

BELIZE:

PROTECTED DISCLOSURES BILL, 2021

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SCHEDULE

DRAFT

BELIZE:**BILL****for**

A BILL to combat corruption and other wrongdoings by encouraging and facilitating disclosures of improper conduct in the public and private sector; to protect persons making those disclosures from detrimental action; to regulate the receiving, investigating or otherwise dealing with disclosures of improper conduct; and to provide for matters connected therewith or incidental thereto.

(Gazetted, 2021)

BE IT ENACTED, by and with the advice and consent of the House of Representatives and Senate of Belize and by the authority of the same, as follows:

Short title.

- 1.** This Act may be cited as the

PROTECTED DISCLOSURES BILL, 2021.

Interpretation.

- 2.** In this Act—

“designated authority” means the office or body listed in the Schedule;

“detrimental action” means any act or omission that results in a person being—

- (a) subject to disciplinary action;
- (b) terminated, suspended or demoted;
- (c) harassed, intimidated or victimized;
- (d) transferred against his will;
- (e) refused transfer or promotion;
- (f) subject to a term or condition of employment or retirement from employment, that is altered to his disadvantage;
- (g) denied access to internship, training or scholarship for professional advancement;

- (h) provided with an adverse reference;
- (i) denied appointment to any employment, profession or office;
- (j) threatened with any of the actions specified in paragraphs (a) to (i);
- (k) otherwise adversely affected in respect of his employment, profession, office (including employment opportunities and job security); or
- (l) otherwise suffering injury, loss or damage in relation to his employment, family life, career, profession, trade or business;

“disclosure” means disclosure by a person of information which shows or potentially shows that improper conduct has occurred, is occurring or is likely to occur;

“employee” means—

- (a) a person who—
 - (i) works or worked for an employer; and
 - (ii) receives, received, or is entitled to receive, any remuneration for work done;
- (b) a person who, in any manner assists or assisted in the carrying on, or conduct of the business of an employer, without any entitlement to receive remuneration or reward; or
- (c) a person who is, or was, engaged or contracted under a contract for services to do work for an employer, or an agent of the person;

“employer” means a person who or an organisation which—

- (a) employs or has employed another person to carry out work or provide services and remunerates, remunerated or expressly or tacitly undertakes to remunerate, that other person for the work carried out or services provided; or
- (b) permits or permitted another person to assist in any manner in the carrying on, or conduct of the business of that person

or organisation, without an obligation to provide remuneration or reward to that other person;

- (c) engages or contracts for services another person or his agent to do work;

“external disclosure” means a disclosure made to a Whistleblowing Reports Unit;

“improper conduct” means any–

- (a) commission of a criminal offence;
- (b) failure to carry out a legal obligation;
- (c) conduct that is likely to result in a miscarriage of justice;
- (d) conduct that is likely to threaten the health or safety of a person;
- (e) conduct that is likely to threaten or damage the environment;
- (f) conduct that shows gross mismanagement, impropriety or misconduct in the carrying out of any activity that involves the use of public funds or any financial resources of an employer;
- (g) act of reprisal against or victimization of a whistleblower or person related to, or associated with, a whistleblower;
- (h) conduct that tends to show unlawful discrimination on a basis of gender, race, place of origin, social class, colour, religion or political opinion; or
- (i) wilful concealment of any act described in paragraphs (a) to (h);

“internal disclosure” means a disclosure made to a whistleblowing reports officer;

“Minister” means the Minister responsible for legal affairs;

“organisation” means any entity or body of persons, whether having legal personality or not, and includes a public body;

“protected disclosure” means a disclosure which qualifies for protection under section 7(1);

“public body” means—

- (a) a ministry, department, commission or agency of the Government; or
- (b) a statutory body or authority or a corporation or other body corporate in which the controlling interest is held by the State or by an agency on behalf of the State;

“whistleblower” means a person who makes a disclosure to a whistleblowing reporting officer or a Whistleblowing Reports Unit, as the case may be, whether it qualifies as a protected disclosure or not under this Act;

“whistleblowing reporting officer” means such officer within an organisation appointed under section 10(1);

“Whistleblowing Reports Unit” means a unit of a designated authority established under section 13;

“whistleblower protection” means protection afforded to a whistleblower under this Act.

