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THE PREVENTION OF CORRUPTION BILL, 2005
(Bill No. 7 of 2005)

To be presented by the Minister for Justice and Constitutional Affairs

MEMORANDUM OF OBJECTS AND REASONS

The objects of this Bill are to establish an Anti Corruption Unit that will be responsible for investigating any corrupt activity that may involve public officers, companies or public enterprises. The Anti Corruption Unit shall be given such powers as are necessary for the effective carrying out of its functions and to that extent shall have power to issue warrants and may refer certain cases, that it has investigated, to the Director of Public Prosecutions for appropriate action.

J. M. DLAMINI
ATTORNEY-GENERAL

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A BILL
entitled

AN ACT to establish the Anti Corruption Commission and to deal with other matters incidental thereto.

ENACTED by the King and Parliament of Swaziland

PART I

PRELIMINARY

Short title and commencement

1. This Act shall be cited as the Prevention of Corruption Act, 2005 and shall come into force on the date to be appointed by the Minister.

Interpretation

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

“advantage” means-

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

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

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

“banker’s books” means-

- (a) any ledger, ledger card, statement of account, day book, cash book, account book or other

book or document whatsoever, used in the ordinary business of banking;

(b) any cheque, voucher, record card, report, letter or other document whatsoever;

(c) a copy of anything referred to in paragraph (a) or (b) which is used in the ordinary business of a bank;

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

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

"Commission" means the Anti-Corruption Commission established in terms of section 3;

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

"Court" means the High Court or a Magistrate's Court, as the case may be;

"Deputy Commissioner" means the person appointed in terms of section 4 as the Deputy Commissioner of the Commission;

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

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

"game of chance" includes a lottery, lotto, numbers game, scratch game, sweepstake, or sports pool or any such similar game;

"investigating officer" means any person authorized by the Commissioner to exercise the powers of an investigating officer under this Act;

"Judicial Officer" means a judge, magistrate, an arbitrator or the presiding officer of a Swazi Court established under the Swazi Court Act, No.80 of 1950;

"member of Parliament" means a person who is either a Senator or a member of the House of Assembly

"Minister" means the Minister responsible for justice;

"passport" includes a travel document;

"principal" includes-

(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
- (e) in the case of a legal representative referred to in the definition of "agent", the person represented by such legal representative;

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

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

"public corporation" means any body, whether corporate or not, in which the Government, the Swazi Nation, or the Swazi National Treasury, holds shares or any financial or monetary interest and includes a body in which such corporation holds shares or any financial or monetary interest;

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

"public officer" means the holder of a public office;

"sporting event" means any event or contest in any sport, between individuals or teams, or in which an animal competes, and which is usually attended by the public and is governed by rules which include the constitution, rules or code of conduct of any sporting body which stages any sporting event or of any regulatory body under whose constitution, rules or code of conduct the sporting event is conducted; and

"spouse" includes concubine, cohabitant, fiancée or lover.

PART II

ESTABLISHMENT AND FUNCTIONS OF THE ANTI-CORRUPTION COMMISSION

Establishment of the Commission

3. There is established an Anti-Corruption Commission which shall consist of the Commissioner and the Deputy Commissioner and such other officers as may be appointed in terms of section 8.

Appointment of Commissioner and Deputy Commissioner

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

- (2) The Deputy Commissioner shall be appointed by the King on the advice of the Judicial

Service Commission and shall hold office for a period not exceeding five years and may be re-appointed for a single term, on such terms and conditions as may be determined.

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

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

(5) A member of the Commission's salary, allowance, gratuity and pension shall not be varied to the member's disadvantage.

Qualifications for office of Commissioner and Deputy Commissioner

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

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

- (a) is of high moral character and proven integrity; and
- (b) possesses considerable experience and demonstrated competence in the conduct of public affairs; or
- (c) has acceptable academic qualification and experience in law, economics, accounting, criminal investigation, or any other related profession relevant to the functions of the Commission.

Vacation of office of Commissioner or Deputy Commissioner

6. (1) A member of the Commission may-

- (a) resign office by written notice addressed to the Chairman of the Judicial Service Commission; and
- (b) be removed by the King, from office for inability to perform the functions of the office whether such inability arises from infirmity of body or mind or other cause or for stated misconduct.

