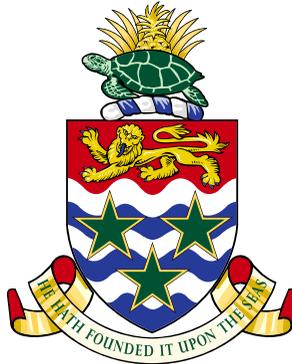


**CAYMAN ISLANDS**



# **CRIMINAL JUSTICE (OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS) BILL, 2022**

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

## PUBLISHING DETAILS

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**Sponsoring Ministry/Portfolio:** Portfolio of Legal Affairs (PLA)



## Memorandum of OBJECTS AND REASONS

This Bill provides for the statutory codification of the use of King’s Evidence, which was a project undertaken by the Law Reform Commission. The Bill, among other things, empowers the Director of Public Prosecutions (“the Director”) to grant immunity from prosecution in certain cases, allows the court to make a sentence reduction on guilty pleas, facilitates the review of sentences and provides for other related matters.

### PART 1 - PRELIMINARY

Clause 1 provides for the short title and commencement of the legislation.

Clause 2 contains interpretation provisions.

Clause 3 provides that nothing in the legislation affects the right of an accused to plead guilty to a charge without entering into any undertaking under the legislation.

Clause 3 also provides that, save as expressly agreed otherwise by the Director, nothing in the legislation affects the powers conferred upon the Director under section 57 of the *Cayman Islands Constitution Order, 2009*.

### PART 2 - REDUCED SENTENCES AND IMMUNITY PROTECTION

Clause 4 empowers the Director, in exceptional circumstances, to offer a person immunity from prosecution. In such a case, an immunity notice is given to the person. Where an immunity notice is given, no proceedings that relate to the offence specified in the notice can be brought except in circumstances specified in the notice.

An immunity notice ceases if the person fails to comply with any conditions specified in the notice.

Clause 5 provides that the Director can give an offender a restricted use undertaking. A restricted use undertaking prevents information described in the undertaking from being used against the person in proceedings to which the clause applies. This includes not only criminal proceedings but also civil forfeiture proceedings under Part 4 of the *Proceeds of Crime Act (2020 Revision)*.

A restricted use undertaking ceases if the person fails to comply with any conditions specified in the undertaking.

Clause 6 deals with reduction in a sentence where a defendant —

- (a) has pleaded guilty; and

- (b) has, pursuant to a written agreement made with the Director, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.

In determining a sentence, the court may consider the extent and nature of the defendant's assistance. In discounting a sentence because of the defendant's assistance, the court must state in open court —

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

Clause 7 sets out, among other things, the matters which may be taken into account by the court when reviewing a sentence.

Clause 8 empowers the court to exclude the public from proceedings relating to sentencing under Clause 7.

Clause 9 requires the Director to inform accused persons of their right to legal representation and to apply for legal aid when negotiating immunity, a reduced sentence or a restricted use undertaking.

Clause 10 empowers the court to seal records of negotiations or agreements.

Clause 11 requires all persons involved in the administration of the legislation to keep information, records and documents secret and confidential.

Clause 12 empowers the Director, before giving an immunity notice or a restricted use undertaking, or before agreeing to a reduced sentence, to permit a victim of the relevant offence to make a written representation to the Director.

Clause 12 also allows the Director to take such a representation into consideration when concluding an agreement. The Director must, in certain circumstances, inform a victim of the substance and reasons for an immunity notice, a restricted use undertaking or an agreement for a reduced sentence.

Clause 13 provides that the court is not bound by an immunity notice, a restricted use undertaking or an agreement for a reduced sentence.

### **PART 3 - GENERAL**

Clause 14 provides that the Cabinet, after consultation with the Director, may make Regulations to give effect to the legislation.



