



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 178

2003

PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 8 of 2003: Anti-Corruption Act, 2003.

ACT

To establish the Anti-Corruption Commission and provide for its functions; to provide for the prevention and punishment of corruption; and to make provision for matters connected therewith.

(Signed by the President on 16 July 2003)

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BE IT ENACTED by the Parliament of the Republic of Namibia as follows:

CHAPTER 1 PRELIMINARY

Definitions

1. In this Act, unless the context indicates otherwise -

“authorised officer” means -

- (a) the Director;
- (b) the Deputy Director;
- (c) an investigating officer appointed under section 13: or
- (d) a special investigator appointed under section 14;

“Commission” means the Anti-Corruption Commission established by section 2;

“corrupt practice” means any conduct contemplated in Chapter 4;

“Director” means the Director of the Commission appointed under section 4, and includes a person temporarily acting as Director under this Act;

“Deputy Director” means the Deputy Director of the Commission appointed under section 4.

CHAPTER 2 ANTI-CORRUPTION COMMISSION

Establishment of Anti-Corruption Commission

2. (1) There is established an independent and impartial body known as the Anti-Corruption Commission with such powers, functions and duties as are provided for in this Act or any other law.

(2) The Commission consists of -

- (a) a Director;
- (b) a Deputy Director; and
- (c) other staff members.

(3) The Commission is an agency in the Public Service as contemplated in the Public Service Act, 1995 (Act No. 13 of 1995).

(4) The Public Service Act, 1995 applies to the Commission, the Director, the Deputy Director and the other staff members of the Commission, except to the extent as provided otherwise by this Act or as is inconsistent with this Act.

Functions of the Commission

3. The functions of the Commission are -

- (a) to receive or initiate and investigate allegations of corrupt practices;
- (b) to consider whether investigation is needed in relation to an allegation and, if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action;
- (c) to consult, co-operate and exchange information with appropriate bodies or authorities, including authorities or bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices;
- (d) to assemble evidence obtained in the course of its functions and to furnish -
 - (i) to any appropriate authority contemplated in paragraph (c); or
 - (ii) to the prosecuting authority or any other suitable authority of another country, upon a formal request,

evidence which may be admissible in the prosecution of a person for a criminal offence or which may otherwise be relevant to the functions of that authority;

- (e) to investigate any conduct of a person employed by a public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices, and to report thereon to an appropriate authority within the public body or private body;
- (f) to take measures for the prevention of corruption in public bodies and private bodies, including measures for -

- (i) examining the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and securing the revision of practices, systems or procedures which may be prone or conducive to corrupt practices;
- (ii) advising public bodies and private bodies on ways of preventing corrupt practices and on changes of practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood of the occurrence of corrupt practices;
- (iii) educating the public and disseminating information on the evil and dangers of corruption, including through the publication and distribution of brochures and pamphlets or the holding of public conferences;
- (iv) enlisting and fostering public confidence and support in combating corruption;
- (g) to disseminate information to the public about the functions of the Commission;
- (h) to do anything else that the Commission is required or authorised to do under this Act or any other law or which is necessary or expedient to do for achieving the purpose of this Act.

Appointment of Director and Deputy Director

4. (1) The National Assembly appoints the Director and Deputy Director upon nomination by the President.

(2) Notwithstanding the provisions of the Public Service Act, 1995 (Act No. 13 of 1995), the President may nominate for appointment as Director or Deputy Director any person whom the President considers suitable and who -

- (a) is of good character and of high integrity; and
- (b) possesses knowledge or experience relevant to the functions of the Commission.

Disqualified persons

5. A person is not eligible to be appointed as Director or Deputy Director who -

- (a) is not a Namibian citizen;
- (b) is a member of the National Assembly or National Council;
- (c) is a member of a regional council or a local authority council;
- (d) is an unrehabilitated insolvent; or
- (e) has been convicted of -
 - (i) theft, fraud, forgery or uttering a forged document, perjury or any other offence involving dishonesty; or
 - (ii) any other offence for which a sentence of imprisonment without the option of a fine has been imposed, excluding an offence of a political nature committed before the date of Namibia's independence.

Authority card

6. (1) Upon their appointment the Director and the Deputy Director must each be issued with an authority card, signed by the President.

(2) An authority card issued under subsection (1) is *prima facie* evidence of the appointment of the person concerned.

(3) The Director and Deputy Director must display the authority card to any person in relation to whom they seek to exercise any power or perform any function or duty under this Act.

Term of office and conditions of service of Director and Deputy Director

7. (1) The Director and Deputy Director are appointed on a full-time basis for five years and may be reappointed upon expiry of their term of office.

(2) The conditions of service of the Director and Deputy Director are determined by the President with the confirmation of the National Assembly.

(3) The Director and Deputy Director may not -

- (a) engage in the day to day management of any business or occupation;
- (b) take part in the management of the affairs of any political party; or
- (c) be a salaried employee of any person or organisation.

(4) The provisions of the Public Service Act, 1995 (Act No. 13 of 1995) in relation to requirements for appointment, tenure of office, conditions of service suspension and dismissal from office do not apply to the Director and Deputy Director in so far as they are inconsistent with the provisions of this Act.

(5) As soon as practicable after their appointment, and thereafter at such times as the Prime Minister may require, the Director and Deputy Director must each furnish to the Prime Minister a statement setting forth particulars of their assets and liabilities, including the nature and extent of any interest which they may have in any business or occupation or in any company or close corporation.

Vacation of office of Director or Deputy Director

8. The office of the Director or Deputy Director becomes vacant if -

- (a) he or she resigns from office by written notice to the President;
- (b) he or she becomes subject to a disqualification referred to in section 5; or
- (c) his or her appointment is terminated under section 9.

