

REPUBLIC OF SOUTH AFRICA

PREVENTION AND COMBATING OF CORRUPT ACTIVITIES BILL

*(As presented by the Portfolio Committee on Justice and Constitutional Development (National Assembly), after consideration of the Prevention of Corruption Bill [B 19—2002])
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 19B—2002]

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BILL

To provide for the strengthening of measures to prevent and combat corruption and corrupt activities; to provide for the offence of corruption and offences relating to corrupt activities; to provide for investigative measures in respect of corruption and related corrupt activities; to provide for the establishment and endorsement of a Register in order to place certain restrictions on persons and enterprises convicted of corrupt activities relating to tenders and contracts; to place a duty on certain persons holding a position of authority to report certain corrupt transactions; to provide for extraterritorial jurisdiction in respect of the offence of corruption and offences relating to corrupt activities; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights;

AND WHEREAS corruption and related corrupt activities undermine the said rights, endanger the stability and security of societies, undermine the institutions and values of democracy and ethical values and morality, jeopardise sustainable development, the rule of law and the credibility of governments, and provide a breeding ground for organised crime;

AND WHEREAS the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies, ethical values and the rule of law;

AND WHEREAS there are links between corrupt activities and other forms of crime, in particular organised crime and economic crime, including money-laundering;

AND WHEREAS corruption is a transnational phenomenon that crosses national borders and affects all societies and economies, and is equally destructive and reprehensible within both the public and private spheres of life, so that regional and international cooperation is essential to prevent and control corruption and related corrupt activities;

AND WHEREAS a comprehensive, integrated and multidisciplinary approach is required to prevent and combat corruption and related corrupt activities efficiently and effectively;

AND WHEREAS the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption and related corrupt activities efficiently and effectively;

AND WHEREAS the prevention and combating of corruption and related corrupt activities is a responsibility of all States requiring mutual cooperation, with the support

and involvement of individuals and groups outside the public sector, such as organs of civil society and non-governmental and community-based organizations, if their efforts in this area are to be efficient and effective:

AND WHEREAS the United Nations has adopted various resolutions condemning all corrupt practices, and urged member states to take effective and concrete action to combat all forms of corruption and related corrupt practices;

AND WHEREAS the *Southern African Development Community Protocol against Corruption*, adopted on 14 August 2001 in Malawi, reaffirmed the need to eliminate the scourges of corruption through the adoption of effective preventive and deterrent measures and by strictly enforcing legislation against all types of corruption;

AND WHEREAS the Republic of South Africa desires to be in compliance with and to become Party to the *United Nations Convention against Corruption* adopted by the General Assembly of the United Nations on 31 October 2003;

AND WHEREAS it is desirable to unbundle the crime of corruption in terms of which, in addition to the creation of a general, broad and all-encompassing offence of corruption, various specific corrupt activities are criminalized,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1 DEFINITIONS AND INTERPRETATION

Definitions

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

- (i) **“agent”** means any authorised representative who acts on behalf of his or her principal and includes a director, officer, employee or other person authorised to act on behalf of his or her principal, and **“agency”** has a corresponding meaning; 5
- (ii) **“animal”** means any living vertebrate member of the animal kingdom, domestic or wild, but does not include a human being; 10
- (iii) **“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 the Republic 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; 15
- (iv) **“dealing”** includes—
 - (a) any promise, purchase, sale, barter, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts or extension of credit; 20
 - (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;
- (v) **“foreign public official”** means— 25
 - (a) any person holding a legislative, administrative or judicial office of a foreign state;
 - (b) any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or 30
 - (c) an official or agent of a public international organisation;
- (vi) **“foreign state”** means any country other than South Africa, and includes—
 - (a) any foreign territory;
 - (b) all levels and subdivisions of government of any such country or territory; or 35
 - (c) any agency of any such country or territory or of a political subdivision of any such country or territory;
- (vii) **“gambling game”** means any gambling game as defined in section 1 of the National Gambling Act, 1996 (Act No. 33 of 1996);
- (viii) **“game of chance”**, includes a lottery, lotto, numbers game, scratch game, sweepstake, or sports pool; 40
- (ix) **“gratification”**, includes—
 - (a) money, whether in cash or otherwise;
 - (b) any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; 45
 - (c) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
 - (d) any office, status, honour, employment, contract of employment or services, any agreement to give employment or render services in any capacity and residential or holiday accommodation; 50
 - (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
 - (f) any forbearance to demand any money or money’s worth or valuable thing; 55
 - (g) any other service or favour or advantage of any description, 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 includes the exercise or the forbearance from the exercise of any right or any official power or duty; 60
 - (h) any right or privilege;

- (i) any real or pretended aid, vote, consent, influence or abstention from voting; or
- (j) any valuable consideration or benefit of any kind, including any discount, commission, rebate, bonus, deduction or percentage;
- (x) **“induce”** includes to persuade, encourage, coerce, intimidate or threaten or cause a person, and **“inducement”** has a corresponding meaning; 5
- (xi) **“judicial officer”** means—
 - (a) any constitutional court judge or any other judge defined in section 1 of the Judges’ Remuneration and Conditions of Employment Act, 2001 (Act No. 47 of 2001); 10
 - (b) a judge of the Labour Court appointed under section 153(1)(a) or (b), (4) or (5) of the Labour Relations Act, 1995 (Act No. 66 of 1995);
 - (c) the President or judge of the Land Claims Court appointed under section 22(3), (4) or (8) of the Restitution of Land Rights Act, 1994 (Act No. 22 of 1994); 15
 - (d) any judge of the Competition Appeal Court appointed under section 36(2) of the Competition Act, 1998 (Act No. 89 of 1998);
 - (e) a judge or additional member appointed under section 7 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996), to a Special Tribunal established in terms of section 2 of that Act; 20
 - (f) the presiding officer of the court of marine enquiry referred to in section 267(1) of the Merchant Shipping Act, 1951 (Act No. 57 of 1951);
 - (g) any presiding officer appointed under section 10(3)(a) of the Administration Amendment Act, 1929 (Act No. 9 of 1929), to a divorce court established in terms of section 10(1) of that Act; 25
 - (h) any regional magistrate or magistrate defined in section 1 of the Magistrates Act, 1993 (Act No. 90 of 1993);
 - (i) any commissioner appointed under section 9 of the Small Claims Courts Act, 1984 (Act No. 61 of 1984);
 - (j) any arbitrator, mediator or umpire, who in terms of any law presides at arbitration or mediation proceedings for the settlement by arbitration or mediation of a dispute which has been referred to arbitration or mediation; 30
 - (k) any adjudicator appointed under section 6 of the Short Process Courts and Mediation in Certain Civil Cases Act, 1991 (Act No. 103 of 1991); 35
 - (l) where applicable, any assessor who assists a judicial officer;
 - (m) any other presiding officer appointed to any court or tribunal established under any statute and who has the authority to decide causes or issues between parties and render decisions in a judicial capacity;
 - (n) any other person who presides at any trial, hearing, commission, committee or any other proceedings and who has the authority to decide causes or issues between parties and render decisions in a judicial capacity; or 40
 - (o) any person contemplated in paragraphs (a) to (n) who has been appointed in an acting or temporary capacity; 45
- (xii) **“legislative authority”**, means the legislative authority referred to in section 43 of the Constitution;
- (xiii) **“listed company”** means a company, the equity share capital of which is listed on a stock exchange as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985); 50
- (xiv) **“National Commissioner”** means the National Commissioner of the South African Police Service appointed in terms of section 207(1) of the Constitution;
- (xv) **“National Director”** means the National Director of Public Prosecutions appointed in terms of section 179(1) of the Constitution; 55
- (xvi) **“official”** means any director, functionary, officer or agent serving in any capacity whatsoever in a public body, private organisation, corporate body, political party, institution or other employment, whether under a contract of service or otherwise, and whether in an executive capacity or not;
- (xvii) **“person who is party to an employment relationship”**, includes any person who in any manner assists in carrying on or conducting the business of an employer; 60

