

THE ANTI-CORRUPTION ACT, 2010

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SCHEDULE

GOVERNMENT OF ZAMBIA

ACT

No. 38 of 2010

Date of Assent: 14th November, 2010

An Act to continue the existence of the Anti-Corruption Commission and provide for its powers and functions; provide for the prevention, detection, investigation, prosecution and punishment of corrupt practices and related offences; bring the law into conformity with the provisions of the regional and international conventions to which Zambia is a State party; repeal and replace the Anti-Corruption Commission Act, 1996; and provide for matters connected with, or incidental to, the foregoing.

[19th November, 2010]

ENACTED by the Parliament of Zambia.

Enactment

PART I
PRELIMINARY

1. This Act may be cited as the Anti-Corruption Act, 2010, and shall come into operation on such date as the President may, by statutory instrument, appoint.

Short title
and
commence-
ment

2. All offences under this Act shall be enquired into, tried and otherwise dealt with in accordance with the Criminal Procedure Code and any other written law.

Application

3. In this Act, unless the context otherwise requires—

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Interpretation

“agent” means a person employed by, or acting for, another and includes an officer of a public body or private body who acts for, or on behalf of, a public body or a private body or any other person, a trustee, an executor or an administrator of an estate of a deceased person;

“appropriate authority” means a person or institution to whom a recommendation is made under section *eight*;

“associate”, in relation to a person, means—

(a) a person who is a nominee or an employee of that person;

(b) a person who manages the affairs of that person;

(c) a firm of which that person, or that person’s nominee, is a partner or a person in charge or in control of its business or affairs;

(d) a company in which that person or that person’s nominee, is a director or is in charge or in control

of its business or affairs, or in which that person, alone or together with that person's nominee, holds a controlling interest or shares amounting to more than thirty percent of the total share capital; or

(e) the trustee of a trust, where —

(i) the trust has been created by that person; or

(ii) the total value of the assets contributed by that person before or after the creation of the trust, amounts, at any time, to not less than twenty percent of the total value of the assets of the trust;

“Board” means the Board of the Commission constituted under paragraph 2 of the Schedule;

“casual gift” means any conventional hospitality, on a modest scale or unsolicited gift of modest value, offered to a person in recognition or appreciation of that person's services, or as a gesture of goodwill towards that person, and includes any inexpensive seasonal gift offered to staff or associates by a public or private body or a private individual on festive or other special occasions, which is not in any way connected with the performance of a person's official duty so as to constitute an offence under Part III;

“Chairperson” means the person appointed as Chairperson under paragraph 2 of the First Schedule;

“Commission” means the Anti-Corruption Commission referred to in section *four*;

“Commissioner” means a person appointed as Commissioner under paragraph 2 of the Schedule;

“corrupt” means the soliciting, accepting, obtaining, giving, promising or offering of a gratification by way of a bribe or other personal temptation or inducement, or the misuse or abuse of a public office for private advantage or benefit contrary to section *ninety-nine* of the Penal Code and “corruption” shall be construed accordingly;

Cap. 87

“Deputy Director-General” means a person appointed as Deputy Director-General under section *twelve*;

“Director-General” means the person appointed as such under section *nine*;

Cap. 1

“Director of Public Prosecutions” means the person appointed as such under the Constitution;

“document” means any device by means of which information is recorded or stored, and includes—

(a) anything on which there is writing;

(b) anything in which there are marks, figures, symbols or perforations having meaning for persons qualified to interpret them;

(c) anything from which sounds, images or writing can be produced, with or without the aid of anything else; or

(d) any of the things referred to in paragraphs (a) to (c) kept or maintained in electronic form;

“foreign public official” means—

(a) a person holding any legislative, administrative or judicial office at any level of the government of a foreign State;

(b) any person performing public functions for a foreign State, or any board, commission, corporation or other body or authority performing a duty or function on behalf of the foreign State; or

(c) an official or agent of a public international organisation formed by two or more States or two or more public international organisations;

“foreign State” means any country other than Zambia;

“former Commission” means the Anti-Corruption Commission established under the repealed Act;

“Government” includes any Ministry, department, Service or undertaking of the Government;

“gratification” means any corrupt payment, whether in cash or in kind, any rebate, bonus, deduction or material gain, benefit, amenity, facility, concession or favour of any description and any loan, fee, reward, advantage or gift, or any other thing obtained as a result of the corrupt misuse or abuse of public funds or property, other than a casual gift;

“illegal activity” means an activity carried out which, under any written law in the Republic, amounts to a crime;

“local authority” has the meaning assigned to it in the Local Government Act;

“officer” means a person appointed under section *thirteen*;

“parastatal” means any company, association, statutory corporation, body or board or any institution of learning, in which the State has a financial interest;

“police officer” means a member of the Zambia Police Force;

“principal” includes an employer, beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased

Cap. 91

Cap. 281

- person as though the estate were a person, and, in relation to a public officer, the authority or body of persons in which the public office is held;
- “private body” means any person or organisation not being a public body, a voluntary organisation, non-governmental organisation, charitable institution, company, partnership or a club;
- “public body” means the Government, any Ministry or department of the Government, the National Assembly, a local authority, parastatal, board, council, authority, commission or other body appointed by the Government, or established by, or under, any written law;
- Act No. 15 of 2004 “public funds” has the meaning assigned to it in the Public Finance Act, 2004 and includes funds donated to a non-governmental organisation;
- “public officer” means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, includes a member of Parliament, and “public office” shall be construed accordingly;
- “relative” in relation to a person, means—
- (a) a spouse of that person; and
 - (b) a brother, sister, nephew, niece, uncle, aunt, grand parent or cousin of that person or that person’s spouse;
- Cap. 91 “repealed Act” means the Anti-Corruption Commission Act;
- “Secretary” means the person appointed Secretary under section *thirteen*;
- “seizure” means temporarily prohibiting the transfer, conversion, disposition or movement of any property or temporarily assuming the custody or control of property on the basis of an order issued by a court or a notice by the Director-General;
- “sporting event” means an event or contest in any sport, between individuals or teams, or in which an animal competes, and which is usually attended by the public and is governed by rules of any sporting body or regulatory body;
- “staff” means the staff of the Commission appointed under section *thirteen*; and
- “valuable security” means any document —

- (a) creating, transferring, surrendering or releasing any right to, in or over property;
- (b) authorising the payment of money or delivery of any property; or
- (c) evidencing the creation, transfer, surrender or release of any right, the payment of moneys or delivery of any property or the satisfaction of any obligation.

PART II

THE ANTI-CORRUPTION COMMISSION

4. (1) The Anti-Corruption Commission established under the repealed Act shall continue to exist as if established under this Act, and shall be a body corporate with perpetual succession and a common seal, capable of suing and of being sued in its corporate name and with power, subject to this Act, to do all such acts and things as a body corporate may, by law, do or perform.

Continuation
of
Commission
Cap. 91

(2) The provisions of the State Proceedings Act shall apply to civil proceedings by, or against, the Commission as if, for a reference to the State there were substituted a reference to the Commission.

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(3) The provisions of the Schedule apply to the Commission.

5. Except as otherwise provided in this Act, the Commission shall not, in the performance of its functions, be subject to the direction or control of any person or authority.

