

## CAYMAN ISLANDS



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### **THE JUSTICE PROTECTION LAW, 2008**

**(LAW 16 OF 2008)**



**THE JUSTICE PROTECTION LAW, 2008**

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CAYMAN ISLANDS

Law 16 of 2008.

I Assent

Stuart Jack

Governor.

23<sup>rd</sup> November, 2008

**A LAW TO ESTABLISH A PROGRAMME TO GIVE PROTECTION TO  
WITNESSES AND CERTAIN OTHER PERSONS; AND FOR  
INCIDENTAL AND CONNECTED PURPOSES**

ENACTED by the Legislature of the Cayman Islands.

**PART I - PRELIMINARY**

1. (1) This Law may be cited as the Justice Protection Law, 2008.

Short title and  
commencement

(2) This Law shall come into force on such date as may be appointed by order made by the Governor.

2. In this Law -

Interpretation

“ancillary documents” means the documents referred to in section 13(4);

“approved authority” or “authority” means -

- (a) the Director;
- (b) the Centre;
- (c) the Commissioner of Police; or
- (d) any other person or body that the Governor may under section 28 designate as an approved authority for the purposes of this Law;

“associate” means a person who, by virtue of his relationship or association with a participant or prospective participant, may be considered for protection or assistance or both under the Justice Protection Programme;

“Board of Management” means the Criminal Justice System Board of Management created under the Agreement Establishing a Justice Protection Programme in respect of [*the relevant Territory*] and the scheduled territories;

(2006 Revision) “Commissioner of Police” or “Commissioner” means the Commissioner of Police appointed under the Police Law (2006 Revision);

“Crown Prosecutor” means a person holding public office in the Attorney-General’s Chambers and any other person, instructed by or on behalf of the Attorney-General to appear for the Attorney-General in any criminal cause or matter;

“designated territory” means a territory designated as such under section 20(a);

“Director” means the officer appointed as Director of the Centre under section 4(1)(a);

“Governor” means the Governor in Cabinet;

“Justice Protection Administrative Centre” or “Centre” means the unit established under section 3(2)(a);

“Justice Protection Investigative Agency” or “Investigative Agency” means the unit established under section 3(2)(b);

“Justice Protection Programme” or “Programme” means the Justice Protection Programme established under section 3(1);

“Justice Protection Protective Agency” or “Protective Agency” means the unit established under section 3(2)(c);

“Memorandum of Understanding” means a memorandum referred to in section 11(1) and includes any Protocol, addendum or document that supplements or is scheduled to any such memorandum;

Schedule 1 “participants” means persons specified in or designated pursuant to Schedule 1;

(2006 Revision) “Police Force” means the Royal Cayman Islands Police Force referred to in section 3 of the Police Law (2006 Revision);

“register” means the register of participants maintained by the Centre pursuant to section 13;

“risk assessment” means an evaluation of the risk or danger which a participant is likely to pose for the receiving community, having regard to the matters specified in paragraphs (b), (d) and (e) of the definition of “threat assessment” and any other factor considered relevant in a particular case;

“threat assessment” means an evaluation of the danger to a prospective participant based on, but not limited to, information on -

- (a) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence;
- (b) any criminal organisation interested in the relevant proceedings;
- (c) the nature of the threat to the prospective participant;
- (d) the names and other identifying data of all persons who are likely to pose a danger to the prospective participant;
- (e) where appropriate, the prospective participant’s association with persons referred to in paragraph (a) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph; and
- (f) the immediacy of the threat; and

“witness” means a person who has given, is obliged to give or has agreed to give a statement or evidence or both -

- (a) in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (b) to an approved authority in relation to a crime that has been committed or in respect of which there are reasonable grounds to believe has been committed or will be committed;
- (c) in any criminal proceedings; or
- (d) in any civil proceedings.

## **PART II - THE JUSTICE PROTECTION PROGRAMME**

3. (1) The Attorney-General shall establish a programme to be known as the Justice Protection Programme, for the purpose of providing to participants, subject to this Law, protection or assistance or both.

Establishment of Justice  
Protection Programme

(2) For the purposes of administering the Programme, the following units are established -

- (a) in the Portfolio of Legal Affairs, a Justice Protection Administrative Centre;
- (b) in the Police Force, a Justice Protection Investigative Agency; and
- (c) in the Police Force, a Justice Protection Protective Agency.

### **PART III - THE JUSTICE PROTECTION ADMINISTRATIVE CENTRE**

Constitution, functions  
and powers of Justice  
Protection  
Administrative Centre

4. (1) The Governor shall appoint the following persons as officers of the Justice Protection Administrative Centre -

- (a) a person holding public office in the Attorney-General's Chambers (who shall be appointed as the Director of the Centre); and
- (b) such other persons holding public office as the Attorney-General may consider necessary to provide services to the Centre.

Schedule 1

(2) Subject to this Law, the Centre shall develop, manage and administer the Programme and shall, subject to any designation under Schedule 1, be responsible for deciding whether a prospective participant is to be afforded protection or assistance or both under the Programme.

(3) In performing its functions under this Law, the Centre shall -

- (a) liaise with appropriate overseas authorities within designated territories;
- (b) liaise, where necessary, with appropriate overseas authorities other than those within designated territories;
- (c) subject to any designation under Schedule 1, determine the participants in the Programme;
- (d) determine after consultation with the Investigative Agency and the Attorney-General, the level and duration of protection or assistance for a prospective participant, based on the assessments referred to in subsection (4);
- (e) obtain such information as may be required to determine -
  - (i) the financial implications of admitting the prospective participant to the Programme; and
  - (ii) the actual or potential civil and criminal liability of the prospective participant;
- (f) require the prospective participant to conclude a Memorandum of Understanding with the Centre, detailing the terms and conditions of his participation in the Programme;
- (g) arrange for the provision of safe-houses only on the written recommendations of the Investigative Agency or the Protective Agency on the basis of threat assessments and risk assessments;

Schedule 1



- (h) develop guidelines for the effective operation of the Programme;
- (i) establish budgetary requirements of the Programme;
- (j) make payments in connection with the protection and assistance provided under this Law;
- (k) take cognisance of the high cost and complexity of providing adequate protection for participants; and
- (l) co-ordinate and relay to appropriate authorities in designated territories, relevant information on threat and risk assessments and other related matters.