3. This Act applies to any disclosure made after the coming into force of this Act, irrespective of whether or not the improper conduct to which the disclosure relates occurred before or after the coming into force of this Act.

Application of Act.

4. This Act binds the State.

Act binds the State.

PART II

Protected Disclosure

5.—(1) An employee of an organisation may make a disclosure of improper conduct to a whistleblowing reporting officer or a Whistleblowing Reports Unit based on his reasonable belief that improper conduct has occurred, is occurring or is likely to occur within the organisation.

Disclosure of improper conduct.

(2) A disclosure under sub-section (1) may be made—

- (a) although the employee is not able to identify a particular person to which the disclosure relates;
- (b) although the improper conduct occurred before the coming into force of this Act;
- (c) in respect of information acquired by the employee while he was employed in the organisation; or

- (d) of any improper conduct of a person while that person was employed in the organisation.

(3) A person, not being an employee under sub-section (1), who reasonably believes a member of the National Assembly, the Speaker of the National Assembly, a Government official or any other person, with whom he dealt, is dealing or is likely to deal with has committed, is committing or is likely to commit an improper conduct, may make a disclosure of the improper conduct to a whistleblowing reporting officer or a Whistleblowing Reports Unit, as the case may be.

(4) A disclosure under sub-section (1) or (3) may be made orally or in writing.

(5) Where a disclosure is made orally, the person receiving the disclosure shall, as soon as practicable, reduce it into writing.

(6) Where a written disclosure is delivered in person it shall be signed by that person.

(7) A disclosure made in relation to a member of the National Assembly shall not amount to a breach of privilege.

(8) Where for any reason a person, qualified to make a disclosure under sub-section (1) or (3), is fearful of making the disclosure to a whistleblowing reporting officer or a Whistleblowing Reports Unit, he may, in writing, authorise any person to make the disclosure on his behalf to a whistleblowing reporting officer or a Whistleblowing Reports Unit.

Special
procedure for
making
disclosure
relating to
national security.

6.—(1) Where a person seeks to make a disclosure in pursuance of this Act, in relation to a matter that would prejudice the national security, defence or international relations of Belize, the disclosure shall be made to the Prime Minister or the Minister responsible for national security.

(2) The Prime Minister or the Minister responsible for national security shall establish procedures for receiving, investigating or otherwise dealing with disclosures made under sub-section (1).

Protected
disclosure.

7.—(1) A disclosure is a protected disclosure if—

- (a) it is made in accordance with section 5;
- (b) it is made in good faith;
- (c) at the time of making the disclosure, the whistleblower reasonably believes, based on the information he has at that time, that—

- (i) the information disclosed, and any allegation contained in it, are substantially true; and
- (ii) the information disclosed tends to show that his employer, another employee of his employer or a person acting in his employer's name and interests has engaged, is engaging or is preparing to engage in improper conduct;
- (d) the disclosure is not made for purpose of personal gain;
- (e) in the case of an internal disclosure, if it is made substantially in accordance with the internal procedures established under section 11(1); and
- (f) in the case of an external disclosure, if the director of a Whistleblowing Reports Unit concludes that a disclosure has been properly made under section 14(5).

(2) Where a person who is qualified under section 5 to make a disclosure, authorises another person to make a disclosure under section 5(8), that disclosure shall be a protected disclosure for the purposes of both the person qualified to make the disclosure and the person authorised.

(3) A disclosure of improper conduct which would prejudice the national security, defence or international relations of Belize shall be protected if made in accordance with the procedures established and operated by the Prime Minister or the Minister responsible for national security under section 6.

(4) A disclosure is not a protected disclosure if the whistleblower discloses information which he knows, or ought reasonably to have known, is false.

8. Nothing in this Act authorises a person to disclose information protected by legal professional privilege and a disclosure of such information is not a protected disclosure.

