

THE PREVENTION OF CORRUPTION ACT, 2006

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Arrangement of Sections

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An Act to investigate and punish corrupt activities, establish an Anti-Corruption Commission and to provide for other matters incidental to the prevention of corruption.

PART I
PRELIMINARY

Short title.

1. This Act may be cited as the Prevention of Corruption Act, 2006.

Interpretation.

2. In this Act, unless the context otherwise requires –

“advantage” means —

- (a) any gift, loan, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or part;
- (d) any other service, favour or gratification other than entertainment;
- (e) the exercise or forbearance from the exercise of any right, power or duty; or
- (f) any offer, undertaking or promise, whether conditional or unconditional, of any advantage referred to in paragraph (a), (b), (c), (d) or (e);

“agent” means any authorized representative who acts on behalf of a principal and includes a director, officer, employee or other person authorized to act on behalf of the principal, and “agency” has a corresponding meaning;

“animal” means any living vertebrate member of the animal kingdom, domestic or wild, but does not include a human being;

“banker’s books” means —

- (a) any ledger, ledger card, statement of account, day book, cash book, account book or other book or document whatsoever, used in the ordinary business of banking;
- (b) any cheque, voucher, record card, report, letter or other document whatsoever;
- (c) a copy of anything referred to in paragraph (a) or (b) which is used in the ordinary business of a bank;

“business” means any business, trade, occupation, profession, calling, industry or undertaking of any kind, or any other activity carried on for gain or profit by any person within Swaziland or elsewhere, and includes all property derived from or used in or for the purpose of carrying on such other activity, and all the rights and liabilities arising from such other activity;

“company books” means the annual return and balance sheets and any ledger, day book, cash book, account book, bank book, report, letter or other book or document used in the ordinary business of a company;

“commission” means the Anti-Corruption Commission established in terms of section 3;

“Commissioner” means the person appointed in terms of section 4 as the Commissioner of the Commission;

“Court” means the High Court or a Magistrate’s Court, as the case may be;

“Deputy Commissioner” means a person appointed in terms of section 4 as a Deputy Commissioner of the Commission;

“document” includes any register, book, record, tape recording, any form of computer input or output, and any other material, whether produced mechanically, electrically or manually or by any other means;

“entertainment” means the provision of food or drink for consumption on the occasion when it is provided and any other entertainment connected with or provided at the same time as such food or drink;

“game of chance” includes a lottery, lotto, numbers game, scratch game, sweep-stake, or sports pool or any such similar game;

“investigating officer” means any person appointed or authorized by the Commissioner to exercise the powers of an investigating officer under this Act and “investigator” has the corresponding meaning;

“judicial officer” means a superior court Judge, magistrate, Master of the High Court, Registrar of a superior court, clerk of court, an arbitrator, or a member of an administrative authority exercising quasi-judicial functions or the presiding officer of a Swazi Court established under the Swazi Courts Act, No. 80 of 1950;

“law officer” means the Attorney-General, Crown Counsel or any other person delegated generally or specially by the Attorney-General in terms of the Law Officers Act, 1966 or any other law;

“member of Parliament” means a person who is either a Senator or a member of the House of Assembly;

“Minister” means the Minister responsible for Justice;

“passport” includes a travel document;

“politician” means any person who holds a position listed in the Schedule to this Act;

“principal” includes —

- (a) any employer;
- (b) any beneficiary under a trust and any trust estate, person;
- (d) in the case of any person serving in or under a public body, the public body; or
- (e) in the case of a legal representative referred to in the definition of “agent”, the person represented by such legal representative;

“private body” means any person or organization not being a public body and it also means a voluntary organization, charitable institution, club, company, firm or partnership;

“property” means money or any other movable, immovable, corporeal or incorporeal thing, whether situated in Swaziland or elsewhere and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof;

“public body” means —

- (a) any Government ministry or department or parastatal; or,
- (b) any other functionary or institution or traditional council (*libandla*) when exercising a power or performing a duty or function in terms of the Constitution or any other law or custom;

“public corporation” means any body, whether corporate or not, in which the Government, the Swazi Nation, or the Swazi National Treasury, holds the majority shares or any controlling financial or monetary interest;

“public office” includes judicial office or any office or position (whether full-time or not) held by any person engaged in a public body or private body or any office or position (whether full-time or not) in respect of which emoluments or allowances are payable from public funds or from Swazi National Treasury;

“public officer” means the holder of a public office;

“Public Prosecutor” means the Director of Public Prosecutions and includes any person delegated generally or specially by the Director of Public Prosecutions under the Criminal Procedure and Evidence Act, 1938 or any other law;

“sporting event” means any event or contest in any sport, between individuals or teams, or in which an animal competes, and which is usually attended by the public and is governed by rules which include the constitution, rules or code

of conduct of any sporting body which stages any sporting event or of any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted; and

“spouse” includes concubine, cohabitant, fiancée or lover.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE ANTI-CORRUPTION COMMISSION

Establishment of the Commission.

3. (1) There is established an independent Anti-Corruption Commission which consists of a Commissioner and two Deputy Commissioners.

(2) The Commission shall have such other officers as may be appointed in terms of section 8.

Appointment of Commissioner and Deputy Commissioners.

4. (1) The Commissioner shall be appointed by the King on the advice of the Judicial Service Commission and shall hold office for a period not exceeding five years and may be re-appointed for a single term, on such terms and conditions as may be determined.

(2) A Deputy Commissioner shall be appointed by the King on the advice of the Judicial Service Commission and shall hold office for a period not exceeding five years and may be re-appointed for a single term, on such terms and conditions as may be determined.

(3) The Commissioner shall be responsible for the proper administration of the Commission.

(4) In the performance of their functions and in the carrying out of their duties the Commissioner and the Deputy Commissioners shall be independent and shall not be subject to the direction or control of any person or authority.

(5) The salary, allowance, gratuity or pension of a member of the Commission shall not be varied to the disadvantage of that member.

Qualifications for office of Commissioner and Deputy Commissioners.

5. (1) Subject to subsection (2)(a) a person shall not qualify for appointment as Commissioner unless that person qualifies for appointment as a Judge of the High Court.

(2) A person shall not qualify for appointment as a Deputy Commissioner unless that person —

(a) is of high moral character and proven integrity; and

(b) possesses considerable experience and demonstrated competence in the conduct of public affairs; or

(c) has acceptable academic qualification and experience in law, economics, accounting, criminal investigation, or any other related profession relevant to the functions of the Commission.

Vacation of office of Commissioner or Deputy Commissioner.

6. (1) A member of the Commission may —
- (a) resign office by written notice addressed to the Chairman of the Judicial Service Commission; and
 - (b) be removed by the King from office for inability to perform the functions of the office whether such inability arises from infirmity of body or mind or any other cause or for stated misconduct.
- (2) The statement of misconduct referred to in subsection (1)(b) shall be referred to the Judicial Service Commission which shall investigate the matter.