(4) In the performance of its functions in accordance with subsection (3)(c), the Centre shall make a determination on the basis of written assessments received from -

- (a) a Crown Prosecutor;
- (b) the Investigative Agency; and
- (c) the Protective Agency;

but the Centre may, in a case of emergency, arrange for provisional entry into the Programme by a prospective participant prior to any such determination.

(5) The Centre shall, in deciding whether to include a prospective participant in the Programme, have regard to -

- (a) any criminal record of the prospective participant, particularly in respect of crimes of violence, and whether that record indicates a risk to the public if he is included in the Programme;
- (b) the results of any medical, psychological or psychiatric examination or evaluation of the prospective participant conducted to determine his suitability for inclusion in the Programme;
- (c) the seriousness of the offence to which any relevant evidence or statement relates;
- (d) the nature and importance of any relevant evidence or statement;
- (e) whether there are viable alternative methods of protecting or assisting the prospective participant;
- (f) the nature of the perceived danger to the prospective participant;
- (g) the nature of the prospective participant's relationship with other prospective participants being assessed for inclusion in the Programme;
- (h) the expected duration of the protection or assistance to be provided; and
- (i) any other matters that the Centre considers relevant.

(6) Action which may be taken by the Centre to facilitate the safety and security of participants may include the following -

- (a) providing any documents necessary -
  - (i) to establish a new identity for the participant; or
  - (ii) to protect the participant;
- (b) permitting a participant to use an assumed name in carrying out his duties in relation to the Programme and to carry documentation supporting the assumed name;
- (c) providing payments to or for the participant for the purpose of -
  - (i) meeting his reasonable living expenses including, where appropriate, living expenses of his family; and
  - (ii) providing, whether directly or indirectly, other reasonable financial assistance;
- (d) providing payments to the participant for the purpose of meeting costs associated with relocation;
- (e) providing assistance to the participant in obtaining employment, access to education and health care; and
- (f) providing other assistance to the participant with a view to ensuring that the participant becomes self-sustaining.

(7) The Centre shall exercise its functions under this or any other Law acting alone or through a person designated by the Centre to act on its behalf, and shall be deemed to act in an administrative capacity.

(8) Subject to this Law, the Centre has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other statute.

(9) The Governor may make rules governing the procedure of the Centre but, subject to any such rules and to subsection (1), the Centre shall have power to regulate its own procedure.

Crown Prosecutor to  
submit application

5. (1) In relation to any matter, a Crown Prosecutor shall, where he is satisfied that the circumstances so warrant, prepare and submit an application in the prescribed form to the Centre for a prospective applicant's entry into the Programme.

(2) An application referred to in subsection (1) shall be made after a Crown Prosecutor has -

- (a) in the case of a prospective participant who is likely to be a witness, formed the opinion that -
  - (i) the testimony of the prospective participant is credible and essential; and
  - (ii) the prospective participant can be relied upon to give the testimony; or

- (b) formed the opinion that a witness or his associate, is in need of protection or assistance or both.

(3) An application under this section shall be accompanied by detailed information on -

- (a) the significance of the case;
- (b) the prospective defendant; and
- (c) the testimony of the prospective participant.

6. The Centre may offer, in relation to a participant, protection or assistance or both under the Programme in respect of the offences set out in Schedule 2.

Cases to be considered  
for protection  
Schedule 2

7. (1) Notwithstanding section 4(4), the Centre shall not include a prospective participant in the Programme unless -

Disclosure of certain  
information to Centre

- (a) it is satisfied that the person has provided the Centre with the information required of him under subsection (2); and
- (b) it receives such other information as may be required in the case or under this Law.

(2) A prospective participant shall in relation to the following matters wherever arising disclose to the Centre -

- (a) details of all of his outstanding legal obligations;
- (b) details of all of his outstanding debts;
- (c) details of his criminal history;
- (d) details of any civil proceedings that have been instituted by or against him;
- (e) details of -
  - (i) any cash balances in bank accounts; and
  - (ii) property, real or personal, held by him in his own name or jointly or severally with any other person or persons as the case may be;
- (f) whether any of his property, real or personal, is liable to forfeiture or confiscation under any statute;
- (g) details of any activity in which he is involved that may yield him a monetary return;
- (h) details of receivables and all sources of income;
- (i) details of his general medical condition;
- (j) details of any dependants and related obligations;
- (k) details of any court order relating to sentences imposed on him or to which he is subject in relation to criminal prosecutions;
- (l) details of any relevant court orders or arrangements relating to his custody of, or access to, children; and
- (m) details of any arrangements that he has made for -
  - (i) the service of documents on him;

- (ii) representation in proceedings in any court;
- (iii) enforcement of judgments in his favour; or
- (iv) compliance with the enforcement of judgments against him.

(3) The Centre shall make such other inquiries and investigations as it considers necessary for the purpose of assessing whether the prospective participant should be included in the Programme.

Inclusion of prospective participant in Programme

8. The Centre shall not include a prospective participant in the Programme unless -

- (a) subject to section 5, he applies in the prescribed form to be included;
- (b) the Centre is satisfied that he understands the implications of being included in the programme; and
- (c) he understands and signs a Memorandum of Understanding in accordance with the provisions of this Law or if he is under eighteen years of age or otherwise lacks legal capacity to sign the Memorandum -
  - (i) it is signed by a parent or guardian; or
  - (ii) if there is no such parent or guardian, it is signed by a person appointed by the Grand Court to be his guardian.

#### **PART IV - THE JUSTICE PROTECTION INVESTIGATIVE AGENCY**

Constitution, functions and powers of Justice Protection Investigative Agency

9. (1) The Governor shall appoint the following persons as officers of the Justice Protection Investigative Agency -

- (a) the Commissioner; and
- (b) such other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Investigative Agency.