Information protected by legal professional privilege.

9.-(1) A disclosure made anonymously is not a protected disclosure.

Anonymously made disclosures.

(2) Subject to sub-section (3), a whistleblowing reporting officer or Whistleblowing Reports Unit may receive and process an anonymous disclosure and may take the disclosure into account in determining whether improper conduct has occurred.

(3) Where a whistleblowing reporting officer or Whistleblowing Reports Unit, after having taken into account all the relevant circumstances, considers that the information in an anonymous disclosure is likely to be defamatory or libellous, the officer or Unit shall discard the information.

(4) Where the identity of a person who makes an anonymous disclosure becomes known, the disclosure shall be deemed to be a protected disclosure if it satisfies the conditions under section 7.

PART III

Internal Disclosures

Appointment of
whistleblowing
reporting
officers.

10.—(1) Every employer shall appoint a whistleblowing reporting officer.

(2) A whistleblowing reporting officer is responsible for—

- (a) receiving and processing internal disclosures of information about improper conduct committed within or by his employer's organisation; and
- (b) determining whether an internal disclosure should be referred for further investigation to a designated authority through its Whistleblowing Reports Unit and the conditions under which the referral should take place.

Internal
procedures for
receiving and
dealing with
internal
disclosures.

11.—(1) An employer shall have in operation internal procedures for receiving and dealing with disclosures relating to his organisation.

(2) Internal procedures referred to in sub-section (1) shall identify the whistleblowing reporting officer within the organisation to whom an internal disclosure may be made.

(3) An employer shall regularly publish in his organisation information about the existence of the internal procedures referred to in sub-section (1), and adequate information on how to use those procedures.

Notice to
whistleblower.

12.—(1) Subject to sub-section (2), a whistleblowing reporting officer shall, within thirty days after receiving an internal disclosure, notify the whistleblower of the status of the disclosure or such matters as may be prescribed.

(2) Where it is apparent from that action has been taken to rectify or deal with the improper conduct disclosed in an internal disclosure, it shall not be necessary for the whistleblowing reporting officer to comply with sub-section (1).

(3) Where an internal disclosure is a protected disclosure and leads to the detection of improper conduct which constitutes a criminal offence or the breach of a law, the whistleblowing reporting officer shall refer the internal disclosure to a designated authority, through its Whistleblowing Reports Unit, for investigation.

(4) Where a whistleblowing reporting officer refers an internal disclosure under sub-section (3), the whistleblowing reporting officer shall not disclose the identity of the whistleblower except with his prior consent in writing.

(5) A protected disclosure does not, by reason of its referral to a Whistleblowing Reports Unit, cease to be a protected disclosure.

PART IV

External Disclosures

13.—(1) A designated authority shall have a Whistleblowing Reports Unit consisting of a director and such other officers as are required for the efficient performance of the functions of the unit.

Establishment of
Whistleblowing
Unit.

(2) A Whistleblowing Reports Unit shall be responsible for receiving and processing external disclosures pertaining to the matters which fall within the areas of responsibility of its designated authority.

(3) The director of the Whistleblowing Reports Unit shall be responsible for determining whether an external disclosure should be referred for further investigation to a designated authority and the conditions under which the referral should take place.

14.—(1) An employee of an organisation may make an external disclosure to the Whistleblowing Reports Unit of a designated authority to which the subject matter of the protected disclosure relates, if—

External
disclosure made
to the
Whistleblowing
Reports Unit.