Autonomy
of
Commission

6. (1) The functions of the Commission are to—

Functions of
Commission

(a) prevent and take necessary and effective measures for the prevention of corruption in public and private bodies, including, in particular, measures for—

(i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of opportunities of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Commission, may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Commission considers necessary to reduce the likelihood of the occurrence of corrupt practices;

- (iii) disseminating information on the evil and dangerous effects of corrupt practices on society;
 - (iv) creation of committees in institutions for monitoring corruption in the institution; and
 - (v) enlisting and fostering public confidence and support against corrupt practices;
- (b) initiate, receive and investigate complaints of alleged or suspected corrupt practices, and, subject to the directions of the Director of Public Prosecutions, prosecute
- (i) offences under this Act; and
 - (ii) such other offence under any other written law as may have come to the notice of the Commission during the investigation of an offence under this Act:

Provided that nothing in this paragraph shall be considered as precluding any public prosecutor from prosecuting, subject to the directions of the Director of Public Prosecutions, any offence under this Act which has come to the notice of the police during investigation of an offence under any written law;

- (c) investigate any conduct of any public officer which, in the opinion of the Commission, may be connected with or conducive to corrupt practices;
- (d) be the lead agency in matters of corruption;
- (e) co-operate with other institutions authorised to investigate, prosecute, prevent and combat corrupt practices so as to implement an integrated approach to the eradication of corruption;
- (f) consult, co-operate and exchange information with appropriate bodies of other countries that are authorised to conduct inquiries or investigations in relation to corrupt practices; and
- (g) do all such things as are incidental or conducive to the attainment of its functions.

(2) The Commission may establish specialised units to investigate and deal with such matters as the Commission considers appropriate.

Instructions
by
Commission

7. (1) The Commission may instruct a public body on practices and procedures that are necessary to prevent, reduce or eliminate the occurrence of corrupt practices.

(2) A public body shall, not later than ninety days from the receipt of the instructions from the Commission pursuant to subsection (1), effect the necessary changes in its practices and procedures.

(3) A public body which considers that the changes in practices and procedures contained in the instructions from the Commission shall be impracticable or otherwise disadvantageous to the effective discharge of its functions shall, within thirty days of the receipt of the instructions, make representations to the Director-General in writing.

(4) The Commission may, after considering the representations of a public body made under subsection (3), confirm, vary or cancel the instruction given to the public body.

(5) The head of a public body which fails to comply with the instructions of the Commission commits an offence and is liable, upon conviction, to a fine not exceeding one hundred thousand penalty units or to imprisonment for a period not exceeding one year, or to both.

(6) In addition to the penalty prescribed in subsection (5), the head of the public body which fails to comply with the instructions of the Commission shall be subject to disciplinary action including dismissal from office by the relevant authority.

8. (1) The Commission may, after an investigation into an offence under this Act, depending on the findings made, make such recommendation as it considers necessary to an appropriate authority.

Reports and
recommen-
dation by
Commission

(2) An appropriate authority shall, within thirty days from the date of receipt of the recommendation of the Commission under subsection (1), make a report to the Commission on the action taken by the appropriate authority.

9. (1) There shall be a Director-General of the Commission who shall be the chief executive officer of the Commission.

Director-
General

(2) The Director-General shall be appointed by the President, subject to ratification by the National Assembly, on such terms and conditions as the President may determine.

(3) A person is not qualified to be appointed as Director-General unless the person is qualified to be appointed judge of the High Court.

(4) The Director-General shall be responsible for —

(a) the control, direction, management and administration of the Commission; and

(b) the implementation of any policy matters referred to the Director-General by the Board.

(5) The Director-General may, subject to any specific or general direction of the Board, make standing orders providing for—

(a) the control, direction and administration of the Commission;

- (b) the discipline, training, classification and promotion of officers of the Commission;
- (c) the duties of officers of the Commission; and
- (d) such other matters as the Director-General may consider necessary or expedient for preventing the abuse of power or neglect of duty by officers or other staff.

(6) The Director-General shall not, while holding the office of Director-General, discharge the duties of any other office of emolument in the Republic.

Tenure of
office of
Director-
General

10. (1) Subject to subsection (2), a person appointed Director-General shall vacate that office on attaining the age of sixty-five years:

Provided that the President may permit a person who has attained that age to continue in office for such period as may be necessary to enable that person to do anything in relation to proceedings that were commenced before the person attained that age.

(2) A person appointed Director-General may be removed from office for inability to perform the functions of office, whether arising from infirmity of body or mind or from any other cause, or for misbehaviour.

(3) If the President considers that the question of removing a person holding the office of Director-General from office ought to be investigated, then—

- (a) the President shall appoint a tribunal which shall consist of a Chairperson and not less than two other members, who hold or have held high judicial office;
- (b) the tribunal shall inquire into the matter and report on the facts thereof to the President and advise the President whether the person holding the office of Director-General ought to be removed from office under this section for incompetence or inability or for misbehaviour.

(4) Where a tribunal appointed under subsection (2) advises the President that a person holding the office of Director-General ought to be removed from office for incompetence or inability or for misbehaviour, the President shall remove the person from office.

(5) If the question of removing a person holding the office of Director-General from office has been referred to a tribunal under this section, the President may suspend that person from performing the functions of the person's office, and any such suspension may at any time be revoked by the President and shall in any case cease to have effect if the tribunal advises that the person ought not to be removed from office.

(6) The Director-General may resign by giving three months' notice, in writing, to the President, of the Director-General's intention to resign.

(7) The Director-General shall, before taking office, take an oath or affirmation before the President in the prescribed manner and form.

11. (1) The Director-General may, for the performance of the Commission's functions under this Act—

Powers of
Director-
General

(a) authorise, in writing, any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require the head, chairperson, manager, chief executive officer or person in charge of any public body, to produce or furnish within such time as may be specified by the Director-General, any document or a certified true copy of any document which is in that person's possession or under that person's control and which the Director-General considers necessary for the conduct of an investigation into alleged or suspected offences under this Act:

Provided that if the document is classified or falls under the State Security Act, the Commission may apply to a judge in chambers to determine whether the document is likely to —

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(i) prejudice the security, defence or international relations of the Republic; or

(ii) involve the disclosure of any matter or deliberations of a secret or confidential nature of the Government; or

(c) require any person to answer, to the best of that person's knowledge and belief, questions with respect to the whereabouts or existence of any documents or records that may be relevant to an investigation.

(2) In determining an application under paragraph (b) of subsection (1), the court may —

(a) order the release of the document; or

(b) confirm that the release of the document will prejudice the security, defence or international relations of the Republic or involve the disclosure of a confidential matter of Government.

(3) Notwithstanding any written law to the contrary, the Director-General may, where the Director-General has reasonable grounds to believe that a person who is the subject of an investigation in respect of an offence under this Act is likely to leave Zambia,

require such person to surrender their travel document or any other document in that person's possession.

(4) The Commission shall, where a person surrenders that person's travel document pursuant to subsection (1), return the document after the investigation of the offence is completed, and if no criminal proceedings are to be instituted.

(5) A person who is aggrieved with the decision of the Director-General made pursuant to subsection (1) may apply to the High Court.

(6) The High Court may, upon hearing an application made under subsection (3), reverse, vary or dismiss the application or make such other order as the court considers appropriate.

(7) A person who fails to comply with the decision of the Director-General under subsection (1) commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

Deputy
Director-
General

12. (1) The President shall appoint a Deputy Director-General on such terms and conditions as the President may determine.

(2) The Deputy Director-General shall assist the Director-General in performing the Director-General's duties under this Act.

(3) A person shall not qualify for appointment as Deputy Director-General unless the person is qualified to be appointed judge of the High Court.

(4) If the office of the Director-General is vacant or the Director-General is absent from duty or unable for any other reason to perform the functions of that office, the Deputy Director-General shall, save where the President otherwise directs, act as Director-General.