(2) The statement of misconduct referred to in subsection (1)(b) shall be referred to the Judicial Service Commission which shall investigate the matter.

Acting Commissioner

7. (1) Where the office of the Commissioner is vacant or the Commissioner is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Commissioner shall act as the Commissioner.

(2) Where both the Commissioner and the Deputy Commissioner are absent from duty or unable for any other reason to perform the functions of their office the King may, subject to sections 4 and 5, appoint another person to act as the Commissioner.

Officers of the Commission

8. (1) The Commission shall appoint such investigating and other officers of the Commission to assist the Commission in the performance of its functions under the Act.

(2) Officers recruited from other Government agencies shall be transferred from the public service or any other Commission without prejudice to their public service.

(3) The Commissioner may, subject to the relevant applicable law, terminate the appointment of an officer of the Commission if the Commissioner is satisfied that it is in the interest of the Commission to terminate such appointment and the Commissioner shall give reasons for such termination.

Applicability of laws governing public service

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

Functions of the Commission

10. (1) The functions of the Commission shall be to-

- (a) take necessary measures for the prevention of corruption in public and private bodies including in particular measures for-
 - (i) examining the practices and procedures of public and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of their methods of works or procedures which, in the opinion of the Commissioner, may be prone or conducive to corrupt practices;
 - (ii) advising public and private bodies on the ways and means of preventing corrupt practices, and on changes in the methods of work or procedures of such public and private bodies compatible with the effective performance of their duties, which the Commissioner considers necessary to reduce the likelihood of the occurrence of corrupt practices;
 - (iii) disseminating information on the evil and dangerous effects of corrupt practices on the society;
 - (iv) enlisting and fostering public support against corrupt practices;
- (b) receive and investigate complaints of alleged or suspected corrupt practice made against any person, and refer appropriate cases to the Director of Public Prosecutions for prosecution;
- (c) investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
- (d) investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue laws of the country;
- (e) assist any law enforcement agency of the Government in the investigation of offences

involving dishonesty or cheating of the public revenue;

- (f) investigate the conduct of any public officer which in the opinion of the Commissioner may be connected with or conducive to corrupt practices;
- (g) instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person; and
- (h) do all such things as may be necessary for the furtherance of the objects of this Bill.

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

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

Powers of the Commission

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

- (a) authorize in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;
- (b) require any public officer or person to answer questions concerning the duties of any other public officer or person and order the production for inspection of any orders, directives, office instructions relating to the duties of such other public officer or person;
- (c) require any person in charge of any Ministry, Department or other establishment of the Government or head, Chairman, Manager or Chief Executive Officer of any public body or private body to produce or furnish within such time as may be specified by the Commissioner, any document or a certified true copy of any document which is in his possession or under his control and which the Commissioner considers necessary for the conduct of investigation into alleged or suspected offences under this Act.

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

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

(3) In the exercise of his powers of access and search under subsection (2)(b), the Commissioner, Deputy Commissioner or any officer of the Commission may use such reasonable force as is necessary in the circumstances and may be accompanied or assisted by such other person he deems necessary to assist him to enter into or upon any premises or upon any vessel, boat, aircraft or vehicle as the case may be.

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

Special powers of investigation

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

- (a) investigate the acquisition of any property (whether movable or immovable) in or outside Swaziland by or on behalf of such person, during such period as may be specified in the authority;
- (b) require such person to furnish and produce all relevant information and documents in respect of-
 - (i) all expenditure incurred by him in respect of himself, spouse, children and parents;
 - (ii) all liabilities incurred by him, his agent or trustee and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;
 - (iii) any money acquired or sent outside Swaziland during such period as may be specified in the authority;
- (c) investigate and inspect any bank account or other account of whatever description or kind and any banker's books or company books of, or relating to, the person named or otherwise identified in the authority;
- (d) require from any person production of any accounts, books or company books of, or relating to, the person named or otherwise identified in the authority and the disclosure of all or any information relating to such accounts, books or documents;
- (e) take originals or certified true copies of such accounts, books or documents of any relevant entry therein;
- (f) require any person who is being investigated to furnish the investigating officer with a sworn affidavit containing any information referred to in paragraphs (a) and (b).