Acting Commissioner or Deputy Commissioner.

7. (1) Where the office of the Commissioner is vacant or the Commissioner is absent from duty or unable for any other reason to perform the functions of his office, any of the Deputy Commissioners shall on nomination by the Minister act as the Commissioner.
- (2) Where the Commissioner and a Deputy Commissioner are absent from duty or unable for any other reason to perform the functions of their office the King may, subject to sections 4 and 5, appoint another person to act as the Commissioner or a Deputy Commissioner.

Officers of the Commission.

8. (1) The Commission shall appoint such investigating and other officers to assist the Commission in the performance of its functions under this Act as the Commission may determine after consultation with the Minister.
- (2) Officers recruited from other Government agencies shall be transferred from the public service or any other Commission without prejudice to their accrued benefits.
- (3) The Commissioner may, subject to the relevant applicable law, terminate the appointment of an officer of the Commission if the Commissioner is satisfied that it is in the interest of the Commission to terminate such appointment and the Commissioner shall give reasons for such termination.

Applicability of laws governing public service.

9. An office in the Commission is a public office, and accordingly except as otherwise provided in this Act or Regulations, the Commissioner, Deputy Commissioners and other officers of the Commission are subject to such laws and regulations as are generally applicable to officers of the public service of the particular designation.

Functions of the Commission.

10. (1) The functions of the Commission shall be to —
- (a) take necessary measures for the prevention of corruption in public and private bodies including, in particular, measures for —
 - (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of their methods of works or procedures which, in the opin-

ion of the Commissioner, may be prone or conducive to corrupt practices;

- (ii) advising public and private bodies on the ways and means of preventing corrupt practices, and on changes in the methods of work or procedures of those public and private bodies compatible with the effective performance of their duties, which the Commissioner considers necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) disseminating information on the evil and dangerous effects of corrupt practices on the society;
 - (iv) enlisting and fostering public support against corrupt practices;
- (b) receive and investigate complaints of alleged or suspected corrupt practice made against any person, and refer appropriate cases to the Director of Public Prosecutions;
 - (c) investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
 - (d) investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
 - (e) assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public revenue;
 - (f) investigate the conduct of any public officer which in the opinion of the Commissioner may be connected with or conducive to corrupt practices;
 - (g) instruct, advise and assist any person, on the request of that person, on ways in which corrupt practices may be eliminated by that person; and
 - (h) do all such things as may be necessary for the prevention of corruption and the furtherance of the objects of this Act.

(2) The Commission may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with an investigation if the Commission is satisfied that the complaint is trivial, frivolous, vexatious or not made in good faith.

(3) In every case where the Commission declines to conduct an investigation the Commission shall inform the complainant in writing of its decision, within a reasonable time, but shall not be bound to assign reasons for so declining.

Powers of the Commission.

11. (1) In the performance of the functions of the Commission under this Act, the Commissioner may —

- (a) authorize in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;
- (b) require any public officer or person to answer questions concerning the duties of any other public officer or person and order the production for inspection of any orders, directives, office instructions relating to the duties of such other public officer or person;

- (c) require any person in charge of any Ministry, Department or other establishment of the Government or head, Chairman, Manager or Chief Executive Officer of any public body or private body to produce or furnish within such time as may be specified by the Commissioner, any document or a certified true copy of any document which is in the possession or under the control of that person and which the Commissioner considers necessary for the conduct of investigation into alleged or suspected offence under this Act.

(2) In the performance of the duties under this Act, the Commissioner or, if acting under the authority of a warrant issued for that purpose by or on behalf of the Commissioner, an officer of the Commission, shall have —

- (a) access, where necessary with a court order, to all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents relating to the functions of any Government Ministry, Department or other establishment, or parastatal, public body or private body;
- (b) access at any time, where necessary with a court order, to the premises of any Government Ministry, Department or other establishment, or parastatal, public body or private body, or to any vessel, boat, train, aircraft or any vehicle if the Commissioner or officer has reason to suspect that any property acquired in contravention of this Act has been placed, deposited or concealed in that vessel, boat, train, aircraft or vehicle.

(3) Any person who accompanies or assists the Commissioner, the Deputy Commissioner or any officer of the Commission to enter into any premises or upon any vessel, boat, train, aircraft or any vehicle, as the case may be, shall enjoy the same immunity as is conferred upon the Commissioner or an officer of the Commission in terms of section 17.

Special powers of investigation.

12. (1) Where it appears to the Commissioner that an offence under this Act may have been committed by any person, the Commissioner may for the purposes of an investigation of that offence authorize an investigating officer to exercise the following powers, that is, to —

- (a) investigate the acquisition of any property (whether movable or immovable) in or outside Swaziland by or on behalf of that person, during such period as may be specified in the authority;
- (b) require that person to furnish and produce all relevant information and documents in respect of —
 - (i) all expenditure incurred by that person personally or in respect of the spouse, children or parents of that person;
 - (ii) all liabilities incurred by that person, the agent or trustee of that person and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;
 - (iii) any money acquired or sent outside Swaziland during the period as may be specified in the authority;
- (c) investigate and inspect any bank account or other account of whatever description or kind and any banker's books or company books of, or relating to, the person named or otherwise identified in the authority;

- (d) require from any person production of any accounts, books or company books of, or relating to, the person named or otherwise identified in the authority and the disclosure of all or any information relating to those accounts, books or documents;
- (e) take originals or certified true copies of any accounts, books or documents or any relevant entry in those accounts, books or documents;
- (f) require any person who is being investigated to furnish the investigating officer with a sworn statement containing any information referred to in paragraphs (a) and (b).

(2) Any person, who has been lawfully required under subsection (1) to disclose any information or to produce any accounts, books or documents to an investigating officer shall, notwithstanding any other law to the contrary, comply with that requirement.

(3) Any person who —

- (a) without reasonable excuse fails or neglects to disclose any information or to produce any accounts, books or documents required by an investigating officer under subsection (2); or
- (b) obstructs an investigating officer in the execution of an authority made under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeni or to imprisonment not exceeding five years or to both.

(4) Where, in any proceedings for an offence under Part III, it is proved that the person charged with the offence refused to furnish a sworn statement required in terms of subsection (1)(f) when requested to do so that refusal shall, unless reasonable cause is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence as regards the manner of the acquisition of the properties mentioned in subsection (1)(a).

(5) The information referred to in subsection (1)(f) shall be admissible as evidence during the trial of that person and if that person submits to be a witness, that information may be used in cross-examination and for purposes of impeaching the credibility of that person.

Powers to enter, search or arrest.

13. (1) Subject to the provisions of subsection (2), an investigator or officer authorized by the Commissioner who reasonably suspects that an offence has been committed under this Act may —

- (a) search or arrest any person;
- (b) enter and search any premises, or
- (c) seize any property —
 - (i) in any premises; or
 - (ii) in the possession of any person,

reasonably believed by the investigator or officer to be connected with the offence.

