

APPENDIX

CAYMAN ISLANDS



Supplement No. published with [Extraordinary
Gazette] No. dated , 2017.

**A BILL FOR A LAW TO PROVIDE FOR IMMUNITY FROM
PROSECUTION AND FOR REDUCED SENTENCES IN CERTAIN
CIRCUMSTANCES; AND FOR INCIDENTAL AND CONNECTED
PURPOSES**

**THE CRIMINAL JUSTICE (OFFENDERS ASSISTING
INVESTIGATIONS AND PROSECUTIONS) BILL, 2017**

[MEMORANDUM OF OBJECTS AND REASONS]

**THE CRIMINAL JUSTICE (OFFENDERS ASSISTING
INVESTIGATIONS AND PROSECUTIONS) BILL, 2017**

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CAYMAN ISLANDS

A BILL FOR A LAW TO PROVIDE FOR IMMUNITY FROM PROSECUTION AND FOR REDUCED SENTENCES IN CERTAIN CIRCUMSTANCES; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Legislature of the Cayman Islands.

PART 1 - PRELIMINARY

1. (1) This Law may be cited as the Criminal Justice (Offenders Assisting Investigations and Prosecutions) Law, 2017.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Cabinet, and different dates may be appointed for different provisions of this Law and in relation to different matters.

2. In this Law -

Interpretation

“agreement” means an agreement between the Director of Public Prosecutions and a person to grant that person immunity from prosecution, to provide a restricted use undertaking or to reduce that person’s sentence in accordance with this Law;

“Category A offence” means an offence triable upon indictment and not otherwise;

“Category B offence” means an offence triable upon indictment which, with the consent of the prosecution and the person charged (or all of the persons charged if there be more than one), may be tried summarily;

“Director of Public Prosecutions” includes any attorney-at-law authorized in writing by the Director of Public Prosecutions to conduct plea negotiations and conclude plea agreements;

“immunity notice” means a notice under section 4;

“offence” means a Category A or Category B offence;

“negotiations” means negotiations relating to matters under sections 4, 5, 6 and 7; and

“restricted use undertaking” means an undertaking under section 5.

Declaration of certain existing rights

3. (1) Nothing in this Law affects the right of an accused to plead guilty to a charge without entering into plea negotiations or a plea agreement.

(2) Save as expressly agreed by the Director of Public Prosecutions in a plea agreement, nothing in this Law affects the powers conferred upon the Director of Public Prosecutions under section 57 of the Constitution.

PART 2 - REDUCED SENTENCES AND IMMUNITY FROM PROSECUTION

Assistance by offender - immunity from prosecution

4. (1) Subject to guidelines under subsection (4), if, in circumstances which the Director of Public Prosecutions think are exceptional, the Director of Public Prosecutions is of the opinion that, for the purposes of an investigation or prosecution of any offence, it is appropriate to offer a person immunity from prosecution, the Director may give the person an immunity notice under this section.

(2) If a person is given an immunity notice, no proceedings for an offence of a description specified in the notice may be brought against that person except in circumstances specified in the notice.

(3) An immunity notice ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the notice.

(4) The Director of Public Prosecutions shall issue guidelines to give effect to this section.

5. (1) If the Director of Public Prosecutions thinks that, for the purposes of the investigation or prosecution of an offence, it is appropriate to offer a person an undertaking that information of any description will not be used against the person in any proceedings to which this section applies, the Director of Public Prosecutions may give the person a written restricted use undertaking.

Assistance by offender -
undertakings as to use of
evidence

(2) This section applies to -

- (a) criminal proceedings; and
- (b) proceedings under Part IV of the Proceeds of Crime Law (2017 Revision).

(2017 Revision)

(3) If a person is given a restricted use undertaking, the information described in the undertaking shall not be used against that person in any proceedings to which this section applies and which are brought in the Islands.

(4) A restricted use undertaking ceases to have effect in relation to the person to whom it is given if the person fails to comply with any conditions specified in the undertaking.

6. (1) This section applies if a defendant -

Assistance by defendant
- reduction in sentence

- (a) following a plea of guilty is either convicted of an offence in proceedings in the Grand Court; or
- (b) has, pursuant to a written agreement made with the Director of Public Prosecutions, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.

(2) In determining what sentence to pass on the defendant the court may take into account the extent and nature of the assistance given or offered.

