



Ministerial Statement  
To the House of Assembly

By

**Hon. Trevor Moniz, JP, MP**  
Attorney General & Minister of Legal Affairs

**Modernizing Bermuda's Law on Bribery & Corruption**  
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**Mr Speaker,**

I wish to inform this Honourable House of Government's intention to update and modernize Bermuda's laws relating to bribery and corruption.

Tackling these evils requires first of all an effective law on bribery and corruption. This, we will do by bringing forward legislation which is based on the United Kingdom's Bribery Act

2010, and by making various amendments aimed at combating corruption.

**Mr Speaker,**

Bribery and corruption are simply wrong. The World Bank conservatively estimates that \$1 trillion dollars is paid in bribes each year. Far more money is wasted through embezzlement, theft and misuse of public funds. Former Secretary-General, Kofi Annan, put the case succinctly in 2004:

“Corruption is an insidious plague that has a wide range of corrosive effects on society. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organised crime, terrorism and other threats to human security to flourish. This evil phenomenon is found in all countries - big and small, rich and poor... corruption hurts the poor

disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic under-performance and a major obstacle to poverty alleviation and development.”

**Mr Speaker,**

Bribery is therefore not a victimless crime and we must all do what we can to fight corruption, both nationally and internationally, since the issue of tackling bribery is undoubtedly global. The OECD and a number of respected NGOs, among others, have all been instrumental in securing an international consensus on the need to address bribery which can be harmful in so many ways.

Bermuda has made tremendous efforts in recent years to combat economic crime of all kinds, particularly in the field of money-laundering and terrorist financing. This is part of a multi-agency and multi-partner strategy to maintain the island's status as a clean and reputable business jurisdiction.

**Mr Speaker,**

While efforts have been made, significant gaps remain in our legislation and administrative practices relating to bribery and corruption. Bermuda's National Anti-Money Laundering and Anti-Terrorist Financing Strategy and Action Plan proposes that corruption and bribery laws be reformed in order to achieve compliance with international benchmarks. By enacting new legislation which is based on an international gold standard in the UK's Bribery Act 2010, Bermuda is signaling to the rest of the world its serious intentions to meet and surpass the highest standards.

**Mr Speaker,**

As in the UK, Bermuda's corruption offences date back to the 19<sup>th</sup> century. The UK and other jurisdictions have since moved on, and it is important that Bermuda do so as well. The UK Bribery Act 2010 was a response to very real problems with their former laws on corruption. Other small island jurisdictions have similarly moved to modernize their law, and we cannot be left behind.

That the UK has moved from those former laws leads to a separate problem which is peculiar to Bermuda. As prosecutions based on the old corruption laws fade into memory, we will not stand to benefit from the developing case-law through court decisions and appeals. In keeping our present offences, the Bermuda courts will have to be guided by stale precedents and a legal status quo frozen in time since 2010. As the years advance, this problem will become particularly acute.

## **Mr Speaker**

Government's proposed Bribery Act would provide a modern and comprehensive scheme of bribery offences, in order to allow investigators, prosecutors and the courts to tackle bribery effectively whether committed at home or overseas. The offences created will address both sides of the bribery equation, instead of the one-sided approach adopted by current corruption offences, which focus only on the recipients of the bribes. The Act will help to enhance Bermuda's international reputation for the highest ethical standards.

In summary, based on the UK Act, the proposed Bribery Act would create four offences:

- one general offence of bribery covering the offering, promising or giving of a financial or other advantage,
- another general offence covering the requesting, agreeing to receive or accepting of a financial or other advantage;

- a third specific offence of bribing a foreign public official;  
and
- fourthly a new offence of failure by a commercial organization to prevent bribery, although it is a defence if a commercial organization can prove - on the balance of probabilities - that it had 'adequate procedures' in place to prevent persons associated with it from bribing.

The general offences would focus on either the conduct of the person bribing another, or the person being bribed and identify 6 cases, each involving the improper performance of a function, where one or the other of these general offences would be committed. These general offences apply to functions of a public nature as well as in a business or employment context.