(2) The investigator or officer shall not enter or search any premises or arrest any person under subsection (1) without an order in writing issued by a Judge in Chambers on the application of that investigator or officer.

- (3) The application under subsection (2) shall be in writing and must —
- (a) indicate the identity of the —
 - (i) investigator or officer who will enter and search the premises or arrest the person;
 - (ii) person to be searched and or arrested; and
 - (iii) premises to be entered and searched;
 - (b) specify the grounds for the application;
 - (c) establish a *prima facie* case; and
 - (d) indicate the period for which order is reacquired.
- (4) A person shall not be searched under this section except by a person of the same sex.
- (5) A person arrested under this section shall be taken as soon as practicable to a police station and be brought before a court of law within a reasonable time.

Identity card.

14. (1) The Commissioner shall issue to an officer of the Commission an identity card which shall be *prima facie* evidence of the appointment of that officer under section 8.
- (2) On termination of the appointment, the officer shall return the identity card.

Impersonation and procurement of officers.

15. Any person who falsely pretends to be —
- (a) an officer of the Commission or to have any of the powers of an officer under this Act, or under any authorization or warrant issued under this Act; or
 - (b) able to procure an officer of the Commission with the duties of that officer,
- commits an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand Emalangeneni or to imprisonment not exceeding two years or to both.

Resisting or obstructing the Commissioner, etc.

16. Any person who —
- (a) assaults, obstructs or resists the Commissioner, Deputy Commissioner or an officer of the Commission in the execution of their duties; or
 - (b) unlawfully hinders or delays the Commissioner, Deputy Commissioner or an officer of the Commission in effecting entry into or upon any premises, vessel, train, boat, aircraft or vehicle,
- commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeneni or to imprisonment not exceeding five years or to both.

Immunity of Commissioner, Deputy Commissioner, etc.

17. No civil or other proceeding shall be brought against the Commissioner, Deputy Commissioner or an officer of the Commission in respect of any act or thing done or omitted to be done in good faith in the performance of their functions under this Act.

Prohibition of disclosure of information.

18. Any person who, without lawful authority or reasonable excuse —
- (a) discloses to any other person who is the subject of an inquiry or investigation under this Act the fact that that other person is subject to that inquiry or investigation or any details of that inquiry or investigation; or
 - (b) publishes or discloses to any other person either the identity of a person who is the subject of an inquiry or investigation or any details of that inquiry or investigation,
- commits an offence and shall be liable, on conviction, to a fine not exceeding twenty thousand Emalangenzi or to imprisonment not exceeding two years or to both.

Privilege from disclosure in legal proceedings.

19. In any legal proceeding the production of the report or record of proceedings of any inquiry or investigation carried out by the Commission into any alleged or suspected offence under Part III shall be privileged if the Minister certifies that the production of that report or record is not in the public interest.

Annual reports.

20. (1) The Commissioner shall, not later than three months after the end of each financial year, submit to the Minister a report on the activities of the Commission during that year.
- (2) The report of the Commissioner shall not contain the facts or findings of any pending investigation.
- (3) The Minister shall, within thirty days after receipt of the report during the sitting of Parliament, cause the report to be laid before Parliament and if Parliament is not then sitting, within fourteen days of the next sitting of Parliament.

PART III
OFFENCES

Bribery.

21. (1) A person who, whether in Swaziland or elsewhere, offers any advantage to any public officer as an inducement to, or a reward for, or otherwise on account of that public officer —
- (a) performing or forbearing to perform or having performed or forborne to perform any act as such public officer;
 - (b) expediting, delaying, hindering or preventing or having expedited, delayed, hindered or prevented, the performance of any act, whether by that officer or by another public officer as such public officer; or
 - (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any other person in the transaction of any business with a public or private body,
- commits an offence.

(2) A public officer who, whether in Swaziland or elsewhere, solicits or accepts any advantage as an inducement to, or a reward for or otherwise on account of the public officer —

- (a) performing or forbearing to perform or having performed or forborne to perform any act as such public officer;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of any act, directly or indirectly, as such public officer; or
- (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public or private body,

commits an offence.

Offences with regard to contracts and tenders.

22. (1) A person who, whether in Swaziland or elsewhere, gives or agrees or offers to give or promises any advantage to any public officer as an inducement to or a reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in —

- (a) the promotion, execution or procurement of —
 - (i) a contract or tender for any contract with a public or private body for the performance of any work or the provision of any service or the supply of any goods; or
 - (ii) a subcontract or tender for a subcontract to perform any work, provide any goods required to be performed, provided or supplied under any contract with a public or private body; or
- (b) the payment of the price or other consideration or money stipulated or otherwise provided in any such contract, subcontract or tender,

commits an offence of corrupt activities relating to contracts and tenders.

(2) A public officer who solicits or demands or accepts any advantage as an inducement to or a reward for or otherwise on account of that person giving assistance or using influence in or having given assistance or used influence in —

- (a) the promotion, execution or procurement of; or
- (b) the payment of the price or other consideration or money stipulated or otherwise provided in any contract or subcontract or tender referred to in subsection (1),

commits an offence of corrupt activities relating to contracts and tenders.

Corrupt transaction by or with public or private bodies.

23. A person who, directly or indirectly, alone or in conjunction with any other person (whether in Swaziland or elsewhere) —

- (a) solicits or demands or accepts from another person either for that person or for any other person, any advantage as an inducement or a reward for, or on account of that person, doing or forbearing to do or having done or forborne

to do anything in relation to any matter or transaction with which any public or private body is or may be concerned;

- (b) gives or offers or promises to give any advantage to another person either for the benefit of that other person or any other person as an inducement or a reward for or on account of any such other person doing or forbearing to do or having done or forborne to do anything in relation to any matter or transaction with which any public or private body is or may be concerned,

commits an offence of corrupt activities relating to public or private bodies.

Cheating the public revenue.

24. (1) A person commits the offence of cheating the public revenue where as a result of the fraudulent conduct of that person, money is diverted from the revenue and thereby depriving the public revenue of money to which the Government is entitled.

(2) A public official or any person commits an offence of cheating the public revenue where that official or person diverts any property belonging to the Government or its agencies, which that official or person has received by virtue of the position of that official or person, to an independent agency or individual for purposes unrelated to the purposes for which that property was intended, for the benefit of that official or that person or of a third party.

Offences in relation to auctions.

25. (1) A person who, directly or indirectly —

- (a) being an auctioneer, demands or accepts or agrees or offers to accept any advantage for the benefit of that auctioneer or of another person —
 - (i) in order to conduct the bidding process at an auction in a manner so as to favour or prejudice a specific person; or
 - (ii) as a reward for acting as contemplated in subparagraph (i);
- (b) being an auctioneer, gives or agrees or offers to give any advantage to any other person whether for the benefit of that auctioneer or of that other person;
- (c) demands or accepts or agrees to accept an advantage for the benefit of that person or of another person as an inducement or reward for or otherwise on account of that person refraining or having refrained from bidding at an auction conducted by or on behalf of any public body; or,
- (d) gives or agrees or offers to give another person an inducement or reward for or otherwise on account of that other person refraining or having refrained from bidding at any auction conducted by or on behalf of any public body,

commits an offence of corrupt activities relating to auctions.

