

THE INTEGRITY IN PUBLIC LIFE (AMENDMENT) ACT, 2014

EXPLANATORY NOTES

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

The Bill seeks to amend the Integrity in Public Life Act, Chap. 22:01 and contains twenty-six clauses.

The Bill contains the requisite preambulatory clauses for a Bill which would infringe sections 4 and 5 of the Constitution.

Clause 1 of the Bill would contain the short title of the Act for which this is the Bill.

Clause 2 of the Bill would provide that the Act for which this is the Bill is inconsistent with the Constitution.

Clause 3 of the Bill would provide for the interpretation of the words “the Act” in the Bill.

Clause 4 of the Bill would amend section 2 of the Act to provide for the insertion of two new definitions namely, “authorized person” and “corruption”.

Clause 5 of the Bill would amend section 3 of the Act to insert a new subsection to provide for attorney privilege.

Clause 6 of the Bill would amend section 4 of the Act to no longer make it mandatory that the Commission comprise an attorney-at-law and an accountant. Further, the clause seeks to amend the section to provide that once a quorum is met, the Commission is properly constituted. This is to deal with the instances where for long periods of time the entire membership of the Commission has not been appointed and therefore the Commission cannot sit resulting in the loss of valuable time in the operations of the Commission.

Clause 7 of the Bill would seek to insert a new section 5A which would provide for the delegation of the functions of the Commission.

Clause 8 of the Bill would insert a new section 8A which would provide that documents may be signed by the Registrar or such other person authorised by the Commission to do so.

Clause 9 of the Bill would amend section 11 of the Act in subsection (1), to increase the materiality limit from ten thousand dollars to **twenty-five** thousand dollars, and in subsection (3) to make the submission by a declarant of the statement of his net worth mandatory rather than

discretionary. Subsection (6) is also being amended to provide for the non filing of the statement of net worth.

Clause 10 of the Bill would amend section 13 of the Act to make the requirement on the Commission to examine every declaration filed with it discretionary rather than mandatory. The clause goes on to insert a new subclause which will provide that where the Commission receives a complaint or is of the view that a declaration requires examination, it is empowered to then examine the declaration relative to the complaint or which the Commission decided, required examination. Subsection (2) is being amended to allow the Commission to also ask for further information in relation to a statement of registrable interest. Subsection (3) is amended to require the Commission to also be satisfied with the accuracy of the statement of registrable interest filed under section 14 in addition to the requirement that already exist in respect of a declaration being fully made, before it issues a Certificate of Compliance. Subsection (4) is also being amended to raise the threshold for requests from ten thousand dollars to twenty thousand dollars. The clause would also provide for the insertion of a new subsection to empower the Commission to request information or explanation relevant to a declaration filed from a third party to assist it in an examination of the declaration. Where the third party refuses to provide the requested information, the clause provides that he is liable on summary conviction to a penalty of five hundred thousand dollars and to imprisonment for ten years.

Clause 11 of the Bill would amend section 14(3) of the Act to include four additional particulars which must be supplied in the statement of registrable interests. The other particulars are in relation to any loans held by the declarant and travel, entertainment, and living accommodation facilities he is entitled to and that he is in receipt of.

Clause 12 of the Bill would insert a new section 14A to require the Commission to issue letters of acknowledgement of receipt for declarations and statements of registrable interest upon receiving such documents.

Clause 13 of the Bill would amend section 20(1) of the Act to allow declarations to be disclosed in respect of an enquiry under the Proceeds of Crime Act, Chap. 11:27 and the Larceny Act, Chap. 11:12. The clause also seeks to remove the reference to “guilty of an offence” and replace it with “commits an offence”.