(5) If both the Director-General and the Deputy Director-General are absent from duty or unable for any other reason to perform the functions of their offices, the President shall appoint another person to act as Director-General.

(6) The Deputy Director-General may resign by giving three months' notice, in writing, to the President, of the Deputy Director-General's intention to resign.

(7) The Deputy Director-General shall, on appointment, take an oath or affirmation before the President in the prescribed manner and form.

Investigating
officers,
Secretary and
other staff of
Commission

13. (1) The Commission may appoint investigating officers, the Secretary and such other staff of the Commission, on such terms and conditions as the Commission may determine, to assist the Director-General in the performance of the Director-General's functions under this Act.

(2) The Secretary shall be in charge of the general administration and shall keep the records of the Commission.

(3) An officer shall have such powers, functions and duties as provided for, or as delegated to the officer, by the Director-General under this Act.

(4) The Director-General may, if satisfied that it is in the best interest of the Commission, terminate the appointment of any officer of the Commission and shall assign the reasons therefor, subject to any directions by the Commission.

(5) A person aggrieved with the decision of the Director-General to terminate that person's employment pursuant to subsection (3) may appeal against that decision to the Board.

(6) The Commission may, in the exercise of its functions, engage the services of such advisors and experts as it considers necessary.

(7) The Secretary, advisors, experts and other members of staff of the Commission shall, on appointment, take an oath or affirmation before the Director-General in the prescribed manner and form.

14. (1) The Director-General, Deputy Director-General, officers and Secretary shall, before taking office under this Act —

Declaration
of assets

(a) in the case of the Director-General, Deputy Director-General and Secretary, submit to the Chief Justice a written declaration, in the prescribed form, of all the assets they own or liabilities owed to them; and

(b) in the case of the other staff of the Commission, submit to a magistrate a written declaration, in the prescribed form, of all the assets they own or liabilities owed to them.

15. (1) The Director-General shall issue to an officer of the Commission an identity card which shall be *prima facie* evidence of the officer's appointment as such.

Identity card

(2) An officer shall, in performing any function under this Act—

(a) be in possession of the identity card referred to in subsection (1); and

(b) show the identity card to any person who requests to see it or is subject to an investigation under this Act.

16. (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any person otherwise than in the course of such person's duties, the contents of any document, communication or information which relates to, or which has come to that person's knowledge in the course of that person's duties under this Act.

Prohibition
of disclosure
of
information
to
unauthorised
persons

(2) A person who contravenes subsection (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred

thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who having information which to that person's knowledge has been published or disclosed in contravention of subsection (1), unlawfully publishes or communicates such information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Immunity of staff

17. (1) No proceedings, civil or criminal, shall lie against an officer or member of staff of the Commission for anything done in good faith in the exercise of the officer's or member of staff's functions under this Act.

(2) For the avoidance of any doubt, nothing in this section shall protect any officer or member of staff for anything done outside the functions of office.

(3) An officer or member of staff of the Commission who commits an offence under this Act or any other written law is liable to prosecution for that offence.

(4) An officer of the Zambia Police Force, the Drug Enforcement Commission or any other law enforcement agency may, where an officer or a member of staff of the Commission commits an offence under this Act or any other written law, investigate the offence.

Impersonation and procurement of officer

18. A person who pretends to—

(a) be an officer of the Commission or to have any of the powers of an officer under this Act, or under any authorisation or warrant issued under this Act; or

(b) be able to procure an officer of the Commission to do or refrain from doing anything in connection with the duties of such officer;

commits an offence and is liable, upon conviction, to imprisonment for a period of not less than two years.

PART III

CORRUPT PRACTICES

Corrupt practices by, or with, public officers

19. (1) A public officer who, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned, commits an offence.

20. (1) A person who, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for and having done or forborne to do, anything in relation to any matter or transaction actual or proposed, with which any private body is or may be concerned, commits an offence.

Corrupt transactions by, or with, private bodies

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned, commits an offence.

21. (1) A public officer who, being concerned with any matter or transaction falling within, or connected with, that public officer's jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for oneself or for any other person any gratification in relation to such matter or transaction, commits an offence.

Corrupt use of official power

(2) A person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by oneself, or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification, whether directly or indirectly, to such public officer either for oneself or for any other person, commits an offence.

22. (1) An agent who corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to the principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business, commits an offence.

Corrupt transactions by, or with, agents

(2) A person who corruptly gives, promises or offers any gratification to an agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to the principal's affairs or business, or for showing or having shown favour or disfavour to any person in relation to the principal's affairs or business, commits an offence.

(3) A person who gives to an agent, or any agent who, with intent to deceive the principal, uses any receipt, account or other document in respect of which the principal is interested or which relates to the principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to the agent's knowledge or belief is intended to mislead the principal, commits an offence.

Corruption
of members
of public or
private
bodies with
regard to
meetings

23. (1) A person who being a member of any public or private body by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for—

- (a) that person's voting or abstaining from voting at any meeting of such public or private body in favour of, or against, any measure, matter, resolution or question submitted to such public or private body;
- (b) that person's performing or abstaining from performing, or for that person's aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public or private body; or
- (c) that person's aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person;

commits an offence.

(2) A person who, by oneself or by, or in conjunction with, any other person, corruptly gives, promises or offers any gratification to a member of any public or private body in any circumstance referred to in subsection (1), commits an offence.

Corruption
of witness

24. (1) A person who, directly or indirectly, corrupts a witness so as to induce false testimony from the witness in a trial, hearing or other proceeding before any court, tribunal, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony commits an offence and is liable, upon conviction, to imprisonment for a term not exceeding five years.

(2) A person who, by oneself, or by, or in conjunction with, any other person, corruptly promises, offers or gives any gratification to any witness whether for the benefit of that witness or any other person, with intent to influence the witness to be absent from trial, to give false testimony or withhold testimony, commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years.

(3) A witness who, by oneself or by, or in conjunction with, any other person, corruptly solicits, accepts or receives, or agrees to accept or attempts to receive or obtain, from any person for oneself or another person, any gratification as an inducement or reward whether for the witness's benefit or any other person, in order for the witness to be absent from trial or to give false testimony or withhold testimony, commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years.

25. (1) A person who, by oneself or by, or in conjunction with, any other person, corruptly promises, offers or gives any gratification to any foreign public official, whether for the benefit of that foreign public official or any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any foreign public body is or may be concerned, commits an offence.

Corrupt practices by, or with, foreign public official

(2) A foreign public official who, by oneself or by, or in conjunction with, any other person corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any foreign public body is or may be concerned, commits an offence.

26. A person who, directly or indirectly, corruptly —

(a) solicits or accepts or agrees to accept any gratification, whether for the benefit of that person or any other person, as an inducement or reward for a person influencing or having influenced the run of play or the outcome of any sporting event; or

(b) offers or gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event;

commits an offence.

Corruption in relation to sporting events

27. (1) Where a public body in which a public officer is a member, director, employee or is otherwise engaged proposes to deal with any person or company, partnership or other undertaking in which that public officer has a direct or indirect private or personal interest, that public officer shall forthwith disclose, in writing to that public body, the nature of such interest.

Conflict of interest

(2) Where a public officer or a relative or associate of such public officer has a personal interest in a decision to be taken by a public body, that public officer shall not vote or take part in any proceedings or process of that public body relating to such decision.

(3) A public officer who contravenes subsection (1) or (2) commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding three years.