- (a) the organisation has no internal procedures established and published for receiving and dealing with disclosures relating to the organisation;
- (b) although an internal disclosure has previously been made, he has not been informed of the status of the disclosure or it is reasonably evident to him that there has been no action or recommended action in relation to the disclosure within a reasonable time from the making of the disclosure; or
- (c) he believes on reasonable grounds—
 - (i) the whistleblowing reporting officer is, or may be involved in the alleged improper conduct;
 - (ii) the whistleblowing reporting officer is, by reason of any relationship or association with a person who is, or may be involved in the improper conduct alleged in the

disclosure, not a person to whom it is appropriate to make the disclosure;

- (iii) the head or senior officer of the organisation is, or may be involved in the improper conduct alleged in the disclosure;
- (iv) immediate reference to the Whistleblowing Reports Unit, is justified by the urgency of the matter to which the disclosure relates, or some other exceptional circumstances;
- (v) he will be subjected to detrimental action by his employer if he makes an internal disclosure; or
- (vi) it is likely that evidence relating to the improper conduct will be concealed or destroyed if he makes an internal disclosure.

(2) Where a person makes a disclosure to a Whistleblowing Reports Unit the director of the Whistleblowing Reports Unit shall, within forty-five days after receiving the disclosure, consider and reach a conclusion as to whether it is appropriate for the disclosure to be made externally.

(3) In determining for the purposes of sub-section (2) whether it is appropriate for the disclosure to be made externally, the director of the Whistleblowing Reports Unit shall consider—

- (a) the seriousness of the alleged improper conduct;
- (b) whether the improper conduct is continuing or is likely to occur in the future;
- (c) whether the disclosure is made in breach of a duty of confidentiality owed by the employer to any other person;
- (d) whether the whistleblower has been subjected to or threatened with injury to himself, his immediate family or his property;
- (e) in a case falling within sub-section (1)(b), any action which the employer has taken or might reasonably be expected to have taken as a result of the previous disclosure;
- (f) whether in making the disclosure to the Whistleblowing Reports Unit, the employee complied with internal procedures referred to in section 11(1); and

(g) the public interest.

(4) Where the director of a Whistleblowing Reports Unit concludes that a disclosure should not have been made externally, he shall within a reasonable time, not exceeding forty-five days, notify the whistleblower in writing that an internal disclosure shall be made and that the Whistleblowing Reports Unit will not be dealing further with the disclosure.

(5) Where the director of a Whistleblowing Reports Unit concludes that a disclosure has been properly made, he shall within a reasonable time, notify the whistleblower in writing of the status of the disclosure or such matters as may be prescribed.

15.—(1) Where a Whistleblowing Reports Unit to whom a protected disclosure is made considers that the disclosure can be better processed by another Whistleblowing Reports Unit, the Whistleblowing Reports Unit to whom the disclosure is made may, within not more than thirty days, refer the disclosure to that other Whistleblowing Reports Unit and immediately inform the whistleblower in writing.

Reference of
information to
another
authority.

(2) Where a Whistleblowing Reports Unit refers a protected disclosure under sub-section (1), the unit shall not disclose the identity of the whistleblower except with his prior written consent.

(3) A protected disclosure does not, by reason of its referral to another Whistleblowing Reports Unit, cease to be a protected disclosure.

PART V

Protection of Whistleblowers

16. Subject to the exceptions provided for in this Act, despite any prohibition of, or restriction on, the disclosure of information under any written law, rule of law, contract, oath or practice, a whistleblower may not be subjected to detrimental action on account of his having made a protected disclosure.

Prohibition of
detrimental
action.

17.—(1) Notwithstanding any other law, but subject to section 18(1), a whistleblower who makes a protected disclosure is not liable to any criminal, civil or disciplinary proceedings for having made such a disclosure.

Immunity from
criminal, civil
and disciplinary
proceedings.

(2) A whistleblower shall be immune from criminal, civil and disciplinary proceedings, notwithstanding that—

(a) the whistleblower was in good faith, mistaken about the importance of the disclosure;

- (b) any perceived threat to the public interest on which the disclosure was based has not materialised; or
- (c) the whistleblower has not fully respected the procedural requirements of this Act or of any regulations or guidelines made under this Act.

Exception to immunity.

18.—(1) Subject to sub-section (3), nothing in this Part shall prevent the institution of criminal proceedings against a whistleblower, where the whistleblower was the perpetrator of, or an accomplice in, any improper conduct—

- (a) to which the disclosure relates; and
- (b) which constitutes a criminal offence.