(2) In relation to the possible inclusion of a prospective participant in the Programme, the Investigative Agency -

- (a) shall conduct investigations and submit to the Centre, the application referred to in section 8(a) which shall be accompanied by the following documents prepared by the Investigative Agency -
  - (i) an assessment of that application;
  - (ii) a threat assessment including a prison report where the prospective participant is in prison; and
  - (iii) a risk assessment;
- (b) shall provide protection for the prospective participant in the period prior to the determination referred to in section 4(4); and

- (c) may, in a case of an emergency, apply to the Centre for provisional entry into the Programme by the prospective participant prior to the determination referred to in paragraph (b).

(3) The Investigative Agency shall exercise its functions under this or any other Law acting alone or through a person designated by the Investigative Agency to act on its behalf, and shall be deemed to act in an administrative capacity.

(4) Subject to this Law, the Investigative Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other Law.

(5) The Governor may make rules governing the procedure of the Investigative Agency but, subject to any such rules and to subsection (1), the Investigative Agency shall have power to regulate its own procedure.

## **PART V - THE JUSTICE PROTECTION PROTECTIVE AGENCY**

10. (1) The Governor shall appoint the following persons as officers of the Justice Protection Protective Agency -

Constitution, functions  
and powers of Justice  
Protection Protective  
Agency

- (a) the Commissioner; and
- (b) such other persons holding office in the Police Force as the Commissioner may consider necessary to provide services to the Protective Agency.

(2) For the purposes of this Law, the Protective Agency shall -

- (a) prepare and submit a report to the Centre on the suitability of a prospective participant for entry into the Programme and for that purpose -
  - (i) shall interview a prospective participant with a view to establishing his suitability for entry into the Programme;
  - (ii) shall examine the threat assessments and risk assessments submitted to the Centre pursuant to section 9(2)(a); and
  - (iii) may require a prospective participant or a participant, as the case may be, to undergo, for the purpose of determining his physical and mental health, medical tests or examinations and psychological or psychiatric evaluations and to authorise the results to be made available to the Protective Agency;
- (b) protect participants and persons accorded provisional entry pursuant to section 9(2)(c);
- (c) relocate participants where necessary; and

- (d) carry out periodic reviews of threat assessments and risk assessments.

(3) The Protective Agency shall exercise its functions under this or any other Law acting alone or through a person designated by the Protective Agency to act on its behalf, and shall be deemed to act in an administrative capacity.

(4) Subject to this Law, the Protective Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions under this or any other Law.

(5) The Governor may make rules governing the procedure of the Protective Agency but, subject to any such rules and to subsection (1), the Protective Agency shall have power to regulate its own procedure.

#### **PART VI - MEMORANDUM OF UNDERSTANDING**

Memorandum of  
Understanding  
Schedule 3

11. (1) The Centre shall, subject to the approval of the Solicitor General, prepare a Memorandum of Understanding which shall, subject to subsection (2), contain the matters set out in Schedule 3.

(2) The Centre may, where it considers necessary in a particular case, include any other matter in the Memorandum of Understanding.

(3) The Memorandum of Understanding shall be signed -

- (a) by the prospective participant; or
- (b) where the circumstances so require, by the person referred to in section 8(c), in the presence of two witnesses, one of whom may be the participant's attorney-at-law.

(4) A prospective participant is included in the Programme when the Memorandum of Understanding is counter-signed by the person authorised by the Attorney-General for the purpose.

(5) The Centre may, after consultation with the Attorney-General vary the Memorandum of Understanding -

- (a) with the consent of the participant; or
- (b) upon application by the participant for a variation.

(6) The variation referred to in subsection (5) shall take effect on the day on which the participant receives written notice thereof.

(7) Where a participant remains in the Programme upon attaining the age of eighteen years, the Centre shall require him to sign a Memorandum of Understanding on his own behalf upon his attaining that age.

## **PART VII – MEMORANDUM OF AGREEMENT**

12. (1) The Memorandum of Agreement set out in Schedule 4 which has been executed between the Cayman Islands and the designated territories shall form the basis of cooperation between the Cayman Islands and the designated territories in relation to the objectives outlined in the Agreement and shall have the force of law in the Cayman Islands.

Memorandum of  
Agreement  
Schedule 4

(2) Notwithstanding subsection (1), where in any exceptional circumstance it is considered expedient for the Cayman Islands to enter into a memorandum of agreement or any other scheme of arrangement with a country or territory that is not a designated territory, for the purposes of -

- (a) receiving assistance from or rendering assistance to that country or territory in relation to the relocation of a participant;
- (b) establishing a system of cooperation for the treatment and security of a participant of the Cayman Islands; or
- (c) exchanging such information as may be necessary for the administration of justice in the Cayman Islands as it relates to any specified witness,

then the Cayman Islands may enter into such an agreement or scheme of arrangement and section 29(2) shall apply accordingly.

(3) Any memorandum of agreement or other scheme of arrangement entered into pursuant to subsection (2) shall have the force of law and the provisions of this Law shall apply in the implementation of such agreement or other arrangement with such modification as may, by an order of the Governor published in the Gazette, be considered necessary.

(4) Where the Cayman Islands enters into any memorandum of agreement or other scheme of arrangement pursuant to subsection (2), the Director shall, within thirty days of the agreement or arrangement, notify in writing the Board established under the Memorandum of Agreement set out in Schedule 4.

Schedule 4

## **PART VIII- REGISTER OF PARTICIPANTS**

13. (1) The Centre shall maintain a register of participants which shall be accorded a security classification not below “Top Secret”.

Register of participants

(2) The register may be maintained by electronic means.

(3) The Centre shall include in the register, the following details in respect of each participant -

- (a) the participant's name and assumed names, if any;
- (b) the participant's new name where he has been provided with a new identity under the Programme;
- (c) the participant's address;
- (d) details of any offences for which the participant has been convicted;
- (e) the dates on which the participant entered and left the Programme;
- (f) the matter giving rise to the participant's entry into the Programme; and
- (g) details of any approval or refusal pursuant to section 16(1).

(4) The Centre shall keep the following ancillary documents along with the register -

- (a) the original of each Memorandum of Understanding;
- (b) in respect of new identities, copies of each new document issued under the Programme;
- (c) the original of each approval granted by the Centre pursuant to section 16(1);
- (d) any documents returned to the Centre pursuant to section 18(5); and
- (e) such other documents as the Director may direct to be kept.