(2) For an offence to be committed under subsection (1)(b) the act complained of must —

- (a) influence that person to —
 - (i) refrain from bidding at an auction; or
 - (ii) participate in the bidding process at an auction in such a manner as to get a specific offer for the article or to sell the article at a specific amount or to sell the article to a specific bidder; or

(b) be a reward for that person for acting as contemplated in subparagraph (i).

Corrupt transactions by or with agents.

26. (1) An agent commits an offence of corruption where that agent corruptly demands or accepts, or agrees or offers to accept from any person, for himself or for any other person any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the affairs or business of the principal of that agent, or for showing or forbearing to show favour or disfavour to any person in relation to the affairs or business of the principal of that agent.

(2) A person commits an offence of corruption where that person corruptly gives or agrees to give or offers to give to any agent any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act or for showing or forbearing to show favour or disfavour to any person in relation to the affairs or business of the principal of that agent.

(3) A person or an agent commits an offence of corruption where that person knowingly gives to an agent, or where an agent knowingly uses with intent to deceive the principal of that agent, any receipt, account or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to the knowledge of that person or agent is intended to mislead the principal.

Conflict of interests.

27. (1) A member or an employee of a public body commits an offence of corruption where that member or employee or an immediate member of the family of that member or employee has a direct or indirect interest in any company or undertaking with which that public body proposes to deal, or that member or employee has a personal interest in any decision which that public body is to make, and that member or employee knowingly fails to disclose the nature of that interest, or votes or participates in the proceedings of that public body relating to that dealing or decision.

(2) It is a defence to a charge under this section where the person having an interest has first made in writing to the public body the fullest disclosure of the exact nature of interest and has been permitted after that disclosure to take part in the proceedings relating to that dealing or decision.

(3) For the purposes of this section “member of family” includes a paramour.

Corrupt activities relating to law officers and public prosecutors.

28. (1) Subject to the provisions of subsection (2), a person who —

(a) being a law officer or public prosecutor, directly or indirectly, demands or accepts or agrees or offers to accept any advantage, whether for the benefit of that officer or prosecutor or for the benefit of another person;

(b) directly or indirectly gives or agrees or offers to give any advantage to a law officer or public prosecutor, whether for the benefit of that person or the benefit of another person,

commits an offence of corrupt activities relating to law officers and public prosecutors.

(2) An act under subsection (1) to constitute an offence must induce the law officer or public prosecutor to act or influence another person so to act in a manner —

(a) that amounts to the —

- (i) illegal, dishonest, unauthorized, incomplete or biased; or
- (ii) misuse or selling of information or material acquired in the course of,

the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, fiduciary or any other legal obligation;

(b) that amounts to —

- (i) the abuse of a position of authority;
- (ii) a breach of trust; or,
- (iii) the violation of a legal duty or a set of rules;

(c) designed to achieve an unjustified result; or

(d) that amounts to any other unauthorized or improper inducement to do or not to do anything.

(3) For purposes of subsection (1), “to act” includes —

(a) performing or not adequately performing a function relating to the —

- (i) institution or conducting of civil or criminal proceedings;
- (ii) carrying out of any necessary functions incidental to the institution or conducting of civil or criminal proceedings; or
- (iii) continuation or discontinuation of civil or criminal proceedings;

(b) delaying, hindering or preventing the performance or commencement of a civil or prosecutorial function;

(c) aiding or assisting any particular person in the performance of a function relating to the institution or conducting of criminal or civil proceedings;

(d) showing any favour or disfavour to any person in the performance of a function relating to the institution or conducting of criminal or civil proceedings; or

(e) exerting any improper influence over the decision-making of any person, including a member of the office of the Attorney-General or the Director of Public Prosecutions or a judicial officer, performing official functions.

Corrupt activities relating to witnesses, etc., during certain proceedings.

29. (1) A person who, directly or indirectly demands or accepts or agrees or offers to accept any advantage from another person, whether for the benefit of that person or for the benefit of any other person, in return for —

(a) testifying in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorized by law to hear evidence or take testimony;

(b) withholding testimony, or withholding a record, document, docket or other object at any trial, hearing or proceedings;

- (c) giving or withholding information relating to any aspect at any trial, hearing or proceedings;
- (d) altering, destroying, mutilating, or concealing a record, document, docket or other object for use at any trial, hearing or proceedings;
- (e) giving or withholding information relating to or contained in a docket;
- (f) evading legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at any trial, hearing or proceedings; or
- (g) being absent from any trial, hearing or proceedings,

commits an offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

(2) A person who, directly or indirectly, gives or agrees or offers to give any advantage to another person, whether for the benefit of that person or for the benefit of any other person, with the intent to —

- (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorized by law to hear evidence or take testimony; or
- (b) cause or induce a person to —
 - (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorized by law to hear evidence or take testimony;
 - (ii) withhold testimony or to withhold a record, document, docket or other object at any trial, hearing or proceedings;
 - (iii) give or withhold information relating to any aspect at any trial, hearing or proceedings;
 - (iv) alter, destroy, mutilate, or conceal a record, document, docket or other object with the intent to impair the availability of such record, document, docket or other object for use at any trial, hearing or proceedings;
 - (v) give or withhold information relating to or contained in a docket;
 - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at any trial, hearing or proceedings; or
 - (vii) be absent from any trial, hearing or other proceedings,

commits an offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

(3) A person who, directly or indirectly, intimidates or uses physical force, or improperly persuades or coerces another person with the intent to —

- (a) influence, delay or prevent the testimony of that other person or any other person as a witness in a trial, hearing or other proceedings before any court,

judicial officer, committee, commission, or some other officer authorized by law to hear evidence or take testimony; or

(b) cause or induce any other person to —

- (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorized by law to hear evidence or take testimony;
- (ii) withhold testimony or to withhold a record, document, docket or other object at any trial, hearing or proceedings;
- (iii) give or withhold information relating to any aspect at any trial, hearing or proceedings;
- (iv) alter, destroy, mutilate, or conceal a record, document, docket or other object with the intent to impair the availability of that record, document, docket or other object for use at any trial, hearing or proceedings;
- (v) give or withhold information relating to or contained in a docket;
- (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at any trial, hearing or proceedings; or
- (vii) be absent from any trial, hearing or other proceedings,

commits an offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

Offences in respect of corrupt activities relating to politicians.

