, by regulations, amend subsection (1) and the Schedule.

(3) A person involved in corrupt conduct is a person who falls within the scope of the offences listed in the Schedule, whether or not they are public officials.

### **Detection and investigation.**

16.(1) Where the Anti-Corruption Authority suspects the commission of corrupt conduct or a report is made to it under section 17(1), it may direct an investigating officer to carry out an investigation and for this purpose the investigating officer may exercise all the powers of investigation provided for under this Act.

(2) In the case of an investigation under subsection (1), the Anti-Corruption Authority must-

- (a) establish and maintain effective systems for the detection and investigation of suspected corrupt conduct;
- (b) make appropriate arrangements for-
  - (i) secure communication channels and procedures for the receipt of information, evidence, material;
  - (ii) the proper processing of personal data in accordance with data protection legislation;
  - (iii) the protection of persons under section 30.

(3) The powers of the Anti-Corruption Authority to investigate are subject to-

- (a) the provisions of section 6(2); and
- (b) the list of offences set out in the Schedule.

(4) The Anti-Corruption Authority may discontinue an investigation brought under subsection (1) if satisfied that-

- (a) the investigation does not disclose any corrupt conduct;
- (b) the investigation concerns a matter that was the subject of a previous investigation under this Act and in respect of which no fresh information has been provided;
- (c) the investigation concerns a matter that is more appropriately dealt with by another public authority;
- (d) the investigation would involve a disproportionate use of resources; or
- (e) the investigation should not proceed for any other reasonable cause as may be determined by the Anti-Corruption Authority.

(5) Every investigation under this section must be conducted in private, but this does not affect any action taken by the Anti-Corruption Authority in accordance with its duties, powers and functions under this Act.

### **Report of corrupt conduct.**

17(1). Any person may make a report to the Anti-Corruption Authority about a matter that concerns corrupt conduct, and this report must be made by this person in the manner or form as approved by the Anti-Corruption Authority.

(2) The Anti-Corruption Authority must establish appropriate arrangements for the reports to it by any person under this Part.

(3) The arrangements established under subsection (2) must include-

- (a) guidelines issued from time to time containing the forms and procedures for making a report under this section;
- (b) secure communication channels for the reports made to the Anti-Corruption Authority;
- (c) secure procedures for the receipt and investigation of reports;
- (d) arrangements that are in accordance with the data protection legislation for the protection of personal data of-
  - (i) a person who makes a report;
  - (ii) a person who otherwise assists the Anti-Corruption Authority under this Act; or
  - (iii) a person who is allegedly involved in the corrupt conduct; and

(e) procedures and systems for the protection of persons under section 30.

(4) A copy of a report made under subsection (1) that is certified by the Anti-Corruption Authority, is admissible as evidence of the contents of the original and of the time, place and manner in which the report was recorded.

**Power to suspend.**

18. (1) Where the Anti-Corruption Authority determines that the subject matter of a report or an investigation under this Act-

- (a) is under investigation by the Royal Gibraltar Police; or
- (b) is the subject matter of proceedings in a court in Gibraltar,

the Anti-Corruption Authority must suspend the consideration of a report or the investigation pending the final resolution of (a) or (b).

(2) “Final resolution” means-

- (a) in the case of subsection (1) (a), that the investigation by the Royal Gibraltar Police has concluded and no charges have been proffered; or
- (b) in the case of subsection (1) (b), in a case before a court, that the proceedings have been determined and where a conviction has been secured, and the time for an appeal has elapsed or an appeal has been finally disposed of.

**Right to request information and documents.**

19.(1) Where an investigation has been commenced under section 16(1) by the Anti-Corruption Authority, it may, by notice, request any person-

- (a) to provide information or answer questions as the Anti-Corruption Authority may reasonably request in the form and at the place and time as so specified;
- (b) to produce any document-
  - (i) that is specified or described in the notice or fall within a category of documents that are specified or described in the notice;
  - (ii) that are in that person’s custody or under their control; and
  - (iii) at a place and time so specified.

(2) The power under this section includes the power by the Anti-Corruption Authority to-

- (a) take copies or extracts from any document produced;



(b) request the person who has produced a document to provide an explanation of that document; or

(c) make a request under subsection (3).