Termination of appointment of Director or Deputy Director

9. (1) The appointment of the Director or Deputy Director may be terminated if he or she -

- (a) has failed to comply with a condition of his or her appointment;
- (b) is unable to perform the functions of his or her office by reason of mental or physical infirmity;

- (c) fails to perform efficiently the duties of his or her office; or
- (d) has been guilty of misconduct.

(2) If the question of termination of the appointment of the Director or the Deputy Director arises, the President must notify the Chief Justice who, after consultation with the Judicial Service Commission established under Article 85 of the Namibian Constitution, must within 30 days appoint a board to inquire into the matter and submit a report and recommendations to the President.

(3) The board must consist of -

(a) a chairperson, being a person who -

- (i) held office as judge of the Supreme Court or the High Court of Namibia; or
- (ii) is qualified to be appointed as judge of the Supreme Court or the High Court of Namibia; and

(b) two other members who are of good character and integrity.

(4) If the question of termination of the appointment of the Director or Deputy Director is referred to the board, the President may suspend the Director or Deputy Director, as the case may be, from exercising the functions of his or her office pending inquiry by the board, but the suspension lapses if the board recommends to the President that the appointment should not be terminated.

(5) The board must inquire into the matter in accordance with such rules as the board may make conforming to the rules of natural justice.

(6) The board must within 30 days after conclusion of the inquiry submit its report and recommendations to the President.

(7) If the President, on receipt of the board's report and recommendations, finds that the Director or Deputy Director, as the case may be, should be removed from office, the President must communicate that finding and the reasons therefor by message to the National Assembly within 14 days after the finding if the National Assembly is then in session or, if the National Assembly is not then in session, within 14 days after its next session starts.

(8) The President must remove the Director or Deputy Director from office upon adoption by the National Assembly of a resolution calling for that person's removal from office.

Acting Director

10. (1) If the office of the Director is vacant or the Director is absent from duty or unable for any reason to perform the functions of his or her office the Deputy Director must act as Director, but the President may appoint another person to act temporarily as Director.

(2) If the offices of both the Director and Deputy Director are vacant or if both the Director and Deputy Director are absent or unable for any reason to perform the functions of their offices, the President must appoint another person with appropriate knowledge or experience to act as Director during such vacancy or temporary absence.

(3) A person acting as Director in terms of subsection (1) or (2) may not act for a period of more than six months.

(4) A person appointed as acting Director while the office of the Director is vacant is entitled to the salary attached to that office for the period that he or she so acts.

Duties of Director and Deputy Director

11. (1) The Director is the head of the Commission and is responsible for the direction, control and management of the Commission.

(2) The Deputy Director performs the functions conferred by this Act on the Deputy Director or as may be assigned to him or her by the Director.

Appointment of other staff members of the Commission

12. The other staff members of the Commission referred to in section 2(2)(c) as may be required for the proper performance of the functions of the Commission are appointed subject to the Public Service Act, 1995 (Act No. 13 of 1995).

Investigating officers

13. (1) Among the staff members referred to in section 12 the Director must appoint persons to be investigating officers for the purposes of this Act.

(2) An investigating officer -

(a) has such powers, functions and duties as may be provided for by this Act or as may be delegated or assigned to the investigating officer by the Director; and

(b) must exercise such powers, perform such functions and discharge such duties in compliance with the directions or instructions as may be specified orally or in writing by the Director, the Deputy Director or any other staff member of the Commission superior to him or her in rank.

(3) An authority card must be issued to every staff member appointed as investigating officer in terms of subsection (1), which -

(a) must be signed by the Director; and

(b) is *prima facie* evidence of the appointment of the person concerned.

(4) An investigating officer must display his or her authority card to any person in relation to whom he or she may seek to exercise any power or perform any function or duty under this Act.

Special investigators

14. (1) The Director, with the concurrence of the Prime Minister, may appoint a person who has expert knowledge in a particular field to be a special investigator to investigate an allegation of corrupt practice, or any aspect thereof, specified -

(a) in the instrument appointing the special investigator; or

(b) in a written notice given to the special investigator by the Director.

(2) A special investigator is appointed on a temporary basis as agreed between the Director and the person and must perform his or her functions -

(a) subject to the control and direction of the Director; and

- (b) on the terms and conditions as the Director and the special investigator may agree.
- (3) An authority card must be issued to a person appointed as special investigator in terms of subsection (1), which -
 - (a) must be signed by the Director; and
 - (b) is *prima facie* evidence of the appointment of the person concerned.
- (4) A special investigator must display his or her authority card to any person in relation to whom he or she may seek to exercise any power or perform any function or duty under this Act.

Administrative orders

15. The Director may issue administrative orders, not inconsistent with this Act or the Public Service Act, 1995 (Act No. 13 of 1995), on the general control, training, duties and responsibilities of staff members of the Commission, and for such other matters as may be necessary or expedient for the good administration of the Commission or the prevention of the abuse of power or neglect of duty, and generally for ensuring the efficient and effective functioning of the Commission.

Annual report

16. (1) The Director must submit to the Prime Minister, not later than 31 March of each year, a report on the activities of the Commission during the previous year.
- (2) The Prime Minister must submit the report of the Director to the National Assembly within 30 days after receipt thereof or, if the National Assembly is not then in session, within 30 days after commencement of its first ensuing session.