30. A person who, directly or indirectly —

- (a) being a politician, demands or accepts or agrees or offers to accept any advantage from another person, whether for the benefit of that politician or for the benefit of any other person; or
- (b) gives or agrees or offers to give any advantage to a politician, whether for the benefit of that person or for the benefit of another person, in order for that politician or that other person to act or to influence another person so to act, in a manner,
- (c) that amounts to the —
 - (i) illegal, dishonest, unauthorized, incomplete, biased; or
 - (ii) misuse or selling of information or material acquired in the course of,
the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;
- (d) that amounts to the —
 - (i) abuse of a position of authority,
 - (ii) a breach of trust, or

- (iii) the violation of a legal duty or a set of rules;
- (e) designed to achieve an unjustified result; or
- (f) that amounts to any other unauthorized or improper inducement to do or not to do anything,

commits an offence of corrupt activities relating to politicians.

Offences in respect of corrupt activities relating to sporting events.

31. A person who, directly or indirectly —

- (a) demands or accepts or offers to accept any advantage whether for the benefit of that person or any other person; or
- (b) gives or agrees or offers to give any advantage, whether for the benefit of that person or any other person in return or as a reward for —
 - (i) engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event;
 - (ii) not reporting the act referred to in paragraph (c) to the managing director, chief executive officer, or to any other person holding a similar post or in authority in the sporting body or regulatory authority of the sporting event concerned or at the nearest police station or to the Anti-Corruption Commission; or
- (c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event,

commits the offence of corrupt activities relating to sporting events.

Offences in respect of gambling games or games of chance.

32. A person who, directly or indirectly —

- (a) demands or accepts or agrees or offers to accept any advantage from any other person whether for the benefit of that person or for the benefit of another person; or
- (b) gives or agrees or offers to give to any other person any advantage whether for the benefit of that other person or for the benefit of another person in return or as a reward for —
 - (i) engaging in any conduct which constitutes a threat to or undermines the integrity of any gambling game or game of chance; or
 - (ii) in any way, influencing the outcome of a gambling game or game of chance; or
- (c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a game or a game of chance,

commits the offence of corrupt activities relating to gambling games or games of chance.

Offences in respect of corrupt activities relating to judicial officers.

33. (1) Subject to the provisions of subsection (2), a person who directly or indirectly —
- (a) gives or offers or agrees to give or offer any advantage to a judicial officer whether for the benefit of that person or another person; or
 - (b) being a judicial officer, demands or accepts or agrees or offers to accept any advantage from any other person, whether for the benefit of that judicial officer or another person,
- commits the offence of corrupt activities relating to judicial officers.
- (2) An act under subsection (1) to constitute an offence must induce the judicial officer to act or influence another person so to act in a manner —
- (a) that amounts to the —
 - (i) illegal, dishonest, unauthorized, incomplete or biased; or
 - (ii) misuse or selling of information or material acquired in the course of,
the exercise, carrying out or performance of any powers, duties or functions, arising out of a constitutional, statutory contractual, fiduciary or any other legal obligation;
 - (b) that amounts to —
 - (i) the abuse of a position of authority;
 - (ii) a breach of trust; or,
 - (iii) the violation of a legal duty or a set of rules;
 - (c) designed to achieve an unjustified result;
 - (d) that amounts to any other unauthorized or improper inducement to do or not to do anything.
- (3) For the purposes of subsection (1), “to act” includes —
- (a) performing or not adequately performing a judicial function;
 - (b) making decisions affecting life, freedoms, rights, duties, obligations and property of persons;
 - (c) delaying, hindering or preventing the performance of a judicial function;
 - (d) aiding, assisting or favouring any particular person in conducting judicial proceedings or judicial functions;
 - (e) showing any favour or disfavour to any person in the performance of a judicial function, or
 - (f) exerting any improper influence over the decision-making of any person, including another judicial officer or a law officer or public prosecutor, performing their official functions.

Possession of property, etc., without reasonable explanation.

34. (1) Subject to the provisions of subsection (2), a person who being or having been a public officer —

- (a) maintains a standard of living above that which is commensurate with the present or past official emoluments of that person; or
- (b) is in control of pecuniary resources or property disproportionate to the present or past official emoluments of that person,

shall be presumed to have committed an offence under section 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 or 33 and accordingly liable to the penalty prescribed in section 35.

(2) The presumption referred to in subsection (1) shall not apply in a case where the public officer gives the Commissioner or investigating officer a satisfactory account or explanation of how the officer maintains that standard of living and how the pecuniary resources or property came under the control of that officer.

(3) Where the Commissioner has reasonable ground to suspect that any person who has no known source of income or who is not known to be engaged in any gainful employment possesses or is in control of any property or pecuniary resources, the Commissioner shall request that person to give satisfactory explanation in writing as to how the property or pecuniary resources have been acquired by or come under the control of that person.

(4) Where the person mentioned in subsection (3) is unable to give any satisfactory account or explanation that person shall be presumed to have committed an offence and liable on conviction to the penalty prescribed in section 35(1).

(5) Where a court is satisfied in the proceedings for an offence under subsection (1) or (4) that there is reason to believe that a person was holding pecuniary resources or property in trust or otherwise on behalf of the accused, or acquired those resources or that property as a gift or a loan without adequate consideration, from the accused, having regard to the relationship of that person to the accused, those resources or that property shall be presumed to have been in the control or in the possession of the accused.

(6) In this section "official emoluments" includes a pension or gratuity or any other retirement benefit payable under any law for the time being in force or under any terms and conditions of service or employment applicable to the public officer.

Penalties.

35. (1) A person who is convicted of an offence referred to in section 21, 22, 23, 24, 25, 26, 27 or 34 shall be liable to a fine not exceeding one hundred thousand Emalangeni or imprisonment not exceeding ten years or to both.

(2) A person who is convicted of an offence referred to in section 28, 29, 30, 31, 32 or 33 shall be liable to a fine not exceeding two hundred thousand Emalangeni or imprisonment not exceeding twenty years or to both.

Additional penalty.

36. (1) Where a person is convicted of an offence under this Part, the court shall in addition to any penalty it may impose under section 35 order the person convicted to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received by that person.

(2) Where after reasonable inquiry, the rightful owner cannot be ascertained or traced or is implicated in the commission of that particular offence under this Part, the court shall order that the amount or value of that advantage be forfeited to the Government.

(3) In addition to the fine a court may impose in terms of section 35, the court may impose a fine equal to five times the value of the advantage involved in the offence.

Dismissal on conviction.

37. The conviction of a judicial officer or other public officer for an offence under this Part, shall, subject to any other law, warrant the dismissal from office of that judicial or public officer.

Endorsement of Register.

38. (1) A court convicting a person of an offence contemplated in section 22, may, in addition to imposing any sentence contemplated in section 35, issue an order that —

- (a) the particulars of the convicted person;
- (b) the conviction and sentence; and
- (c) any other order of the court following that conviction and sentence,

be endorsed on the Register.

(2) Where the person convicted is an enterprise, the court may also issue an order that

- (a) the particulars of that enterprise;
- (b) the particulars of any other partner, manager, director or other person —
 - (i) who wholly or partly exercises or may exercise control over that enterprise; and
 - (ii) who was involved in the offence concerned; or
 - (iii) who knows or ought reasonably to have known or suspected that the enterprise committed the offence concerned; and
- (c) the conviction, sentence and any other order of the court following the conviction and sentence,

be endorsed on the Register.