- (xviii) **“police official”** means a **“member”** of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);
- (xix) **“principal”**, includes— 5
- (a) any employer;
 - (b) any beneficiary under a trust and any trust estate;
 - (c) the estate of a deceased person and any person with a beneficial interest in the estate of a deceased person;
 - (d) in the case of any person serving in or under a public body, the public body; or 10
 - (e) in the case of a legal representative referred to in the definition of **“agent”**, the person represented by such legal representative;
- (xx) **“private sector”** means all persons or entities, including any—
- (a) natural person or group of two or more natural persons who carries on a business; 15
 - (b) syndicate, agency, trust, partnership, fund, association, organisation or institution;
 - (c) company incorporated or registered as such;
 - (d) body of persons corporate or unincorporate; or
 - (e) other legal person, 20
- but does not include—
- (a) public officers;
 - (b) public bodies;
 - (c) any legislative authority or any member thereof;
 - (d) the judicial authority or any judicial officer; or 25
 - (e) the prosecuting authority or any member thereof;
- (xxi) **“property”** means money or any other movable, immovable, corporeal or incorporeal thing, whether situated in the Republic or elsewhere and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof; 30
- (xxii) **“public body”** means—
- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or
 - (b) any other functionary or institution when— 35
 - (i) exercising a power or performing a duty or function in terms of the Constitution or a provincial constitution; or
 - (ii) exercising a public power or performing a public duty or function in terms of any legislation;
- (xxiii) **“public international organisation”** means— 40
- (a) an organisation—
 - (i) of which two or more countries are members; or
 - (ii) that is constituted by persons representing two or more countries;
 - (b) an organisation established by, or a group of organisations constituted by— 45
 - (i) organisations of which two or more countries are members; or
 - (ii) organisations that are constituted by the representatives of two or more countries; or
 - (c) an organisation that is—
 - (i) an organ of, or office within, an organisation described in paragraph (a) or (b); 50
 - (ii) a commission, council or other body established by an organisation or organ referred to in subparagraph (i); or
 - (iii) a committee or a subcommittee of a committee of an organisation referred to in paragraph (a) or (b) or of an organ, council or body referred to in subparagraph (i) or (ii); 55
- (xxiv) **“public officer”** means any person who is a member, an officer, an employee or a servant of a public body, and includes—
- (a) any person in the public service contemplated in section 8(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994); 60
 - (b) any person receiving any remuneration from public funds; or
 - (c) where the public body is a corporation, the person who is incorporated as such.

- but does not include any—
- (a) member of the legislative authority;
 - (b) judicial officer; or
 - (c) member of the prosecuting authority; and
- (xxv) “**sporting event**” means any event or contest in any sport, between 5
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. 10

Interpretation

2. (1) For purposes of this Act a person is regarded as having knowledge of a fact if—
- (a) that person has actual knowledge of the fact; or
 - (b) the court is satisfied that—
 - (i) the person believes that there is a reasonable possibility of the existence 15
of that fact; and
 - (ii) the person has failed to obtain information to confirm the existence of
that fact,
- and “**knowing**” shall be construed accordingly.
- (2) For the purposes of this Act a person ought reasonably to have known or suspected 20
a fact if the conclusions that he or she ought to have reached are those which would have
been reached by a reasonably diligent and vigilant person having both—
- (a) the general knowledge, skill, training and experience that may reasonably be
expected of a person in his or her position; and
 - (b) the general knowledge, skill, training and experience that he or she in fact has. 25
- (3) (a) A reference in this Act to accept or agree or offer to accept any gratification,
includes to—
- (i) demand, ask for, seek, request, solicit, receive or obtain;
 - (ii) agree to demand, ask for, seek, request, solicit, receive or obtain; or
 - (iii) offer to demand, ask for, seek, request, solicit, receive or obtain, 30
any gratification.
- (b) A reference in this Act to give or agree or offer to give any gratification, includes
to—
- (i) promise, lend, grant, confer or procure;
 - (ii) agree to lend, grant, confer or procure; or 35
 - (iii) offer to lend, grant, confer or procure,
- such gratification.
- (4) A reference in this Act to any act, includes an omission and “**acting**” shall be
construed accordingly.

CHAPTER 2 OFFENCES IN RESPECT OF CORRUPT ACTIVITIES

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Part 1: General offence of corruption

General offence of corruption

3. Any person, including a person in the private sector, who, directly or indirectly—
- (a) accepts or agrees or offers to accept any gratification from any other person, 45
whether for the benefit of himself or herself or for the benefit of another
person; or
 - (b) gives or agrees or offers to give to any other person any gratification, whether
for the benefit of that other person or for the benefit of another person,
in order to act, personally or by influencing another person so to act, in a manner— 50
- (i) that amounts to the—
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) misuse or selling of information or material acquired in the course
of the,
- exercise, carrying out or performance of any powers, duties or functions 55
arising out of a constitutional, statutory, contractual or any other legal
obligation;

- (ii) that amounts to—
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or 5
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corruption.

Part 2: Offences in respect of corrupt activities relating to specific persons

Offences in respect of corrupt activities relating to public officers 10

- 4. (1) Any—**
- (a) public officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
 - (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a public officer, whether for the benefit of that public officer or for the benefit of another person, 15
- in order to act, personally or by influencing another person so to act, in a manner—
- (i) that amounts to the—
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or 20
 - (bb) 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;
 - (ii) that amounts to— 25
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules;
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, 30
- is guilty of the offence of corrupt activities relating to public officers.
- (2) Without derogating from the generality of section 2(4), “**to act**” in subsection (1), includes—
- (a) voting at any meeting of a public body; 35
 - (b) performing or not adequately performing any official functions;
 - (c) expediting, delaying, hindering or preventing the performance of an official act;
 - (d) aiding, assisting or favouring any particular person in the transaction of any business with a public body; 40
 - (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body;
 - (f) showing any favour or disfavour to any person in performing a function as a public officer; 45
 - (g) diverting, for purposes unrelated to those for which they were intended, any property belonging to the state which such officer received by virtue of his or her position for purposes of administration, custody or for any other reason, to another person; or
 - (h) exerting any improper influence over the decision making of any person performing functions in a public body. 50

Offences in respect of corrupt activities relating to foreign public officials

- 5. (1) Any person who, directly or indirectly gives or agrees or offers to give any gratification to a foreign public official, whether for the benefit of that foreign public official or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner— 55**
- (i) that amounts to the—
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or

- (bb) 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;
- (ii) that amounts to— 5
- (aa) the abuse of a position of authority;
- (bb) a breach of trust; or
- (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, 10
- is guilty of the offence of corrupt activities relating to foreign public officials.
- (2) Without derogating from the generality of section 2(4), “to act” in subsection (1) includes—
- (a) the using of such foreign public official’s or such others person’s position to influence any acts or decisions of the foreign state or public international organisation concerned; or 15
- (b) obtaining or retaining a contract, business or an advantage in the conduct of business of that foreign state or public international organisation. 20

Offences in respect of corrupt activities relating to agents 20

6. Any—
- (a) agent who, directly or indirectly—
- (i) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or 25
- (ii) gives or agrees or offers to give to any person any gratification, whether for the benefit of that person or for the benefit of another person; or
- (b) person who, directly or indirectly—
- (i) accepts or agrees or offers to accept any gratification from an agent, whether for the benefit of himself or herself or for the benefit of another person; or 30
- (ii) gives or agrees or offers to give any gratification to an agent, whether for the benefit of that agent or for the benefit of another person,
- in order to act, personally or by influencing another person so to act, in a manner—
- (aa) that amounts to the— 35
- (aaa) illegal, dishonest, unauthorised, incomplete, or biased; or
- (bbb) 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; 40
- (bb) that amounts to—
- (aaa) the abuse of a position of authority;
- (bbb) a breach of trust; or
- (ccc) the violation of a legal duty or a set of rules; 45
- (cc) designed to achieve an unjustified result; or
- (dd) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corrupt activities relating to agents.