The offences of bribery of a foreign public official and failure to prevent bribery are specifically aimed at the use of bribery in commercial transactions and should help create a level playing field for business. The bribery of a foreign public official offence focuses on the use of bribery to influence the recipient in his or

her official capacity and is closely modeled on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business.

The proposed Act would also allow for extra-territorial jurisdiction which will enable the prosecution in the Bermuda of bribery committed wholly or partly abroad by persons ordinarily resident in Bermuda as well as Bermudians, and Bermuda-registered corporate bodies.

**Mr Speaker,**

Any perusal of the UK Act will reveal that the offences are widely drawn. Bribery can take many different forms and the legislation needs to take account of that. Furthermore, at the time of its passage, some expressed concern about hospitality or promotional expenditure of commercial organizations. The starting point is that these activities are not illegal per se and

the Act is not intended to clamp down on legitimate expenditure of this type.

It is clear, however, that lavish hospitality and similar expenditure can be used as a bribe intended to induce a public official to award business. The Act must be capable of penalizing such conduct. It will all depend on the particular circumstances. In practice, I do not believe it will be too difficult to distinguish what is bribery and what is not, but ultimately of course it will be a matter for the jury to decide.

**Mr Speaker,**

Establishing the right culture within commercial organizations is clearly of paramount importance in order to prevent bribery occurring in the first place. That is part of the operational good practice of businesses in any event, although the way in which that is disseminated will clearly depend upon the size and nature of the particular business. For any commercial organization that needs a bit of encouragement, however, there

will be the failure to prevent bribery offence, which will be subject to a penalty of an unlimited fine. As I mentioned earlier though, it is a defence if the company can prove that it had “adequate procedures” in place. It may simply be a ‘rogue employee’ that is committing bribery.

**Mr Speaker,**

The UK Act was recently incorporated into the domestic law of Gibraltar in 2011 and the Isle of Man in 2013. Our small-island competing jurisdictions are getting the message that this is an area that they need to act in, and so should Bermuda.

What I would point out is that the Isle of Man’s legislation goes one step further than the UK Act and incorporates new duties of public officials to report instances of corruption to the police. Failure to report bribery when under an obligation to do so or interfering with such a duty are very serious offences

attracting very stiff penalties. These offences are expected to be included as part of the Bermuda Bribery Act. No longer will it be acceptable behaviour to turn a blind eye when corruption is seen or suspected in the public service.

**Mr Speaker,**

In addition, to updating the law of Bribery, Government will also more generally propose amendments to Bermuda's anti-corruption framework, comprised of a range of other legislation. Preventative anti-corruption policies and practices will have to be in place, including enforceable codes of conduct for public officials, in order to promote the highest standards of integrity, honesty and responsibility amongst public officials. Amendments to legislation and policies will also be considered in order to promote transparency, anti-corruption practices and integrity of accounting records in the areas of public procurement and public finances.

Government will also bring into force amendments to mandate the rescission of contracts and the revocation of licences that are created as a result of corrupt practices. We will also look at amendments which empower National Authorities to appropriately cooperate with the private sector, or establish other relevant means of compliance, in the prevention, detection, investigation and prosecution of corruption offences.

**Mr Speaker,**

We have begun the process of stakeholder consultation on a proposed new Bribery Act. The National Anti-Money Laundering Committee, based within the Ministry of Legal Affairs, has taken the lead in coordinating with stakeholders within the Government. They have also published last week an Information Paper on our propose bribery and corruption legislation. Submissions concerning the proposed legislation are welcome no later than 31 May 2016, and may be sent to the

Office of the National Anti-Money Laundering Committee on the 4<sup>th</sup> Floor of Global House on Church Street, or electronically to [info-NAMLC@gov.bm](mailto:info-NAMLC@gov.bm). Once again for the listening public, that is “info” “hyphen” “N-A-M-L-C”, all one word, @gov.bm.

**Mr Speaker,**

Government is rightly proud of its efforts to modernize the law on bribery and corruption to meet global standards. We look forward to continuing to update this Honourable House and the people of Bermuda on all efforts in this regard.

Thank you.