(3) The court may also issue an order contemplated in subsection (1) in respect of any enterprise owned or controlled by the person so convicted, or the particulars of any partner, manager, director or other person who wholly or partly exercises or may exercise control over the enterprise, which —

- (a) enterprise, partner, manager, director or other person; or,
- (b) partner, manager, director or other person knew or ought reasonably to have known or suspected that the enterprise,

was involved in the offence concerned.

(4) Whenever the Register is endorsed as contemplated in subsection (1), (2) or (3), the endorsement applies, unless the court directs otherwise, to every enterprise to be established in the future, and which enterprise will be wholly or partly controlled or owned by the person or enterprise so convicted or endorsed, and the Registrar shall, in respect of every such enterprise, endorse the Register accordingly.

(5) Where a court has issued an order in terms of subsection (1) or (2) the Clerk of that court shall forthwith forward the court order to the Registrar and the Registrar shall forthwith endorse the Register accordingly.

(6) Where the Registrar has endorsed the Register in terms of subsection (5), in addition to any other legal action, the Accountant-General may issue an instruction terminating any agreement with the person or enterprise referred to in subsection (1) or (2).

(7) In considering the termination of an agreement, the Accountant-General shall take into account, among other things, the following factors, namely —

- (a) the extent and duration of the agreement concerned;
- (b) whether he is likely to conclude a similar agreement with another person or enterprise within a specific time frame;
- (c) the extent to which the agreement has been executed;
- (d) the urgency of the services to be delivered or supplied in terms of the agreement;
- (e) whether extreme costs will follow that termination; and
- (f) any other factor which, in the opinion of the Accountant-General may impact on the termination of the agreement.

(8) Where the agreement involves any purchasing authority or a Government Department, the restriction may only be imposed after consultation with the purchasing authority or Government Department concerned.

(9) The Accountant-General shall determine the period (which period may not be less than five years or more than ten years) for which the particulars of the convicted person or the enterprise referred to in subsection (1), (2), (3) or (4) shall remain in the Register and during that period no offer in respect of any agreement from a person or enterprise referred to in those subsections may be considered by the Accountant-General.

(10) During the period determined in subsection (9), the Accountant-General, the purchasing authority or any Government Department shall —

- (a) ignore any offer tendered by a person or enterprise referred to in subsection (1), (2), (3) or (4); or
- (b) disqualify any person or enterprise referred to subsection (1), (2), (3) or (4), from making any offer or obtaining any agreement relating to the procurement of a specific supply or service.

(11) A restriction imposed in terms of subsection (6) only comes into effect after any appeal against the conviction or sentence or both has been finalized by the court.

(12) Where the Supreme Court sets aside, varies or amends the order referred to in subsection (1), (2) or (3) the Accountant-General shall, where necessary, amend the restrictions imposed under subsection (6) accordingly.

(13) Where the Accountant-General has terminated an agreement in terms of subsection (6), the Accountant-General may, in addition to any other legal remedy, recover from the person or enterprise any damages —

- (a) incurred or sustained by the Government as a result of the tender process or the conclusion of the agreement; or

(b) which the Government may suffer by having to make less favourable arrangements thereafter.

(14) The Accountant-General —

(a) may at any time vary or rescind any restriction imposed under subsection (6), (7), (8) or (9); and

(b) shall, when the period determined in terms of subsection (9) expires, remove the particulars of the person or enterprise concerned, from the Register.

(15) Where the Accountant-General imposes a restriction under subsection (6), (7), (8) or (9), or amends or rescinds that restriction, the Accountant-General shall, within 14 days, in writing notify —

(a) the person whose particulars have been so endorsed;

(b) any purchasing authority on which it may decide; and

(c) all Government Departments,

of any resolution or decision relative to that restriction or the amendment or rescission, and request those authorities and departments to take similar steps.

(16) Where, in subsequent agreement or tender process involving the Government, a person —

(a) whose particulars, conviction and sentence have been endorsed on the Register as contemplated in this section; and

(b) who has been notified as contemplated in subsection (15)(a),

fails to disclose that endorsement, conviction or sentence, as the case may be, commits an offence and is liable on conviction to a fine not exceeding fifty thousand Emalangeni or imprisonment for a period not exceeding five years or to both.

(17) For the purposes of this section —

(a) “agreement” includes an agreement to procure and supply services, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the Government;

(b) “enterprise” includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity;

(c) “Registrar” means the Registrar designated under section 44; and

(d) “Register” means the Register established in terms of section 43.

Attempting, inciting, etc., commission of offences.

39. A person who, under this Part —

(a) attempts to commit an offence;

(b) conspires with another person to commit an offence;

(c) aids, abets, induces, incites, instigates, commends, counsels or procures another person to commit an offence,

commits an offence and is liable on conviction to a like penalty as if that person has been convicted of that offence.

Briber and bribed to be guilty even if purpose not achieved.

40. (1) Where, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any advantage, believing or suspecting or having grounds to believe or suspect that the advantage was given as an inducement to or a reward for or otherwise on account of the accused doing or forbearing to do or having done or forborne to do, any act referred to in that section, it shall not be a defence that —

- (a) the accused did not actually have the power, right or opportunity to do or forebear to do any such act;
- (b) the accused accepted the advantage without intending to do or forbear to do any such act; or
- (c) the accused did not in fact do so or forbear.

(2) Where, in any proceedings for an offence under any section of this Part, it is proved that the accused offered any advantage to another person as an inducement to or a reward for or otherwise on account of that other person doing or forbearing to do, or having done or forborne to do any act referred to in that section, believing or suspecting or having reason to believe or suspect that such other person had the power, right or opportunity to do or forbear to do any such act, it shall not be a defence that such other person had no such power, right or opportunity.

Money laundering.

41. (1) A person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and —

- (a) enters into any agreement or transaction with anyone in connection with that property, whether that agreement, arrangement or transaction is legally enforceable or not; or
- (b) performs any act in connection with that property, whether it is performed independently or in concert with any other person,

commits an offence and shall be liable on conviction to a fine not exceeding one hundred thousand Emalangeni or to a term of imprisonment not exceeding ten years or to both.

(2) For an offence to be committed under this section, the agreement, performance, transaction or act in connection with the property must have or be likely to have an effect of —

- (a) concealing or disguising the nature, source, location, disposition or movement of that property or the ownership of that property or any interest which anyone may have in respect of that property; or
- (b) enabling or assisting any person who has committed or commits an offence whether in the country or elsewhere —
 - (i) to avoid prosecution; or
 - (ii) to remove or diminish any property acquired directly as a result of a commission of an offence.

General offence of corruption.