CHAPTER 3 INVESTIGATION OF CORRUPT PRACTICES

Notification to Commission of corrupt practice

17. (1) Any person may furnish to the Commission information in connection with any matter which that person suspects on reasonable grounds concerns or may concern a corrupt practice.
- (2) Information referred to in subsection (1) may be furnished to the Commission orally or in writing, and if orally the informant's statement must be reduced to writing and signed by the informant.
- (3) The Director may require from an informant to furnish, in such form as the Director thinks fit, any further information as may be required for purposes of the functions of the Commission.

Receipt and examination of allegations

18. (1) The Commission must -
- (a) receive information furnished to it by any person who alleges that another person has or is engaged, or is about to engage, in a corrupt practice; and
 - (b) examine each alleged corrupt practice and decide whether or not an investigation in relation to the allegation is warranted on reasonable grounds.

(2) When deciding whether an investigation into an alleged corrupt practice is warranted, the Commission may consider -

- (a) the seriousness of the conduct or involvement to which the allegation relates;
- (b) whether or not the allegation is frivolous or vexatious or is made in good faith;
- (c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of investigation or other action by any other appropriate authority for the purposes of any other law;
- (d) whether or not, in all the circumstances, the carrying out of an investigation for the purposes of this Act in relation to the allegation is justified and in the public interest.

(3) If the Commission decides that an investigation in relation to the allegation is warranted on reasonable grounds, it must decide whether the investigation should be carried out by the Commission or whether the allegation should be referred to another appropriate authority for investigation or action.

(4) For the purposes of performing the functions under this section the Commission may -

- (a) make such preliminary inquiry as it considers necessary; and
- (b) consult any other appropriate authority.

Notification of decision to informant

19. The Commission must in writing inform a person who has made an allegation in terms of section 17 of any decision made by the Commission under section 18 that further action in relation to the allegation for the purposes of this Act is not warranted on reasonable grounds, and if the matter is referred to another appropriate authority for further action, inform that person accordingly.

Initiating or assuming investigation of a complaint

20. (1) Investigation of a complaint or allegation of a corrupt practice may be initiated by the Commission of its own motion or on information furnished to the Commission in terms of section 17.

- (2) The Commission may -
 - (a) assume the responsibility for any investigation into an alleged corrupt practice commenced or to be commenced by the police, and the police must comply with any requirement of the Commission in that regard;
 - (b) carry out an investigation into an alleged corrupt practice notwithstanding that any other authority, other than the police, is entrusted with a corresponding power or duty of investigation under, and for the purposes of, any other law.

Investigation by Commission

21. (1) For the performance of the functions of the Commission under this Act an authorised officer may conduct any investigation which the Commission is empowered to undertake in terms of this Act or any other law.

(2) Upon initiating or receiving a complaint which in the opinion of the Director warrants investigation on reasonable grounds, the Director must cause the complaint to be investigated as quickly as practicable.

(3) At any time during an investigation, the Director may designate one or more other authorised officers to assist the authorised officer conducting the investigation.

(4) A person questioned by an authorised officer conducting an investigation must answer each question truthfully and to the best of that person's ability, but a person is not obliged to answer any question if the answer is self-incriminating.

(5) At any time during an investigation the Director may summon any person who is believed to be able to furnish any information on the subject of the investigation, or to have possession or control of any book, document or article that has a bearing on that subject to appear before the Director, or any other authorised officer designated by the Director, at a specified time and place in order -

(a) to be questioned; or

(b) to deliver or produce such book, document or article.

(6) The Director or other authorised officer before whom a person appears in terms of subsection (5) may -

(a) require that person to furnish the information under oath or on affirmation; and

(b) administer an oath to, or accept an affirmation from, that person.

(7) No self-incriminating answer given or statement made by any person to the Director or other authorised officer in terms of this section is admissible as evidence against that person in criminal proceedings against that person instituted in any court, except in criminal proceedings -

(a) for perjury; or

(b) for an offence referred to in section 29,

and then only to the extent that the answer or statement is relevant to prove the offence charged.

Authority to enter and search under warrant

22. (1) An authorised officer may enter any premises and there -

(a) make such investigation or inquiry; and

(b) seize anything;

which in the opinion of the authorised officer has a bearing on the investigation.

(2) Subject to section 23, premises may be entered in terms of subsection (1) only by virtue of a warrant issued by a judge of the High Court or by a magistrate in whose area of jurisdiction the building or premises are situated.

(3) A warrant referred to in subsection (2) must be applied for by the Director, the Deputy Director or any other authorised officer and must be supported by an affidavit or a solemn declaration by the person making the application, or any other person having knowledge of the facts, stating -

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- (a) the nature of the investigation being conducted;
- (b) the suspicion which gave rise to the investigation; and
- (c) the need for a search and seizure in terms of this section for purposes of the investigation.

(4) A judge or a magistrate to whom an application for a warrant is made in terms of subsection (3) may issue a warrant authorising entry and search of the premises concerned if it appears to the judge or magistrate from the information furnished that there are reasonable grounds for believing that -

- (a) a corrupt practice has taken place, is taking place or is likely to take place; and
- (b) that anything connected with the investigation into that corrupt practice is on or in those premises.

(5) A warrant to enter and search premises may be issued on any day and must specifically -

- (a) identify the premises that may be entered and searched; and
- (b) authorise an authorised officer mentioned in the warrant to conduct the entry and search of the premises.

(6) A warrant to enter and search premises is valid until one of the following events occurs -

- (a) the warrant is executed;
- (b) the warrant is cancelled by the authority who issued it or, in that person's absence, by a person with similar authority;
- (c) the purpose for issuing it has lapsed; or
- (d) the expiry of one month after the date it was issued.

(7) A warrant to enter and search may be executed only between 6:00 and 18:00, unless the judge or magistrate who issued it on good cause shown authorises that it may be executed at a different time.