(3) If documents required under subsection (1) are not produced, the Anti-Corruption Authority has the power to request the person who was requested to produce them to provide, to the best of their knowledge and belief, the whereabouts of those documents.

(4) The powers under this section may only be exercised where the Anti-Corruption Authority is satisfied that an investigation has commenced under section 16(1) and the information or documents are those that the Anti-Corruption Authority reasonably requires in connection with the investigation.

(5) An explanation given, or information or document provided, by a person in response to a request under this section may only be used in evidence against that person-

(a) in a prosecution for an offence under this Act; or

(b) in a prosecution for any other offence where in giving evidence that person makes a statement that is inconsistent with the explanation, information or document.

(6) Any disclosure made by a person under subsection (5) (b) may not be used by virtue of that subsection against that person unless-

(a) evidence relating to it is adduced; or

(b) a question relating to it is asked,

by that person or on behalf of that person, in the proceedings arising out of the prosecution.

**Production order.**

20.(1) The Anti-Corruption Authority may, for the purposes of an investigation, apply to the court for a production order.

(2) On the application of the Anti-Corruption Authority by information on oath, the court may make a production order if it is satisfied that each of the requirements for the making of the order is fulfilled.

(3) The requirements for making a production order are that-

(a) there is an investigation under section 16(1);

(b) the person specified in the application is subject to an investigation; and

(c) there are reasonable grounds for believing that-

- (i) the person the application specifies as appearing to have custody or control of the material so specified is in custody or control of it;
- (ii) the material is likely to be of substantial value (whether or not by itself) to the investigation under section 16(1) for the purposes of which the order is sought; and
- (iii) it is in the public interest for the material to be produced, or for access to be given, having regard to the benefit likely to accrue to the investigation if the material is obtained and the circumstances under which the person the application specifies appears to have custody or control of the material.

(4) The application for a production order must state that-

- (a) the person specified in the application is subject to an investigation;
- (b) the order is sought for the purposes of the investigation;
- (c) the order is sought in relation to material, or material of a description, specified in the application; and
- (d) the person specified in the application appears to be in custody or control of the material.

(5) A production order is an order either-

- (a) requiring the person the application for the order specifies as appearing to be in custody or control of the material to produce it to a police officer or the Anti-Corruption Authority to take away; or
- (b) requiring that person to give access to the material requested under section 19,

within the period stated in the order.

(6) The period stated in a production order must be a period of 7 days beginning with the day on which the order is made unless it appears to the court that a longer or shorter period would be appropriate in the particular circumstances.

(7) A production order does not require a person to produce, or give access to, privileged material.

(8) Privileged material is any material that the person would be entitled to refuse to produce, or give access to, on grounds of legal professional privilege in proceedings.

(9) A production order does not require a person to produce, or give access to, excluded material.

(10) A production order has effect in spite of any restriction on the disclosure of information (however imposed).

(11) The Anti-Corruption Authority may take copies of any material that is produced, or to which access is given, in compliance with a production order.

(12) Material produced in compliance with a production order may be retained for so long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes for which the order was made.

(13) If the Anti-Corruption Authority has reasonable grounds for believing that the material may need to be produced for the purposes of any court proceedings, and it might otherwise be unavailable for those purposes, it may be retained until those proceedings are concluded.

### **Order for entry.**

21.(1) This section applies if the court makes a production order under section 20 requiring a person to give access to material on any premises as set out in subsection (3).

(2) The court may, on the application of the Anti-Corruption Authority and specifying the premises, make an order granting entry in relation to the premises.

(3) An order to grant entry under this section is an order requiring any person who appears to the court to be entitled to grant entry to the premises to allow-

(a) a police officer to-

- (i) enter the premises specified in the order and seize and retain any material found in the premises appearing to be of a type in respect of which the order was granted or take any other steps that may appear to be necessary for preserving, or preventing any interference with, any material appearing to be of the relevant type;
- (ii) take copies of, or extracts from, any material appearing to be of the relevant type; and
- (iii) use any reasonable force that may be necessary.

(4) An order for entry may authorise a person acting under an instrument of authorisation from the Anti-Corruption Authority to-

- (a) accompany any police officer who is executing the order; and
- (b) exercise any powers under subsection 3(a) in the company and under the supervision of the police officer.