Gratification
for giving
assistance,
etc., with
regard to
contracts

28. (1) A public officer who, directly or indirectly, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for or otherwise on account of, that public officer giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution or procurement of—

(i) any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any sub-contract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

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

commits an offence.

(2) A person who corruptly gives, promises or offers any gratification to any public officer as an inducement or reward for, or otherwise on account of, such public officer giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution or procurement of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in;

any contract or sub-contract commits an offence.

Gratification
for procuring
withdrawal
of tender

29. (1) A person who, directly or indirectly, by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for oneself or for any other person, any gratification as an inducement or reward for or otherwise on account of, the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, commits an offence.

(2) A person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for, or otherwise on account of, the withdrawal of a tender, or the refraining from making of a tender, for a contract commits an offence.

30. (1) A person who, by use of corrupt means interferes with the exercise of official duties by a judge, magistrate, judicial officer or any other arbiter or law enforcement officer, commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

Obstruction
of justice

(2) A person who accepts or obtains, agrees to accept or attempts to obtain, or offers or gives, a gratification for oneself or for any other person in consideration of that person —

- (a) concealing an offence;
- (b) shielding any other person from legal proceedings for an offence;
- (c) not proceeding against any other person in relation to an alleged offence; or
- (d) abandoning or withdrawing, or obtaining or endeavoring to obtain the withdrawal of, a prosecution against any other person;

commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

31. (1) A person who, directly or indirectly by oneself, or by, or in conjunction with, any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for oneself or for any other person, any gratification as an inducement or reward for or otherwise on account of, that person refraining or having refrained from bidding at any sale by auction conducted by, or on behalf of, any public body or private body, commits an offence.

Gratification
with regard to
bidding at
auction sale

(2) A person who corruptly gives, promises or offers any gratification to any other person as an inducement or reward for, or otherwise on account of, that other person's refraining or having refrained from bidding at an auction commits an offence.

32. A public officer who —

- (a) performs or abstains from performing any act in that public officer's capacity as a public officer;
- (b) expedites, delays, hinders or prevents the performance of any act; or
- (c) assists, favours, hinders or delays any person in the transaction of any business with a public body;

Coercion of
investor

in order that an investor or potential investor is coerced, compelled or induced to abandon the investment or induced to abandon the investment to the advantage of another person, commits an offence and is liable, upon conviction, to a fine of not less than two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Corrupt
acquisition
of public
property
and revenue

33. (1) A person who fraudulently or unlawfully —

- (a) acquires public property or a public service or benefit;
- (b) diverts any public property for that person's or another person's benefit;
- (c) mortgages, charges or disposes of any public property; or
- (d) obtains any exemption, remission, reduction or abatement from payment of any tax, fee, levy or charge required to be paid under any law;

commits an offence.

(2) A person whose functions concern the administration, custody, management, receipt or use of any part of public revenue or public property commits an offence if that person —

- (a) fraudulently makes payment from the public revenue for—
 - (i) goods not supplied or not supplied in full; or
 - (ii) services not rendered or not adequately rendered;
 or
- (b) willfully fails to comply with any law or applicable procedures or guidelines relating to the procurement, allocation, sale or disposal of property, tendering of contracts, management of funds or incurring of public expenditures.

(3) A person who commits an offence under this section is liable, upon conviction, to imprisonment for a period not exceeding five years.

(4) For the purposes of this section, "public property" means real or personal property, including public funds or money of a public body or under the control of, or consigned or due to, a public body.

Electoral
corruption
Act No. 12
of 2006
Concealment
of
property

34. The Commission has jurisdiction to investigate and prosecute any offence of bribery prescribed under the Electoral Act, 2006.

35. A person who —

- (a) converts, transfers or disposes of property, knowing that such property is the proceeds of corruption or related offences for the purpose of concealing or disguising the illicit origin of the property or of helping any other person who is involved in the commission of the offence to evade the consequences of that person's action;

(b) conceals or disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property which is from the proceeds of corruption or related offences; or

(c) acquires, possesses or uses any property with the knowledge at the time of receipt, that such property is from the proceeds of corruption or related offences;

commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

36. A person who, directly or indirectly, whether on that person's behalf or any other person, knowingly uses or causes to be used, or receives, holds, controls or conceals any property or any part thereof, which was obtained as gratification, or derived from the proceeds of crime obtained in the commission of an offence under this Part commits an offence.

Dealing with,
using and
concealing
gratification

37. A person commits an offence who with intent to defraud or to conceal the commission of an offence under this Part or to obstruct an officer in the investigation of any offence—

Concealment
of offence

(a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of or has been received by that person or that person's employer, or any entry in such book, document, account or electronic device, or is privy to any such act;

(b) makes or is privy to the making of any false entry in any book, document, account or electronic device; or

(c) omits or is privy to the omission of any information from any book, document, account or electronic device.

38. (1) A public officer to whom any gratification is corruptly given, promised or offered shall make a full report of the circumstances of the case to an officer of the Commission or a police officer within twenty-four hours of the occurrence of the event, and if the public officer fails to do so without reasonable cause, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

Public
officer's duty
to report

(2) An officer of the Commission or a police officer may arrest without warrant any person in respect of whom a report is made under subsection (1).

(3) An officer of the Commission or a police officer may search any person arrested for an offence under this Act and take possession of all the articles found upon that person which the police officer or

officer of the Commission believes upon reasonable grounds to constitute evidence of the commission of an offence by that person under this Part:

Provided that a person shall not be searched except by a police officer, or officer of the Commission or by any person authorised in that behalf by a police officer or officer of the Commission, of the same sex.

Attempts
and
conspiracies

39. (1) A person who aids, abets or counsels or conspires with any person to commit an offence under this Part, commits an offence and is liable, upon conviction, to a sentence as if that person committed the offence.

(2) A person who attempts to commit an offence under this Act commits an offence and is liable, upon conviction, to a sentence as if that person committed the offence.

General
penalty

40. A person who is convicted of an offence under this Part, for which no penalty is provided, is liable—

(a) upon conviction, to imprisonment for a period not exceeding ten years;

(b) upon a second or subsequent conviction, to imprisonment for a term of not less than five years but not exceeding ten years; and

(c) in addition to any other penalty imposed under this Act, to forfeiture to the State of any pecuniary resource, property, advantage, profit or gratification received in the commission of an offence under this Act.

Restitution

41. Where a person is convicted of an offence under this Part, the court may, in addition to the sentence that it may impose under section *forty*, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any gratification actually received by that person, and such order shall be deemed to form part of the sentence:

Provided that where, after reasonable inquiry, the rightful owner cannot be ascertained or traced, or where the rightful owner is implicated in the giving of the gratification, the court shall order that the amount or value thereof be paid into the general revenues of the Republic.

Recovery of
gratification
by distress,
etc.

42. Any fine imposed under the provisions of this Part and the amount or value of any gratification ordered to be paid under section *forty-five* may be recovered in accordance with the provisions of sections *three hundred and eight* and *three hundred and nine* of the Criminal Procedure Code by distress and sale of the movable and immovable property of the person sentenced.

43. (1) Where a person gives gratification to, or for, or on account of, an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such gratification from the agent, and the acquittal of the agent or such person in respect of an offence under this Part shall not operate as a bar to any proceedings for such recovery.

Recovery of gratification corruptly received by agent

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule to recover from the agent any money or property.