Offences in respect of corrupt activities relating to members of legislative authority 50

7. (1) Any—
- (a) member of the legislative authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the legislative authority, whether for the benefit of that member or for the benefit of another person, 55
- in order to act, personally or by influencing another person so to act, in a manner—

- (i) that amounts to the—
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) 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; 5
 - (ii) that amounts to—
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules; 10
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corrupt activities relating to members of the legislative authority. 15
- (2) Without derogating from the generality of section 2(4), “to act” in subsection (1) includes—
- (a) absenting himself or herself from;
 - (b) voting at any meeting of;
 - (c) aiding or assisting in procuring or preventing the passing of any vote in; 20
 - (d) exerting any improper influence over the decision making of any person performing his or her functions as a member of; or
 - (e) influencing in any way, the election, designation or appointment of any functionary to be elected, designated or appointed by,
- the legislative authority of which he or she is a member or of any committee or joint committee of that legislative authority. 25

Offences in respect of corrupt activities relating to judicial officers

8. (1) Any—
- (a) judicial officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person; 30
 - (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a judicial officer, whether for the benefit of that judicial officer or for the benefit of another person,
- in order to act, personally or by influencing another person so to act, in a manner— 35
- (i) that amounts to the—
 - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bb) 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; 40
 - (ii) that amounts to—
 - (aa) the abuse of a position of authority;
 - (bb) a breach of trust; or
 - (cc) the violation of a legal duty or a set of rules; 45
 - (iii) designed to achieve an unjustified result; or
 - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,
- is guilty of the offence of corrupt activities relating to judicial officers.
- (2) Without derogating from the generality of section 2(4), “to act” in subsection (1) includes— 50
- (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; 55
 - (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 member of the prosecuting authority, performing his or her official functions.

Offences in respect of corrupt activities relating to members of prosecuting authority

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9. (1) Any—

- (a) member of the prosecuting authority who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person;
- (b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a member of the prosecuting authority, whether for the benefit of that member or for the benefit of another person,

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in order to act, personally or by influencing another person so to act, in a manner—

- (i) that amounts to the—
- (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
- (bb) 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;
- (ii) that amounts to—
- (aa) the abuse of a position of authority;
- (bb) a breach of trust; or
- (cc) the violation of a legal duty or a set of rules;
- (iii) designed to achieve an unjustified result; or
- (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything,

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is guilty of the offence of corrupt activities relating to members of the prosecuting authority.

(2) Without derogating from the generality of section 2(4), “to act” in subsection (1) includes—

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- (a) performing or not adequately performing a function relating to the—
- (i) institution or conducting of criminal proceedings;
- (ii) carrying out of any necessary functions incidental to the institution or conducting of such criminal proceedings; or
- (iii) continuation or discontinuation of criminal proceedings;
- (b) delaying, hindering or preventing the performance of a prosecutorial function;
- (c) aiding or assisting any particular person in the performance of a function relating to the institution or conducting of criminal proceedings;
- (d) showing any favour or disfavour to any person in the performance of a function relating to the institution or conducting of criminal proceedings; or
- (e) exerting any improper influence over the decision making of any person, including another member of the prosecuting authority or a judicial officer, performing his or her official functions.

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Part 3: Offences in respect of corrupt activities relating to receiving or offering of unauthorised gratification

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Offences of receiving or offering of unauthorised gratification by or to party to an employment relationship

10. Any person—

- (a) who is party to an employment relationship and who, directly or indirectly, accepts or agrees or offers to accept from any other person any unauthorised gratification, whether for the benefit of that person or for the benefit of another person; or
- (b) who, directly or indirectly, gives or agrees or offers to give to any person who is party to an employment relationship any unauthorised gratification, whether for the benefit of that party or for the benefit of another person,

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in respect of that party doing any act in relation to the exercise, carrying out or performance of that party’s powers, duties or functions within the scope of that party’s

employment relationship, is guilty of the offence of receiving or offering an unauthorised gratification.

Part 4: Offences in respect of corrupt activities relating to specific matters

Offences in respect of corrupt activities relating to witnesses and evidential material during certain proceedings

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11. (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another 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 authorised by law to hear evidence or take testimony; 10
- (b) withholding testimony or withholding a record, document, police docket or other object at any such trial, hearing or proceedings;
- (c) giving or withholding information relating to any aspect at any such trial, hearing or proceedings; 15
- (d) altering, destroying, mutilating, or concealing a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;
- (e) giving or withholding information relating to or contained in a police docket; 20
- (f) evading legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or
- (g) being absent at such trial, hearing or proceedings,

is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings. 25

(2) Any person who gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another 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 authorised by law to hear evidence or take testimony; or 30
- (b) cause or induce any 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 authorised by law to hear evidence or take testimony; 35
 - (ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings; 40
 - (iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings;
 - (iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings; 45
 - (v) give or withhold information relating to or contained in a police docket;
 - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or 50
 - (vii) be absent at such trial, hearing or other proceedings,

is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

Offences in respect of corrupt activities relating to contracts

12. (1) Any person who, directly or indirectly— 55

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or

- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,
 - (i) in order to improperly influence, in any way—
 - (aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or
 - (bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
 - (ii) as a reward for acting as contemplated in paragraph (a),
- is guilty of the offence of corrupt activities relating to contracts. 10
- (2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person—
- (a) for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or
 - (b) with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority,
- is guilty of an offence. 20

Offences in respect of corrupt activities relating to procuring and withdrawal of tenders

13. (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as— 25
- (a) an inducement to, personally or by influencing any other person so to act—
 - (i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderer to accept a particular tender; or
 - (iii) withdraw a tender made by him or her for such contract; or
 - (b) a reward for acting as contemplated in paragraph (a)(i), (ii) or (iii),
- is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders. 35
- (2) Any person who, directly or indirectly—
- (a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as—
 - (i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) a reward for acting as contemplated in subparagraph (i); or
 - (b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit any other person, as—
 - (i) an inducement to withdraw the tender; or
 - (ii) a reward for withdrawing or having withdrawn the tender,
- is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders. 50

Offences in respect of corrupt activities relating to auctions

14. (1) Any auctioneer who, directly or indirectly— 55
- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit 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); or
 - (b) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person— 5
 - (i) in order to influence that person to—
 - (aa) refrain from bidding at an auction; or
 - (bb) participate, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so 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 10
 - (ii) as a reward for acting as contemplated in subparagraph (i),
- is guilty of the offence of corrupt activities relating to auctions.

- (2) Any person who, directly or indirectly—
- (a) accepts or agrees or offers to accept any gratification from any other person or an auctioneer, whether for the benefit of himself or herself or for the benefit of another person— 15
 - (i) in return for that person—
 - (aa) refraining from bidding at an auction; or
 - (bb) participating, personally or by influencing any other person so to participate, at an auction in the bidding process in order to get a specific offer for the article or to buy the article for a specific amount or to sell the article to a specific bidder; or 20
 - (ii) as a reward for acting as contemplated in subparagraph (i); or
 - (b) gives or agrees or offers to give any gratification to an auctioneer, whether for the benefit of that auctioneer or for the benefit of another person— 25
 - (i) in order to influence that auctioneer to conduct the bidding process at an auction in such a manner so as to favour or prejudice a specific person; or
 - (ii) as a reward for acting as contemplated in subparagraph (i); or
 - (c) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person— 30
 - (i) in return for that other person—
 - (aa) refraining from bidding at an auction; or
 - (bb) participating, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so 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 35
 - (ii) as a reward for acting as contemplated in subparagraph (i),
- is guilty of the offence of corrupt activities relating to auctions.