**CAYMAN ISLANDS**



**CRIMINAL JUSTICE (OFFENDERS ASSISTING  
INVESTIGATIONS AND PROSECUTIONS) BILL,  
2022**

**Arrangement of Clauses**

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Clause Page

**PART 1 - PRELIMINARY**

|    |  |   |
|----|--|---|
| 1. | Short title and commencement .....           | 7 |
| 2. | Interpretation .....                         | 7 |
| 3. | Declaration of certain existing rights ..... | 8 |

**PART 2 - REDUCED SENTENCES AND IMMUNITY FROM  
PROSECUTION**

|     |   |    |
|-----|---|----|
| 4.  | Assistance by offender - immunity from prosecution .....          | 8  |
| 5.  | Assistance by offender - undertakings as to use of evidence ..... | 9  |
| 6.  | Assistance by defendant - reduction in sentence .....             | 9  |
| 7.  | Assistance by defendant - review of sentence .....                | 10 |
| 8.  | Proceedings under section 7 - exclusion of public.....            | 11 |
| 9.  | Legal representation .....  | 12 |
| 10. | Sealing of records of negotiations .....                          | 13 |
| 11. | Obligation for secrecy .....                                      | 13 |
| 12. | Victim to be informed of notice, agreement, etc. ....             | 14 |
| 13. | Court not bound by immunity notice, undertaking or agreement..... | 14 |

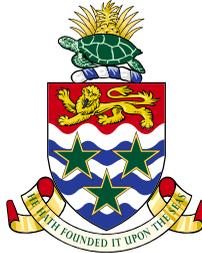


**PART 3 - GENERAL**

14. Regulations .....15



## CAYMAN ISLANDS



# CRIMINAL JUSTICE (OFFENDERS ASSISTING INVESTIGATIONS AND PROSECUTIONS) BILL, 2022

**A BILL FOR AN ACT 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

### Short title and commencement

- (1) This Act may be cited as the *Criminal Justice (Offenders Assisting Investigations and Prosecutions) Act, 2022*.
- (2) This Act 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 Act and in relation to different matters.

### Interpretation

- In this Act —

“**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**” means the Director of Public Prosecutions and includes any attorney-at-law authorised in writing by the Director of Public Prosecutions to exercise any of the functions specified in sections 4 to 7;

“**immunity notice**” means a notice given under section 4;

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

“**offence**” means a Category A or Category B offence as provided in Schedule 1 of the *Criminal Procedure Code (2021 Revision)*; and

“**restricted use undertaking**” means an undertaking as set out in section 5(1).

### **Declaration of certain existing rights**

3. (1) Nothing in this Act affects the right of an accused to plead guilty to a charge without entering into any undertaking under this Act.
- (2) Save as expressly agreed otherwise by the Director, nothing in this Act affects the powers conferred upon the Director under section 57 of the *Cayman Islands Constitution Order, 2009*.

## **PART 2 - REDUCED SENTENCES AND IMMUNITY FROM PROSECUTION**

### **Assistance by offender - immunity from prosecution**

4. (1) Subject to Regulations under this Act, if the Director 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 for the offence, 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.



### **Assistance by offender - undertakings as to use of evidence**

5. (1) Subject to section 13, if the Director 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 may give the person a written restricted use undertaking.
- (2) This section applies to —
- (a) criminal proceedings; and
  - (b) proceedings under Part 4 of the *Proceeds of Crime Act (2020 Revision)*.
- (3) Subject to section 13, 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 except in the circumstances specified in the undertaking.
- (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 of the conditions specified in the undertaking.

### **Assistance by defendant - reduction in sentence**

6. (1) This section applies if a defendant —
- (a) has pleaded guilty; and
  - (b) has, pursuant to a written agreement made with the Director, assisted or offered to assist the investigator or prosecutor in relation to that or any other offence.
- (2) A court, in determining what sentence to pass on the defendant, may take into account the extent and nature of the assistance given by the defendant.
- (3) If a court passes a sentence which is less than it would have passed but for the assistance given, 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 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 —
- (a) 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 shall be construed accordingly; or
  - (b) any other custodial sentence.