(8) Before commencing with the execution of a warrant to enter and search premises, the person authorised by the warrant must -

- (a) if the person in control of the premises is present-
 - (i) identify himself or herself to that person;
 - (ii) hand a copy of the warrant to that person; and
 - (iii) supply that person, at his or her request, with particulars regarding his or her authority to execute the warrant in accordance with the powers conferred by section 24.
- (b) if no person is present, affix a copy of the warrant to a prominent and visible place on the premises.

Authority to enter and search without a warrant

23. (1) Notwithstanding section 22, an authorised officer may without a warrant of entry and search referred to in that section enter and search premises, other than a private dwelling, except if the dwelling is used also for business purposes, for the purpose of attaching and removing, if necessary, any book, document or article, if -

- (a) the occupier of the premises or any other person in control of the premises consents to the entry, search, seizure and removal of the book, document or article concerned; or
- (b) the authorised officer on reasonable grounds believes -
 - (i) that a warrant of entry and search will be issued if application therefor were made under section 22; and
 - (ii) that the delay in obtaining a warrant would defeat the object of the entry and search.

(2) Immediately before entering and searching premises in terms of this section, the person exercising the power must, if the person in control of the premises is present -

- (a) identify himself or herself to that person; and
- (b) supply that person, at his or her request, with particulars regarding -
 - (i) his or her authority to enter and search the premises without a warrant; and
 - (ii) the powers conferred by section 24.

(3) An entry and search without a warrant may be carried out between 6:00 and 18:00, unless doing it at another time is justifiable and necessary in the circumstances.

Powers to enter and search

24. (1) A person who is authorised under section 22 or 23 to enter and search premises may -

- (a) enter the premises;
- (b) search the premises;
- (c) search any person on the premises if there are reasonable grounds for believing that the person has personal possession of any book, document or article that has a bearing on the investigation;
- (d) examine any book, document or article that is on or in those premises that has a bearing on the investigation;
- (e) request information about any book, document or article from the owner or other person in control of the premises or from any person who has control of the book, document or article, or from any other person who may have the information;
- (f) take extracts from, or make copies of, any book or document that is on or in the premises that has a bearing on the investigation;

- (g) in the presence of a person in charge of, or employed at, the premises, use any computer system on the premises, or require the assistance of any such person to use that computer system, to -
 - (i) search any data contained in or available to that computer system;
 - (ii) reproduce any record from that data; and
 - (iii) seize any output from that computer for examination and copying; and
- (h) attach and, if necessary, remove from the premises for examination and safekeeping anything that has a bearing on the investigation.

(2) Notwithstanding paragraph (g) of subsection (1), if a person contemplated in that paragraph is not present or not able to give the assistance required by the authorised officer, the authorised officer may proceed to use the computer system if in the circumstances of the case any delay may prejudice the purpose for which the search is carried out.

(3) A person conducting an entry and search of premises under this Act may be accompanied and assisted by any other authorised officer or a police officer, or by any other person authorised by the Director for that purpose.

Conduct of entry and search

25. (1) A person who enters and searches any premises under section 22 or 23 must exercise those powers with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

(2) The search of a person under section 24(1)(c) may be conducted only by a person of the same gender as the person to be searched.

(3) A person who enters and searches premises under section 22 or 23 must, before questioning any person -

- (a) advise that person of the right to be assisted by a legal practitioner; and
- (b) allow that person to exercise that right.

(4) A person who removes anything from premises being searched must -

- (a) issue a receipt for it to the owner or other person in control of the premises; and
- (b) return it as soon as practicable after achieving the purpose for which it was removed.

(5) If the owner or person in control of any book, document or article refuses to allow the authorised officer conducting a search to inspect that book, document or article on the ground that it contains privileged information, the authorised officer may request the registrar or sheriff of the High Court, or the messenger of the magistrate's court of the area of jurisdiction where the premises are situated, to attach and remove the article or document for safe custody until a competent court determines whether or not the information is privileged.

(6) An authorised officer or a police officer who accompanies and assists an authorised officer who conducts an entry and search of premises under section 22 or 23, may overcome resistance to the entry and search by using such force as is reasonably required, including breaking out a door or a window of the premises or any container or receptacle on the premises.

(7) Before using force as contemplated in subsection (6) to gain access to any premises, the authorised officer or police officer must audibly demand admission and must announce the purpose of the entry, except if the circumstances are such that immediate entry must be gained to prevent concealment, loss or destruction of anything on or in the premises.

Power to obtain information concerning assets

26. (1) If, in the course of an investigation into an alleged corrupt practice, the Director is satisfied that it could assist or expedite the investigation, the Director may, by notice in writing, require -

- (a) any suspected person to furnish a statement in writing -
 - (i) enumerating all movable or immovable property belonging to or possessed by him or her in Namibia or elsewhere or held in trust for him or her in Namibia or elsewhere, and -
 - (aa) specifying the date on which every such property was acquired;
 - (bb) explaining whether it was acquired by way of purchase, exchange, gift, bequest, inheritance or by any other cause; and
 - (cc) specifying the consideration paid or given therefor and the amount or value of the consideration;
 - (ii) specifying any moneys or other property acquired in Namibia or elsewhere, or held in or sent out of Namibia, in trust for him or her or on his or her behalf during such period as may be specified in the notice;
- (b) any other person with whom the Director believes the suspected person had any financial transaction or other business dealing relating to an alleged corrupt practice to furnish a statement in writing enumerating all movable or immovable property acquired by that person in Namibia and elsewhere at the material time;
- (c) any person to furnish, notwithstanding the provisions of any other law to the contrary, any information in that person's possession relating to the affairs of any suspected person and to produce any document or certified true copy of any document relating to such suspected person which is in the possession or under the control of the person required to furnish the information;
- (d) the manager or other person in charge of any bank, building society or other financial institution, in addition to furnishing any information specified in paragraph (c), to furnish any information or the originals, or certified true copies of the accounts or the statements of account at the bank, building society or financial institution of any suspected person notwithstanding the provisions of any other law to the contrary.