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

(3) Any person who-

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

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand

or to imprisonment not exceeding 5 years or to both.

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

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

Powers of arrest

13 (1) An investigating officer or an officer authorized by the Commissioner, may without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence under this Act.

(2) Where, during an investigation by the Commission of a suspected offence under this Act, another offence is disclosed, any such officer may, without warrant, arrest a person where he reasonably suspects that such person has committed that other offence.

(3) The officer may-

(a) use force as is reasonable in the circumstances in effecting the arrest under subsections (1) and (2);

(b) for the purpose of effecting such arrest, enter and search any person or place, if he has reason to believe that there is in the premises or place a person who is to be arrested.

(4) Premises or places shall not be entered under subsection (3), unless the officer has first stated that he is an officer of the Commission and the purpose for which he seeks entry and produces his identity card to any person therein requesting its production.

(5) A person shall not be searched under subsection (3)(b) except by a person of the same sex.

(6) A person arrested under this section shall be taken as soon as practicable to a police station, brought before a court within a reasonable time, which time shall not exceed forty-eight hours.

Identity card

14. The Commissioner shall issue to an officer of the Commission an identity card which shall be prima facie evidence of the officer's appointment as such.

Impersonation and procurement of Commission's officers

15. Any person who falsely pretends that-

(a) he is an officer of the Commission or has any of the powers of such an officer under this Act, or under any authorization or warrant issued under this Act; or

is able to procure an officer of the Commission to perform the duties of such officer,

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

Resisting or obstructing the Commissioner, Deputy Commissioner, etc.

16. Any person who-

- (a) assaults, resists or obstructs the Commissioner, Deputy Commissioner or an officer of the Commission in the execution of his duties; or
- (b) unlawfully hinders or delays the Commissioner, Deputy Commissioner or an officer of the Commission in effecting entry into or upon any premises, vessel, train, boat, aircraft or vehicle,

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

Immunity of Commissioner, Deputy Commissioner and other officers.

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

Prohibition of disclosure of information

18. Any person who, without lawful authority or reasonable excuse,

- (a) discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by that person under this Act the fact that he is subject to such an investigation or any details of such investigation; or
- (b) publishes or discloses to any other person either the identity of any person who is the subject of such an investigation or any details of such an investigation,

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

Privilege from disclosure in legal proceedings

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

Annual Reports

20. (1) The Commissioner shall, not later than three months after the end of each financial year, submit to the Minister a report on the activities of the Commission during that year.

(2) The report of the Commissioner shall not contain the facts or findings of any pending investigation that may have been carried out by the Commission during that year.

(3) The Minister shall, within thirty days after receipt of the report during the sitting of Parliament,

cause it to be laid before Parliament and if Parliament is not sitting, within fourteen days of the next sitting of Parliament.

PART III

OFFENCES

Bribery

21. (1) A person who, whether in Swaziland or elsewhere, offers any advantage to any public officer as an inducement to, or a reward for, or otherwise on account of that public officer-

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

commits an offence.

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

- (a) performing or forbearing to perform or having performed or forborne to perform any act in his capacity as such public officer;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of any act, whether by himself or by another public officer in his or that other officer's capacity as such public officer; or
- (c) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed, any person in the transactions of any business with a public or private body,

commits an offence.

Bribery for giving assistance, etc with regard to contracts and tenders.

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

- (a) the promotion, execution or procuring of-
 - (i) a contract or tender for any contract with a public or private body for the performance of any work or the provision of any service or the supply of any goods; or
 - (ii) a subcontract or tender for a subcontract to perform any work, provide any goods required to be performed, provided or supplied under any contract with a public or private body; or

- (b) the payment of the price or other consideration or money stipulated or otherwise provided in any such contract, subcontract or tender,

commits an offence.

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

- (a) the promotion, execution or procuring of; or

- (b) the payment of the price or other consideration moneys stipulated or otherwise provided in any such contract or subcontract or tender referred to in subsection (1),

commits an offence.

Corrupt transaction by or with public or private bodies

- 23. A person who by himself or on behalf of or in conjunction with any other person (whether in Swaziland or elsewhere)-

- (a) solicits or accepts from another person either for himself or for any other person any advantage as an inducement or a reward for, or on account of such person, doing or forbearing to do or having done or forborne to do anything in relation to any matter or transaction with which any public or private body is or may be concerned;

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

commits an offence.