(5) Where the court makes an order for entry, the police officer or the person referred to in subsection (4) must-

- (a) if the occupier of the premises is present, produce the order to the occupier and provide him with a copy of it; or
- (b) if the occupier is not present, but there is some other person who is present and appears to be in charge of the premises, produce the order to that person and provide him with a copy of it.

(6) If there is no person present at the premises who appears to the police officer or the person referred to in subsection (4) to be in charge of the premises, a copy of the order must be left in a prominent place on the premises.

**Supplementary.**

22.(1) An application for a production order or an order to grant entry must be made in private and may be made without notice.

(2) The Chief Justice may make supplementary or additional rules of court in connection with proceedings relating to production orders and orders to grant entry as he may deem necessary.

(3) An application to discharge or vary a production order or to discharge or vary an order to grant entry may be made to the court by—

- (a) the Anti-Corruption Authority; or
- (b) any person affected by the order.

(4) The court may—

- (a) discharge the order;
- (b) vary the order; or
- (c) dismiss the application.

**Warrant for search and seizure.**

23.(1) The Anti-Corruption Authority may, for the purposes of an investigation under section 16(1), apply to the court for a search and seizure warrant.

(2) On the application of the Anti-Corruption Authority by information on oath, the court may issue a search and seizure warrant if it is satisfied that each of the requirements under subsection (3) are fulfilled.

(3) The requirements for issuing a search and seizure warrant are that-

- (a) there is an investigation under section 16(1);

- (b) the person specified in the application is subject to the investigation; and
- (c) there are reasonable grounds for believing that-
  - (i) any material on the premises specified in the application for the warrant is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought;
  - (ii) it is in the public interest for the material to be obtained having regard to the benefit likely to accrue to the investigation if the material is obtained; and
  - (iii) it would not be appropriate to make a production order for any one or more of the reasons in subsection (4).
- (4) The reasons referred to in subsection (3)(c)(iii) are that-
  - (a) it is not practicable to communicate with any person against whom the production order could be made;
  - (b) it is not practicable to communicate with any person who would be required to comply with an order to grant entry to the premises;
  - (c) the investigation might be seriously prejudiced unless the Anti-Corruption Authority is able to secure immediate access to the material.
- (5) The application for a search and seizure warrant must state that-
  - (a) the person specified in the application is subject to an investigation;
  - (b) the warrant is sought for the purposes of the investigation;
  - (c) the warrant is sought in relation to the premises specified in the application; and
  - (d) the warrant is sought in relation to material specified in the application.
- (6) If the court is satisfied with information on oath by the Anti-Corruption Authority of the requirements under this section, it may grant a warrant authorising a police officer to-
  - (a) enter and search the premises specified in the order and seize and retain any material found in the premises appearing to be of a type in respect of which the order was granted or take any other steps that may appear to be necessary for preserving, or preventing any interference with, any material appearing to be of the relevant type;
  - (b) take copies of, or extracts from, any material; and

(c) use any reasonable force that may be necessary.

(7) A warrant under this section may authorise a person acting under an instrument of authorisation from the Anti-Corruption Authority to-

(a) accompany any police officer who is executing the warrant; and

(b) exercise any powers under subsection (6) in the company and under the supervision of a police officer.

(8) Material falls within this section even if it cannot be identified at the time of the application but it relates to a person who is the subject to an investigation and is likely to be of substantial value (whether or not by itself) to the investigation for the purposes of which the warrant is sought.

(9) Where material to which an application under this section relates, consists of information or documents that is not recorded in legible form, an order under this section has effect as an order to produce the information and documents in a form in which it can be produced and in which it is visible and legible.

### **Applications under section 23.**

24.(1) An application under section 23 may be made to the court in private and may be made without notice.

(2) Any search and seizure warrant issued under section 23 does not confer the right to seize privileged material.

(3) Privileged material is any material which a person would be entitled to refuse to produce on grounds of legal professional privilege in court proceedings.

(4) Any search and seizure warrant has effect in spite of any restriction on the disclosure of information (however imposed).

(5) A search and seizure warrant does not confer the right to seize excluded material.