44. In any proceedings under this Act, a certificate by a Government valuation officer or other specialist valuer with respect to the value of any gratification or of any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

Certificate of Government valuation officer or other specialist valuer

45. A person convicted of an offence under this Part shall, by reason of such conviction, be disqualified for a period of ten years from the date of such conviction, from being elected or appointed to, or from holding or continuing to hold, any office or position in any public body.

Effect of conviction

46. Where an offence under this Act is committed by a body corporate or unincorporate body, every director or manager of the body corporate or unincorporate body shall be liable, upon conviction, as if the director or manager had personally committed the offence, unless the director or manager proves to the satisfaction of the court that the act constituting the offence was done without the knowledge, consent or connivance of the director or manager or that the director or manager took reasonable steps to prevent the commission of the offence.

Offences by body corporate or unincorporate body

PART IV

INVESTIGATION OF CORRUPT PRACTICES

47. (1) A person who alleges that another person has engaged or is about to engage in a corrupt practice may lodge a complaint with the Commission in the prescribed manner and form.

Lodging of complaint

(2) The Commission may investigate a matter under this Act on receipt of a complaint or on its own initiative.

(3) The Commission may refer any offence that comes to its notice in the course of an investigation under subsection (2) to any other appropriate investigation authority or agency.

48. (1) The Director-General shall, upon receipt of a complaint under section *forty-six*, examine each alleged corrupt practice and decide whether or not an investigation in relation to the allegation is warranted.

Consideration of complaint

(2) The Director-General may, in deciding whether to investigate an alleged corrupt practice, consider —

- (a) the seriousness of the conduct or involvement to which the allegation relates;
- (b) whether or not the allegation is frivolous or vexatious;
- (c) whether or not the conduct or involvement to which the allegation relates is or has been the subject of an investigation or other action by any other appropriate authority under any other written law; and
- (d) whether or not, in all the circumstances, the carrying out of an investigation for the purpose of this Act in relation to the allegation will disclose the commission or likelihood of the commission of an offence under this Act.

(3) The Director-General shall, where the Director-General determines that an investigation into an allegation is warranted, decide whether the Commission shall carry out the investigation or whether the allegation should be referred to another appropriate authority for investigation or action.

(4) The Director-General may, for purposes of performing the functions under this section—

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

(5) The Director-General shall inform the complainant, in writing, of the decision of the Commission in relation to the allegation.

49. (1) The Director-General may, by notice, in writing, require any person whose affairs are being investigated or any other person who the Director-General has reason to believe may have information or documents relevant to an investigation to---

- (a) attend before the Director-General as may be specified in the notice;
- (b) answer questions with respect to any matter or supply any information that may be relevant to the investigation; or
- (c) produce for inspection any documents which are specified in the notice.

(2) Subsection (1) shall apply without prejudice to a person's rights under any other law relating to privilege.

50. (1) An officer may, without a warrant, enter and search any premises, other than a private dwelling except if the private dwelling is used for business purposes, for the purpose of attaching and removing, if necessary, any record, return, report, document or article, if the owner, occupier of the premises or other person in control of the premises consents to the entry, search, seizure and

Power to
require
attendance
before
Director-
General

Search
without
warrant

removal of the record, return, book, document or article.

(2) An officer exercising any power under this section shall, before entering and searching any premises, ensure that the owner, occupier or person in control of the premises is present.

51. (1) The Director-General, the Deputy Director-General or an officer of the Commission, in the performance of their duties, may apply for a warrant to a judge or a magistrate.

Search with
warrant

(2) A judge or magistrate to whom an application for a warrant is made under subsection (1) may issue the warrant where—

(a) there are reasonable grounds to believe that —

- (i) a person has failed to produce the documents required for purposes of this Act;
- (ii) a person has failed to answer any questions asked for purposes of an investigation or that any answer given to any question is false or misleading in a material particular or is incomplete;
- (iii) it is not practicable to serve a notice on a person by reason of the fact that the person cannot be located or is absent from Zambia, or that the service of a notice might prejudice an investigation; or

(b) there are reasonable grounds to believe that any document or other thing relevant to an investigation or that may be evidence of an offence under this Act is placed, deposited or concealed in the premises to which the warrant relates.

(3) A warrant issued under subsection (2) shall confer on the Director-General, the Deputy Director-General or an officer of the Commission power to —

- (a) access all the books, records, returns, reports and other documents relating to the work of any public or private body;
- (b) enter and search, at any time, the premises of any public or private body or any vessel, boat, aircraft or other conveyance, where the Director-General, Deputy Director-General or officer has reasonable grounds to believe that any property or thing corruptly acquired has been placed, deposited or concealed therein;
- (c) search for and remove any document or other thing that may be relevant to an investigation or may be evidence of an offence;
- (d) where necessary, take copies of any document or extracts from documents that the person executing the warrant

believes on reasonable grounds may be relevant to an investigation; and

(e) where necessary, to require any person to reproduce, or to assist to reproduce, in usable form, any information recorded or stored in any documents.

(4) In the exercise of powers of entry and search conferred under paragraph (b) of subsection (3), the Director-General, the Deputy Director-General or other officer of the Commission, may use such reasonable force as is necessary and justifiable in the circumstances, and may be accompanied or assisted by such other persons as they consider necessary to assist them to enter into, or upon, any premises, or upon any vessel, boat, aircraft or other conveyance, as the case may be.

(5) A person who accompanies or assists the Director-General, the Deputy Director-General or other officer of the Commission to enter into or upon any premises or upon any vessel, boat, aircraft or other conveyance, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section *seventeen* upon an officer of the Commission.

Inspection
of banker's
books

52. (1) The Director-General or an officer may, with a court order, investigate any bank account, share account, purchase account, expense account or any other account or safe deposit box in any bank.

(2) An order made under subsection (1) shall be sufficient for the disclosure or production by any person of all or any information, account, document or article that may be required by an officer of the Commission so authorised.

Power of
arrest

53. (1) The Director-General, the Deputy Director-General or an officer of the Commission authorised in that behalf by the Director-General may arrest a person, without warrant, if the officer has reasonable grounds to believe that such person has committed or is about to commit an offence under this Act.

(2) Where a person is arrested without warrant under subsection (1), such person may, at any time before appearing in court, while the person is in custody, be admitted to bail upon providing surety or sureties sufficient, in the opinion of the Director-General, Deputy Director-General or an officer authorised in that behalf by the Director-General, to secure that person's appearance before court, or the person may be released upon that person's own recognizance on such conditions as the officer thinks fit.

(3) A bail bond issued under this section shall be dealt with in accordance with the provisions of the Criminal Procedure Code.

54. (1) Where in the course of an investigation into an offence under this Act, an officer has reasonable grounds to suspect that any movable or immovable property which is derived or acquired from corrupt practices, is the subject matter of an offence or is evidence relating to an offence, the officer shall, with a warrant, seize the property.

Seizure of property

(2) An officer who seizes any property pursuant to subsection (1) shall prepare and sign a list of all the movable or immovable property seized under that subsection and of the places in which the property is found.

(3) An officer shall serve a copy of the list referred to in subsection (2) on the owner of the property or on the person from whom the property was seized, not later than thirty days from the date of seizure.

(4) For the purpose of this section, “property” means real or personal property of any description, and includes money and any interest in the real or personal property.

55. (1) An officer shall effect a seizure by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of such other person or authority and at such place as the officer may determine.

Custody and release of seized property

(2) An officer shall, where it is not practicable or otherwise not desirable to effect the removal of any property under subsection (1), leave it at the premises in which it is seized under the custody of such person as the officer may determine.