Cheating of public revenue

- 24. (1) A person commits the offence of cheating the public revenue if as a result of the person's fraudulent conduct, money is diverted from the revenue and thereby depriving the revenue of money to which it is entitled.

- (2) A public official or any other person shall not divert any property belonging to the State or its agencies, that such official or person has received by virtue of his or her position, to an independent agency or individual for purposes unrelated to those for which it was intended, for his or her own benefit or that of a third party.

Bribery in relation to auctions

- 25. (1) A person commits an act of corruption where the person directly or indirectly accepts or agrees to accept for himself or any other person any advantage as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

- (2) A person commits an act of corruption if the person directly or indirectly gives or agrees or offers to give any other person any advantage as an inducement or reward for or otherwise

on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

Corrupt transactions by or with agents

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

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

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

Conflict of interest

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

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

(3) For the purposes of this section "family" includes a paramour.

Offences in respect of corrupt activities relating to members of the Director of Public Prosecution office.

28. (1) A-

(a) member of the Director of Public Prosecutions office who, directly or indirectly, accepts or agrees or offers to accept any advantage 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 advantage to a member of the prosecuting authority, whether for the benefit of that member or for the benefit of another person,

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

(i) that amounts to the-

(a) illegal, dishonest, unauthorized, incomplete, or biased; or

- (b) 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-

- (a) the abuse of a position of authority;
- (b) a breach of trust ; or
- (c) 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 unauthorized or improper inducement to do or not to do anything, commits an offence of corrupt activities relating to members of the Director of Public Prosecution's office.

(2) For purposes of subsection (1), "to act" includes-

- (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 a member of the Director of Public Prosecution's office or a judicial officer, performing his or her official functions.

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

29. (1) A person who, directly or indirectly, accepts or agrees or offers to accept any advantage from another 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 authorized by law to hear evidence or take testimony;
- (b) withholding testimony, or withholding a record, document, 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;
- (d) altering, destroying, mutilating, or concealing a record, document, docket or other object for use at such trial, hearing or proceedings;
- (e) giving or withholding information relating to or contained in a docket;
- (f) evading legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at such trial, hearing or proceedings; or
- (g) being absent from such trial, hearing or proceedings,

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

(2) A person who, directly or indirectly, gives or agrees or offers to give any advantage to another person, whether for the benefit of that 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 authorized by law to hear evidence or take testimony; or
- (b) cause or induce a person to-
 - (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorized by law to hear evidence or take testimony;
 - (ii) withhold testimony or to withhold a record, document, docket or other object at such trial, hearing or proceedings;
 - (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, docket or other object with the intent to impair the availability of such record document, docket or other object for use at such trial, hearing or proceedings;
 - (v) give or withhold information relating to or contained in a docket;
 - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at such trial, hearing or proceedings; or
 - (vii) be absent from such trial, hearing or other proceedings,

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

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

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

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

(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 authorized by law to hear evidence or take testimony;
- (ii) withhold testimony or to withhold a record, document, docket or other object at such trial, hearing or proceedings;
- (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, 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;
- (v) give or withhold information relating to or contained in a docket;
- (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, docket or other object at such trial, hearing or proceedings; or
- (vii) be absent from such trial, hearing or other proceedings,

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

Offences in respect of corrupt activities relating to members of parliament

30. (1) A-

- (a) member of parliament who, directly or indirectly, accepts or agrees or offers to accept any advantage from any other person, whether for the benefit of the member or for the benefit of another person; or
- (b) person who, directly or indirectly, gives or agrees or offers to give any advantage to a member of parliament, whether for the benefit of that member or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner,
 - (i) that amounts to the illegal, dishonest, unauthorized, incomplete, biased or 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 the abuse of a position of authority, a breach of trust, or 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 unauthorized or improper inducement to do or not to do anything,

commits an offence of corrupt activities relating to members of parliament.

(2) For the purposes of this section, the words "to act" shall be construed to include-

- (a) absenting himself or herself from;
- (b) voting or not voting at any meeting of;
- (c) aiding or assisting in procuring or preventing the passing of any vote in;
- (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,

Parliament of which he or she is a member or of any committee or joint committee of the Parliament.

