**CRIMINAL PROCEDURE (PLEA DISCUSSION AND PLEA AGREEMENT) BILL**

**EXPLANATORY MEMORANDUM**

This Bill seeks to provide for the establishment of a system of plea discussions and plea agreements in criminal procedure and for matters connected thereto.

This Bill is divided into five (5) Parts and contains thirty-eight (38) clauses and one (1) Schedule.

**Part I** of the Bill provides for the preliminary provisions and contains **clauses 1** to **4**. **Clause 1** of the Bill provides for the short title and commencement of the Bill on a date to be appointed by the Minister by Order. **Clause 2** provides for the interpretation of certain terms used in the Bill including “improper inducement”, “particular course of action”, “suspect” and “victim”. **Clause 3** of the Bill provides for the application of the Act to both summary and indictable offences and expressly clarifies that the Act does not affect the right of an accused person to plead guilty without entering into a plea bargaining nor the right of an accused person to seek a sentencing indication from the Court. **Clause 4** of the Bill provides a substantive definition of a plea agreement and its scope.

**Part II** of the Bill provides for the procedure pertaining to plea discussions and contains **clauses 5** to **12**. **Clause 5** of the Bill provides for plea discussions to be held and plea agreements concluded at any time before conviction including before charges are instituted. **Clause 6** of the Bill requires the written permission of the Director of Public Prosecutions to be obtained prior to a prosecutor entering into a plea discussion or concluding a plea agreement. **Clause 7** of the Bill prohibits the use of improper inducements to encourage an accused person or suspect to participate in a plea discussion. **Clause 8** of the Bill prohibits a prosecutor from participating in plea discussions in certain circumstances, *inter alia*, a plea discussion that requires an accused to plead guilty to an offence that is not disclosed by the evidence or inadequately reflects the gravity of the provable conduct of the accused.

**Clause 9** of the Bill prohibits a prosecutor from engaging in plea discussions with an accused person or suspect in the absence of his or her attorney-at-law, where that accused person or suspect has retained counsel to represent him or her. **Clause 10** of the Bill prohibits a prosecutor from initiating plea discussions with an unrepresented accused person or suspect, unless the prosecutor informs the accused person or suspect of certain rights, *inter alia*, the right to be represented by an attorney-at-law. **Clause 11** of the Bill imposes a duty on the prosecutor to provide the suspect or accused person with a written summary of the evidence against the suspect or accused person in circumstances where plea discussions are initiated before charges are laid, as well as in circumstances where plea discussions are initiated after charges are laid respectively. **Clause 12** of the Bill sets out the procedure to be followed by a Judge or Magistrate upon the first appearance of the accused in Court.

**Part III** of the Bill provides for victim impact statements and contains **clauses 13** to **18**. **Clause 13** of the Bill imposes a duty on the prosecutor to inform the victim of his or her right to provide a victim impact statement and require that certain content not be included in the victim impact statement. **Clause 14** of the Bill imposes restrictions on the contents of a victim impact statement. **Clause 15** of the Bill provides for relatives of the victim to provide a victim impact statement in circumstances where the victim has died, is ill or is otherwise incapacitated, or cannot be found. **Clause 16** of the Bill provides the procedure to be followed in circumstances where an impact statement is being provided by a victim who is a child. **Clause 17** of the Bill provides for a duly authorized representative of a business that has been the victim of a crime to provide a victim impact statement on behalf of that business. **Clause 18** of the Bill sets out the duties of the prosecutor in respect of the victim impact statement and the victim. This clause would also require the prosecutor to serve the impact statement on the accused.

**Part IV** of the Bill provides the procedure to be followed in respect of plea agreements and plea agreement hearings and contains **clauses 19** to **27**. **Clause 19** of the Bill provides for circumstances where a plea agreement is concluded between a prosecutor and the attorney-at-law for an accused person or suspect and provides a list of documents which shall accompany the plea agreement and which must be filed with the Clerk of the Court or Registrar, as the case may be. **Clause 20** of the Bill provides for circumstances where a plea agreement is concluded between a prosecutor and an unrepresented accused person or suspect and provides a list of documents which shall accompany the plea agreement and which must be filed with the Clerk of the Court or Registrar, as the case may be. **Clause 21** of the Bill provides the procedure to be followed upon the filing of a plea agreement. The clause would, *inter alia*, require the Clerk of the Court or Registrar, as the case may be, to list the matter for a plea agreement hearing within twenty-eight days of the filing of the plea agreement.

**Clause 22** of the Bill provides that where a plea agreement is filed before the commencement or during the conduct of committal proceedings but before an accused is committed to stand trial in the High Court, the Magistrate shall, *inter alia*, cease conduct of the committal proceedings and order that the plea agreement hearing be transferred to the High Court for determination. **Clause 23** of the Bill imposes a duty on the Director of Public Prosecutions to prefer and file an indictment within a specified time frame, in circumstances where a plea agreement is filed before the commencement or conclusion of committal proceedings. **Clause 24** of the Bill provides the procedure to be followed at a plea agreement hearing. The prosecutor is required to disclose certain information to the Court and the Court is required to make certain enquiries of the accused at the plea agreement hearing. **Clause 25** of the Bill provides that a plea agreement is not binding on the Court. **Clause 26** of the Bill provides that where a Judge or Magistrate accepts a plea agreement, the accused shall be requested to plead to the charge. **Clause 27** of the Bill provides the procedure to be followed in circumstances where an accused person withdraws from a plea agreement.

**Part V** of the Bill provides general and miscellaneous provisions and contains **clauses 28** to **38**. **Clause 28** of the Bill provides that an accused person may appeal to the Court of Appeal where a Court has rejected a plea agreement. **Clause 29** of the Bill provides that the Director of Public Prosecutions may appeal to the Court of Appeal where a Court has rejected a plea agreement. **Clause 30** of the Bill provides the grounds upon which an accused may withdraw from a plea agreement. **Clause 31** of the Bill provides the grounds upon which the Director of Public Prosecutions may seek the leave of the Court of Appeal to have a plea agreement, a conviction or a sentence set aside. **Clause 32** of the Bill provides for the extension of time for filing a notice of appeal.

**Clause 33** of the Bill provides that the evidence of certain matters, *inter alia*, a plea agreement, which is later withdrawn, shall not be admissible against the accused who entered into a plea agreement or was a party to a plea discussion. **Clause 34** of the Bill empowers a Court to order that the records of plea discussions or a plea agreement be sealed, in the interest of justice and requires the Court to give reasons for the order. **Clause 35** of the Bill empowers the Minister to amend the Schedule by Order and **clause 36** of the Bill empowers the Minister to make regulations. **Clause 37** of the Bill provides for the repeal of the Criminal Procedure (Plea Bargaining and Plea Agreement) Act, Cap. 10:09. **Clause 38** of the Bill saves any actions, proceedings and decisions in respect of plea discussions or plea agreements commenced or taken under the repealed Act, upon the commencement of this Act.

The **Schedule** sets out the forms referred to in the Act.