Offences in respect of corrupt activities relating to sporting events 40

- 15.** Any person who, directly or indirectly—
- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or
 - (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person, 45
 - (i) in return for—
 - (aa) 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; or 50
 - (bb) not reporting the act contemplated in this section to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station; or
 - (ii) as a reward for acting as contemplated in subparagraph (i); or 55
 - (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,
- is guilty of the offence of corrupt activities relating to sporting events.

Offences in respect of corrupt activities relating to gambling games or games of chance

16. Any person who, directly or indirectly—

- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or 5
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person,
 - (i) in return for engaging in any conduct 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 gambling game or a game of chance; or 10
 - (ii) as a reward for acting as contemplated in subparagraph (i); 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 gambling game or a game of chance, 15

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

Part 5: Miscellaneous offences relating to possible conflict of interest and other unacceptable conduct 20

Offence relating to acquisition of private interest in contract, agreement or investment of public body

17. (1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence. 25

(2) Subsection (1) does not apply to—

- (a) a public officer who acquires or holds such interest as a shareholder of a listed company;
- (b) a public officer, whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or 30
- (c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process. 35

Offences of unacceptable conduct relating to witnesses

18. Any 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 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 40
- (b) cause or induce any 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 authorised by law to hear evidence or take testimony; 45
 - (ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings; 50
 - (iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings;
 - (iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings; 55
 - (v) give or withhold information relating to or contained in a police docket;

- (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or
 - (vii) be absent at such trial, hearing or other proceedings,
- is guilty of the offence of unacceptable conduct relating to witness. 5

Intentional interference with, hindering or obstruction of investigation of offence

19. Any person who, at any stage, with intent to defraud or to conceal an offence in terms of this Chapter or to interfere with, or to hinder or obstruct a law enforcement body in its 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 or any entry in such book, document, account or electronic device, or is privy to any such act; 10
 - (b) makes or is privy to making any false entry in such book, document, account or electronic device; or 15
 - (c) omits or is privy to omitting any information from any such book, document, account or electronic device,
- is guilty of an offence.

Part 6: Other offences relating to corrupt activities

Accessory to or after an offence 20

20. Any person who, knowing that property or any part thereof forms part of any gratification which is the subject of an offence in terms of Part 1, 2, 3, or 4, or section 21 (in so far as it relates to the aforementioned offences) of this Chapter, 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 such property or any part thereof; or 25
 - (b) uses or causes to be used, or holds, receives or conceals such property or any part thereof,
- is guilty of an offence.

Attempt, conspiracy and inducing another person to commit offence 30

21. Any person who—

- (a) attempts;
 - (b) conspires with any other person; or
 - (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,
- to commit an offence in terms of this Act, is guilty of an offence. 35

CHAPTER 3

INVESTIGATIONS REGARDING POSSESSION OF PROPERTY RELATING TO CORRUPT ACTIVITIES

Investigation regarding property relating to corrupt activities 40

22. (1) Whenever the National Director has reason to suspect that there may be in any building, receptacle or place, or in the possession, custody or control of any person any property which—

- (a) may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under Chapter 2; 45
 - (b) may have facilitated the commission of such an offence, or enabled any person or entity to commit such an offence, or provided financial or economic support to a person or entity in the commission of such an offence; or
 - (c) may be the proceeds of such an offence,
- he or she may, prior to the institution of any asset forfeiture or criminal proceedings, under written authority direct that a particular Director of Public Prosecutions or a Special Director of Public Prosecutions, shall have the power to institute an 50

investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to such property.

(2) For purposes of subsection (1), a reference in the said Chapter 5 to—

- (a) the “**head of the Directorate of Special Operations**” or an “**Investigating Director**” shall be construed as a reference to a Director of Public Prosecutions or a Special Director of Public Prosecutions, as the case may be: Provided that for purposes of section 28(2)(a) of the said Act, a Director of Public Prosecutions or Special Director of Public Prosecutions, may only designate a Deputy Director of Public Prosecutions; and 5
- (b) a “**special investigator**” shall be construed as to include a police official. 10

(3) If property seized under any power exercised under subsection (1) consists of cash or funds standing to the credit of a bank account, the Director of Public Prosecutions or a Special Director of Public Prosecutions who has instituted the investigation under that subsection shall cause the cash or funds to be paid into a banking account which shall be opened with any bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and the Director of Public Prosecutions or a Special Director of Public Prosecutions shall forthwith report to the Financial Intelligence Centre the fact of the seizure of the cash or funds and the opening of the account. 15

Application for, and issuing of investigation direction in respect of possession of property disproportionate to a person’s present or past known sources of income or assets 20

23. (1) The National Director, or any person authorised in writing thereto by him or her (hereinafter referred to as the applicant), may apply to a judge in chambers for the issuing of an investigation direction in terms of subsection (3).

(2) An application referred to in subsection (1) must be in writing and must— 25

- (a) indicate the identity of the—
 - (i) applicant and, if known, the identity of the person who will conduct the investigation; and
 - (ii) person to be investigated (hereinafter referred to as the suspect);
- (b) specify the grounds referred to in subsection (3) on which the application is made; 30
- (c) contain full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;
- (d) include the basis for believing that evidence relating to the ground on which the application is made will be obtained through the investigation direction; 35
- (e) indicate whether any previous application has been made for the issuing of an investigation direction in respect of the same suspect in the application and, if such previous application exists, must indicate the current status of that application; and
- (f) indicate the period for which the investigation is required. 40

(3) (a) A judge in chambers may upon an *ex parte* application made to him or her in terms of subsection (1), issue an investigation direction.

(b) An investigation direction may only be issued if the judge concerned is satisfied that—

- (i) there has been compliance with the provisions of subsection (2); and 45
- (ii) on the facts alleged in the application concerned, there are reasonable grounds to believe that—
 - (aa) a person—
 - (aaa) maintains a standard of living above that which is commensurate with his or her present or past known sources of income or assets; 50
 - or
 - (bbb) is in control or possession of pecuniary resources or property disproportionate to his or her present or past known sources of income or assets; and
 - (bb) that person maintains such a standard of living through the commission of corrupt activities or the proceeds of unlawful activities or that such pecuniary resources or properties are instrumentalities of corrupt activities or the proceeds of unlawful activities; and 55
 - (cc) such investigation is likely to reveal information, documents or things which may afford proof that such a standard of living is maintained 60

through the commission of corrupt activities or the proceeds of unlawful

activities or that such pecuniary resources or properties are instrumentalities of corrupt activities or the proceeds of unlawful activities.

(c) An investigation direction—

- (i) must be in writing;
- (ii) must indicate the identity of the suspect and, if known, the person who will conduct the investigation: 5
- (iii) must specify the period for which it has been issued;
- (iv) may specify conditions of restriction relating to the conducting of the investigation; and
- (v) may be issued in respect of any place in the Republic. 10

(d) An application must be considered and an investigation direction issued without any notice to the suspect to whom the application applies and without hearing that suspect: Provided that where any previous investigation direction has been issued in respect of a suspect, the applicant may only apply for a further investigation direction in respect of that suspect on the same facts, after giving reasonable notice to the suspect concerned. 15

(e) A judge considering an application may require the applicant to furnish such further information as he or she deems necessary.