Offences in respect of corrupt activities relating to sporting events.

31. A person who, directly or indirectly-

- (a) accepts or agrees or offers to accept any advantage from another 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 advantage, whether for the benefit of that other person or for the benefit of another person-
 - (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
 - (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 the Anti-Corruption Commission; or
 - (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 sporting event, including, in any way, influencing the run of play or the outcome of a sporting event,

commits the offence of corrupt activities relating to sporting events.

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

32. A person who, directly or indirectly-

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

- (b) gives or agrees or offers to give to any other person any advantage whether for the benefit of that other person or for the benefit of another person-
 - (i) in return for engaging in any conduct which constitutes a threat to or undermines the integrity of any gambling game or game of chance, including, in any way, influencing the outcome of a gambling game or game of chance; or
 - (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 game or a game of chance,

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

Offences in respect of corrupt activities relating to judicial officers

33. (1) A-

- (a) judicial officer who, directly or indirectly, accepts or agrees or offers to accept any advantage 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 advantage 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-

- (i) that amounts to the-
 - (aa) illegal, dishonest, unauthorized, 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 unauthorized or improper inducement to do or not to do anything,

commits the offence of corrupt activities relating to judicial officers.

(2) For the purposes of this section, "to act" in subsection (1) includes-

- (a) performing or not adequately performing a judicial function;
- (b) making decisions affecting life, freedoms, rights, duties, obligations and property of persons;
- (c) delaying, hindering or preventing the performance of a judicial function;
- (d) aiding, assisting or favouring any particular person in conducting judicial proceedings or judicial functions;
- (e) showing any favour or disfavour to any person in the performance of a judicial function; or
- (f) exerting any improper influence over the decision-making of any person, including another judicial officer or a member of the prosecuting authority, performing his or her official functions.

Possession without reasonable explanation of property, etc.

34. (1) A person who being or having been a public officer-

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

shall, unless that person gives a satisfactory explanation to the Commissioner or the officer conducting the investigation as to how he is able to maintain such standard of living or how such pecuniary resources or property came under his control, be presumed to have maintained such standard of living or acquired such pecuniary resources or property as the result of the commission of an offence under section 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32 or 33 of this Part, and shall be presumed to have committed that offence and liable on conviction to the penalty prescribed in relation to that offence under section 35 as the case may be.

- (2) Where the Commissioner has reasonable grounds to suspect that any person who has no known source of income or who is not known to be engaged in any gainful employment possesses or is in control of any property or pecuniary resources, the Commissioner shall request such person to give satisfactory explanation in writing as to how the property or pecuniary resources have been acquired by the person or come under the person's control, and if such person is unable to give any satisfactory explanation that person shall have committed an offence and liable on conviction to the penalty prescribed in section 35 (1).
- (3) Where a court is satisfied in the proceedings for an offence under subsection (1) or (2) that, having regard to his relationship to the accused and to other relevant circumstances, there is reason to believe that a person was holding such pecuniary resources or property in trust or otherwise on behalf of the accused, or acquired such resources or property as a gift, or a loan without adequate consideration, from the accused, such resources or property shall, unless the contrary is proved, be presumed to have been in the control or in possession of the accused.
- (4) In this section "official emoluments" includes a pension or gratuity or any other retirement

benefit payable under any law for the time being in force or under any terms and conditions of service or employment applicable to the public officer.

Penalties

35. (1) A person who is convicted of an offence referred to in section 21, 22, 23, 24, 25, 26, 27 or 34 shall be liable to a fine not exceeding one hundred thousand Emalangeni or imprisonment not exceeding ten years or to both.
- (2) A person who is convicted of an offence referred to in section 28, 29, 30, 31, 32 or 33 shall be liable to a fine not exceeding two hundred thousand Emalangeni or imprisonment not exceeding twenty years or to both.

Additional penalty

36. (1) Where a person is convicted of an offence under this Part, the court shall in addition to any penalty it may impose under section 35 order the person convicted to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received by that person.
- (2) Where after reasonable inquiry, the rightful owner cannot be ascertained or traced or is himself implicated in the commission of that particular offence under this Part, the court shall order that the amount or value of such advantage be forfeited to the Government.
- (3) In addition to the fine a court may impose in terms of section 35, the court may impose a fine equal to five times the value of the advantage involved in the offence.