(2) Notwithstanding any oath or other obligation of secrecy imposed by law or otherwise, a person on whom a notice referred to in subsection (1) is served must, comply with the requirements of that notice within the time specified therein.

(3) A person who without reasonable excuse fails to comply with any requirement of a notice referred to in subsection (1), commits an offence and is liable on conviction to a fine not exceeding N\$50 000 or to imprisonment for a term not exceeding three years or to both such fine and such imprisonment.

Investigation of accounts at financial institutions

27. (1) The Director or Deputy Director, or an investigating officer or special investigator authorised in writing by the Director or Deputy Director, may require access to and investigate any bank account, share account, purchase account, expense account or any other account, or any safe box in any bank, building society or other financial institution.

(2) A person in charge of an account or safe box referred to in subsection (1) must, notwithstanding the provisions of any other law to the contrary, comply with a request made by an authorised officer referred to in subsection (1) to disclose any information or produce any book or document, including data stored in electronic form, or anything relating to an account or safe box referred to in that subsection.

(3) A person who without reasonable cause fails to comply with a request of an authorised officer in terms of subsection (2), commits an offence and is liable to a fine of N\$50 000 or to imprisonment for three years or to both such fine and such imprisonment.

Powers of arrest

28. (1) An authorised officer may without a warrant arrest any person whom he or she reasonably suspects has committed or is about to commit an offence under this Act.

(2) If during an investigation of a suspected offence under this Act another offence is disclosed, the authorised officer may, without a warrant, arrest a person if he or she reasonably suspects that the person has committed the offence and that such other offence is connected with, or was either directly or indirectly facilitated by, the suspected offence under this Act.

(3) A person arrested must be taken forthwith to a police station to be dealt with in accordance with the Criminal Procedure Act, 1977 (Act No. 51 of 1977).

Offences in relation to functions of the Commission

29. (1) A person commits an offence who -

- (a) assaults, resists or obstructs an authorised officer who is exercising a power or performing a duty conferred or imposed on, or delegated or assigned to, the authorised officer by or under this Act;
- (b) does anything calculated to improperly influence an authorised officer concerning any matter connected with an investigation;
- (c) defames an authorised officer in his or her official capacity;
- (d) knowingly provides false information to an authorised officer; or
- (e) fails to comply with a lawful direction or requirement of an authorised officer under this Act;
- (f) having been summoned to appear before the Director or any other authorised officer in terms of section 21(5) -
 - (i) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
 - (ii) attends as required, but -

- (aa) refuses to be sworn in or to make an affirmation when requested to do so;
 - (bb) fails to produce a book document or article as ordered, if it is in the possession or under the control of that person;
- (g) falsely pretends that he or she is an authorised officer or has any of the powers of such an officer under this Act, or under any authorization of the Commission issued under this Act;
- (h) discloses material information concerning the affairs of any person obtained in carrying out any function in terms of this Act;
- (i) in contravention of an order issued under section 52(3), publishes in any manner any information that may reveal the identity or address of an informer or person referred to in that section.
- (2) Paragraph (h) of subsection (1) does not apply to information disclosed -
 - (a) for the purpose of the proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice; or
 - (c) at the request of an authorised officer.
- (3) A person convicted of an offence in terms of subsection (1) or (2) is liable to a fine not exceeding N\$100 000 or to imprisonment for a term not exceeding five years or to both such fine and such imprisonment.

Regulations

- 30.** (1) The Prime Minister may, after consultation with the Director, make regulations -
- (a) prescribing a code of conduct for office-bearers and members of the staff of institutions and bodies established by law, including bodies corporate in which the State, a regional council, a local authority council or any statutory institution or other public body is a shareholder or member or holds a similar interest;
 - (b) assigning functions to the Commission concerning the giving of advice and assistance in relation to the development and implementation of any code of conduct which any designated authority is required to formulate and implement in terms of any law;
 - (c) imposing a duty on -
 - (i) members of the National Assembly and National Council;
 - (ii) members of regional councils and local authority councils;
 - (iii) members of the management boards or committees of institutions and bodies referred to in paragraph (a);
 - (iv) specified categories of staff members of the Public Service, regional councils, local authority councils and institutions and bodies referred to in paragraph (a),

to declare, in the manner and to the extent prescribed, their assets, including assets held in trust for them or by other persons on their behalf, and to furnish such information as may be stipulated in relation to those assets;

- (d) prescribing the creation and keeping of a register for the recording of assets and information referred to in paragraph (c), and the powers, functions and duties of the Commission or any other authority or person in relation to -
 - (i) the keeping of that register;
 - (ii) the receipt or collection of information to be recorded therein;
 - (iii) the preservation of secrecy in respect of that information; and
 - (iv) the circumstances when and the conditions on which any such information may be disclosed; or
- (e) any other matter which is reasonably necessary in order to promote the efficiency of the Commission to achieve the purposes of this Act.

(2) A regulation may provide that the contravention of, or failure to comply with, any provision thereof constitutes an offence and prescribe penalties therefor not exceeding a fine of N\$100 000 or imprisonment for a period of five years or both such fine and such imprisonment.

Referral of matter to Prosecutor-General

31. (1) If, upon completion of an investigation by the Commission, it appears to the Director that a person has committed an offence of corrupt practice under Chapter 4 or any other offence discovered during the investigation, the Director must refer the matter and all relevant information and evidence assembled by the Commission in connection with the matter to the Prosecutor-General.