Access to register

14. (1) Subject to this section, the Centre shall be the only approved authority that shall have access to the register and to the ancillary documents.

(2) The Centre may, if it is of the opinion that it is in the interest of the due administration of justice to do so, allow another approved authority to have access to the register and the ancillary documents.

(3) Where the Centre allows an approved authority access to the register and the ancillary documents, the Centre shall notify the other approved authorities of -

- (a) the identity of the authority to whom the access was allowed;
- (b) the information to which the authority was allowed access;
- (c) the reasons for allowing access; and
- (d) the date and time of such access.



**PART IX - PROTECTION UNDER THE JUSTICE PROTECTION  
PROGRAMME**

15. (1) Where a participant is entitled to exercise a right, is under an obligation or is subject to any restriction, the appropriate approved authority shall take such steps as are reasonably practicable to ensure that - Rights and obligations

- (a) the right or obligation is dealt with according to law; and
- (b) the participant complies with the restriction.

(2) The steps referred to in subsection (1) may include -

- (a) providing protection for the participant while the participant is attending court; and
- (b) notifying a party or possible party to legal proceedings, that the authority shall accept process issued by a court or tribunal on behalf of the participant, and nominating one of its officers for the purpose.

(3) Where the authority is satisfied that a participant who has been provided with a new identity under the Programme is using the new identity to -

- (a) avoid obligations that were incurred before the new identity was established; or
- (b) avoid complying with restrictions that were imposed on the participant before the new identity was established,

the authority shall give notice in writing to the participant stating that unless he satisfies the authority that the obligations are dealt with according to law or the restriction is complied with, the authority shall take such action as it considers necessary to ensure performance of the obligations or compliance with the restrictions.

(4) The action referred to in subsection (3) may include informing a person who is seeking to enforce rights against the participant, of the details of any property, real or personal, owned by the participant under his former identity.

16. (1) A participant who has been provided with a new identity under the Programme shall not identify or disclose his former identity unless he has obtained the prior written approval of the Centre.

Non-disclosure of  
former identity

(2) Notwithstanding subsection (1) and any other law, the participant shall in any proceedings, be entitled to claim that his new identity is his only identity.

(3) In this section, “participant” includes a person who is no longer participating in the Programme but retains his new identity.

Cessation of protection  
and assistance

17. (1) Protection or assistance provided under the Programme to a participant -

- (a) shall be terminated by the Centre if the participant requests in writing that it be terminated; or
- (b) may be terminated by the Centre if -
  - (i) the participant deliberately breaches a term of the Memorandum of Understanding;
  - (ii) the Centre discovers that the participant had knowingly given information to the Centre that was false or misleading in a material particular;
  - (iii) the participant's conduct is, in the opinion of the Centre, likely to compromise the integrity of the Programme;
  - (iv) the circumstances that gave rise to the need for protection or assistance for the participant cease to exist;
  - (v) the participant deliberately breaches an undertaking, including an undertaking to give evidence, in relation to a matter, material to the Programme;
  - (vi) the participant refuses or fails to sign a new Memorandum of Understanding when required to do so under section 11(7); or
  - (vii) there is, in the opinion of the Centre, no reasonable justification for the participant to remain in the Programme.

(2) Where the Centre decides under subsection (1)(b) to terminate protection or assistance or both under the Programme, the Centre shall -

- (a) take reasonable steps to notify the participant of the decision; and
- (b) notify the other approved authorities of the decision.

(3) A participant who receives such a notification may, within twenty-eight days after receiving the notice, apply in writing to the Attorney-General for a review of the decision of the Centre.

(4) Where a participant applies for a review of the decision of the Centre, the Attorney-General shall -

- (a) allow the participant a reasonable opportunity to state his case; and
- (b) review the decision of the Centre and -
  - (i) confirm or reverse it; or
  - (ii) vary it with the consent of the participant,

and inform the participant in writing of the decision; and the decision of the Attorney-General shall be final.

(5) A decision of the Centre pursuant to subsection (1)(b) to terminate protection or assistance or both shall be effected as follows -

- (a) where the participant's whereabouts are unknown and the Centre has taken reasonable steps to notify the participant of the decision but has been unable to do so or where, in the opinion of the Attorney-General, the participant is avoiding notification, the protection shall be terminated at the end of the period of twenty-eight days after those steps were commenced;
- (b) where the participant does not apply for a review of the decision in accordance with subsection (3), termination shall take effect at the end of the period of twenty-eight days after the participant receives the notification; or
- (c) if the participant applies for a review of the decision in accordance with subsection (3) and the Attorney-General notifies the participant that the decision of the Centre is confirmed, termination shall take effect from the date of receipt of the notification.

18. (1) Where a participant has been provided with a new identity under the Programme and protection or assistance to the participant is terminated, the Centre may, if it considers it appropriate to do so, take such action as is necessary to restore the former participant's former identity.

Restoration of former  
identity

(2) The Centre shall take reasonable steps to notify the former participant of its decision under subsection (1).

(3) Where the Centre decides to take action to restore the identity of the former participant, he may, within twenty-eight days after receiving the notification, apply in writing to the Attorney-General for a review of the decision of the Centre.

(4) Where an application is made, the Attorney-General shall -

- (a) before making a decision, give the former participant a reasonable opportunity to state his case; and
- (b) review the decision of the Centre and vary, confirm or reverse it, and inform the former participant, in writing, of the decision;

and the decision of the Attorney-General shall be final.

(5) Where the Centre takes action under this section to restore the identity of the former participant and the Centre requests the return of all documents that were provided in relation to the new identity, he shall return those documents to the Centre within seven days after receiving the request.

Provision of information to an approved authority

19. Where another approved authority notifies the Centre that a participant who has been provided with a new identity or has been relocated, is under investigation for, or has been arrested or charged with an offence, the maximum penalty for which is or includes imprisonment for a period of more than one year, the Centre may -

- (a) provide the appropriate approved authority with -
  - (i) the participant's new identity;
  - (ii) the participant's criminal record and fingerprints; and
  - (iii) such other information relating to the Programme as the Centre considers appropriate in the circumstances; and
- (b) cause the participant to appear before the appropriate authority.