(2) Subject to the sub-sections (4) and (5), nothing in this Part shall prevent the institution of civil or disciplinary proceedings against a whistleblower, where the proceedings arise from the conduct of the whistleblower.

(3) In any criminal proceedings instituted against a whistleblower based on the fact that the whistleblower was the perpetrator of, or an accomplice in, the improper conduct disclosed by the whistleblower, the court shall, in giving its judgment or decision, take into account—

- (a) the fact that the disclosure was made by the whistleblower; and
- (b) whether the whistleblower has assisted the police to apprehend any other person involved in the commission of an offence,

and the punishment of the whistleblower may be mitigated or remitted as the court thinks fit and the court shall expressly refer to this sub-section in its judgment or decision.

(4) In any civil proceedings instituted against a whistleblower based on the fact that the whistleblower was the perpetrator of, or was an accomplice in, the improper conduct disclosed by the whistleblower, the court may, if it finds that the whistleblower is responsible for the payment of damages, only hold him liable for such part of the damage as he may have caused and not hold him liable jointly and severally with others.

(5) Where a whistleblower is an employee of a public body and disciplinary proceedings are instituted against him based on the fact that he was the perpetrator of, or an accomplice in, the improper conduct disclosed by him, the public body shall—

- (a) endeavour to mitigate the effects of any punishment; and
- (b) where possible, not seek the dismissal of the whistleblower as punishment.

19.—(1) A whistleblowing reporting officer or Whistleblowing Reports Unit to whom a protected disclosure is made or referred shall not disclose information that identifies or may lead to the identification of the whistleblower, unless the whistleblower expressly consents in writing to the disclosure of that information.

Prohibition of disclosure of information to identify the whistleblower.

(2) A Whistleblowing Reports Unit shall not communicate the contents of a disclosure to other departments within its designated authority, until it has duly investigated the disclosure and it has established that it is necessary or expedient in the public interest for further investigation to be carried out by the appropriate department or by the police, or any other body with investigative, prosecutorial or regulatory power in relation to any improper conduct which constitutes a criminal offence or the breach of a law.

(3) Notwithstanding any other law, a designated authority shall not be restricted in any manner in sharing information about its investigation with its Whistleblowing Reports Unit, for the Whistleblowing Reports Unit to determine whether it has any relevant information on the subject matter under investigation.

- (4) Guidelines may be issued by each designated authority setting out—
- (a) the duties of communication between the Whistleblowing Reports Unit and the whistleblower and the restrictions thereon; and
 - (b) the rules for disclosure to other departments of the designated authority or to other designated authorities.

20.—(1) A whistleblower who believes that detrimental action has been or is likely to be taken against him in breach of section 16, may apply to the Supreme Court for—

Civil remedies for detrimental action.

- (a) an order requiring the person who has taken the detrimental action to remedy that action;
- (b) an injunction; or
- (c) any other relief as the court deems fit.

(2) The Supreme Court, pending the final determination of an application under this section may—

- (a) make an interim order;
- (b) grant an interim injunction; or
- (c) grant any other relief as the court deems fit.

(3) If, in determining an application under sub-section (2), the Supreme Court is satisfied that a person has taken or intends to take detrimental action against a whistleblower in breach of section 16, the Supreme Court may—

- (a) order the person who took the detrimental action to remedy that action and determine the amount of damages due to the person who suffered the detrimental action;
- (b) grant an injunction in such terms as the Supreme Court considers appropriate; or
- (c) grant any other relief as the court deems fit.

(4) Any person who may have suffered detrimental action as a result of making a protected disclosure shall, without prejudice to any other right under any other law, have a right to compensation for any loss or damage sustained as a consequence of the detrimental action.

PART VI

Miscellaneous

Annual report.

21.—(1) The director of a Whistleblowing Reports Unit shall, not later than 31st March in each year, submit a report to the Minister on the activities of the Whistleblowing Reports Unit during the preceding year, so, however, that the report shall not disclose particulars of any disclosures filed with the Whistleblowing Reports Unit.