(2) If, upon referral of a matter in terms of subsection (1), the Prosecutor-General decides to prosecute any person for an offence under this Act, the Prosecutor-General, in consultation with the Director, may delegate authority -

- (a) to conduct criminal proceedings in court in respect of that matter; or
- (b) to defend or prosecute any appeal emanating from criminal proceedings in relation to that matter,

to any staff member of the Commission, including the Director or Deputy Director, who possesses the required legal qualifications to appear in the courts of Namibia.

(3) A person to whom authority is delegated under subsection (2), exercises the powers under that authority subject to the control and direction of the Prosecutor-General.

CHAPTER 4 CORRUPT PRACTICES AND PENALTIES

Definitions for this Chapter

32. In this Chapter, unless the context indicates otherwise-

“agent” means a person employed by or acting for another in any capacity whatsoever, and includes -

- (a) a trustee of an insolvent estate;
- (b) the assignee of an estate assigned for the benefit or with the consent of creditors;
- (c) the liquidator of a company or other corporate body that is being wound up or dissolved;
- (d) the executor of the estate of a deceased person;
- (e) the legal representative of a minor or a person who is of unsound mind or otherwise under legal disability;
- (f) a public officer or an officer serving in or under any public body;
- (g) a trustee, an administrator or a subcontractor and any person appointed as an agent in terms of any law;

“business” means any activity carried on for the purpose of gain or profit within Namibia or elsewhere, and includes all property derived from or used in or for the purpose of carrying on such activity, and all the rights and liabilities arising from such activity;

“corruptly” means in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to -

- (a) any employment relationship;
- (b) any agreement; or
- (c) the performance of any function in whatever capacity;

“gratification “ includes -

- (a) money or any gift, loan, fee, reward, commission, valuable security or property or interest in property of any description, whether movable or immovable;
- (b) any office, dignity, employment, contract of employment or services and any agreement to give employment or render services in any capacity;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any valuable consideration or benefit of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) any forbearance to demand any money or money’s worth or valuable thing;
- (f) any service or favour, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty;
- (g) any right or privilege;
- (h) any aid, vote, consent or influence, or any pretended aid, vote, consent or influence;

- (i) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs;

“principal” includes any employer, any beneficiary under a trust, any trust estate, the estate of a deceased person, any person beneficially interested in the estate of a deceased person, in the case of a person serving in or under a public body, the public body and in the case of a person acting in a representative capacity, the person on whose behalf the representative acts;

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

“public body” means -

- (a) any ministry, office or agency of government;
- (b) any regional council or local authority council; or
- (c) any corporation, board, council, institution or other body, whether incorporate or unincorporated, or any functionary -
 - (i) exercising any power or performing any duty in terms of the Namibian Constitution; or
 - (ii) exercising a public power or performing a public function in terms of any law or the common law;

“public officer” means a person who is a member, an officer, an employee or a servant of a public body, and includes -

- (a) a staff member of the public service, including the police force, prisons service and defence force, or of a regional council or a local authority council;
- (b) a member of the National Assembly, the National Council, a regional council or a local authority council;
- (c) a judge of the Supreme Court or the High Court or any other member of the judicial authority;
- (e) any person receiving any remuneration from public funds;
- (f) if the public body is a corporation, the person who is incorporated as such.

Offence of corruptly accepting gratification

33. A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept for the benefit of himself or herself or any other person any gratification as -

- (a) an inducement to do or to omit doing anything;
- (b) a reward for having done or having omitted to do anything.

Offence of corruptly giving gratification

34. A person commits an offence who, directly or indirectly, corruptly offers, gives or agrees to give to any person, whether for the benefit of that person or any other person, any gratification as -

- (a) an inducement to do or to omit doing anything; or
- (b) a reward for having done or having omitted to do anything.

Corruptly accepting gratification by or giving gratification to agent

35. (1) An agent commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept from any person a gratification -

- (a) as an inducement to do or to omit doing anything;
- (b) as a reward for having done or having omitted to do anything,

in relation to the affairs or business of the agent's principal.

(2) A person commits an offence who, directly or indirectly, corruptly offers or gives or agrees to give to an agent, whether for the benefit of the agent or any other person, any gratification as -

- (a) an inducement to do or to omit doing anything; or
- (b) a reward for having done or having omitted to do anything,

in relation to the affairs or business of the agent's principal,

(3) A person commits an offence who -

- (a) knowingly gives to an agent; or
- (b) being an agent, knowingly uses,

any receipt, account or other document in respect of which the agent's 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 the agent, as the case may be, is intended to mislead the principal or any other person.

(4) If, in any proceedings against an agent for an offence under subsection (1), it is proved that the agent corruptly accepted or obtained or agreed to accept any gratification, having reason to believe or suspect that the gratification was offered or given as an inducement or reward contemplated in that subsection, it is no defence that the agent -

- (a) did not have the power, right or opportunity to perform or not to perform any act contemplated in that subsection;
- (b) accepted the gratification without intending to perform or not to perform the act in relation to which the gratification was given; or
- (c) failed to perform or not to perform the act in relation to which the gratification was given.

(5) If, in any proceedings for an offence under subsection (2), it is proved that the accused corruptly offered or gave or agreed to give any gratification to an agent as an inducement or reward contemplated in that subsection, the accused is guilty of the offence notwithstanding that the agent had no power, right or opportunity to perform or not to perform the act in relation to which the gratification was offered given or agreed to be given.