(6) A warrant issued under section 23 continues in force until the end of the period of 1 month starting with the day on which it was made.

(7) A warrant may include a provision authorising the police officer to do other things that-

(a) are specified in the warrant; and

(b) need to be done in order to give effect to it.

(8) Any material seized under a warrant may be retained for as long as it is necessary to retain it (as opposed to copies of it) in connection with the investigation for the purposes of which the warrant was issued.

- (9) Where a warrant is issued under section 23, the police officer must—
- (a) if the occupier of the premises is present, produce the warrant to the occupier and provide him with a copy of it; or
  - (b) if the occupier is not present, but there is some other person who is present and appears to be in charge of the premises, produce the order to that person and provide him with a copy of it.

(10) If there is no person present at the premises who appears to the police officer to be in charge of the premises, a copy of the order must be left in a prominent place on the premises.

**Application to vary or discharge warrant.**

25.(1) An application to discharge or vary a warrant may be made to the court by—

- (a) the Anti-Corruption Authority; or
- (b) any person affected by the order.

(2) The court may—

- (a) discharge the warrant;
- (b) vary the warrant; or
- (c) dismiss the application.

**Powers in relation to Ministers or officers of the Crown.**

26.(1) For the purposes of this section, “officer of the Crown” means any person in the service of, or holding office under, the Crown in the right of the Government whether this service or office is temporary or permanent or paid or unpaid.

(2) For the purposes of an investigation under section 16(1), the Anti-Corruption Authority may require any Minister or officer of the Crown, who, in its opinion, is able to provide information or produce documents relevant to an investigation to furnish any information, produce any document or give access to the information or document.

(3) Notwithstanding anything contained in this Act where—

- (a) the Chief Minister certifies that the giving of any information or the answering of any question or the production of any document or the giving access to the information or document is likely to—

- (i) affect the relations or dealings between the Government and any other government or any international organisation of states or governments or administrative bodies;
  - (ii) have serious harmful effects on the economy;
  - (iii) involve the disclosure of the deliberations or proceedings of the Council of Ministers or any committee of Ministers;
  - (iv) prejudice the investigation or detection of offences under Gibraltar law;
  - (v) be injurious to the public interest; or
- (b) the Governor certifies that the giving of any information, the production of any document, or giving access to any information or document on the commencement of an investigation prejudices the internal or external security of Gibraltar,

the Anti-Corruption Authority must not require the information or answer to be given or, as the case may be, the document to be produced or to give access to the information or document.

(4) Nothing in this Act affects the common law rules as to the withholding of information on the grounds of public interest immunity.

(5) Notwithstanding the provisions of this section, no person is required or authorised to furnish any information or answer any question relating to the proceedings of the Council of Ministers or of any committee of Ministers or to produce or grant access to so much of any information or document as relates to those proceedings.

(6) For the purposes of subsection (3), a certificate issued by the Chief Minister shall be conclusive evidence of the matters in that subsection.

### **Appeals.**

27.(1) A person aggrieved by any order under sections 22 or 25 may appeal against the order to the Supreme Court for-

- (a) a discharge of the order;
- (b) a variation of the order; or
- (c) other relevant form of relief as the Supreme Court deems just and reasonable in all the circumstances.

(2) An appeal must be made within 28 days of the date on which the order under sections 22 or 25 was made.



(3) The Supreme Court may allow an appeal to be made outside the time stipulated in subsection (2) in exceptional circumstances if the Supreme Court considers that it would be unjust not to do so.

(4) The Supreme Court may-

- (a) dismiss the appeal;
- (b) allow the appeal and quash the order appealed against; or
- (c) remit the matter to the court for further consideration in accordance with any directions of the Supreme Court.

(5) The Supreme Court may make any order as to the costs of an appeal as it considers appropriate.

(6) An appeal under this section does not have the effect of staying an order made under sections 22 or 25, but the Supreme Court may, in its discretion, grant a stay or other relief in respect of these orders until the appeal has been determined.

#### **Referral to the Royal Gibraltar Police.**

28. If at any stage of an investigation by the Anti-Corruption Authority, it appears to the Anti-Corruption Authority that-

- (a) a person has committed corrupt conduct; or
- (b) any other offence is disclosed during the investigation,

it must refer the matter and all relevant information and material to the Royal Gibraltar Police who must deal with the matter as they deem fit.