Clause 14 of the Bill would amend section 21 of the Act in subsection (1), to remove the reference of “guilty of an offence” and substitute “commits an offence”. Subsection (2) is also being deleted and replaced to make it an offence not to furnish particulars as required under subsection (1)(a), the penalty being a fine of two hundred and fifty thousand dollars (\$250,000.00) and imprisonment for five (5) years. Two new subsections are also being inserted into the section. Proposed subsection (2A) would reinsert old subsection (2) which was deleted but allows the new subsection to only deal with the offence of not disclosing assets which cannot

be accounted for in relation to emoluments of the declarant. New subsection (2B) would provide for additional penalties that may be imposed by the Court for such non-disclosure.

Clause 15 of the Bill would insert after section 21 a new section 21A which would create the offence of unjust enrichment. So where a person in public life has a standard of living which is above his present or past emoluments or is in control of property which is not proportionate to his present or past emoluments he commits an offence. The penalty for such an offence is a fine of five hundred thousand dollars (\$500,000.00) and to imprisonment for **ten (10)** years. The section goes on to provide guidance to the Court where the Court becomes satisfied that having regard to the relationship between the accused and another person it is believed that that person holds resources or property for the accused. Provision is made for a certificate of emoluments to be used to certify the rate of and total amount of official emoluments the accused earned as well as the period of his official employment.

Clause 16 of the Bill would amend section 22 of the Act, by inserting new subsections (9) and (10). Subsection (9) would make it an offence for a person who fails to comply with a direction of the Commission to place his asset in a blind trust. A person who is found liable for such an offence will be subject to a fine of five hundred thousand dollars (\$500,000.00) and to imprisonment for ten (10) years.

Clause 17 of the Bill would insert after section 31 a new section 31A which would empower the Commission to make a public statement where it sees it necessary where a breach of Part IV in relation to the code of conduct occurs.

Clause 18 of the Bill would amend section 32 of the Act to include two new subsections. Proposed subsection (1A) would provide that even if there is a written law that restricts a person through secrecy requirements, if there is a breach of this Act or the Prevention of Corruption Act a person in public life or a person exercising public functions is required to report his suspicions to the Integrity Commission or the Commissioner of Police. Proposed subsection (1B) would create an offence for those persons in public life or exercising public functions who fail to make a report under subsection (1A). A person who is found liable for such an offence will be subject to a fine of **twenty-five hundred thousand dollars (\$500,000.00)** and to imprisonment for ten (10) years.

Clause 19 of the Bill would amend section 34 of the Act to first introduce a new subsection (1) which would empower the Commission to act as a commission of enquiry in accordance with the Commission of Enquiry Act, Chap. 19:01. New clause A would contain paragraphs (a) and (e) of old paragraph (1) and an additional paragraph for the purpose of getting persons to attend to have handwriting and voice samples taken. The clause would also seek to realign paragraphs (b), (c), (d) and (e) of old subsection (1) into new subsection (1B) to allow not only the Commission but also an authorised person and an investigating officer to do certain things for the purpose of an investigation. The clause would then insert after subsection (7)

seven new subsections. Proposed subsection (9) would make it an offence for a person to not answer any question posed to him which is within his knowledge or which is available to him. The penalty for such an offence is a fine of five hundred thousand dollars and imprisonment for ten years. Proposed subsection (10) would set out what is required of any person when they are required to produce anything under subsection (1B)(a) (i), while proposed subsection (11) requires the person in providing information under subsection (1B)(a)(ii) to do so truthfully. Proposed subsection (12) would require that upon examination all statements are to be recorded and signed by the person making the statement and the person recording the proposed subsection (13) statement states that where the statement is signed by both persons, it is admissible as evidence. Proposed subsection (14) provides that where a person fails to comply with subsections (8) to (10) he commits an offence the penalty for which is a fine of five hundred thousand dollars (\$500,000.00) and to imprisonment for ten (10) years.