Dismissal on conviction

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

Endorsement of register

38. (1) A court convicting a person of an offence contemplated in section 22, may, in addition to imposing any sentence contemplated in section 35, issue an order that-
 - (a) the particulars of the convicted person;
 - (b) the conviction and sentence; and
 - (c) any other order of the court consequent thereupon, be endorsed in the register.
- (2) Where the person so convicted is an enterprise, the court may also issue an order that-
 - (a) the particulars of that enterprise;
 - (b) the particulars of any other partner, manager, director or other person, 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
 - (c) the conviction, sentence and any other order of the court consequent thereupon, be

endorsed on the register.

- (3) The court may also issue an order contemplated in subsection (1) in respect of any enterprise owned or controlled by the person so convicted, or the particulars of any partner, manager, director or other person who wholly or partly exercises or may exercise control over such other enterprise, and which-
 - (a) enterprise, partner, manager, director or other person was involved in the offence concerned; or
 - (b) 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.
- (4) Whenever the register is endorsed as contemplated in subsections (1), (2) or (3), the endorsement applies, unless the court directs otherwise, to every enterprise to be established in the future, and which enterprise will be wholly or partly controlled or owned by the person or enterprise so convicted or endorsed, and the Registrar shall, in respect of every such enterprise, endorse the register accordingly.
- (5) Where a court has issued an order in terms of subsections (1), (2) and (3) the Registrar or Clerk of such court shall forthwith forward the court order to the Registrar and the Registrar shall forthwith endorse the register accordingly.
- (6) Where the Registrar has endorsed the register in terms of subsection (5), in addition to any other legal action, the Accountant General may issue an instruction terminating any agreement with the person or enterprise referred to in subsection (1) or (2).
- (7) In considering the termination of an agreement, the Accountant General shall take into account, among others, the following factors, namely-
 - (a) the extent and duration of the agreement concerned;
 - (b) whether he is likely to conclude a similar agreement with another person or enterprise within a specific time frame;
 - (c) the extent to which the agreement has been executed;
 - (d) the urgency of the services to be delivered or supplied in terms of the agreement;
 - (e) whether extreme costs will follow such termination; and
 - (f) any other factor which, in the opinion of the Accountant General may impact on the termination of the agreement.
- (8) Where the agreement involves any purchasing authority or Government Department, such restriction may only be imposed after consultation with the purchasing authority or Government Department concerned.
- (9) The Accountant General shall determine the period (which period may not be less than five years or more than ten years) for which the particulars of the convicted person or the enterprise referred to in subsections (1), (2), (3) or (4) shall remain in the register and during such period no offer in respect of any agreement from a person or enterprise referred to in those subsections may be considered by the Accountant General.

- (10) During the period determined in subsection (9), the Accountant General, the purchasing authority or any Government Department shall-
 - (a) ignore any offer tendered by a person or enterprise referred to in subsections (1), (2), (3) or (4); or
 - (b) disqualify any person or enterprise referred to subsections (1), (2), (3) or (4), from making any offer or obtaining any agreement relating to the procurement of a specific supply or service.
- (11) A restriction imposed in terms of subsection (6) only comes into effect after any appeal against the conviction or sentence or both has been finalized by the court.
- (12) Where the Appeal Court sets aside, varies or amends the order referred to in subsection (1), (2) or (3) the Accountant General shall, where necessary, amend the restrictions imposed under subsection (6) accordingly.
- (13) Where the Accountant General has terminated an agreement in terms of subsection (6), it may, in addition to any other legal remedy, recover from the person or enterprise any damages-
 - (a) incurred or sustained by the State as a result of the tender process or the conclusion of the agreement; or
 - (b) which the State may suffer by having to make less favourable arrangements thereafter.
- (14) The Accountant General-
 - (a) may at any time vary or rescind any restriction imposed under subsection (6), (7), (8) or (9); and
 - (b) shall, when the period determined in terms of subsection (9) expires, remove the particulars of the person or enterprise concerned, from the register.
- (15) When the Accountant General imposes a restriction under subsection (6), (7), (8) or (9), or amends or rescinds such a restriction, the Accountant General shall, within 14 days in writing notify-
 - (a) the person whose particulars have been so endorsed;
 - (b) any purchasing authority on which it may decide; and
 - (c) all Government Departments,of any resolution or decision relative to such restriction or the amendment or rescinding thereof, and request such authorities and departments to take similar steps.
- (16) (a) Any person whose particulars, conviction and sentence have been endorsed on the register as contemplated in this section and who has been notified as contemplated in subsection (15)(a), shall in subsequent agreement or tender process involving the State, disclose such endorsement, conviction and sentence.
 - (b) Any person who fails to comply with paragraph (a), commits an offence.