### **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 given, in pursuance of a written agreement, 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 further assistance; or
    - (ii) receives a sentence which is not discounted but in pursuance of a written agreement the person subsequently gives assistance to the prosecutor or investigator of an offence.
- (2) The Director 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 thinks it is in the interests of justice to do so.



- (3) A case so referred shall, if possible, be heard by the judge or magistrate 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)(i) or (ii), 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 or the Director may appeal against any sentence imposed in the circumstances set out in section 6 or this section.
- (8) A discounted sentence is a sentence passed pursuant to section 6 or subsection (5).
- (9) References to a written agreement are to an agreement made in writing with the Director.
- (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 the person 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 give such directions as it thinks appropriate prohibiting 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.
- (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.** The Director shall, before commencing negotiations with any person for an immunity, a reduced sentence or a restricted use undertaking —
- (a) inform the person, where the person is not represented by an attorney-at-law —
    - (i) of the person's right to representation by an attorney-at-law if the person so desires;
    - (ii) of the person's right to apply for legal aid in respect of such negotiations if the person cannot afford to retain an attorney-at-law;
    - (iii) of the person's right to protection against self-incrimination;
    - (iv) of the person's right to be presumed innocent;
    - (v) of the person's right to seek a sentence indication from the court of the maximum sentence that the court may impose if the person pleads guilty to an offence; and
    - (vi) that the person may elect to have a third party of the person's choice present during negotiations;
  - (b) be notified by the person in writing that, having been advised by the Director of the matters set out in paragraph (a), that the person desires —



- (i) to enter into discussions relating to immunity, a reduced sentence or a restricted use undertaking; and
- (ii) to represent himself or herself in the negotiations; and
- (c) ensure that the court —
  - (i) has been informed of the matters set out in paragraphs (a) and (b);
  - (ii) is satisfied that the accused person is competent to enter into negotiations for immunity, a reduced sentence or a restricted use undertaking; and
  - (iii) approves of the initiation of the negotiations.

### **Sealing of records of negotiations**

**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 those records is in the interests of the effective administration of justice.

### **Obligation for secrecy**

- 11.** (1) Every person who is employed in the administration of this Act 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 of the agreement being sealed by the court.
- (2) Every person referred to in subsection (1) having possession of or control over any documents, records or other information, who at any time communicates or attempts to communicate anything contained in such documents or records to any person except —
- (a) where to do so is in accordance with subsection (1);
  - (b) pursuant to a court order; or
  - (c) in the case of the Director, where the Director is required to do so fulfil his continuing duties of disclosure,
- 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 documents, records or other information are communicated in accordance with this Act shall regard and deal with such documents, records or other information as secret and confidential.
- (4) A person referred to in subsection (3) who at any time communicates or attempts to communicate any information or give any document or record referred to in that subsection to any person otherwise than for the purposes of this Act, 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.

**Victim to be informed of notice, agreement, etc.**

- 12.** (1) Subject to section 10 —
- (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 may permit a victim of the offence to make representations to the Director in writing and may take such representations into consideration in concluding an agreement; and
  - (b) where an immunity notice or a restricted use undertaking is given, or an agreement to reduce the sentence of any accused is concluded, the Director 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 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 sixteen 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 is has sixteen years of age or older, representation may be made —
    - (i) by the child and one of the child’s parents or the child’s guardian; or
    - (ii) where the parents or guardian cannot be located, a guardian *ad litem*.

**Court not bound by immunity notice, undertaking or agreement**

- 13.** A court is not bound to accept an immunity notice, a restricted use undertaking or an agreement for a reduced sentence.



## **PART 3 - GENERAL**

### **Regulations**

- 14.** The Cabinet, after consultation with the Director, may make regulations to give effect to this Act.

**Passed by the Parliament the            day of            , 2022.**

*Speaker*

*Clerk of the Parliament*

