



BERMUDA

GOOD GOVERNANCE ACT 2012

2012 : 25

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WHEREAS it is expedient to establish a procedure for a Minister to consider an application or appeal on behalf of another Minister in certain circumstances, to create criminal offences of terminating a contract with, or withholding payment from, certain whistle-blowers, and to create criminal offences relating to collusion in the awarding of government contracts, and to make related provision;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

Citation

- 1 This Act may be cited as the Good Governance Act 2012.

Interest disclosure regarding applications and appeals

- 2 (1) This section applies where a Minister has a duty to consider an application or hear an appeal under any enactment.

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(2) If the Minister is aware that he has an interest (whether legal, beneficial, fiduciary, family or otherwise) in any of the persons making or opposing any such application or appeal, he shall notify the Premier accordingly.

(3) Where—

- (a) the Minister has notified the Premier under subsection (2); or
- (b) in any other case where the Premier considers that there may be such an interest so that the Minister should not consider the application or hear the appeal,

the Premier shall arrange for the appointment of another Minister for the purpose of considering the application or hearing the appeal in place of the substantive Minister.

Offence of terminating contract with, or withholding payment from, a whistle-blower

3 (1) A person commits an offence—

- (a) if he terminates a contract with another person because that person or any of his officers or employees has made a protected disclosure; or
- (b) if he withholds any payment due under a contract to another person because that person or any of his officers or employees has made a protected disclosure.

(2) For the purposes of this section, a person makes a protected disclosure if, in good faith, he notifies whichever of the listed persons appears to him to be the most appropriate person to notify in the circumstances, that he has reasonable grounds to believe—

- (a) that another person has committed, is committing, or is about to commit, a criminal offence or breach of any statutory obligation related to that person's business; or
- (b) that information tending to show any matter falling within paragraph (a) has been, is being, or is likely to be, altered, erased, destroyed or concealed by any person.

(3) For the purposes of subsection (2), the "listed persons" are—

- (a) the person's employer, manager or supervisor;
- (b) a police officer;
- (c) the Collector of Customs;
- (d) the Chief Fire Officer, as defined in section 2 of the Bermuda Fire and Rescue Service Act 1982;
- (e) the Chief Medical Officer, as defined in section 2 of the Public Health Act 1949;
- (f) the Chief Environmental Health Officer of the Department of Environmental Health;

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- (g) a Safety and Health Officer appointed for the purposes of the administration of the Occupational Safety and Health Act 1982;
- (h) the Auditor General, appointed under section 88 of the Constitution;
- (i) the Ombudsman, appointed under section 93A of the Constitution;
- (j) the Accountant-General, appointed under section 4 of the Public Treasury (Administration and Payments) Act 1969;
- (k) the Director of Project Management and Procurement, appointed under section 32B of the Public Treasury (Administration and Payments) Act 1969;
- (l) the Director of Internal Audit, appointed under section 3 of the Internal Audit Act 2010;

(4) A person who commits an offence under subsection (1) is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(5) Where an offence committed against subsection (1) by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

(6) Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this section shall be commenced within three years after the date of the commission of the offence.

(7) The Premier may, by order subject to the affirmative resolution procedure, amend subsection (3) so as to add or remove persons from the list.

Amends section 29A of the Employment Act 2000

4 In section 29A of the Employment Act 2000 (whistle-blowers), subsection (2)(l) (which includes the Director of the Financial Intelligence Agency as a listed person) is repealed.

Inserts sections 33B and 33C into the Public Treasury (Administration and Payments) Act 1969

5 After section 33A of the Public Treasury (Administration and Payments) Act 1969 insert—

“Offences of collusion relating to government contracts

33B (1) In this section—

“appointed or elected official” means a Member of Parliament, a Senator, a person who is appointed or elected to any municipality, parish council or any other public authority, and includes a person who has held any

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such office at any time within the five years immediately preceding the commission of an offence under this section;

“contractor” means—

- (a) any person bidding for a government contract; and
- (b) where the person bidding is a company or partnership, any director, partner, officer, employee or associate acting on behalf of the company or partnership;

“government contract” means a contract to which the Code of Practice for Project Management and Procurement applies.

(2) An appointed or elected official who attempts to influence the awarding of a government contract commits an offence, regardless of whether or not he has any interest (whether legal, beneficial, fiduciary, family or otherwise) in any of the persons bidding for the contract.

(3) For the avoidance of doubt, an appointed or elected official who bids for a government contract does not commit an offence under subsection (2) solely by reason of that fact.

(4) If a contractor attempts to gain an unfair advantage when bidding for a government contract by obtaining, from a public officer or from an appointed or elected official, information which is not available to all persons bidding for that contract, the contractor and the public officer or the appointed or elected official commit an offence.

(5) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding \$10,000, or to imprisonment for a term not exceeding 12 months, or to both such fine and imprisonment.

(6) Where an offence committed against subsection (4) by a body corporate is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Time within which prosecutions may be instituted

33C Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.”

Related amendments: time within which prosecutions may be instituted

6 (1) In section 20 of the Audit Act 1990 (offences), at the end insert—

“(3) Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.”

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(2) In section 22 of the Internal Audit Act 2010 (offences) at the end insert—

“(4) Notwithstanding anything in any other provision of law, proceedings in respect of an offence against this Act shall be commenced within three years after the date of the commission of the offence.”

[Assent Date: 03 July 2012]

[Operative Date: 03 July 2012]