(17) For the purposes of this section-

- (a) "agreement" includes an agreement to procure and supply services, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the State;
- (b) "enterprise" includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity;
- (c) "Registrar" means the Registrar of the Register designated under section 43; and
- (d) "register" means the register established in terms section 42.

Attempting, inciting etc, commission of offences

39. A person who attempts, incites or procures or attempts to incite or procure, the commission of an offence under this Part shall be dealt with and punished in like manner as if the person has been convicted of that offence.

Giver and receiver of bribe to be guilty notwithstanding that purpose is not carried out.

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

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

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

Money laundering

41. A person who knows or ought to reasonably to have known that property is or forms part of proceeds of unlawful activities and-

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

which has or is likely to have an effect of-

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

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

PART IV

REGISTER FOR TENDER DEFAULTERS

Establishment of register

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

Designation of Registrar

43. The Minister responsible for finance shall designate a fit and proper person, with due regard to the person's experience, conscientiousness and integrity, as Registrar.

Powers, duties and functions of Registrar

44. (1) The Registrar shall, subject to the provisions of section 38 and this Part, exercise and perform his or her powers, duties and functions subject to the control and directions of the Accountant General.
- (2) The Registrar shall-
- (a) maintain the Register;
 - (c) manage the office of the Registrar; and
 - (d) carry out the duties and perform the functions assigned to him or her by section 38, this Part or the Accountant General or any other law.

Access to Register

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

Regulations pertaining to Register

46. (1) The Minister responsible for finance may, in consultation with the Minister, make regulations relating to-
- (a) the maintenance and management of the Register, the particulars to be entered in such Register, the manner in which such particulars shall be recorded and the period for which the information in the Register shall be retained;
 - (b) access to information contained in the Register;
 - (c) the safe-keeping and disposal of records; or
 - (d) any other matter which the Minister may consider necessary to prescribe in order to achieve the objects of section 38 and this Part.
- (2) Regulations made in terms of subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe as a penalty a fine not exceeding two thousand Emalangeni or imprisonment for a period not exceeding 12 months.

PART V**PRESUMPTIONS*****Presumptions***

47. (1) Whenever a person is charged with an offence under section 21, 22, 23, 24, 25, 26, 28, 30 or 33, proof that that person, or someone else at the instance of that person-
- (a) accepted or agreed or offered to accept any advantage from; or
 - (b) gave or agreed or offered to give any advantage to, any other person-
 - (i) who holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organization, corporate body or other organization or institution in which the person charged was serving as an official;
 - (ii) 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 organization, corporate body or other organization 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 advantage 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 advantage from that person or gave or agreed or offered to give such advantage to that person in order to act, in a manner-
 - (aa) that amounts to the-

(aaa) illegal, dishonest, unauthorized, 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 unauthorized or improper inducement to do or not to do anything.

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

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

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

(c) the investigation of an alleged offence,

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

PART VI

MISCELLANEOUS MATTERS

Duty to report corrupt transactions

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

(a) an offence under Part III; or

(b) the offence of theft, fraud, extortion, forgery or uttering a forged document involving an amount of E10,000-00 or more,

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

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

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

Application for restraining order and forfeiture order

49. (1) Where a person, who is the subject of an investigation under this Act or is about to be charged with an offence under Part III, the Director of Public Prosecutions may apply to the court for a restraining order under section 11 of the Serious Offences (Confiscation of Proceeds) Act, 2001, and accordingly the provisions of that Act shall have effect in respect of the application.
- (2) Where a person has been convicted of any offence under Part III of this Act, the Director of Public Prosecutions may apply to court for a forfeiture order under section 3 of the Serious offences (Confiscation of Proceeds) Act, 2001, and accordingly, the provisions of that Act shall have effect in respect of the application.