## **PART X - EXTERNAL ENFORCEMENT OF JUSTICE PROTECTION PROGRAMME**

External enforcement of Programme

20. Without prejudice to any agreement or arrangement entered into pursuant to section 12(2), the Governor may, by order -

Schedule 5

- (a) designate any territory specified in Schedule 5 as a territory to which this Law applies for the purposes of the relocation of participants under the Programme;
- (b) specify appropriate overseas authorities within designated territories that are to give effect to the provisions of this Law in relation to the relocation of participants under the Programme to designated territories; and
- (c) specify, in respect of designated territories, the steps that need to be taken there for the purposes of the relocation of participants under the Programme to designated territories.

## **PART XI - MISCELLANEOUS**

Officers protected from suit in respect of decisions made under this Law

21. Officers of the Centre, the Investigative Agency or the Protective Agency performing functions in relation to the Programme, shall not be liable to any action, suit or other proceedings in respect of an act done or omitted to be done in good faith in the exercise or purported exercise of a power conferred by this Law.

Offences

22. (1) A person who, without lawful authority, discloses information -

- (a) about the identity or location of a person who is or has been a participant; or
- (b) that compromises the safety or security of a participant or the integrity of the Programme,

commits an offence.

(2) A person who is or has been a participant or a person who has undergone assessment for inclusion in the Programme and without being authorised by the Centre, discloses -

- (a) the fact of such participation or assessment;
- (b) information as to the way in which the Programme operates;
- (c) information about any officer of the Centre who is or has been involved in the Programme;
- (d) the fact that he has signed a Memorandum of Understanding; or
- (e) any details of a Memorandum of Understanding that he has signed,

commits an offence.

(3) A person who -

- (a) offers any bribe, gratification or other inducement to any person employed in the administration of this Law, for the purpose of obtaining information which could prejudice the safety or security of a participant or the integrity of the Programme; or
- (b) being a person employed in the administration of this Law, accepts any bribe, gratification or other inducement in exchange for the information referred to in paragraph (a),

commits an offence.

(4) A person who commits an offence under subsection (1), (2) or (3) is liable -

- (a) on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of ten years, or to both; and
- (b) on conviction on indictment, to a fine of thirty thousand dollars or to imprisonment for a term of fifteen years, or to both.

(5) A person who, without reasonable excuse, fails to return the documents referred to in section 18(5) in accordance with that section, commits an offence and is liable -

- (a) on summary conviction to a fine of ten thousand dollars or to imprisonment for a term of three years, or to both; and
- (b) on conviction on indictment, to a fine of twenty thousand dollars or to imprisonment for a term of six years, or to both.

23. (1) Subject to subsection (2), no officer of the Centre, the Investigative Agency or the Protective Agency shall be required to -

Officers not required to disclose information

- (a) produce in any court or to another approved authority, any document that has come into the custody or control of the Centre,

the Investigative Agency or the Protective Agency in the course of, or because of, the performance of functions or duties under this Law; or

- (b) divulge, communicate or produce to or before such a body, any matter or thing that has come to the notice of the officer in the performance of functions or duties under this Law,

except where -

- (i) it is necessary to do so for the purpose of carrying the provisions of this Law into effect; or
- (ii) a court, on an application, considers that it is necessary to do so in the interest of justice and that such production or disclosure is not likely to adversely affect the intent and purposes of this Law.

(2) Where a court makes an order under subsection (1) for production or disclosure, the Attorney-General or a person aggrieved by the order may -

- (a) upon the making of the order, give oral notice; or
- (b) within seven days of the making of the order, give written notice,

of his intention to appeal against the order.

(3) Where notice is given under subsection (2), the court shall stay the execution of the order pending the outcome of the appeal.

(4) Where, in the determination of legal proceedings it becomes necessary for the judge or magistrate presiding to be advised of a person's participation in the Programme, the Attorney-General may issue a certificate in the form set out in Schedule 6.

Schedule 6

(5) A certificate issued under subsection (4) shall be conclusive evidence that the person named therein is a participant in the Programme for any of the purposes of the legal proceedings and the judge or magistrate shall not disclose the fact of that person's participation in the Programme otherwise than in accordance with this Law.

Requirement where participant becomes a witness in criminal proceedings

24. (1) Where -

- (a) a person is provided with a new identity under the Programme;
- (b) the person retains that identity, whether or not he remains a participant; and
- (c) the person is to appear as a witness in criminal proceedings under that identity,

the person shall notify the Centre that he is to appear as a witness in such proceedings.

(2) After being notified under subsection (1), the Centre may take any action it considers appropriate in the circumstances, except that where the person has a criminal record, the Centre shall disclose that criminal record to the court, the prosecutor and the accused person or the accused person's attorney-at-law.

25. If in any proceedings in any court, the new identity of a person who is a participant is in issue or may be disclosed, the court shall, unless it considers that the interests of justice require otherwise –

Identity of participant  
not to be disclosed

- (a) hold that part of the proceedings that relate to the identity of the participant in camera; and
- (b) make such order restricting the publication of evidence given before the court as in its opinion will ensure that the identity of the participant is not disclosed.

26. (1) Subject to subsection (2), the Centre shall submit to the Board of Management, annual reports on the general operation, performance and effectiveness of the Programme.

Annual reports

(2) A report under subsection (1) shall not contain any matter which in the opinion of the Centre, is likely to prejudice the effectiveness or security of the Programme.

27. (1) The Governor may make regulations prescribing all matters which are required or permitted to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the provisions of this Law.