(3) An officer shall, where property is seized under subsection (2), make a record, in writing, specifying in detail the circumstances of, and the reason for, the seizure of the property and subsequent leaving of the property at the premises.

56. (1) The Director-General may, by written notice to a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed under this Act, or against whom a prosecution for an offence has been instituted, direct that such person shall not dispose of, or otherwise deal with, any property specified in such notice without the consent of the Director-General.

Restriction on disposal of property

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director-General is satisfied that that person cannot be found, or is not in the Republic, be served on or brought to the knowledge of, that person in such other manner as the Director-General may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of nine

months or until cancelled by the Director-General, whichever is earlier:

Provided that the Director-General may issue a fresh notice upon the expiry of the previous one for such further final term of six months to facilitate the conclusion of an investigation.

(4) A person who, having been served with, or having knowledge of a notice issued under subsection (1), disposes of or otherwise deals with, any property specified in the notice other than in accordance with the consent of the Director-General, commits an offence, and is liable, upon conviction, to imprisonment for a term not exceeding five years.

(5) A person aggrieved with the directive of the Director-General issued under subsection (1) may apply to the High Court for an order to reverse or vary the directive.

(6) An application made under subsection (5) shall give notice to the Director-General of the day appointed for the hearing of the application as a judge of the High Court may order.

(7) The High Court may, on the hearing of an application under subsection (5)—

(a) confirm the directive;

(b) reverse the directive and consent to the disposal of, or other dealing with, any property specified in the notice, subject to such terms and conditions as it thinks fit; or

(c) vary the directive as it thinks fit.

Restriction
on disposal
of property
by third
party

57. (1) The Commission may, where it has reasonable grounds to believe that a third party is holding any property, including money in a bank account for, or on behalf of, or to the order of, a person who is under investigation, by notice, in writing, under the hand of the Director-General, serve a notice on the third party directing that the third party shall not dispose of, or otherwise deal with, any property specified in the notice.

(2) A notice issued under subsection (1) shall be served on the third party to whom it is directed and on the person being investigated.

(3) The Commission may, in issuing a notice under this section impose such conditions as it may determine.

(4) A notice issued under subsection (1) shall have effect from the time of service upon the person to whom it is addressed and shall continue in force for a period of twelve months unless cancelled or varied by the Director-General:

Provided that the Director-General may issue a fresh notice upon the expiry of the previous one for such further final term of six months to facilitate the conclusion of an investigation.

(5) A third party on whom a notice is served under subsection (1) who disposes of, or deals with, the property specified in the notice without the consent of the Director-General commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding five years.

(6) A third party on whom a notice is served under this section shall not dispose of, or otherwise deal with, the property specified in the notice except in accordance with the terms of the notice.

(7) Subsections (5), (6) and (7) of section *fifty-five* apply to this section.

58. A person who—

General
offences

(a) knowingly makes, or causes to be made, to the Commission, false testimony or a false report in any material particular on any offence or matter under investigation;

(b) destroys, alters, conceals or removes any books, document, record or evidence that the person believes may be relevant to an investigation or proceeding under this Act;

(c) destroys, alters, mutilates or falsifies any valuable security, account, computer system, disk, computer printout or other electronic device or any entry in any book, document, account or electronic device;

(d) knowingly misleads the Director-General, the Deputy Director-General or any other officer of the Commission by giving any false information or statement or making a false allegation;

(e) obstructs, insults, assaults, hinders or delays an officer of the Commission in the lawful exercise of the powers conferred on the officer under this Act;

(f) refuses or fails, without reasonable cause, to give to the Director-General or an officer of the Commission on request, any document or information required for purposes of this Act;

(g) fails to comply with any lawful demand of the Director-General, Deputy Director-General or an officer of the Commission under this Act;

(h) fails to produce, conceals or attempts to conceal any property, document or book in relation to which there are reasonable grounds to believe is used to commit an offence or is a proceed of an offence under this Act; or

(i) destroys anything to prevent the seizure of any property or document or securing of the property or documents;

commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding two years.

PART V

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

Consent of
Director of
Public
Prosecutions

59. (1) A prosecution for an offence under Part III shall not be instituted except by, or with, the consent of the Director of Public Prosecutions.

(2) Notwithstanding subsection (1), a person may be charged with an offence under Part III and may be arrested, or a warrant for that person's arrest may be issued and executed, and the person may be remanded by the court in custody or on bail notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which that person is charged has not been obtained.

(3) Where a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against that person is obtained, the charge shall be explained to the accused person but the accused person shall not be called upon to plead.

Bail where
suspect or
accused
person about
to leave
Zambia

60. (1) If any person, against whom investigations or proceedings for an offence under Part III are pending, is preparing or about to leave Zambia, whether temporarily or permanently, the Director of Public Prosecutions or any officer authorised in that behalf, may apply to any court for an order requiring such person to furnish bail in any sum, or, if already admitted to bail, in such greater sum and on such additional conditions, as the case may be, with or without sureties, and in any such application the court may make such order as it considers appropriate.

(2) An order made under this section, whether originally or on review, shall be reviewed within thirty days by the court which made the order.

PART VI

EVIDENCE, PRESUMPTIONS AND OTHER MATTERS

Presumption
of corrupt
intention

61. (1) Where, in any proceeding under this Act, it is proved that any gratification has been received by any person with the knowledge and acquiescence or consent of the accused person, and the court is satisfied, having regard to that person's relationship to the accused person or to any other circumstances that such person has received the gratification for or on behalf of the accused person, or otherwise on account of, or in connection with, the office or duties of the accused person, the gratification in the absence of a satisfactory explanation, shall be presumed to have been received by the accused person.

(2) Where, in any proceedings for an offence under Part III, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which that person is charged, then such payment shall, in the absence of a satisfactory explanation be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained corruptly.

(3) For the purposes of subsection (2), "payment" means any corrupt payment, whether in cash or in kind.

62. (1) Subject to the Plea Negotiations and Agreements Act, 2010, the Director of Public Prosecutions may, at any time, with a view to obtaining at a trial the evidence of any person directly or indirectly concerned with or privy to an offence under Part III, tender indemnity to such person on condition that the person makes a full and true disclosure of all facts or circumstances within that person's knowledge relating to the offence and to every other person involved in the commission thereof, whether as principal or in any other capacity, together with the delivery up of any document or thing constituting evidence or corroboration of the commission of the offence by the person to be charged or the accused person, as the case may be.

(2) The court shall record in the manner prescribed by the Criminal Procedure Code the evidence on oath of every person accepting indemnity under subsection (1) and shall transmit the record of such evidence to the Director of Public Prosecutions.

(3) A person accepting indemnity under this section shall be examined as a witness at the trial.

(4) Where a person who has accepted indemnity under this section has, either by wilfully concealing anything material to the case, or by giving false evidence, not complied with the condition on which the indemnity was made, that person may be prosecuted for the offence in respect of which the indemnity was tendered or for any other offence of which the person appears to have been guilty in connection with the same matter.

(5) A person to whom indemnity has been made under subsection (1), who in the opinion of the court, has made a true and full disclosure of all things as to which that person is lawfully examined, shall be entitled to receive a certificate of indemnity under the hand of the Director of Public Prosecutions stating that the person has made a true and full disclosure of all things as to which the person was examined, and such certificate shall be a bar to all legal proceedings against that person in respect of all such things as aforesaid.

Grant of
indemnity
by Director
of Public
Prosecutions
Act No. 20
of 2010

Cap. 88

Protection of whistleblowers Act No. 4 of 2010

Absence of power, authority or opportunity, no defence

63. The provisions of the Public Interest Disclosure (Protection of Whistleblowers) Act, 2010, shall apply in relation to the protection of whistleblowers and other related matters.