(4) If an investigation direction has been issued under subsection (3), the National Director or the person authorised thereto in the investigation direction, may, for the purposes of an investigation direction— 20

- (a) summon the suspect or any other person, specified in the investigation direction, who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any property, book, document or other object relating to that subject, to appear before the National Director or the person so authorised, at a time and place specified in the summons, to be questioned or to produce that property, book, document or other object; 25
- (b) question that suspect or other person, under oath or affirmation administered by the National Director or the person so authorised, and examine or retain for further examination or for safe custody such property, book, document or other object; or 30
- (c) at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises where the suspect is or is suspected to be or any premises on or in which anything connected with that investigation is or is suspected to be, and may— 35
 - (i) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
 - (ii) examine any property found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from the suspect or the owner or person in charge of the premises or from any person in whose possession or charge that property is, information regarding that property; 40
 - (iii) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from any person suspected of having the necessary information, an explanation of any entry therein; or 45
 - (iv) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the investigation in question, or if he or she wishes to retain it for further examination or for safe custody: 50

Provided that any person from whom a book or document has been taken under paragraph (b) or (c)(iv), may, as long as it is in the possession of the person conducting the investigation, at his or her request be allowed, at his or her own expense and under the supervision of the person conducting the investigation, to make copies thereof or to take extracts therefrom at any reasonable time. 55

(5) (a) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a suspect or any person referred to in subsection (4): Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him or her to a criminal charge. 60

(b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where

the person concerned stands trial on a charge contemplated in subsection (7)(b), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(6) Subject to any directions, conditions or restrictions determined by the judge under subsection (3)(c)(iv), the provisions of sections 28(1)(d), (2) to (10) and 29(2), (7)(a), (9), (10)(b) and (11) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to the conducting of an investigation and the execution of a warrant in terms of those provisions, apply, with the necessary changes, in respect of an investigation conducted in terms of subsection (4).

(7) Any person who—

- (a) obstructs or hinders the person conducting the investigation or any other person in the performance of his or her functions in terms of this section; or
 - (b) when he or she is asked in terms of subsection (4) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,
- shall be guilty of an offence.

CHAPTER 4 PRESUMPTIONS AND DEFENCES

Presumptions

24. (1) Whenever a person is charged with an offence under Part 1 or 2, or section 21 (in so far as it relates to the aforementioned offences) of Chapter 2, proof that that person, or someone else at the instance of that person—

- (a) accepted or agreed or offered to accept any gratification from; or
 - (b) gave or agreed or offered to give any gratification to,
- any other person—
- (i) who holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person charged was serving as an official;
 - (ii) who is concerned, or who 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 organisation, corporate body, political party or other organisation or institution in which the person charged was serving as an official; or
 - (iii) who acts on behalf of a person contemplated in subparagraph (i) or (ii),
- and, if the State can further show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of or agreement or offer to accept or the giving or agreement to give or offer to give the gratification to any lawful authority or excuse on the part of the person charged, and in the absence of evidence to the contrary which raises reasonable doubt, is sufficient evidence that the person charged accepted or agreed or offered to accept such gratification from that person or gave or agreed or offered to give such gratification to that person in order to act, in a manner—
- (aa) that amounts to the—
 - (aaa) illegal, dishonest, unauthorised, incomplete, or biased; or
 - (bbb) 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;
 - (bb) that amounts to—
 - (aaa) the abuse of a position of authority;
 - (bbb) a breach of trust; or
 - (ccc) the violation of a legal duty or a set of rules;
 - (cc) designed to achieve an unjustified result; or
 - (dd) that amounts to any other unauthorised or improper inducement to do or not to do anything.

(2) Whenever a public officer whose duties include the detection, investigation, prosecution or punishment of offenders, is charged with an offence involving the acceptance of a gratification, 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, 5
- it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a) to (c) or any other offence had been committed.

Defences

25. Whenever an accused person is charged with an offence under Part 1, 2, 3, or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences), it is not a valid 10 defence for that accused person to contend that he or she—

- (a) did not have the power, right or opportunity to perform or not to perform the act in relation to which the gratification was given, accepted or offered;
- (b) accepted or agreed or offered to accept, or gave or agreed or offer to give the gratification without intending to perform or not to perform the act in relation 15 to which the gratification was given, accepted or offered; or
- (c) failed to perform or not to perform the act in relation to which the gratification was given, accepted or offered.

CHAPTER 5 PENALTIES AND RELATED MATTERS 20

Penalties

26. (1) Any person who is convicted of an offence referred to in—

- (a) Part 1, 2, 3, or 4, or section 18, is liable—
 - (i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life; 25
 - (ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or
 - (iii) in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding five years;
- (b) section 17(1), 19, 20, 23(7)(a) or (b), or 34(2), is liable— 30
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 10 years; or
 - (ii) in the case of a sentence to be imposed by a magistrate's court, to a fine or to imprisonment for a period not exceeding three years; or
- (c) section 28(6)(b), is liable to a fine of R250 000 or to imprisonment for a period 35 not exceeding three years.

(2) A person convicted of an offence referred to in section 21, is liable to the punishment laid down in subsection (1) for the offence which that person attempted or conspired to commit or aided, abetted, induced, instigated, instructed, commanded, counseled or procured another person to commit. 40

(3) In addition to any fine a court may impose in terms of subsection (1) or (2), the court may impose a fine equal to five times the value of the gratification involved in the offence.

Authorisation by National Director, Deputy National Director or Director to institute proceedings in respect of certain offences 45

27. The institution of a prosecution for an offence referred to in section 17(1), 23(7)(b), or 34(2), must be authorised in writing by the National Director of Public Prosecutions, a Deputy National Director of Public Prosecutions or the Director of Public Prosecutions concerned and only after the person concerned has been afforded a reasonable opportunity by the investigating or prosecuting authority, as the case may be, 50 to explain, whether personally or through a legal representative—

- (a) in the case of section 17(1), how he or she acquired the private interest concerned;
- (b) in the case of section 23(7)(b), how he or she acquired the property or resources concerned; or 55

- (c) in the case of section 34(2), why he or she failed to report in terms of section 34(2).

Endorsement of Register

28. (1) (a) A court convicting a person of an offence contemplated in section 12 or 13, may, in addition to imposing any sentence contemplated in section 26, issue an order that—

- (i) the particulars of the convicted person;
- (ii) the conviction and sentence; and
- (iii) any other order of the court consequent thereupon,

be endorsed on the Register.

(b) If the person so convicted is an enterprise, the court may also issue an order that—

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

be endorsed on the Register.

(c) The court may also issue an order contemplated in paragraph (a) in respect of—

- (i) any other enterprise owned or controlled by the person so convicted; or
- (ii) the particulars of any partner, manager, director or other person, who wholly or partly exercises or may exercise control over such other enterprise,

and which—

- (aa) enterprise, partner, manager, director or other person was involved in the offence concerned; or
- (bb) partner, manager, director or other person knew or ought reasonably to have known or suspected that such other enterprise was involved in the offence concerned.

(d) Whenever the Register is endorsed as contemplated in paragraph (a), (b) or (c), 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 must, in respect of every such enterprise, endorse the Register accordingly.

(2) Where a court has issued an order under subsection (1), the registrar or clerk of such court must forthwith forward the court order to the Registrar and the Registrar must forthwith endorse the Register accordingly.