## **PART 4**

### **PROTECTION MEASURES**

#### **Right to interpreter or assistance.**

29.(1) This section applies if the Anti-Corruption Authority reasonably suspects that any person is unable, because of inadequate knowledge of the English language or a physical or mental impairment, to understand what is being said or to speak with reasonable fluency in English.

(2) Before any communication with the person referred to in subsection (1), the Anti-Corruption Authority must arrange for the presence of an interpreter or an appropriate person to assist and delay any communication until the interpreter or appropriate person is present.

#### **Protection of persons making reports and assisting.**

30.(1) If it appears to the Anti-Corruption Authority that-

- (a) the safety of a person who is assisting the Anti-Corruption Authority may be prejudiced; or
- (b) the person who is assisting the Anti-Corruption Authority may be subject to intimidation, harassment or retaliation,

the Anti-Corruption Authority may inform the Commissioner of Police whose duty it shall be to ensure that measures are available and that arrangements are made to-

- (i) protect the safety of that person; or
- (ii) protect that person from intimidation, harassment or retaliation.

(2) In this section, a reference to a person who is assisting the Anti-Corruption Authority is a reference to a person who-

- (a) has assisted or is assisting with an investigation under section 16;
- (b) has made a report under section 17;
- (c) has been asked to comply with a request under section 19;
- (d) is required to comply with an order made by the court or the Supreme Court; or
- (e) has assisted or is to assist the Anti-Corruption Authority under this Act in some other manner.

### **Employment protection.**

31.(1) A person who is assisting the Anti-Corruption Authority within the meaning of section 30(2)-

- (a) must not be deemed to be in breach of any restriction on disclosure of information imposed by contract or under any enactment, and any provision in any contract is void insofar as it purports to preclude a person from assisting; and
- (b) has the right not to be subjected to any detriment by any act, or any deliberate failure to act, by their employer on the ground that the person is assisting.

(2) A person who has been subjected to a detriment contrary to subsection (1) (b) may present a complaint to the Employment Tribunal as if the report under section 17 or assistance in relation to an investigation under this Act was a qualifying disclosure within the meaning of Part IVA of the Employment Act.

### **Obligation to return material.**

32.(1) The obligation to return material under subsection (2) will lie either on-

- (a) the police officer if they executed the order under sections 20, 21 or 23; or
- (b) the Anti-Corruption Authority if it made a request under section 19.

(2) If at any time after requests or orders made under this Act are executed, it appears that any material seized or produced has items subject to legal professional privilege or has items that consist of excluded material, the person who has the obligation to return material under subsection (1) must ensure that the material is returned as soon as practicable to the person from whom it was seized or who delivered the material to them.

(3) Where-

- (a) the material referred to in subsection (2) contains items subject to legal professional privilege or items that are excluded material;
- (b) the rest of the material is lawfully obtained; and
- (c) it is reasonably practicable for the item that is subject to legal professional privilege or the item that is excluded material to be separated from the rest of the material without prejudicing the use of the rest of that material,

the person who has the obligation to return the material under subsection (1) must ensure that the item is returned as soon as practicable to the person from whom it was seized or who delivered the item to them.

(4) The material referred to in subsection (2) must be returned to-

- (a) the owner;
- (b) the person who had custody or control of it before it was seized or produced; or
- (c) the person who it is believed is lawfully entitled to have custody or have control of it.

## **PART 5**

### **SPECIFIC OFFENCES**

#### **Abuse of office and bribery.**

33.(1) A person appointed to the Anti-Corruption Authority who receives or obtains, or agrees to or attempts to receive or obtain, a benefit of any kind for themselves or for any other person in exchange for-

- (a) neglecting their duty or being influenced in the exercise of their duties, powers and functions under this Act;
- (b) anything already done or omitted to be done or to be done or omitted to be done afterwards in the exercise of their duties, powers and functions under this Act;
- (c) using or taking advantage of their appointment to the Anti-Corruption Authority;  
or
- (d) facilitating the commission of an offence under any enactment,

commits an offence and is liable-

- (i) on summary conviction to imprisonment for 12 months or a fine on level 5 of the standard scale, or both; or
- (ii) on conviction on indictment to a term of imprisonment of 10 years.