Corrupt acquisition of private interest by public officer

36. A public officer commits an offence who knowingly and corruptly, and otherwise than as a member of a registered joint stock company consisting of more than 20 persons, acquires or holds, directly or indirectly, a private interest in any contract, agreement or investment emanating from or connected with the public body on or in which he or she serves as a member or as an employee or which is made on account of the public body.

Corruption in relation to tenders

37. A person commits an offence who, directly or indirectly -

- (a) gives or offers to give to any person any gratification as an inducement or a reward for, or otherwise on account of, the withdrawal of, or the refraining from the making of, any tender for a contract invited by any public body, private organisation, corporate body or other organisation or institution to perform any work, provide any service, supply any article, material or substance or for doing anything; or
- (b) solicits or accepts or agrees to accept for himself or herself or any other person any gratification as an inducement or a reward for or otherwise on account of the withdrawal of, or the refraining from the making of, a tender for a contract referred to in paragraph (a).

Bribery of public officer

38. A person who offers or gives or agrees to give to a public officer, or who, being a public officer, solicits or accepts or agrees to accept, any gratification as an inducement or a reward for, or otherwise on account of -

- (a) voting or abstaining from voting at any meeting of a public body in favour of or against any measure, resolution or question relating to the functions of that public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;
- (c) aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- (d) showing or forbearing to show any favour or disfavour in his or her capacity as a public officer,

commits an offence, whether or not the public officer had the power, right or opportunity so to do.

Corruption of witnesses

39. (1) A person commits an offence who, directly or indirectly, corruptly offers or gives or agrees to give any gratification to any person, whether for the benefit of that person or any other person, with the intent to -

- (a) influence 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 authorised by law to hear evidence or take testimony; or

- (b) influence that person or another witness to absent himself or herself from such trial, hearing or other proceedings or to withhold true testimony.
- (2) A person commits an offence who, directly or indirectly, corruptly solicits or accepts or agrees to accept any gratification, whether for the benefit of himself or herself or any other person, in return -
 - (a) for testifying in a particular or untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony; or
 - (b) for not testifying at any such trial, hearing or proceedings.

Bribery of foreign public officials

40. (1) A person commits an offence who, in order to obtain or retain business or an advantage in the course of business, directly or indirectly, corruptly offers or gives or agrees to give any gratification to a foreign public official -
- (a) as a reward for an act or omission by the official in connection with the performance of the official's duties or functions; or
 - (b) as an inducement to use his or her position to influence any act or decision of the foreign state or public international organisation for which the official performs duties or function.
- (2) For the purposes of subsection (1), "foreign public official" means-
- (a) a person holding any legislative, administrative or judicial office at any level or subdivision of government of a foreign state;
 - (b) any person performing public functions for a foreign state, or any board, commission, corporation or other body or authority performing a duty or function on behalf of the foreign state; or
 - (c) an official or agent of a public international organisation formed by two or more states or by two or more public international organisations.

Bribery in relation to auctions

41. A person commits an offence who, directly or indirectly, corruptly -
- (a) offers or gives or agrees to give any gratification to any other person as an inducement to refrain, or as a reward for having refrained, from bidding at any auction; or
 - (b) solicits or accepts or agrees to accept any gratification as an inducement or a reward of his or her refraining or having refrained from bidding at any auction.

Bribery for giving assistance in relation to contracts

42. (1) A person commits an offence who corruptly offers or gives or agrees to give any gratification to any other person whether for the benefit of that person or any other person, as an inducement or a reward for giving assistance or using influence, or having given assistance or used influence, in -
- (a) the promotion, execution or procuring, or the amendment, suspension or cancellation, of any contract with a public body, private organisation, corporate body or other organisation or institution; or

- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

(2) A person commits an offence who corruptly solicits or accepts or agrees to accept, whether for the benefit of himself or herself or any other person, any gratification as an inducement or as a reward of his or her giving assistance or using influence, or having given assistance or used influence, in -

- (a) the promotion, execution or procuring of any contract with a public body, private organisation, corporate body or other organisation or institution; or
- (b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

Corruptly using office or position for gratification

43. (1) A public officer commits an offence who, directly or indirectly, corruptly uses his or her office or position in a public body to obtain any gratification, whether for the benefit of himself or herself or any other person.

(2) For the purposes of subsection (1), proof that a public officer in a public body has made a decision or taken action in relation to any matter in which the public officer, or any relative or associate of his or hers has an interest, whether directly or indirectly, is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the public officer has corruptly used his or her office or position in the public body in order to obtain a gratification.

- (3) For the purposes of subsection (2) -

- (a) "relative" includes -

- (i) a spouse or fiancé, including a partner living with the public officer on a permanent basis as if they were married or with whom the public officer habitually cohabits;
- (ii) a child, including a stepchild or fosterchild;
- (iii) a parent, including a step-parent or fosterparent;
- (iv) a brother or sister of the public officer or of his or her spouse; or
- (v) the spouse of any of the persons mentioned in subparagraphs (ii), (iii) or (iv); and

- (b) "associate" includes -

- (i) an employee, agent or nominee of the public officer;
- (ii) a business partner or any company or other corporate body of which the public officer is a director or is in charge or control of its business or affairs, or in which the public officer, alone or together with any nominee of his or her, has or have a controlling interest;
- (iii) a trust controlled and administered by the public officer;

Corruption in relation to sporting events

- 44. (1) A person commits an offence who, directly or indirectly, corruptly -

- (a) solicits or accepts or agrees to accept any gratification, whether for the benefit of himself or herself or any other person, as an inducement or a reward of his or her influencing or having influenced the run of play or the outcome of any sport event; or
- (b) offers or gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event.