(3) (a) Where the Register has been endorsed in terms of subsection (2), in addition to any other legal action, the following restrictions may or must, as the case may be, be imposed:

- (i) The National Treasury may terminate any agreement with the person or enterprise referred to in subsection (1)(a) or (b): Provided that—

(aa) in considering the termination of an agreement, the National Treasury must take into account, among others, the following factors, namely—

(aaa) the extent and duration of the agreement concerned;

(bbb) whether it is likely to conclude a similar agreement with another person or enterprise within a specific time frame;

(ccc) the extent to which the agreement has been executed;

(ddd) the urgency of the services to be delivered or supplied in terms of the agreement;

(eee) whether extreme costs will follow such termination; and

(fff) any other factor which, in the opinion of the National Treasury, may impact on the termination of the agreement; and

(bb) if that agreement involves any purchasing authority or Government Department, such restriction may only be imposed after consultation with the purchasing authority or Government Department concerned;

- (ii) the National Treasury must determine the period (which period may not be less than five years or more than 10 years) for which the particulars of the convicted person or the enterprise referred to in subsection (1)(a), (b), (c) or (d) must remain in the Register and during such period no offer in respect of

- any agreement from a person or enterprise referred to in that subsection may be considered by the National Treasury; or
- (iii) during the period determined in subparagraph (ii), the National Treasury, the purchasing authority or any Government Department must—
- (aa) ignore any offer tendered by a person or enterprise referred to in subsection (1)(a), (b), (c) or (d); or 5
- (bb) disqualify any person or enterprise referred to subsection (1)(a), (b), (c) or (d), from making any offer or obtaining any agreement relating to the procurement of a specific supply or service.
- (b) A restriction imposed under paragraph (a) only comes into effect after any appeal 10 against the conviction or sentence or both has been finalised by the court: Provided that if the appeal court sets aside, varies or amends the order referred to in subsection (1), the National Treasury must, if necessary, amend the restrictions imposed under paragraph (a) accordingly.
- (c) Where the National Treasury has terminated an agreement in terms of paragraph 15 (a)(i), it may, in addition to any other legal remedy, recover from the person or enterprise any damages—
- (i) incurred or sustained by the State as a result of the tender process or the conclusion of the agreement; or
- (ii) which the State may suffer by having to make less favourable arrangements 20 thereafter.
- (4) The National Treasury—
- (a) may at any time vary or rescind any restriction imposed under subsection (3)(a)(i) or (ii); and
- (b) must, when the period determined in terms of paragraph (a)(ii) expires, 25 remove the particulars of the person or enterprise concerned, from the Register.
- (5) When the National Treasury imposes a restriction under subsection (3)(a)(i) or (ii), or amends or rescinds such a restriction, it must within 14 days in writing notify—
- (a) the person whose particulars have been so endorsed; 30
- (b) any purchasing authority on which it may decide; and
- (c) all Government departments,
- of any resolution or decision relative to such restriction or the amendment or rescinding thereof, and request such authorities and departments to take similar steps.
- (6) (a) Any person whose particulars, conviction and sentence have been endorsed on 35 the Register as contemplated in this section and who has been notified as contemplated in subsection (5)(a), must in any subsequent agreement or tender process involving the State, disclose such endorsement, conviction and sentence.
- (b) Any person who fails to comply with paragraph (a), is guilty of an offence.
- (7) For purposes of this section— 40
- (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 State;
- (b) “**enterprise**” includes any individual, partnership, corporation, association, 45 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 of the Register designated under section 30; and
- (d) “**Register**” means the Register established under section 29.

CHAPTER 6 REGISTER FOR TENDER DEFAULTERS

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Establishment of Register

29. Within six months after the commencement of this Chapter, the Minister of Finance must establish a register, to be known as the Register for Tender Defaulters, within the Office of the National Treasury.

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Designation of Registrar

30. The Minister of Finance must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as Registrar.

Powers, duties and functions of Registrar

31. (1) The Registrar must, subject to the provisions of section 28 and this Chapter, exercise and perform his or her powers, duties and functions subject to the control and directions of the National Treasury.

(2) The Registrar must—

- (a) maintain the Register;
- (b) manage the Office of the Registrar; and
- (c) carry out the duties and perform the functions assigned to him or her by section 28, this Chapter or the National Treasury or any other law.

Access to Register

32. The Register is open to the public as prescribed.

Regulations pertaining to Register

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

- (a) the maintenance and management of the Register, the particulars to be entered in such Register, the manner in which such particulars must be recorded and the period for which the information in the Register must 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 28 and this Chapter.

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

CHAPTER 7 MISCELLANEOUS MATTERS

Duty to report corrupt transactions

34. (1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed—

- (a) an offence under Part 1, 2, 3, or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or
- (b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official.

(2) Subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.

(3) (a) Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgment of receipt of such report.

(b) The National Commissioner must within three months of the commencement of this Act publish the directions contemplated in paragraph (a) in the *Gazette*.

(c) Any direction issued under paragraph (b), must be tabled in Parliament before publication thereof in the *Gazette*.

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

- (a) the Director-General or head, or equivalent officer, of a national or provincial department;
- (b) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998);
- (c) any public officer in the Senior Management Service of a public body;
- (d) any head, rector or principal of a tertiary institution;

- (e) the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984);
- (f) the executive manager of any bank or other financial institution;
- (g) any partner in a partnership; 5
- (h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means; 10
- (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 paragraph (a) to (i), who has been appointed in an acting or temporary capacity.

Extraterritorial jurisdiction 15

35. (1) Even if the act alleged to constitute an offence under this Act occurred outside the Republic, a court of the Republic shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged—

- (a) is a citizen of the Republic; 20
- (b) is ordinarily resident in the Republic;
- (c) was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic at the time the offence was committed;
- (d) is a company, incorporated or registered as such under any law, in the Republic; or 25
- (e) any body of persons, corporate or unincorporated, in the Republic.

(2) Any act alleged to constitute an offence under this Act and which is committed outside the Republic by a person, other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in the Republic if that— 30

- (a) act affects or is intended to affect a public body, a business or any other person in the Republic;
- (b) person is found to be in South Africa; and
- (c) person is for one or other reason not extradited by South Africa or if there is no application to extradite that person. 35

(3) Any offence committed in a country outside the Republic as contemplated in subsection (1) or (2), is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed—

- (a) at the place where the accused is ordinarily resident; or 40
- (b) at the accused person's principal place of business.

(4) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after the offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or, in case of an omission, should have acted. 45

Repeal and amendment of laws and transitional provisions

36. (1) The laws specified in the Schedule are repealed or amended to the extent indicated in that Schedule.

(2) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Corruption Act, 1992 (Act No. 94 of 1992), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if this Act had not been passed. 50

(3) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Corruption Act, 1992, and which occurred after the commencement of that Act but before the commencement of this Act, may be concluded, instituted and continued as if this Act had not been passed. 55

(4) Notwithstanding the repeal or amendment of any provision of any law by this Act, such 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 such provision had not been repealed or amended.

Short title and commencement

37. (1) This Act is called the Prevention and Combating of Corrupt Activities Act, 2004, and shall, subject to subsection (2), come into operation on 27 April 2004 or on such earlier date as the President may determine by proclamation in the *Gazette*. 5

(2) Section 34(2) shall come into operation on 31 July 2004.

SCHEDULE

LAWS REPEALED OR AMENDED BY SECTION 36

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 38 of 1927	Black Administration Act	The Third Schedule to the Act is hereby amended by the substitution of the offence "bribery" for the following offence: "any offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004."	5 10
Act 61 of 1973	Companies Act	Section 218 is hereby amended by the substitution for subparagraph (iii) of paragraph (d) of subsection (1) of the following subparagraph: "(iii) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding one hundred rand."	15 20 25 30 35
Act 51 of 1977	Criminal Procedure Act	1. Insert the following section after section 269: "269A. If evidence on a charge of an offence under Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, does not prove the offence so charged but proves the offence of— (a) theft; (b) fraud; or (c) extortion, the accused may be found guilty of the crime or offence so proved."	40 45 50

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 91 of 1981	Co-operatives Act	<p>Section 108 is hereby amended by the substitution for subparagraph (iii) of paragraph (f) of subsection (1) of the following subparagraph:</p> <p>“(iii) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, any offence involving dishonesty or in connection with the formation or management of a co-operative or company and sentenced therefor to imprisonment without the option of a fine or to a fine exceeding two hundred rand;”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
Act 19 of 1982	Veterinary and Para-Veterinary Professions Act	<p>Section 24 is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph:</p> <p>“(b)he or she has at any time been convicted of extortion, bribery, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, theft, fraud, forgery or uttering of a forged document or perjury, and was sentenced in respect thereof to imprisonment without the option of a fine;”.</p>	<p>30</p> <p>35</p> <p>40</p> <p>45</p>