(2) The Minister shall lay a report submitted under sub-section (1) in the House of Representatives and the Senate not later than 31st May in each year.

Offences.

22.—(1) A person commits an offence if that person—

- (a) prevents, restrains or restricts any person from making an internal or external disclosure;

- (b) intimidates any person who intends to make an internal or external disclosure or who has made a protected disclosure;
 - (c) induces any person by threats, promises or otherwise to contravene this Act;
 - (d) being an employer, subjects any person to detrimental action as a consequence of the person making a protected disclosure; or
 - (e) purports to make a disclosure under this Act knowing that it contains a statement that is false or misleading, or reckless as to whether the statement is false or misleading.
- (2) A person who commits an offence under sub-section (1) is liable on—
- (a) summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years; or
 - (b) conviction on indictment to a fine of fifty thousand dollars and to imprisonment for ten years.

23.—(1) A person receiving, investigating or otherwise dealing with a disclosure under this Act shall regard and deal with as secret and confidential—

Obligation for secrecy and confidentiality.

- (a) the identity of the person making the disclosure and any disclosure made; and
- (b) any statement given, or document, information or thing provided, to the person, in the carrying out an investigation,

(2) Notwithstanding sub-section (1)(b), any statement given, or document, information or thing provided, in furtherance of an investigation or any legal or disciplinary proceedings, shall not be regarded as being inconsistent with the obligation for secrecy and confidentiality.

(3) A person who contravenes sub-section (1) commits an offence and is liable upon summary conviction to a fine of fifty thousand dollars and to imprisonment for two years.

24. A person who obstructs a whistleblowing reporting officer, a director of a Whistleblowing Reports Unit or any other officer of a Whistleblowing Reports Unit in the performance of his duties under this Act commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for two years.

Offence of obstructing whistleblowing reporting personnel.

Offence of destroying, falsifying or concealing documents.

25. A person who, knowing that a document or thing is relevant to a disclosure or the processing of a disclosure under this Act—

- (a) destroys, mutilates or alters the document or thing;
- (b) falsifies the document or makes a false document;
- (c) conceals the document or thing; or
- (d) directs, counsels or causes, in any manner, a person to do anything mentioned in paragraphs (a) to (c),

commits an offence and is liable on summary conviction to a fine of thirty thousand dollars and to imprisonment for five years.

Conflict between contract of service and the provisions of this Act.

26. Any provision in a contract of service or other agreement between an employer and an employee is void in so far as it—

- (a) purports to exclude or limit the operation of any provision of this Act, including an agreement to refrain from instituting or continuing any proceedings under this Act;
- (b) purports to preclude a person or has the effect of discouraging the employee from making a protected disclosure; or
- (c) prohibits or restricts the making of protected disclosures.

Regulations.

27.—(1) The Minister may make such regulations as may be necessary or expedient for the purpose of carrying into effect the provisions of this Act.

(2) Regulations made under sub-section (1) shall be subject to negative resolution.

(3) Regulations made under this section may provide that the contravention of any regulation constitutes an offence and may prescribe penalties for any offence not exceeding a fine of fifty thousand dollars and imprisonment for two years.

Amendment of Schedule.

28.—(1) The Minister may, by Order published in the *Gazette*, amend the Schedule.

(2) An Order made under sub-section (1) shall be subject to affirmative resolution.

Commencement.

29. This Act shall come into force on a date to be appointed by the Minister by Order published in the *Gazette*.

DRAFT

SCHEDULE
[section 2]

DESIGNATED AUTHORITIES

1. Office of the Auditor General
2. Belize Tax Service
3. Belize Bureau of Standards
4. Central Bank of Belize
5. Customs and Excise Department
6. Elections and Boundaries Department
7. Financial Intelligence Unit of Belize
8. Integrity Commission of Belize
9. Office of the Director of Public Prosecutions
10. Office of the Ombudsman
11. Belize Police Department
12. Attorney General's Ministry
13. Belize Business Bureau
14. Belize Chamber of Commerce and Industry