Regulations

(2) Without prejudice to the generality of subsection (1), the Governor may make regulations -

- (a) respecting the establishment of identities of participants and any matters relating thereto;
- (b) adopting such measures as are necessary and reasonable to secure the safety, health and welfare of participants;
- (c) facilitating the relocation of participants within the Cayman Islands and to and from a designated territory pursuant to the Memorandum of Understanding set out in Schedule 6 or any other agreement or scheme of arrangement entered into pursuant to section 12(2);
- (d) providing for access by participants to their attorneys-at-law and vice versa; and

Schedule 6

- (e) establishing a mechanism for the monitoring and reviewing of the Programme.
- (3) Regulations made under this section are subject to negative resolution.
- Designation of approved authorities 28. The Governor may by order designate such person or body as the Governor sees fit as an approved authority for the purposes of this Law.
- Amendment of Schedules 29. (1) The Governor may by order amend Schedule 1, 2, 3 or 6 to this Law.
- (2) Notwithstanding section 20 and the definition of “designated territory” in section 2, the Governor may by order amend Schedule 5 to include any other territory or country and any reference in this Law to a designated territory shall be construed as a reference to that other territory or country.
- Savings 30. Any Memoranda of Understanding or any arrangements with any persons in relation to protection or assistance that existed at the date of commencement of this Law, shall continue in force on the same terms and conditions until they are replaced by Memoranda of Understanding under this Law.

## **SCHEDULE 1**

(Section 2)

### **PROSPECTIVE PARTICIPANTS IN THE JUSTICE PROTECTION PROGRAMME**

Witnesses and their associates

Any person designated in writing by the Attorney-General

## **SCHEDULE 2**

(Section 6)

### **OFFENCES WHICH MAY GIVE RISE TO PROTECTION UNDER THE JUSTICE PROTECTION PROGRAMME**

Criminal damage and related offences

Drug offences

Firearms and ammunition offences

Hijacking



Money laundering offences

Offences against property

Offences against the administration of justice

Offences against the Crown and offences against public order

Offences against the person

Offences involving domestic violence

Piracy

Sexual offences

Terrorism and related offences

### **SCHEDULE 3**

(Section 11)

#### **CONTENTS OF MEMORANDUM OF UNDERSTANDING**

The basis on which a prospective participant is to be included in the Programme.

The details of the protection or assistance that is to be provided.

The terms and conditions upon which protection or assistance shall be provided to the prospective participant.

An undertaking that the participant will not compromise, directly or indirectly, the security of, or any other aspect of, the protection or assistance, or both, being provided.

An undertaking that the participant will comply with all reasonable directions of the Centre in relation to the protection or assistance, or both, provided to him.

An undertaking that the prospective participant or participant, as the case may be, shall, if required to do so by the Centre -

- (a) undergo medical tests or examinations and psychological or psychiatric evaluations by medical officers approved by the Centre for those purposes; and
- (b) undergo drug or alcohol counselling or treatment,

and authorise that the results be made available to the Centre.

A list of all outstanding legal obligations and a statement by the prospective participant, of the arrangements which have been made to meet those obligations.

A financial support arrangement.

An undertaking by the prospective participant to disclose to the Centre, details of any criminal charges that are made against him, and any civil or bankruptcy proceedings that are instituted against him after his inclusion in the Programme.

A provision to the effect that protection or assistance under the Programme may be terminated if the participant breaches a term of the Memorandum of Understanding.

#### SCHEDULE 4

(Section 12(1))

### MEMORANDUM OF AGREEMENT ESTABLISHING A JUSTICE PROTECTION PROGRAMME

The Governments of Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat and Turks and Caicos Islands (hereinafter referred to as “the Contracting Parties”):

**Recognising** the need to uphold the integrity of the justice system of the Contracting Parties and the need to prevent any interference in the administration of justice by the intimidation or elimination of witnesses, jurors, judicial and legal officers, and law-enforcement personnel and their associates;

**Convinced** that a co-operative approach by the Contracting Parties is the most effective way to confront and overcome the threat;

**Conscious** of the need to establish, develop and maintain an appropriate and effective infrastructure in order to safeguard and enhance the credibility and integrity of the justice system in the Contracting Parties;

**Affirming** the importance of the principles of cooperation, mutual respect, and friendly relations;

**Have agreed** as follows:

## **Article 1**

### **Definition of Terms**

In this Agreement, unless the context otherwise requires:

"approved authority" means the Attorney-General, the Director of Public Prosecutions, the Commissioner of Police or the Office with responsibility for criminal prosecutions, or such other person or body as may from time to time be designated as an approved authority by a Contracting Party;

"associate" means a person who, by virtue of his relationship or association with a participant may be considered for protection or assistance under this Agreement;

"Board" means the Criminal Justice System Board of Management established under Article 5;

"Justice Protection Administrative Centre" means the Department or Unit of Government charged with responsibility for developing, managing and administering the Justice Protection Programme in a Contracting Party;

"Justice Protection Programme" or "Programme" means the programme established by the Contracting Parties to provide protection and/or assistance to participants;

"participants" means witnesses, jurors, judicial and legal officers, law enforcement personnel, their associates and any other persons to whom assistance and/or protection is given in accordance with this Agreement and 'participant' shall have a corresponding meaning;

"risk assessment" means an evaluation of the risk or danger which a participant is likely to pose for the receiving Contracting Party, having regard to the matters specified in the definition of "threat assessment" and such other factors as are considered relevant in any particular case;

"threat assessment" means an evaluation of the danger to a prospective participant, and includes information on -

- (a) persons who are the subject of judicial or administrative proceedings concerning the case in relation to which the prospective participant has given evidence or is required to give evidence;
- (b) any criminal organisation interested in the relevant proceedings;
  - (i) the nature of the threat to the prospective participant;

- (ii) the names and other identifying data of all individuals who are likely to pose a danger to the prospective participants;
- (iii) where appropriate, the prospective participant's association with the persons referred to in paragraph (ii) or his involvement in the illegal activity giving rise to the proceedings referred to in that paragraph;
- (iv) the immediacy of the threat;

"witness" means a person who has given, is obliged to give or has agreed to give a statement or evidence or both -

- (a) in relation to a crime which has been committed against the laws of a Contracting Party or which there are reasonable grounds to believe will be committed;
- (b) in any criminal proceedings in a Contracting Party;
- (c) in any civil proceedings in a Contracting Party;
- (d) to an approved authority in relation to a crime that has been committed or which there are reasonable grounds to believe will be committed.

## **Article 2**

### **Establishment of the Justice Protection Programme**

There is hereby established a Justice Protection Programme having the structure, composition, powers and functions set out in this Agreement.

## **Article 3**

### **Participation in the Programme**

1. Participation in the Programme shall be open to the Contracting Parties.
2. Any other country or territory which, in the opinion of the Board, is willing and able to enjoy the rights and assume the obligations established by this Agreement may be approved and admitted by the Board as a Contracting Party to this Agreement.