42. (1) Subject to the provisions of subsection (2), a person who directly or indirectly —

- (a) demands or accepts or agrees or offers to accept any advantage whether for the benefit of that person or of another person; or
- (b) gives or agrees or offers to give any other person any advantage whether for the benefit of that other person or of another person,

is guilty of the offence of corruption and liable on conviction to the penalty prescribed under section 35(1).

(2) For an offence to be committed under subsection (1), the act complained of must cause that person or influence another person to act in a manner —

- (a) that amounts to the —
 - (i) illegal, dishonest, unauthorized, incomplete or biased; or
 - (ii) misuse or selling of information or material acquired in the course of,
the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, fiduciary or any other legal obligation;
- (b) that amounts to —
 - (i) the abuse of a position of authority;
 - (ii) a breach of trust; or
 - (iii) the violation of a legal duty or a set of rules;
- (c) designed to achieve an unjustified result; or
- (d) that amounts to any other unauthorized or improper inducement to do or not to do anything.

PART IV

REGISTER FOR TENDER DEFAULTERS

Establishment of Register.

43. Within six months after the commencement of this Part, the Minister responsible for Finance shall establish a register, to be known as the Register for Tender Defaulters, within the office of the Accountant-General.

Designation of Registrar.

44. The Minister responsible for Finance shall designate as Registrar a fit and proper person, with due regard to the experience, conscientiousness and integrity of that person.

Powers, duties and functions of Registrar.

45. (1) The Registrar shall, subject to the provisions of section 38 and this Part, exercise and perform the powers, duties and functions under this Act subject to the control and directions of the Accountant-General.

- (2) The Registrar shall —
 - (a) maintain the Register;

- (b) manage the office of the Registrar; and
- (c) carry out the duties and perform the functions assigned under section 38, this Part or by the Accountant-General or any other law.

Access to Register.

46. The Register is open to the public as may be prescribed.

Regulations pertaining to Register.

47. (1) The Minister responsible for Finance may, in consultation with the Minister, make regulations relating to —

- (a) the maintenance and management of the Register, the particulars to be entered in such Register, the manner which such particulars shall be recorded and the period for which the information in the Register shall be retained;
- (b) access to information contained in the Register;
- (c) the safe-keeping and disposal of records; or
- (d) any other matter which the Minister may consider necessary to prescribe in order to achieve the objects of section 38 and this Part.

(2) Regulations made in terms of subsection (1) may, in respect of any contravention or failure to comply, prescribe as a penalty a fine not exceeding two thousand Emalangeni or imprisonment for a period not exceeding 12 months.

PART V

PRESUMPTIONS

Presumptions.

48. (1) Subject to the provisions of subsection (2), where a person is charged with an offence under section 21, 22, 23, 24, 25, 26, 28, 30 or 33, proof that that person or another at the instance of that person —

- (a) accepted or agreed or offered to accept any advantage from; or
- (b) gave or agreed or offered to give any advantage to,

any other person who —

- (i) holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organization, corporate body or other organization or institution in which the person charged was serving as an official;
- (ii) is concerned, or is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person charged or public body, private organization, corporate body or other organization or institution in which the person charged was serving as an official; or
- (iii) acts on behalf of a person contemplated in paragraph (i) or (ii),

and, in the absence of evidence to the contrary which raises reasonable doubt, is sufficient evidence that the person charged demanded or accepted or agreed or offered to accept that advantage from that person or gave or agreed or offered to give that advantage to that person.

(2) For an offence to be committed under subsection (1), the act complained of must

(a) amount to the —

- (i) illegal, dishonest, unauthorized, incomplete or biased; or
- (ii) misuse or selling of information or material acquired in the course of,

the exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, fiduciary or any other legal obligation; or

(b) amount to —

- (i) the abuse of a position of authority;
- (ii) a breach of trust; or
- (iii) the violation of a legal duty or a set of rules; or

(c) be designed to achieve an unjustified result; or

(d) amount to any other unauthorized or improper inducement to do or not to do anything; and,

(e) show that the Crown despite having taken reasonable steps was unable with reasonable certainty to link the —

- (i) demand or acceptance of or agreement or offer to accept; or
- (ii) giving of or agreement or offer to give,

the advantage to any lawful authority or excuse on the part of the person charged.

(3) Whenever a public officer whose duties include the detention, investigation, prosecution or punishment of offenders, is charged with an offence involving the acceptance of an advantage, arising from —

(a) the arrest, detention, investigation or prosecution of any person for an alleged offence;

(b) the omission to arrest, detain or prosecute any person for an alleged offence; or

(c) the investigation of an alleged offence,

it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a), (b) and (c) or any other offence had been committed.

PART VI

MISCELLANEOUS MATTERS

Duty to report corrupt transactions.

49. (1) A person who holds a position of authority and who knows or ought reasonably to have known or suspected that another person has committed —

- (a) an offence under Part III; or
- (b) the offence of theft, fraud, extortion, forgery or uttering a forged document involving an amount of E10 000.00 or more,

and fails to report that knowledge or suspicion or cause that knowledge or suspicion to be reported to any police officer or investigating officer of the Anti-Corruption Commission, commits an offence and shall, on conviction, be liable to a fine not exceeding five thousand Emalangeni or imprisonment not exceeding two years or to both.

(2) For purposes of subsection (1) the following persons hold a position of authority, namely —

- (a) a principal secretary in charge of any Government Ministry, the Head of a Department or other establishment of Government, or equivalent officer, or a Regional Administrator, or Regional Secretary;
- (b) in the case of a municipality, the chief executive officer or town clerk as appointed in terms of any relevant law;
- (c) any head, chairman, chief executive officer of any public or private body;
- (d) any head, rector or principal of any school or college;
- (e) the manager, secretary or director of any company;
- (f) the executive manager of any bank or other financial institution;
- (g) any partner in a partnership;
- (h) any person who has been appointed as head or chief executive officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organization, whether established by legislation, contract or any other legal means;
- (i) any other person who is responsible for the overall management and control of the business of an employer; or
- (j) any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.

Application for restraining order and forfeiture order.

50. (1) Where a person, who is the subject of an investigation under this Act or is about to be charged with an offence under Part III, the Director of Public Prosecutions may apply to the court for a restraining order under section 2 of the Serious Offences (Confiscation of Proceeds) Act, 2001, and accordingly the provisions of that Act shall have effect in respect of the application.

(2) Where a person has been convicted of any offence under Part III of this Act, the Director of Public Prosecutions may apply to court for a forfeiture order under section 3 of the

Serious Offences (Confiscation of Proceeds) Act, 2001, and accordingly, the provisions of that Act shall have effect in respect of the application.

Surrender of passport.

51. (1) A magistrate's court may, on application by the Commissioner, order a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by that person under this Act to surrender to the Commissioner any passport in possession of that person.

(2) Subject to section 52, a passport surrendered to the Commissioner may be detained for one month or for such further period as the court may determine, if on application by the Commissioner, the magistrate is satisfied that the investigation could not reasonably have been completed before the expiration of the one month or such further period.