64. Where a public officer has corruptly solicited, accepted, obtained or agreed to accept or attempted to receive or obtain any gratification, it shall not be a defence in any trial in respect of an offence under Part III that —

(a) the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(b) the public officer or any other public officer did not have the power, authority or opportunity of doing, or of forbearing from doing, the act, favour or disfavour to which the gratification related.

Corrupt practices coming to notice of commission, body or tribunal

Cap. 1

Cap. 41

Cap. 1

65. Where any commission, body or tribunal established by or under the Constitution, or appointed under the Inquiries Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission, body or tribunal concerned shall, subject to any prohibition, restriction or restraint imposed upon it by, or under, the Constitution or any other written law, communicate its opinion to the Director-General, together with the particulars of the person concerned and such other facts of the case as the commission, body or tribunal may consider necessary.

Affidavit evidence

66. For the purposes of any proceedings in respect of an offence under this Act, the court may, at any stage of the proceedings, direct that any specified fact may be proved at the trial by affidavit:

Provided that the deponent may be summoned for cross examination.

False, frivolous or groundless complaints or allegations

67. (1) Where, at the conclusion of the trial of a person charged with an offence under Part III, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner made a false, frivolous or groundless complaint or allegation against the accused person, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions.

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit, any offence under Part III, commits an offence and is liable, upon conviction, to

imprisonment for a term not exceeding ten years or to a fine not exceeding ten thousand penalty units, or to both.

68. The provisions of the Forfeiture of Proceeds of Crime Act, 2010, shall apply in relation to the seizure and forfeiture of any proceeds or property corruptly acquired by any person and any other related matters.

Forfeiture of
proceeds or
property
corruptly
acquired
Act No. 19 of
2010

69. A person who tampers with any property that is seized or forfeited under this Act commits an offence and is liable, upon conviction, to imprisonment for a period not exceeding three years.

Tampering
with seized
and forfeited
property

70. (1) If, on the trial of a person who has committed an offence under Part III, it is not proved that the accused person committed the offence charged but it is proved that the accused person committed some other offence under this Act, the accused person may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence, and be liable to be dealt with accordingly.

Alternative
conviction of
accused
person

(2) If, on the trial of any person for any offence under Part III, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused person to an acquittal of the offence charged if, in the opinion of the court, there is *prima facie* evidence of the commission of that offence.

(3) Subject to subsection (2), notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, the court may make the necessary amendment to the particulars and shall thereupon read and explain the same to the accused person and the accused person shall be called to plead to the amended particulars and the parties shall be allowed to recall and examine, on matters relevant to such amendment, any witness who may have been examined and to call any further witness.

(4) If an amendment is made under subsection (3) after the prosecution's case is closed, no further witness shall be called by the prosecution other than a witness on such matters only as it would, apart from the provisions of this subsection, be permissible to call and put in evidence in rebuttal.

PART VII

GENERAL PROVISIONS

- Procedure for commencement of application** **71.** Except where otherwise specifically provided for, all applications under this Act shall be commenced by way of originating summons.
- Register of gifts** **72.** (1) A public body shall keep a register of gifts which shall be administered by the controlling officer or chief executive officer of the public body, as the case may be.
(2) The Commission may, by statutory instrument, make rules relating to the management of the register of gifts.
- Mutual legal assistance Cap. 98** **73.** The Mutual Legal Assistance in Criminal Matters Act applies to offences under this Act, except where the provisions of that Act are inconsistent with this Act.
- Supremacy of Act Cap.1** **74.** Subject to the Constitution, where there is any inconsistency between the provisions of this Act and those of any other written law relating to corrupt practices, the provisions of this Act shall prevail to the extent of the inconsistency.
- Defence** **75.** In any proceedings for an offence under this Act it shall be a valid defence that the gratification offered or accepted is an entertainment or a casual gift.
- Offences committed outside Zambia** **76.** (1) This Act shall have effect within as well as outside Zambia and notwithstanding where any offence is committed by any person, that person may be dealt with in respect of such offence as if it has been committed within Zambia.
(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence, if such offence had been committed in Zambia, shall be a bar to further proceedings against that person under any written law for the time being in force relating to the extradition of persons, in respect of the same offence outside Zambia.
- Extraditable offences Cap. 94** **77.** An offence under this Act shall be deemed to be an extraditable offence under the provisions of the Extradition Act.
- Rules** **78.** The Commission may, by statutory instrument, make rules for the—
(a) appointment, including the power to confirm appointments of persons, to any office in respect of which the Commission is charged with the responsibility under this Act;

- (b) disciplinary control of persons holding or acting in any office;
- (c) termination of appointments and the removal of persons from office; and
- (d) practice and procedure of the Commission in the exercise of its functions under this Act.

79. (1) The President may, in consultation with the Commission, make regulations for the better carrying out of the provisions of this Act.

Regulations

(2) Without prejudice to the generality of subsection (1), the regulations made under that subsection may provide for —

- (a) the prevention of corruption generally;
- (b) the disclosure by public officers of interest in contracts or proposed contracts;
- (c) the control and maintenance of the register of gifts;
- (d) the creation and keeping of registers for the recording of assets and information, the powers, functions and duties of the controlling officers;
- (e) protection to informers, whistle-blowers and complainants;
- (f) the procedure for lodging and dealing with complaints;
- (g) the procedure for declaring of interest and assets by officers of the Commission;
- (h) the disposal of recovered gratification;
- (i) anti-corruption strategies in private and public bodies;
- (j) the form of oaths to be declared under this Act;
- (k) the establishment, composition, tenure, procedure and any other matters in respect of committees; and
- (l) generally the carrying into effect of the purposes of this Act.

80. (1) The Anti-Corruption Commission Act, 1996, is hereby repealed.

Repeal of
Cap. 91

(2) Notwithstanding subsection (1), all the investigations, prosecutions and other legal proceedings, instituted or commenced under the repealed Act, and pending immediately before the commencement of this Act by or against the former Commission, may be continued by or against the Commission.

Cap. 91

(3) Notwithstanding subsection (1), all the property, assets, rights, liabilities and obligations of the former Commission existing immediately before the commencement of this Act, shall vest and continue to vest in, and subsist against the Commission, together with the rights, liabilities and obligations arising out of any contract or otherwise, as if this Act had not come into force.

(4) Subject to the other provisions of this Act, a person who, immediately before the commencement of this Act, held office as a Commissioner of the former Commission shall continue to hold such office as a Commissioner until the expiry of the term, after which the Commissioners shall be appointed in accordance with the provisions of this Act.

(5) Notwithstanding subsection (1), any rules, regulations, orders, notices, prescriptions and other instruments or directives issued under the Act hereby repealed and in existence immediately before the commencement of this Act, shall continue in operation until their expiration or until their express repeal or revocation.

Staff of
former
Commission

81. A person who, before the commencement of this Act, was an officer or member of staff of the former Commission, shall continue to be an officer or member of staff of the Commission, as the case may be, as if appointed or employed under this Act.

SCHEDULE

(Section 4 (3))

ADMINISTRATION OF COMMISSION

PART I

THE BOARD OF THE COMMISSION

Seal of
Commission

1. (1) The seal of the Commission shall be such device as may be determined by the Board and shall be kept by the Secretary.

(2) The affixing of the seal shall be authenticated by the Chairperson or any other person authorised in that behalf by a resolution of the Board.