## **Article 4**

### **Objectives of the Programme**

The objectives of the Programme shall be to promote and ensure the proper administration of justice by providing participants with such protection, assistance and security as would enable them to perform their functions with efficiency and confidence when there is a threat to their lives, safety, or property arising from, or directly or indirectly related to the performance of their duties or obligations in the administration of justice.

## **Article 5**

### **Establishment of the Criminal Justice System Board of Management**

1. There is hereby established a Criminal Justice System Board of Management.
2. The Board shall comprise -
  - (a) a Chairman, who shall be a Governor appointed by the collective body of Governors of the Contracting Parties on an annual rotating basis;
  - (b) the Heads of Elected Government of each Contracting Party;
  - (c) the Attorney General of each Contracting Party;
  - (d) a Commissioner of Police, who shall be appointed by the collective body of the Commissioners of Police of the Contracting Parties on an annual rotating basis;
  - (e) a Director or Superintendent of Prisons, who shall be appointed by the collective body of Prison Directors and/or Superintendents of the Contracting Parties on an annual rotating basis.
3. The Board shall be convened in an ordinary meeting at least once in every year and in extraordinary meetings as often as the Board determines.
4. Ordinary and extraordinary meetings of the Board shall be convened in a Contracting Party or at such other venue as the Board may determine.
5. The Board shall regulate its procedure.
6. For the purpose of conducting its business as provided in this Agreement, the Board may appoint a coordinator who shall perform such duties as may be determined by the Board.

## **Article 6**

### **Functions of the Board**

1. In order to achieve the objectives set out in Article 4, the Board may carry out the following functions:
  - (a) upon request, advise a Contracting Party on the establishment, development, management and administration of a Justice Protection Programme;
  - (b) identify and mobilise required resources for the establishment, development and operation of Justice Protection Programmes in the Contracting Parties;

- (c) approve agreements and working arrangements for the provision of resources for the efficient operation of the Justice Protection Programmes;
  - (d) develop policies and guidelines for consideration and adoption by Contracting Parties;
  - (e) such other functions consistent with this Agreement as the Board may determine from time to time.
2. In the execution of its functions, the Board may invite any person, other than a member of the Board, to provide such advice and perform such duties on behalf of the Board as the Board may determine.

#### **Article 7**

##### **Establishment of Justice Protection Programmes**

1. Each Contracting Party shall establish, develop, manage and administer a Justice Protection Programme designed to facilitate the achievement of the objectives set out in Article 4.
2. Each Contracting Party shall ensure that its Justice Protection Programme includes the following components:
- (a) an Investigative Agency;
  - (b) an Agency providing protection and/or assistance to participants;
  - (c) an Administrative Centre.
3. Each Contracting Party shall ensure that, having regard to its laws, each component is so structured and composed as to be able to discharge its functions under this Agreement.
4. Without prejudice to the generality of paragraph 1, Programmes shall provide for the training of personnel in the following areas:
- (a) safe-house establishment and operational procedures;
  - (b) advanced investigative methods and techniques;
  - (c) the preparation of threat and risk assessments;
  - (d) evaluation, including psychological and psychiatric evaluations, of the suitability of participants for entry into protection programmes;
  - (e) management of participants in protective custody;
  - (f) personal security of participants.
5. Each Contracting Party shall establish a mechanism for the review and monitoring of its Programme.

## **Article 8**

### **Functions of the Investigative Agency**

The Investigative Agency shall -

- (a) carry out investigations in relation to an application by a prospective participant for protection and/or assistance;
- (b) prepare and submit to the Administrative Centre, the application which shall be accompanied by -
  - (i) an assessment of the application;
  - (ii) a threat assessment including a prison report where the prospective participant is in prison;
  - (iii) a risk assessment;
- (c) provide protection for prospective participants in the period prior to the approval for entry into the Programme by the Administrative Centre;
- (d) request emergency protection under the Programme prior to approval of the application by the Administrative Centre.

## **Article 9**

### **Applications by the Attorney General and Director of Public Prosecutions**

The Attorney General or Director of Public Prosecutions, as the case may be, shall, where appropriate, prepare and submit applications for protection and/or assistance to the Administrative Centre, and with respect to witnesses shall -

- (a) satisfy himself as to the credibility of the prospective participant;
- (b) evaluate the nature of the evidence given or to be given;
- (c) certify that the related testimony is essential;
- (d) determine when a participant in the Programme is no longer necessary for the prosecution of the case.

## **Article 10**

### **Functions of the Agency Providing Protection**

The Agency providing protection and assistance shall -

- (a) conduct interviews with prospective participants to establish their suitability for entry into the Programme;
- (b) examine the threat and risk assessments submitted by the Investigative Agency;
- (c) require a prospective participant or a participant, as the case may be, to undergo such medical tests and examinations and psychological and psychiatric evaluations as would determine his physical and mental health;
- (d) submit a report to the Administrative Centre on the matters mentioned in paragraphs (a), (b) and (c);

- (e) protect participants approved by the Administrative Centre and those accorded provisional entry into the Programme on an emergency basis;
- (f) organise relocation, if necessary, of participants approved pursuant to paragraph (e);
- (g) review threat and risk assessments throughout the relevant proceedings, including any appeal process and, where appropriate, after such proceedings.