(3) If the court passes a sentence which is less than it would have passed but for the assistance given or offered, it must state in open court -

- (a) that it has passed a lesser sentence than it would otherwise have passed; and
- (b) what the greater sentence would have been.

(4) Subsection (3) does not apply if the court thinks that it would not be in the public interest to disclose that the sentence has been discounted; but in such a case, the court must give written notice of the matters specified in subsection (3) (a) and (b) to both the prosecutor and the defendant.

(5) The power of a court to act under subsection (2) is not affected by anything in any enactment which -

- (a) requires that a minimum sentence is passed in respect of any offence or an offence of any description or by reference to the circumstances of any offender (whether or not the enactment also permits the court to pass a lesser sentence in particular circumstances); or
- (b) in the case of a sentence which is fixed by law, requires the court to take into account certain matters for the purposes of making an order which determines or has the effect of determining the minimum period of imprisonment which the offender must serve (whether or not the enactment also permits the court to fix a lesser period in particular circumstances).

(6) If, in determining what sentence to pass on the defendant, the court takes into account the extent and nature of the assistance given or offered as mentioned in subsection (2), that does not prevent the court from also taking account of any other matter which it is entitled by virtue of any other enactment to take account of for the purposes of determining -

- (a) the sentence; or
- (b) in the case of a sentence which is fixed by law, any minimum period of imprisonment which an offender must serve.

(7) In this section, a reference to a sentence includes, in the case of a sentence which is fixed by law, a reference to the minimum period an offender is required to serve, and a reference to a lesser sentence must be construed accordingly.

Assistance by defendant
- review of sentence

7. (1) This section applies if -

- (a) the court has passed a sentence on a person in respect of an offence; and
- (b) the person -
 - (i) receives a discounted sentence in consequence of that person having offered, in pursuance of a written agreement, to give assistance to the prosecutor or investigator of an offence but he knowingly fails to any extent to give assistance in accordance with the agreement;
 - (ii) receives a discounted sentence in consequence of that person having offered, in pursuance of a written agreement, to give assistance to the prosecutor or investigator of an offence and, having given the assistance in accordance with the agreement, in pursuance of another written agreement, gives, or offers to give, further assistance; or

(iii) receives a sentence which is not discounted but in pursuance of a written agreement the person subsequently gives, or offers to give, assistance to the prosecutor or investigator of an offence.

(2) The Director of Public Prosecutions may at any time refer the case back to the court by which the sentence was passed if -

- (a) the person is still serving his or her sentence; and
- (b) the Director of Public Prosecutions thinks it is in the interests of justice to do so.

(3) A case so referred shall, if possible, be heard by the judge who passed the sentence to which the referral relates.

(4) If the court is satisfied that a person who falls within subsection (1)(b) (i) knowingly failed to give the assistance it may substitute for the sentence to which the referral relates, such greater sentence, not exceeding that which it would have passed but for the agreement to give assistance, as it thinks appropriate.

(5) In a case of a person who falls within subsection (1)(b) (ii) or (iii), the court may -

- (a) take into account the extent and nature of the assistance given or offered; and
- (b) substitute for the sentence to which the referral relates, such lesser sentence as it thinks appropriate.

(6) Any part of the sentence to which the referral relates which the person has already served must be taken into account in determining when a greater or lesser sentence imposed by subsection (4) or (5) has been served.

(7) A person in respect of whom a reference is made under this section and the specified prosecutor may, with the leave of the Court of Appeal, appeal to the Court of Appeal against the decision of the Grand Court.

(8) A discounted sentence is a sentence passed in pursuance of section 6 or subsection (5).

(9) References to a written agreement are to an agreement made in writing with the Director of Public Prosecutions.

(10) A person does not fall within subsection (1) if -

- (a) the person was convicted of an offence for which the sentence is fixed by law; and
- (b) the person did not plead guilty to the offence for which he was sentenced.

(11) Section 6(3) to (7) apply for the purposes of this section as they apply for the purposes of section 6; and any reference in those subsections to subsection (2) of section 6 shall be construed in the same manner as a reference to subsection (5) of this section.