Dealing with, using, holding, receiving or concealing gratification in relation to any offence

45. A person commits an offence who, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person -

- (a) enters into, or causes to be entered into, any dealing in relation to any property; or
- (b) uses or causes to be used, or receives, holds, controls or conceals any property or any part thereof,

which was obtained as gratification, or derived from the proceeds of any gratification obtained, in the commission of an offence under this Chapter.

- (2) For the purposes of subsection (1), “dealing” includes -
 - (a) any purchase, sale, loan, charge, mortgage, lien, pledge, transfer, delivery, assignment, subrogation, transmission, gift, trust, settlement, deposit, withdrawal, transfer between accounts or extension of credit;
 - (b) any agency or grant of power of attorney; or
 - (c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or in part of any property being conferred on any person.

Attempts and conspiracies

46. A person who -

- (a) attempts to commit an offence under this Chapter;
- (b) conspires with any other person to commit an offence under this Chapter; or
- (c) abets, induces, incites or commands another person to commit an offence under this Chapter,

commits an offence and is, on conviction, liable to the punishment prescribed for that offence by this Act.

Fraudulent concealment of offence

47. A person commits an offence who, with intent to defraud or to conceal the commission of an offence under this Chapter or to obstruct an authorised officer in the investigation of any such offence -

- (a) destroys alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of his or her employer, or has been

received by him or her on account of his or her employment, or any entry in such book, document, account or electronic device, or is privy to any such act;

- (b) makes or is privy to the making of any false entry in such book, document, account or electronic device; or
- (c) omits or is privy to the omission of any information from any such book, document, account or electronic device.

Duty to report corrupt transactions

48. (1) A public officer to whom any gratification is promised, offered, or given in contravention of any provision of this Chapter must, as soon as possible, report such fact, together with the name or any other information relating to the identity of the person or persons concerned to his or her supervisor and to the Commission.

(2) If any gratification has been demanded, solicited, accepted or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept or obtain any gratification from any person in contravention of any provision of this Chapter, that person must, as soon as possible, report such fact together with the name or any other information relating to the identity of the other person or persons involved to the Commission.

- (3) A person commits an offence who fails to comply with subsection (1) or (2).

Penalties

49. A person convicted of an offence under any provision of this Chapter is liable to a fine not exceeding N\$500 000 or to imprisonment for a term not exceeding 25 years, or to both such fine and such imprisonment.

CHAPTER 5 GENERAL PROVISIONS

Liability for offences committed outside Namibia

50. (1) The provisions of this Act shall, in relation to Namibian citizens and persons domiciled or permanently resident in Namibia, have effect also outside Namibia, and when an offence under this Act is committed outside Namibia by any such citizen or a person so domiciled or resident, such person may be dealt with in respect of that offence as if it had been committed at any place within Namibia.

(2) The acquittal or conviction of a person by a foreign court of law on a criminal charge for an offence similar to an offence referred to in this Act, which would be a bar to subsequent charges against that person for the same offence if committed in Namibia, is a bar to further proceedings against him or her under any law relating to the extradition of persons, in respect of the same offence, outside Namibia.

Jurisdiction of magistrates' courts

51. Any magistrate's court has jurisdiction to impose any penalty mentioned in this Act.

Protection of informers and information

52. (1) Subject to subsection (2), in any trial for an offence under this Act, a witness is not obliged to -

- (a) disclose the identity or address of any informer or person who assisted the Commission in an investigation into an alleged or suspected offence under this Act; or
 - (b) state any matter which may disclose the identity or address of such informer or person.
- (2) If in any proceedings before a court, the court, after full inquiry into the case, is satisfied -
- (a) that an informer wilfully made a material statement which the informer knew or believed to be false or did not believe to be true; or
 - (b) that justice cannot fully be done between parties without disclosing the identity of an informer or a person who assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law,

the court may permit inquiry into, and require disclosure of, the identity of the informer or person concerned.

- (3) In a case contemplated in subsection (2)(b) the court may -
- (a) direct any person whose presence is not necessary at the proceedings to leave the court room before permitting the inquiry into the identity of an informer or person referred to in that subsection; and
 - (b) issue an order prohibiting the publication by any person of any information that may disclose the identity or address of such informer or person.
- (4) No action or proceedings of a disciplinary, civil or criminal nature may be instituted or maintained by any person or authority against any informer or a person who has assisted the Commission in an investigation into an alleged or suspected offence under this Act or any other law in respect of any information, other than a material statement which he or she knew or believed to be false or did not believe to be true, disclosed by him or her to the Commission for the purpose of assisting the Commission in the performance of its functions under this Act.
- (5) If any book or document, or any visual or sound recording or any other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his or her identity or discovery, the court, tribunal or other authority before which the proceedings are held must cause all such parts thereof or passages therein to be concealed from view or to obliterated or otherwise removed so far as is necessary to protect such person from discovery.

Limitation of liability

53. No person, including the State, is liable in respect of anything done or omitted in good faith in the exercise of a power or the performance of a duty conferred by or under this Act.

Repeal and amendment of laws

54. (1) The Prevention of Corruption Ordinance, 1928 (Ordinance No. 2 of 1928), and the Prevention of Corruption Amendment Act, 1985 (Act No. 21 of 1985), are repealed.

Act No. 8, 2003

ANTI-CORRUPTION ACT, 2003

(2) The Public Service Act, 1995 (Act No. 13 of 1995) is amended by the insertion in Schedule 3 to that Act -

- (a) in the first column, of the expression “Anti-Corruption Commission”; and
- (b) in the second column, of the expression “Director: Anti-Corruption Commission”.

Short title and commencement

55. This Act is called the Anti-Corruption Act, 2003 and comes into operation on a date determined by the Prime Minister by notice in the *Gazette*.