(2) A person who gives to, confers on, or procures for or promises or offers to give to, confer on or procure for any person appointed to the Anti-Corruption Authority or for any other person a benefit of any kind in exchange for the person appointed-

- (a) neglecting their duty or being influenced in the discharge of their duties, powers and functions under this Act;
- (b) having done anything or omitted to do anything in the exercise of their duties, powers and functions under this Act;
- (c) using or taking advantage of their appointment to the Anti-Corruption Authority;  
or
- (d) facilitating the commission of an offence under any enactment,

commits an offence and is liable-

- (i) on summary conviction to imprisonment for 12 months or a fine on level 5 of the standard scale, or both; or
- (ii) on conviction on indictment to a term of imprisonment of 10 years.

**False or misleading statements.**

34.(1) A person commits an offence if in purported compliance with-

- (a) a request under section 19; or
- (b) an order under sections 20, 21 or 23,

that person-

- (i) makes a statement that he knows to be false or misleading in a material particular; or
- (ii) recklessly makes a statement that is false or misleading in a material particular.

(2) A person who is convicted of an offence under subsection (1) is liable-

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine on level 5 of the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for a term of 7 years.

**Falsification, destruction, disposal, concealment.**

35.(1) A person commits an offence if that person-

- (a) knows or could reasonably be expected to know that a report has been made under section 17 or an investigation is being carried out under section 16; and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents, material or information which that person knows or could reasonably be expected to know is or would be relevant to a report or an investigation,

unless it is proved that that person had no intention of falsifying, concealing, destroying or otherwise disposing of the documents, material or information from the Anti-Corruption Authority.

(2) A person who is convicted of an offence under subsection (1) is liable-

- (a) on summary conviction to imprisonment for 12 months or a fine on level 5 of the standard scale, or both; or
- (b) on conviction on indictment, to imprisonment for 7 years.

**Improper disclosure.**

36.(1) Where in relation to-

- (a) a report under section 17, a request has been made by the Anti-Corruption Authority under section 19 and has not been refused;
- (b) an investigation under section 16(1) has commenced and a request has been made under section 19 and has not been refused; or

- (c) an investigation under section 16(1) has commenced and a request for an order under sections 20, 21 or 23 has been applied for and has not been refused,

a person who knows or could reasonably be expected to know that the circumstances in subsection (a), (b) or (c) exist discloses any information that is likely to prejudice the circumstances in subsections (a), (b) or (c) commits an offence.

(2) In proceedings against a person for an offence under subsection (1), it is a defence to prove that-

- (a) the person did not know or could not reasonably have known that the disclosure was likely to prejudice the circumstances in subsections (1) (a), (b) or (c); or
- (b) the person has lawful authority or reasonable excuse for disclosing the material.

(3) A person who is convicted of an offence under subsection (1) is liable-

- (a) on summary conviction to imprisonment for 12 months or to a fine on level 5 of the standard scale, or both; or
- (b) on conviction on indictment to imprisonment for 7 years.

#### **Disclosure of confidential information.**

37. A person who contravenes section 12 or section 14 (2) commits an offence and is liable-

- (a) on summary conviction to imprisonment for a term not exceeding 12 months or to a fine at level 5 on the standard scale or to a fine, or both; or
- (b) on conviction on indictment to imprisonment for a term not exceeding 5 years or to a fine, or both.

#### **Corporate liability.**

38.(1) Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of-

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) a person who was purporting to act in any such capacity,

that person as well as the body corporate is guilty of that offence and is liable to be proceeded against and punished accordingly.

(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 of management as if the member were a director of the body corporate.

(3) Where an offence committed by a partnership, or by an unincorporated association other than a partnership, is proved to have been committed with the consent or connivance of, or is attributable to any neglect on the part of, a partner in the partnership or (as the case may be) a person concerned in the management or control of the association he, as well as the partnership or association, is guilty of that offence and is liable to be proceeded against and punished accordingly.