#### **Article 11**

##### **Functions of the Administrative Centre**

1. The Administrative Centre shall be responsible for developing, managing and administering the Programme.
2. In general, protection shall be on a short-term basis, that is, until the relevant proceedings are concluded. Long-term or post-trial protection or assistance shall be dealt with on a case by case basis.
3. In discharging its responsibility, the Centre shall -
  - (a) make a determination as to the persons who will participate in the Programme on the basis of the submissions from -
    - (i) the Investigative Agency;
    - (ii) the Attorney General or Director of Public Prosecutions, as the case may be; and
    - (iii) the Agency providing protection;
  - (b) on the basis of the threat and risk assessments, determine the level and duration of protection or assistance for the prospective participant, taking into account the need to protect associates;
  - (c) require the prospective participant to furnish such information as may indicate -
    - (i) the financial implications of admitting the prospective participant to the Programme; and
    - (ii) the actual or potential civil and/or criminal liability of the prospective participant;
  - (d) require the prospective participant to conclude an agreement with the Administrative Centre detailing the terms and conditions for participation in the Programme and for terminating that agreement;
  - (e) where necessary, facilitate the relocation of participants and the establishment of safe houses;
  - (f) liaise with Administrative Centres of other Contracting Parties;



- (g) co-ordinate and relay to approved authorities in Contracting Parties relevant information on threat and risk assessments and other related matters;
- (h) develop guidelines for the effective operation of the Programme;
- (i) establish budgetary requirements and approve and make payments for the subsistence and other allowances of participants;
- (j) take cognisance of the high cost and complexity of providing adequate security for participants and ensure strict compliance with the requirements of Articles 8, 9 and 10;
- (k) undertake such other responsibilities as may facilitate the functioning of the Centre.

4. The Administrative Centre shall prepare and submit annual reports to the Board and make recommendations on policy for the consideration of the Board.

## **Article 12**

### **Scope of Protection under Programmes**

1. Contracting Parties shall take such measures as are necessary and reasonable to protect the safety, health and welfare of participants in their Programmes.

2. Such measures may include where necessary -

- (a) providing accommodation;
- (b) defraying relocation expenses;
- (c) providing living expenses;
- (d) establishing new identities;
- (e) providing assistance in rehabilitation.

## **Article 13**

### **Register of Participants**

1. Contracting Parties shall establish and maintain a register of participants in their Programmes. The register may be in electronic form and shall include the following information which shall be accorded a security classification not below "TOP SECRET" -

- (a) the names and addresses of participants;
- (b) assumed names, if any;
- (c) new identities, where appropriate;
- (d) details of convictions, if any;
- (e) case references;
- (f) date of commencement of participation in the Programme and date of termination.

2. Contracting Parties shall determine the conditions under which access to the register may be accorded to an approved authority.
3. The register shall be kept at the Administrative Centre, which shall be responsible for its safe custody.

#### **Article 14**

##### **Relocation of Participants**

1. Contracting Parties shall co-operate with the Board and each other in the relocation of participants under their Programmes.
2. A determination to relocate a participant in a jurisdiction other than the jurisdiction in which the participant ordinarily resides shall be made by the Administrative Centres of the sending Contracting Party and the receiving Contracting Party.
3. Prior to the relocation of a participant in a different jurisdiction, the sending Contracting Party and the receiving Contracting Party shall establish an arrangement determining the rights and obligations of the respective Contracting Parties and the participants being relocated.

#### **Article 15**

##### **Legislative and Other Measures**

Contracting Parties undertake to adopt such legislative and other measures as are necessary to discharge their obligations under this Agreement to, inter alia -

- (a) facilitate in their jurisdictions, the incarceration of persons who are participants and have been convicted of offences against the laws of the sending Contracting Party;
- (b) provide protective custody for participants in their Programmes;
- (c) protect identities;
- (d) establish offences and penalties for -
  - (i) unauthorised disclosure of information, corruption and unethical practices;
  - (ii) unlawfully interfering with a participant; and
- (e) provide for immunity from suit of the representatives of the Contracting Parties involved in the administration of their Programmes resulting from acts or omissions committed in good faith which cause injury to participants.

**Article 16**

**Signature**

This Agreement shall be open for signature by the Contracting Parties.

**Article 17**

**Entry Into Force**

This Agreement shall enter into force upon signature and shall be binding as between the signatory Contracting Parties.

**Article 18**

**Amendments**

This Agreement may be amended by the Contracting Parties who are signatories to the Agreement. Such amendments shall enter into force one month after their execution and shall be binding as between the signatory Contracting Parties.

**Article 19**

**Notification**

Contracting Parties shall notify the Board of the addresses of their Administrative Centres, and their approved authorities.

**Article 20**

**Withdrawal**

1. A Contracting Party shall not withdraw from this Agreement until two years after its entry into force in respect of that Contracting Party.
2. A Contracting Party wishing to withdraw from this Agreement shall give twelve months' notice to the Board. A notice of withdrawal shall not affect the Contracting Party's obligations assumed under this Agreement prior to the effective date of its withdrawal.

**IN WITNESS WHEREOF** the undersigned duly authorised in that behalf by their respective Governments have executed this Agreement.

**DONE** at \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

**Signed by**

for the Government of Anguilla on the \_\_\_\_\_ day of \_\_\_\_\_, 2008 at \_\_\_\_\_ ;

**Signed by**

for the Government of Bermuda on the      day of      , 2008 at      ;

**Signed by**

for the Government of the British Virgin Islands on the      day of      ,  
2008 at      ;

**Signed by**

for the Government of the Cayman Islands on the      day of      , 2008  
at      ;

**Signed by**

for the Government of Montserrat on the      day of      , 2008 at      ;

**Signed by**

for the Government of the Turks and Caicos Islands on the      day of      ,  
2008 at      .

**SCHEDULE 5**

(Section 20(a))

**TERRITORIES THAT MAY PARTICIPATE IN THE JUSTICE  
PROTECTION PROGRAMME**

Anguilla

Bermuda

British Virgin Islands

Cayman Islands

Montserrat

Turks and Caicos Islands

**SCHEDULE 6**

(Section 23)

**JUSTICE PROTECTION PROGRAMME CERTIFICATE**

**SECTION 23(4) and (5) OF THE JUSTICE PROTECTION LAW, 2008**

For the purposes of section 23(4) and (5) of the Justice Protection Law, 2008, the Attorney-General hereby certifies that

\_\_\_\_\_  
(Date of birth: \_\_\_\_\_ )

of

\_\_\_\_\_  
is a participant in the Justice Protection Programme.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_  
Attorney-General

**NOTE:** *Under section 23(4) and (5) of the Justice Protection Law, 2008, this certificate is conclusive evidence in legal proceedings that the person named herein is a participant in the Justice Protection Programme.*

Passed by the Legislative Assembly the 15<sup>th</sup> day of October, 2008.

EDNA MOYLE

Speaker.

WENDY LAUER

Clerk of the Legislative Assembly.