Clause 20 of the Bill would insert new sections 34B and 34C. Proposed new section 34B would empower the Commission to apply to a Magistrate or Justice of the Peace to obtain a warrant for the purpose of searching any building, vehicle, boat, place or thing to seize any asset or obtain any information. The clause goes on to provide that the warrant issued may authorise the Commission to seize and detain any asset or thing in which or upon which information is contained or stored other than items subject to legal privilege. The clause also requires a report of the execution or non-execution of the warrant, the time frame for the report, and to whom to report, if the Magistrate who issued the warrant is not available.

Proposed new section 34C would empower the Commission to obtain freezing orders from the High Court in respect of assets to prohibit any person under investigation from dealing with his assets. The clause goes on to provide that a freezing order can make provision for living and legal expenses and that the application for the freezing order should be accompanied by an affidavit. Provision is made that the application for the freezing order should only be made by the Commission and may be made *ex parte* providing for notice to be given to all persons affected by the order. Subsections (5) and (6) would provide that the freezing order may be discharged or varied on the application of any person affected by it in relation to any property and on the conclusion of the proceedings the order is required to be discharged. Provision is made for the appointment of a receiver by the Court where a freezing order has been made. Where this is done, the receiver may be required to take possession of an asset or thing in or upon which information may be stored or held and manage or otherwise deal with the asset subject to conditions that the Court may set out. Subsection (8) would define what is meant by “dealing with assets”. Subsection (9) would empower a police officer to seize an asset in order to prevent the asset from being removed from Trinidad and Tobago. Finally, subsection (11) would provide that the Remedies of Creditors Act would apply in relation to forfeiture orders as they do to orders enforcing judgments and *lis pendens*.

Proposed section 34D would provide for the interception of communications by the Commission upon the application to a Judge for a warrant. The warrant would provide for the

interception, detention and opening of mail, interception of messages during transmission over a telecommunications network and the interception, and recording of conversations intercepted. Proposed subsection (2) would provide for the use of any information obtained as a result of an interception to be used as evidence. Proposed subsection (3) would require the Judge to be satisfied of all the things he is required to be satisfied of under the Interception of Communications Act for the purpose of granting a warrant.

Proposed section 34E would provide for the offences in respect of obstructing an authorised person or investigating officer of the Commission during the course of an investigation. Different circumstances are provided for in the section. Where an offence is committed, the penalty for the offence is a fine of five hundred thousand dollars (\$500,000.00) and to imprisonment for ten (10) years.

Clause 21 of the Bill would seek to amend section 35(2) of the Act to make the section which deals with liability of members of the Commission and persons in the service of the Commission for disclosure of information or evidence, subject to section 39, which limits the liability of such persons where they did not act recklessly or in bad faith .

Clause 22 of the Bill would seek to insert after section 35, new sections 35A, 35B and 35C. Proposed section 35A seeks to deal with tipping off in a manner similar as to what is provided for under the Proceeds of Crime Act, Chap. 11:27. A person who is found guilty of committing an offence under this section is liable to a fine of five hundred thousand dollars and to imprisonment for a term of ten years. Proposed section 35B would provide for the Commission to examine the practices and procedures of public bodies in order to determine if corrupt practices can or are taking place and require the public body to comply with the request of the Commission. Proposed section 35C provides for the Commission to instruct a public body after it examines the practices and procedures of public bodies.

Clause 23 of the Bill would amend section 39 of the Act to insert a new subsection (2) to provide for the exemption of liability of staff and officers of the Commission for any acts or omissions done in good faith in the discharge of their functions.

Clause 24 of the Bill would amend section 42 of the Act to allow a person who has been asked to submit a statement of net worth to use the outgoing expenses incurred in the preparation of that document to be incurred wholly or exclusively and necessarily in the production of his income, as is provided for the statutory declaration

Clause 25 of the Bill would insert a new section 42B to provide protection for persons who assist the Commission in its investigations.

Clause 26 of the Bill will amend the Schedule to the Act to amend the references to persons caught by the Schedule and to include eight new persons or categories of persons who will be persons in public life.