(3) An application under subsection (2) shall not be heard by a magistrate unless reasonable notice of the application has been given by the Commissioner to the person who surrendered the passport.

(4) All proceedings before a magistrate under this section shall be conducted in Chambers.

Return of passport.

52. (1) A person who has surrendered a passport under section 51(1) may at any time apply to the magistrate's court for its return and the application shall contain a statement of the grounds on which it is made.

(2) Notice of an application under subsection (1) shall be given by the applicant to the Commissioner.

(3) The magistrate may —

(a) grant the application either without conditions or subject to such conditions as to the further surrender of the passport and the appearance of the applicant at any place and time as the magistrate may specify; or

(b) refuse the application.

(4) Without prejudice to subsection (3), the magistrate may, before granting an application under subsection (1), register that —

(a) the applicant enters into a recognizance, with such sureties, if any, as the magistrate may require; or

(b) the applicant deposits such sum of money and enters into such recognizance as the magistrate may require.

(5) Where an application is granted under subsection (3) subject to conditions or is refused, the applicant aggrieved may within fourteen days appeal to the High Court against the conditions or refusal, stating the grounds for the appeal, but the lodging of that appeal shall not of itself affect the operation of any such conditions.

(6) Where after considering the grounds of appeal, the High Court is satisfied that the detention of the passport shall, having regard to all the circumstances including the interests of the investigation, cause unreasonable hardship to the applicant, order that the passport be returned to the applicant either without conditions or upon such conditions as to the further

surrender of the passport and the appearance of the applicant at such time and place as may be specified in the order.

(7) Proceedings under this section shall be conducted in Chambers.

Bail from persons about to leave Swaziland.

53. (1) Where, in the course of an investigation of an offence alleged or suspected to have been committed by any person under this Act, it appears to the Commissioner that that person is about to leave Swaziland, the Commissioner may apply to the court for a warrant for the apprehension of that person and the production before the court of that person.

(2) Where on any application under subsection (1) the court is satisfied upon oath that there is reasonable cause to believe that the person whose apprehension is being sought is about to leave Swaziland and that in all the circumstances, the investigation could not reasonably have been completed before the date of the application, the court may issue a warrant to apprehend that person and cause the person to be brought before the court so soon after apprehension as is practicable to be dealt with according to subsection (3).

(3) On the production before the court of any person apprehended in execution of a warrant issued under subsection (2), the court shall, unless the person apprehended can satisfy the court that he is not about to leave Swaziland and that he has no intention of leaving Swaziland offer to admit the person to bail, on that person giving in cash —

(a) a deposit of E500 if the amount or the value of the advantage in respect of which the offence is committed is E2 000.00; or

(b) a deposit equivalent to one half the amount of the advantage if the amount or value of the advantage in respect of which the offence is committed is more than E2 000.00.

(4) Where the amount or value of the advantage involved is E2 000.00 or more the court shall not admit the person to bail on recognizance.

(5) In deciding the day on which a person admitted to bail under subsection (3) is to appear, the court shall have regard to the time reasonably necessary for completion of the investigation of the offence alleged or suspected to have been committed by that person and to any special hardship to that person likely to result from being on bail.

(6) All proceedings under this section shall be conducted in Chambers.

Evidence of pecuniary resources or property.

54. (1) In any proceedings against a person for an offence under Part III the fact that —

(a) the accused who at the date of or at any time after the date of the alleged offence, is in possession of pecuniary resources or property disproportionate to the known sources of income of that person for which that person cannot satisfactorily account; or

(b) the accused had at the date of or at any time after the date of the alleged offence, obtained an accretion to the pecuniary resources or property of that accused for which the accused cannot satisfactorily account,

may be proved and may be taken by the court —

(i) as corroborating the evidence of any witness in those proceedings that the accused demanded or accepted or solicited any advantage; and

(ii) as showing that any advantage was demanded or accepted or solicited as an inducement or reward.

(2) For the purpose of subsection (1), a person accused of an offence under Part III shall be presumed to be in possession of pecuniary resources or property or to have obtained an accretion to the resources or property where the resources or property are held or the accretion is obtained by another person whom having regard to the relationship to the accused or to any other circumstances, there is reason to believe that other person held those resources or property or obtained that accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Certificates as to official emoluments, etc.

55. In any proceedings against a public officer for an offence under this Act, a certificate purporting to —

(a) certify —

- (i) the rate of, and the total amount of, official emoluments and allowances of the public officer;
- (ii) that the public officer was or was not serving at any specified time or any specified period as a public officer; or
- (iii) that the public officer held or did not hold any specified office; and

(b) be signed by the authorized or appropriate officer of the relevant public or private body,

shall be admitted in evidence in those proceedings by the court on production without further proof.

Protection of informers.

56. (1) In any trial in respect of an offence under Part III of this Act a witness shall not be obliged to disclose the name or address of any informer or state any matter which might lead to the discovery of that informer.

(2) Where in any document which is in evidence or liable to inspection in any civil or criminal proceedings under this Act contains any entry or record in which an informer is named or described or which might lead to the discovery of that informer, the court shall cause that entry or record to be concealed from view or to be obliterated in such a manner as in the opinion of the court may not disclose the identity of the informer.

(3) Where the court is of the opinion that an informer wilfully made to the Commission a material statement which that informer knew or believed to be false or did not believe to be true, or that justice cannot be fully done between the parties without the discovery of the informer, the court may require full disclosure of the identity of the informer.

False reports to the Commission.

57. Any person who, during the course of an investigation into an offence alleged or suspected to have been committed under this Act, knowingly —

(a) makes or causes to be made a false report to the Commission of the commission of an offence;

(b) misleads the Commission or any investigating officer, commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding one year or to both.

Regulations.

58. The Minister, in consultation with the Commissioner, may make regulations in respect of any matter necessary to be prescribed to give effect to this Act.

Repeal of the Prevention of Corruption Order, 1993.

59. The Prevention of Corruption Order, No. 19 of 1993 is repealed.

Transitional provisions.

60. (1) All acts or actions done under the repealed Prevention of Corruption Order, 1993 shall only be lawful and valid up to the date of the repeal.

(2) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the Prevention of Corruption Order, No. 19 of 1993, and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if that Order has not been repealed.

(3) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Prevention of Corruption Order, 1993, and which occurred after the commencement of that Order but before the commencement of this Act, may be concluded, instituted and continued as if that Order has not been repealed.

(4) Notwithstanding the repeal or otherwise of any provision of any law by this Act, that provision shall, for the purpose of the disposal of any investigation, prosecution or any criminal or legal proceedings contemplated in subsection (2) or (3), remain in force as if that provision had not been repealed or done otherwise.

SCHEDULE

(Under Section 30)

1. Senator
2. Member of Parliament
3. Member of Bucopho
4. Regional Administrator
5. King's (Advisory) Counsellor
6. Chief and Chief's Counsellor
7. Municipal Councillor
8. Indvuna YeNkhundia