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 69 of 1984	Close Corporations Act	<p>Section 47 is hereby amended by the substitution for subparagraph (iii) of paragraph (b) of the following subparagraph:</p> <p>“(iii) any person who has at any time been convicted of theft, fraud, forgery or uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty or in connection with the formation or management of a company or a corporation, and has been sentenced therefor to imprisonment for at least six months without the option of a fine; and”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p>
Act 97 of 1990	Financial Services Board Act	<p>Section 5 is hereby amended by the substitution for paragraph (d) of the following paragraph:</p> <p>“(d) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100; or”.</p>	<p>30</p> <p>35</p> <p>40</p> <p>45</p>

No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 80 of 1991	Public Accountants' and Auditors' Act	<p>1. Section 4 is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: 5</p> <p>“(b) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] 10</p> <p><u>any offence under the Prevention of Corruption Act, 1958 (Act No. 6 No. of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R300;”.</u> 15</p> <p>2. Section 15 is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph: 20</p> <p>“(b) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] 25</p> <p><u>any offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R300; or”.</u> 30</p> <p>35 40 45</p>
Act 94 of 1992	Corruption Act	The whole

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 106 of 1993	Natural Scientific Professions Act	Section 11 is hereby amended by the substitution for paragraph (b) of subsection (9) of the following paragraph: “(b) has at any time been convicted of extortion, bribery, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or sections 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, theft, fraud, forgery or uttering a forged document knowing it to be false or perjury and has in respect thereof been sentenced to imprisonment without the option of a fine or to a fine exceeding R1 000;”.	5 10 15 20
Act 148 of 1993	Independent Media Commission Act	Section 6 is hereby amended by the substitution for subparagraph (i) of paragraph (j) of subsection (1) of the following subparagraph: “(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or”.	25 30 35 40
Act 33 of 1996	National Gambling Act	Section 3 is hereby amended by the substitution for item (dd) of subparagraph (iii) of paragraph (a) of subsection (7), of the following item: “(dd) has at any time been or is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, [an] any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty.”.	45 50 55 60

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 65 of 1996	Films and Publications Act	<p>Section 7 is hereby amended by the substitution for subparagraph (i) of paragraph (h) of subsection (1), of the following subparagraph:</p> <p>“(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or [an offence in terms of the Corruption Act, 1992 (Act 94 of 1992)] any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004;”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
Act 57 of 1997	Lotteries Act	<p>1. Section 3 is hereby amended by—</p> <p>(a) the substitution for paragraph (b) of subsection (5) of the following paragraph:</p> <p>“(b) shall suspend the membership of any member of the board in the event of the State instituting criminal proceedings in a court of law on a charge of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty;</p> <p>(b) the substitution for subparagraph (i) of paragraph (c) of subsection (5) of the following subparagraph:</p> <p>“(i) being found guilty in a court of law of contravening this Act or of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992, Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty; or;”;</p>	<p>25</p> <p>30</p> <p>35</p> <p>40</p> <p>45</p> <p>50</p> <p>55</p> <p>60</p>

No. and Year of Law	Short title	Extent of Repeal or Amendment
		<p>(c) the substitution for item (dd) of subparagraph (iii) of paragraph (a) of subsection (7), of the following item:</p> <p>“(dd) has at any time been, or is, convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No.6 of 1958), the Corruption Act, 1992, Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty.</u>”.</p> <p>2. Section 51 is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph:</p> <p>“(e) if the certificate holder is convicted on a charge of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992, Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty.</u>”.</p>
Act 105 of 1997	Criminal Law Amendment Act	<p>1. Section 51 is hereby amended by the addition of the following subsection:</p> <p>“(9) The amounts mentioned in respect of the offences referred to in <u>PART II of Schedule 2 to the Act, may be adjusted by the Minister from time to time by notice in the Gazette.</u></p> <p>2. PART II of Schedule 2 is hereby amended by the substitution of the words preceding paragraph (a) in the last offence of PART II, of the following words:</p> <p>“Any offence relating to exchange control, [corruption] extortion, fraud, forgery, uttering, [or] theft, or an offence in <u>Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004—</u>”.</p>

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 40 of 1998	South African Civil Aviation Authority Act	Section 9 is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (3) of the following subparagraph: “(ii) of any offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, the Companies Act, 1973, or of contravening this Act;</u> ”.	5 10 15
Act 105 of 1998	National Empowerment Fund Act	Section 7 is hereby amended by the substitution for paragraph (e) of subsection (1) of the following paragraph: “(e) has at any time been convicted, whether in the Republic or elsewhere, of theft, fraud, forgery and uttering, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No.6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any other offence involving dishonesty; or</u> ”.	20 25 30 35
Act 121 of 1998	Prevention of Organised Crime Act	Schedule 1 to the Act is hereby amended by the substitution for item 12 of the following item: “12. Any offence contemplated in Part 1 to 4, or section 17, 18, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004;</u> ”.	40 45
Act 131 of 1998	Medical Schemes Act	Section 5 is hereby amended by the substitution for paragraph (d) of subsection (1) of the following paragraph: “(d) has at any time been convicted (whether in the Republic of South Africa or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the <u>Prevention of Corruption Act, 1958 (Act 6 No. of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine.</u> ”.	50 55 60 65

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 132 of 1998	South African Medicines and Medical Devices Regulatory Authority Act	<p>Section 8 is hereby amended by the substitution for subparagraph (i) of paragraph (j) of subsection (1) of the following subparagraph:</p> <p>“(i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u> the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u>, or any other offence involving dishonesty;”.</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p>
Act 4 of 1999	Broadcasting Act	<p>Section 16 is hereby amended by the substitution for subparagraph (i) of paragraph (d) of subsection (1) of the following subparagraph:</p> <p>“(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u> the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u>;”.</p>	<p>25</p> <p>30</p> <p>35</p>
Act 20 of 1999	Road Traffic Management Corporation Act	<p>Section 10 is hereby amended by the substitution for subparagraph (ii) of paragraph (a) of subsection (1) of the following subparagraph:</p> <p>“(ii) of an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u>, the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u>, the Companies Act, 1973 (Act 61 of 1973), or this Act;”.</p>	<p>40</p> <p>45</p> <p>50</p>
Act 13 of 2000	Independent communications Authority of South Africa Act	<p>Section 6 is hereby amended by the substitution for subparagraph (i) of paragraph (j) of subsection (1) of the following subparagraph:</p> <p>“(i) theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u>, the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u>, or any other offence involving dishonesty; or”.</p>	<p>55</p> <p>60</p> <p>65</p> <p>70</p>

No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 38 of 2000	Construction Industry Development Board Act	Section 7 is hereby amended by the substitution for paragraph (a) of subsection (4) of the following paragraph: “(a) is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, an offence in terms of the <u>Prevention of Corruption Act, 1958</u> (Act No. 6 of 1958), the <u>Corruption Act, 1992</u> (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> , or the <u>Companies Act, 1973</u> (Act 61 of 1973), or of contravening this Act;”.	5 10 15 20
Act 14 of 2002	Media Development and Diversity Agency Act	Section 5 is hereby amended by the substitution for paragraph (e) of the following paragraph: “(e) has, notwithstanding paragraph (f), at any time been convicted of theft, fraud, perjury, an offence under the <u>Prevention of Corruption Act, 1958</u> (Act No. 6 of 1958), the <u>Corruption Act, 1992</u> (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> , or any other offence involving dishonesty;”.	25 30 35
Act 15 of 2002	Land and Agricultural Development Bank Act	Section 10 is hereby amended by the substitution for subparagraph (i) of paragraph (d) of the following subparagraph: “(i) in the Republic of theft, perjury, or an offence in terms of the <u>Prevention of Corruption Act, 1958</u> (Act No. 6 of 1958), the <u>Corruption Act, 1992</u> (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the <u>aforementioned offences</u>) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> ;”.	40 45 50 55

MEMORANDUM ON THE OBJECTS OF THE PREVENTION AND COMBATING OF CORRUPTION BILL

1. BACKGROUND TO AND OBJECTS OF BILL

1.1 Since the enactment in 1992 of legislation dealing with corruption, various proposals have been received relating to the amendment of this legislation. For example, it has been suggested that the common law crime of bribery be re-instated and further that—

- (a) the crime of corruption should be broadened to cover all agents, public or private; and
- (b) the legislation should apply extra-territorially in order to cover any gifts given or received outside our borders.