## **PART 6**

### **MISCELLANEOUS**

#### **Reports.**

39.(1) The Chief Minister may require the Anti-Corruption Authority to report on matters-

- (a) connected with the exercise of its duties, powers or functions under this Act; or
- (b) otherwise than connected with any of its duties, powers or functions under this Act,

as may be specified in the requirement.

(2) A report under subsection (1) must be submitted in draft to the Chief Minister who may require that the Anti-Corruption Authority amend the draft report to exclude any material that the Chief Minister considers would be in the public interest, appropriate or necessary to exclude.

(3) The Anti-Corruption Authority must prepare, within 3 months after the end of each financial year, a report on the number of-

- (a) reports received under section 17;
- (b) investigations commenced under section 16(1);
- (c) investigations completed; and
- (d) the number of referrals to the Royal Gibraltar Police,

during that financial year and must submit each report to the Chief Minister within two weeks after it has been finalised.

(4) The Chief Minister must as soon as practicable lay before the Parliament each report referred to in subsections (1) and (3).

#### **Regulations.**

40.(1) The Chief Minister may by regulations-

- (a) make provision for the exchange of information between the Anti-Corruption Authority and overseas authorities for the purposes of an investigation being undertaken by the Anti-Corruption Authority or an equivalent activity being undertaken by those authorities outside Gibraltar;
- (b) prescribe other matters as appear to him to be reasonably necessary for, or consequential, supplementary or incidental to, this Act;
- (c) add, amend or remove any matters from the Schedule;
- (d) make transitional, transitory or saving provision as he considers appropriate in connection with the coming into force of any provision of this Act; and
- (e) make provision for the purpose of implementing, or further implementing in Gibraltar, an international agreement or convention or any other international obligation concerned with the matters covered under this Act.

(2) In subsection (1) “overseas authorities” means an authority in a country or territory outside Gibraltar which exercises powers, duties and functions equivalent to those exercised by the Anti-Corruption Authority under this Act.



**SCHEDULE**  
**CORRUPT CONDUCT OFFENCES**

Section 15

- (1). Crimes Act 2011-
  - (a) Section 418 (fraud by abuse of position);
  - (b) section 566 (offences of bribing another person);
  - (c) section 567 (offences related to being bribed);
  - (d) section 571 (bribery of foreign public officials); and
  - (e) section 572 (failure of commercial organisations to prevent bribery).
- (2). Parliament Act -
  - (a) section 26 (providing money for illegal practice);
  - (b) section 27 (corruptly inducing withdrawal);
  - (c) section 31 (payments made otherwise than through election agents);
  - (d) section 38 (definition and penalty for corrupt practices); and
  - (e) section 76 (corrupt and improper practices).
- (3). The common-law offence of misconduct in public office.
- (4). The common-law offence of cheating in relation to the public revenue.
- (5). Any offences falling within Part 3 of the Crimes Act 2011 that may applicable to the offences listed at 1, 3 and 4.
- (6). Offences under Part XIX of the Criminal Offences Act (Corruption), including offences under Parts III (Attempts and Cognate Offences), IV (Conspiracy) and V (Accessories) as it applies to Part XIX to the extent that these offences may be prosecuted by virtue of section 601(2)(a) of the Crimes Act 2011.

## **EXPLANATORY MEMORANDUM**

This Act establishes the Anti-Corruption Authority for Gibraltar and applies to all persons involved in corrupt conduct, including public servants. It is divided into six Parts and a Schedule. Part 1 has the title, commencement and interpretation provisions. Part 2 deals with the creation of this authority, its composition, duties, powers and functions, immunities and protections, conflict of interest provisions, confidentiality, its powers to issue guidance and cooperate with other domestic authorities. Part 3 concerns the authority's power to institute an investigation or alternatively investigate a report that is made to it, with the powers it can exercise and the right of appeal. Following an investigation the matter can be referred from the authority to the Royal Gibraltar Police. Part 4 contains protection measures in respect of persons who assist the authority with investigations. Part 5 makes provision for offences where reports and investigations are not dealt with properly and in accordance with the provisions of this Act. Part 6 contains miscellaneous provisions.

---

**Printed by the Gibraltar Chronicle Printing Limited  
Unit 3, New Harbours  
Government Printers for Gibraltar,  
Copies may be purchased at 6, Convent Place, Price. £2.15.**