Surrender of passport

50. (1) A magistrate's court may, on application by the Commissioner, order a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by such person under this Act to surrender to the Commissioner any passport in his possession.
- (2) Subject to section 51, a passport surrendered to the Commissioner may be detained for one month or for such further period as the court may determine, if on application by the Commissioner, the magistrate is satisfied that the investigation could not reasonably have been completed before the expiration of the one month or such further period.

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

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

Return of passport

51. (1) A person who has surrendered a passport under section 50 (1) may at any time apply to the magistrate's court for its return and the application shall contain a statement of the grounds on which it is made.

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

(3) The magistrate may-

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

(b) refuse the application.

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

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

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

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

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

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

Bail from persons about to leave Swaziland after commencement of investigation

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

(2) Where on any such application the court is satisfied upon oath that there is reasonable cause

to believe that the person whose apprehension is being sought is about to leave Swaziland and that in all the circumstances, the investigation could not reasonably have been completed before the date of the application, the court may issue a warrant to apprehend such person and cause the person to be brought before the court soon after that person's apprehension as is practicable to be dealt with according to subsection (3).

- (3) On the production before the court of any person apprehended in execution of a warrant issued under subsection (2), the court shall, unless the person apprehended can satisfy the court that he is not about to leave Swaziland and that he has no intention of leaving Swaziland offer to admit the person to bail, on that person giving in cash-
 - (a) a deposit of E500 if the amount or the value of the advantage in respect of which the offence is committed is E2,000.00; or
 - (b) a deposit equivalent to one half the amount of the advantage if the amount or value of the advantage in respect of which the offence is committed is more than E2,000.00.
- (4) Where the amount or value of the advantage involved is E2,000.00 or more the court shall not admit such person to bail on recognizance.
- (5) In deciding the day on which a person admitted to bail under subsection (3) is to appear, the court shall have regard to the time reasonably necessary for completion of the investigation of the offence alleged or suspected to have been committed by such person and to any special hardship to such person likely to result from his being on bail.
- (6) All proceedings under this section shall be conducted in Chambers.

Evidence of pecuniary resources or property

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

- (a) the accused who at the date of or at any time after the date of the alleged offence is, in possession of pecuniary resources or property disproportionate to his known sources of income for which he cannot satisfactorily account; or
- (b) he had at the date of or at any time after the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account,

may be proved and may be taken by the court-

- (i) as corroborating the evidence of any witness in such proceedings that the accused accepted or solicited any advantage; and
 - (ii) as showing that such advantage was accepted or solicited as an inducement or reward.
- (2) For the purpose of subsection (1), a person accused of an offence under Part III shall be presumed to be in possession of pecuniary resources or property or to have obtained an accretion to such resources or property where such resources or property are held or such accretion is obtained by another person whom having regard to his relationship to the accused or to any other circumstances, there is reason to believe held such resources or property or obtained such accretion in trust for or otherwise on behalf of the accused or as a gift from the accused.

Certificates as to official emoluments, etc

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

(a) certify-

(i) the rate of, and the total amount of, official emoluments and allowances of the public officer;

(ii) that the public officer was or was not serving at any specified time or any specified period as a public officer; or

(iii) that a public officer held or did not hold any specified office; and

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

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

Protection of informers.

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

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

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

False reports to the Commission

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

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

(b) misleads the Commission or any investigating officer,

commits an offence and shall, on conviction, be liable to a fine not exceeding two thousand Emalangeni or imprisonment not exceeding one year or to both.

Regulations

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

Transitional provisions

58. (1) The Prevention of Corruption Order No. 19 of 1993 is repealed.

- (2) All acts or actions done under the repealed Prevention of Corruption Order, 1993 shall only be lawful and valid up to the date of the repeal.
- (3) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the Prevention of Corruption Order, No.19 of 1993, and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if this Act had not been passed.
- (4) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Prevention of Corruption Order, 1993 and which occurred after the commencement of that Order but before the commencement of this Act, may be concluded, instituted and continued as if this Act had not been passed.
- (5) Notwithstanding the repeal or otherwise 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 (3) or (4), remain in force as if such provision had not been repealed or done otherwise.