It has also been suggested that “anti-corruption legislation” should create a crime when public officials are used or manipulated to commit irregularities.

1.2 Rather than amending the Corruption Act, 1992 (Act No. 94 of 1992), on a piece-meal basis, the Bill aims at giving effect to recommendations emanating from a total review of the current legislation. This will contribute to Government’s initiatives in developing an overall anti-corruption strategy. The provisions contained in the Bill follow the trend of modern international legislation, namely, the “unbundling” of corruption, in terms of which various specific corrupt actions and corrupt practices are defined and prohibited.

Following the trend of modern legislation internationally, the Bill envisages the incorporation and development of a number of different provisions regarding various types of corrupt practices. Some of the important provisions of the Bill are highlighted hereunder:

1.3.1 Part 1 of the Bill (clause 3) creates the general offence of corruption and applies to any person in the public or private sector. In terms of this provision any person is guilty of the offence of corruption who accepts or agrees or offers to accept any gratification from any other person, or who gives or agrees or offers to give to any other person any gratification, in order to act, personally or by influencing another person so to act, in a manner that amounts to, amongst others, the illegal, dishonest, unauthorised, incomplete, or biased performance of any functions arising out of a constitutional, statutory, contractual or any other legal obligation or that amounts to the abuse of a position of authority, breach of trust or the violation of a legal duty or a set of rules. The word “gratification” has been defined to include a wide range of benefits and avoidance of losses. For a contravention of this provision, clause 26(1) provides, in the case of a sentence to be imposed by a High Court, for imprisonment up to a period for imprisonment for life and in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years.

1.3.2 Part 2 of the Bill (clauses 4 to 9) provides for offences in respect of corrupt activities relating to specific persons. These offences include offences relating to public officers, foreign public officials, agents, members of the legislative authority, judicial officers, and members of the prosecuting authority. The penalty for a contravention of any of these provisions is the same as for the general offence of corruption.

1.3.3 Part 3 (clause 10) aims at replacing the common law crime of bribery. Clause 10 prohibits the receiving and offering of unauthorised gratification by or to a person who is party to an employment relationship. Whereas the common law crime of bribery only applies to persons in the public sector, the offence in clause 10 aims at also applying to persons who are party to an employment relationship in the private sector. The penalty for this offence is the same as for the general offence of corruption.

1.3.4 Part 4 of the Bill (clauses 11 to 15) provides for offences in respect of corrupt activities relating to specific matters. These offences include offences in respect of corrupt activities relating to the testimony of witnesses and evidential material during certain proceedings, contracts, the procuring and withdrawal of tenders, auctions, sporting events and gambling games and games of chance. The penalty for any of the offences in Part 4, is the same as for the general offence of corruption.

1.3.5 Part 5 of the Bill (clauses 17 to 19) creates offences relating to possible conflict of interest and other unacceptable conduct. In terms of clause 17(1) any public officer who acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence. This offence does not apply, amongst others, to a public officer who acquires or holds such interest as a

shareholder of a listed company or whose conditions of employment does not prohibit him or her from acquiring or holding such an interest. Clause 18 deals with the intimidation and improper inducement of witnesses and clause 19 deals with the intentional interference with, hindering or obstruction of the investigation of and offence. The maximum penalty for the contravention of an offence in clauses 17(1) and 19, is 10 years imprisonment, and for an offence in clause 18 is the same as for the general offence of corruption, namely, imprisonment for life.

1.3.6 Part 6 of the Bill provides for offences relating to corrupt activities. This includes the offence of accessory to or after an offence (clause 20), and the attempt, conspiracy and inducing another person to commit an offence (clause 21).

1.3.7 Chapter 3 of the Bill provides for investigations regarding the possession of property relating to corrupt activities. In the first instance clause 22 provides for an investigation procedure in terms of Chapter 5 of the National Prosecuting Authority Act, 1998, in respect of property that may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under Chapter 2 or property that may have facilitated the commission of such an offence, or enabled any person or entity to commit such an offence, or provided financial or economic support to a person or entity in the commission of such an offence. In the second instance clause 23 provides for the application by the National Director of Public Prosecutions, and the issuing of an investigation direction by a judge in respect of the possession of property disproportionate to a person's present or past known sources of income or assets. The National Director may—

- (a) summon the suspect or any other person, specified in the investigation direction, who is believed to be able to furnish any information relating to the property in his or her possession or under his or her control, to appear before him or her or a person authorised thereto, at a time and place specified in the summons, and to be questioned or to produce that property;
- (b) question that suspect or other person, under oath or affirmation, and examine or retain for further examination or for safe custody such property; or
- (c) enter any premises where the suspect is or is suspected to be and there inspect and search the premises, examine and seize any property found on the premises which has a bearing on the investigation in question.

Any person who refuses or fails to give any information or explanation when required to do so in terms of the above provisions, is guilty of an offence and liable to a fine or to imprisonment for a period not exceeding 10 years.

1.3.8 Clause 24 provides for the application of a presumption, subject to strict requirements. The provisions of this presumption are in line with the guidelines laid down by the Constitutional Court in recent decisions. Clause 25 rules out the raising of certain offences by an accused person. This clause provides, amongst others, that where an accused person who is charged with an offence under Part 1, 2, 3, or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences), it is not a valid defence for that accused person to contend that he or she did not have the power, right or opportunity to perform the act in relation to which the gratification was given, accepted or offered; or that he or she accepted the gratification without intending to perform the act in relation to which the gratification was given, accepted or offered; or that he or she failed to perform the act in relation to which the gratification was given, accepted or offered.

1.3.9 In terms of clause 27 the National Director of Public Prosecutions, a Deputy Director or a Director must authorise the institution of a prosecution in respect of a contravention of clause 17(1) (the offence relating to the acquisition of a private interest in a contract of a public body), clause 23(7)(b) (failure to answer questions or to give explanation regarding property) and clause 34(2) (failure by tenderer to disclose endorsement and certain offences).

1.3.10 Chapter 6 of the Bill provides for the establishment of a Register for Tender Defaulters. This Register is established in the Office of the National Treasury. In terms of clause 28 a court may, in respect of an accused who has been found guilty in respect of corrupt activities relating to tenders and contracts, in addition to imposing any other sentence, issue an order in terms of which the particulars of the convicted person or enterprise must be endorsed on the Register. This may include the endorsement of enterprises, partners, managers and directors involved in the commission of the offence. Furthermore, the National Treasury may or must, as the case may be, where the Register has been so endorsed, impose certain restrictions in respect of the persons or enterprises so endorsed. This includes the termination of an agreement, the determination of a

period (between 5 and 10 years), for which the endorsement must remain on the Register and the disqualification relating to future tenders and contracts.

1.3.11 Clause 34 creates a duty to report certain corrupt transactions. It is important to note that this duty only applies to persons who hold a position of authority as defined in the Bill. Furthermore, the duty only applies where such a person knows or ought reasonably to have known or suspected that certain serious offences have been committed and where the offence involves an amount of R100 000, or more.

1.3.12 Clause 35 provides for extraterritorial jurisdiction in respect of offences committed in terms of this Act.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Public Service and Administration, the Department of Finance, all Directors of Public Prosecutions, Unit Heads within the National Prosecuting Authority and members of the Policy Unit of the Department of Justice. The Portfolio Committee on Justice and Constitutional Development also hold public hearing regarding the contents of the Bill.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution applies.