(3) Any document purporting to be under the seal of the Commission or issued on behalf of the Commission shall be received in evidence and shall be deemed to be so executed or issued, as the case may be, without further proof, unless the contrary is proved.

Board of
Commission

2. (1) There is hereby constituted a Board of Commissioners which shall be the governing body of the Commission.

(2) The Board shall consist of the following Commissioners:

(a) the Chairperson, who shall be a person who has held, or is qualified to hold, high judicial office;

(b) the Vice-Chairperson; and

(c) three other persons.

(3) The Commissioners shall be appointed by the President, subject to ratification by the National Assembly.

(4) A person is eligible to be appointed as a Commissioner if that person —

- (a) is a citizen of Zambia;
- (b) is permanently resident in Zambia;
- (c) is of high integrity; and
- (d) has served with distinction at a senior level in a Government office or a registered profession or vocation.

(5) A person shall not be appointed as a Commissioner if that person —

- (a) holds office in, or is an employee of, any political party; or
- (b) has been convicted of an offence involving fraud or dishonesty, or any other offence under this Act or any other written law and sentenced therefor to a term of imprisonment of six months or more without the option of a fine.

3. (1) A Commissioner shall, subject to the other provisions of this Schedule, hold office for a term of three years and may be appointed for a further period of three years:

Tenure of
office of
Commissioner

Provided that a Commissioner shall only hold office for two terms.

(2) A Commissioner may resign upon giving one month's notice in writing to the President.

(3) The office of a Commissioner shall become vacant —

- (a) if the Commissioner is absent, without reasonable excuse from three consecutive meetings of the Commission of which the Commissioner has had notice;
- (b) if the Commissioner is adjudged bankrupt;
- (c) if the Commissioner is convicted of an offence under this Act or any other written law and sentenced therefor to imprisonment for a term of six months or more, without the option of a fine;
- (d) if the Commissioner is declared to be of unsound mind; or
- (e) upon the Commissioner's death.

4. A Commissioner shall not take up office unless the Commissioner furnishes a declaration of assets and liabilities to the Chief Justice in the prescribed form.

Declaration
of assets

5. (1) Subject to the other provisions of this Act, the Board may regulate its own procedures.

Proceedings
of Board

(2) The Board shall meet for the transaction of business at least once in every three months at such places and times as the Board may determine.

(3) A meeting of the Board may be called by the Chairperson upon giving notice of not less than fourteen days, and shall be called by the Chairperson if not less than one third of the members so request in writing:

Provided that if the urgency of any particular matter does not permit the giving of such notice, a special meeting may be called upon a shorter notice given by three members of the Board.

(4) The Chairperson with two other Commissioners shall constitute a quorum at any meeting of the Board.

(5) There shall preside at any meeting of the Board —

(a) the Chairperson;

(b) in the absence of the Chairperson, the Vice-Chairperson;
or

(c) in the absence of both the Chairperson and the Vice-Chairperson, such other Commissioner as the Commissioners present may elect for the purpose of that meeting.

(6) A decision of the Board on any question shall be by a majority of the Commissioners present and voting at the meeting and in the event of an equality of votes, the person presiding at the meeting shall have a casting vote, in addition to that person's deliberative vote.

(7) The Board may invite any person, whose presence is in its opinion desirable, to attend and to participate in the deliberations of a meeting of the Board, but such person shall have no vote.

(8) The validity of any proceedings, acts or decisions of the Board shall not be affected by any vacancy in the membership of the Board or by any defect in the appointment of any Commissioner or by reason that any person not entitled to do so, took part in the proceedings.

Committees
of Board

6. (1) The Board may, for the purpose of performing its functions under this Act, establish such committees as it considers necessary and delegate to any of those committees such of its functions as it considers fit.

(2) Subject to subparagraph (1), the Board may appoint as members of a committee persons who are, or are not, Commissioners, except that at least one member of a committee shall be a Commissioner.

(3) A person serving as a member of a committee shall hold office for such period as the Board may determine.

(4) Subject to any specific or general direction of the Board, a committee may regulate its own procedure.

7. There shall be paid to a Commissioner or a member of a committee such remuneration and allowances as the Board may determine with the approval of the President.

Remuneration and allowances of Commissioners

8. (1) If any person is present at a meeting of the Board or any committee at which any matter is the subject of consideration, and in which matter that person or that person's spouse, relative, friend or associate is directly or indirectly interested in a private capacity, that person shall, as soon as is practicable after the commencement of the meeting, declare such interest and shall not, unless the Board or the committee otherwise directs, take part in any consideration or discussion of, or vote on, any question relating to that matter.

Disclosure of interest

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

9. (1) A person shall not, without the consent in writing given by, or on behalf of, the Commission, publish or disclose to any unauthorised person, otherwise than in the course of duties of that person, the contents of any document, communication or information whatsoever, which relates to or which has come to the knowledge of that person in the course of that person's duties under this Act.

Prohibition of publication of, or disclosure of, information to unauthorised persons

(2) A person who contravenes subparagraph (1) commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

(3) A person who, having any information which to the knowledge of that person has been published or disclosed in contravention of sub-paragraph (1), unlawfully publishes or communicates the information to any other person, commits an offence and is liable, upon conviction, to a fine not exceeding two hundred thousand penalty units or to imprisonment for a period not exceeding two years, or to both.

10. An action or other proceeding shall not lie or be instituted against a Commissioner or a member of a committee of the Commission for, or in respect of, any act or thing done or omitted to be done in good faith in the exercise of or performance, or purported exercise or performance of any of the powers, functions or duties conferred under this Act.

Immunity

PART II
FINANCIAL PROVISIONS

- Funds of Commission**
- 11.** (1) The funds of the Commission shall consist of such monies as may —
- (a) be appropriated to the Commission by Parliament for the purposes of the Commission;
 - (b) be paid to the Commission by way of grants or donations; and
 - (c) otherwise vest in or accrue to the Commission.
- (2) The Commission may, subject to the approval of the President—
- (a) accept monies by way of grants or donations from any source within or outside Zambia; and
 - (b) raise by way of loans or otherwise, such monies as it may require for the discharge of its functions.
- (3) There shall be paid from the funds of the Commission—
- (a) the salaries, allowances, pensions and loans of the members of staff of the Commission;
 - (b) such reasonable travelling and other allowances for the Commissioners and the members of any committee when engaged on the business of the Commission, at such rates as the Board may determine; and
 - (c) any other expenses incurred by the Commission in the performance of its functions under this Act.
- (4) The Board may invest in such manner as it considers appropriate such funds of the Commission which it does not immediately require for the performance of its functions.
- Financial year**
- 12.** The financial year of the Commission shall be a period of twelve months ending on 31st December in each year.
- Accounts**
- 13.** (1) The Commission shall cause to be kept proper books of account and other records relating to its accounts.
- (2) The accounts of the Commission shall be audited annually by the Auditor-General or an auditor appointed by the Auditor-General.
- (3) The Auditor-General's fees shall be paid by the Commission.
- Annual report**
- 14.** (1) As soon as practicable, but not later than ninety days after the end of the financial year, the Commission shall submit to the President a report concerning its activities during the financial year.

(2) The report referred to in subparagraph (1) shall include information on the financial affairs of the Commission and there shall be appended to the report —

(a) an audited balance sheet;

(b) an audited statement of income and expenditure; and

(c) such other information as the President may require.

(3) The President shall, not later than seven days after the first sitting of the National Assembly next after receipt of the report referred to in subparagraph (1), lay the report before the National Assembly.