Proceedings under section 7 - exclusion of public

8. (1) This section applies to -
- (a) any proceedings relating to a reference made under section 7(2); and
 - (b) any other proceedings arising in consequence of such proceedings.
- (2) The court in which the proceedings will be or are being heard may make such order as it thinks appropriate -
- (a) to exclude from the proceedings any person who does not fall within subsection (4); and
 - (b) to prohibit the publication of any matter relating to the proceedings (including the fact that the reference has been made).
- (3) An order under subsection (2) may be made only to the extent that the court thinks -
- (a) that it is necessary to do so to protect the safety of any person; and
 - (b) that it is in the interests of justice to do so.
- (4) The following persons fall within this subsection -
- (a) an officer of the court;
 - (b) a party to the proceedings;
 - (c) an attorney-at-law for a party to the proceedings; and
 - (d) a person otherwise directly concerned with the proceedings.
- (5) This section does not affect any other power which the court has by virtue of any rule of law or other enactment -
- (a) to exclude any person from proceedings; or
 - (b) to restrict the publication of any matter relating to proceedings.

Legal representation

9. (1) The Director of Public Prosecutions shall, before commencing negotiations with any person for any immunity, reduced sentence or undertaking as to use of evidence, inform the person of the person's right to representation by

an attorney-at-law and of the person's right to apply for legal aid in respect of such negotiations.

(2) Negotiations shall be held by the Director of Public Prosecutions with a person only through that person's attorney-at-law.

10. A judge or magistrate may upon application or in the discretion of the judge or magistrate, order that the records of negotiations or an agreement be sealed, where the judge or magistrate is satisfied that the sealing of such records is in the interests of the effective administration of justice.

Sealing of records of negotiations

11. (1) Every person having an official duty or being employed in the administration of this Law shall regard and deal with as secret and confidential, all information relating to an agreement before it is presented to the court or consequent upon the records thereof being sealed by the court.

Obligation for secrecy

(2) Every person referred to in subsection (1) having possession of or control over any documents, information or records, who at any time communicates or attempts to communicate anything contained in such documents or records or any such information to any person otherwise than in accordance with this Law or pursuant to a court order, commits an offence and is liable on summary conviction to a fine of ten thousand dollars, to imprisonment for a term of twelve months, or to both.

(3) Any person to whom information is communicated in accordance with this Law shall regard and deal with such information as secret and confidential.

(4) A person referred to in subsection (3) who at any time communicates or attempts to communicate any information referred to in that subsection to any person otherwise than for the purposes of this Law, commits an offence and is liable on summary conviction to a fine of ten thousand dollars, to imprisonment for a term of twelve months, or to both.

12. (1) Subject to section 10 -

Victim to be informed of notice, agreement, etc.

- (a) before an immunity notice or a restricted use undertaking is given, or before an agreement is reached to reduce the sentence of any accused, the Director of Public Prosecutions shall permit a victim of the offence to make representation to the Director of Public Prosecutions in writing and may take such representation into consideration in concluding an agreement;
- (b) where an immunity notice or restricted use undertaking is given, or an agreement to reduce the sentence of any accused is concluded, the Director of Public Prosecutions shall, unless

otherwise required by compelling reasons in the interest of justice, as soon as is reasonably practicable, communicate with the victim in respect of -

- (i) the substance of and reasons for the immunity, the restricted use undertaking or the reduced sentence agreement; and
- (ii) the entitlement of the victim to be present when the court considers any of the above.

(2) Where the victim has died or is incapacitated, the Director of Public Prosecutions shall communicate with a member of the victim's immediate family in respect of the matters set out in subsection (1).

(3) Where the victim is a child -

- (a) under the age of fourteen years, representation may be made by one of the child's parents or the child's guardian, or where the parents or guardian cannot be located, a guardian ad litem; or
- (b) who has attained the age of fourteen years, representation may be made by the child and one of the child's parents or the child's guardian, or where the parents or guardian cannot be located, a guardian ad litem.

Court not bound by undertaking or agreement

13. A court is not bound to accept a restricted use undertaking or an agreement for a reduced sentence.

PART 3 - GENERAL

Regulations

14. The Cabinet may make regulations for the purpose of giving effect to the provisions of this Law.

Cabinet may amend monetary penalties

15. The Cabinet may, by order, amend the monetary penalties in this Law.

Passed by the Legislative Assembly this day of , 2017

Speaker

Clerk of the Legislative Assembly