

ANTI CORRUPTION ACT

2009



Act 6

2009

THE ANTI CORRUPTION ACT, 2009

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THE ANTI CORRUPTION ACT, 2009

An Act to provide for the effectual prevention of corruption in both the public and the private sector, to repeal and replace the Prevention of Corruption Act, to consequentially amend the Penal Code Act, the Leadership Code Act and to provide for other related matters.

DATE OF ASSENT: 25th July, 2009.

Date of Commencement: 25th August, 2009.

BE IT ENACTED by Parliament as follows:

PART I—PRELIMINARY.

1. Interpretation

In this Act, unless the context otherwise requires—

“agent” means a person employed by or acting for another, and includes a trustee, an administrator and executor, and a person employed in the public service or under a corporation or a public body, and for the purposes of section 5 includes a subcontractor and a person who is employed by or acting for the subcontractor;

“authorised officer” means a police officer not below the rank of Assistant Inspector of Police authorised in writing by the Inspector General of Police or an inspectorate officer authorised in writing by the Inspector General of Government or a State Attorney authorised in writing by the Director of Public Prosecutions;

“confiscation” includes forfeiture and where applicable, means the permanent deprivation of property by order of court;

“confiscation order” means a confiscation order referred to in section 63;

“corruptly” means purposely doing an act, which tends to corrupt, or influence a person to do an act or omission contrary to established procedures;

“currency point” has the value specified in the Schedule to this Act;

“gratification” includes—

- (a) money or any gift, loan, fee, reward, commission, valuable security or other property or interest in property of any description, whether movable or immovable;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any other service, favour, or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary or penal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; and
- (e) any offer, undertaking or promise of any gratification within the meaning of subparagraphs (a), (b), (c) and (d);

“inspectorate officer” means an officer of the Inspectorate of Government designated as an inspectorate officer;

“property” includes money or any other movable or immovable, corporeal thing and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof;

“principal” includes an employer, a 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 person as though the estate were a person and in the case of a person employed in the public service or a public body, includes the Government or the public body, as the case may be;

“public body” includes—

- (a) the Government, any department, services or undertaking of the Government;
- (b) the East African Community, its institutions and corporations;
- (c) the Cabinet, Parliament, any court;
- (d) district administration, a district council and any committee of a district council local council and any committee of any such council;
- (e) any corporation, committee, board, commission or similar body whether corporate or incorporate established by an Act of Parliament for the purposes of any written law relating to the public health or public undertakings of public utility, education or for promotion of sports, literature, science, arts or any other purpose for the benefit of the public or any section of the public to administer funds or property belonging to or granted by the Government or the East African Community, its institutions or its corporations or money raised by public subscription, rates, taxes, cess or charges in pursuance of any written law;
- (f) a political party, a trade union, a society registered under the Cooperative Societies Act and any council, board, committee or society established by an Act of Parliament for the benefit, regulation and control of any profession and non-governmental organisations;

“special investigator” means a person appointed under section 50;

“tainted property” means property used in connection with the commission of an offence under this Act or property constituting the proceeds of an offence.

PART II—CORRUPTION.

2. Corruption

A person commits the offence of corruption if he or she does any of the following acts—

- (a) the solicitation or acceptance, directly or indirectly, by a public official, of any goods of monetary value, or benefits, such as a gift, favour, promise, advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (b) the offering or granting, directly or indirectly, to a public official, of any goods of monetary value, or other benefit, such as a gift, favour, promise or advantage or any other form of gratification for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;
- (c) the diversion or use by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State, to an independent agency, or to an individual, which that official has received by virtue of his or her position for purposes of administration, custody or for other reasons;
- (d) the offering or giving, promising, solicitation or acceptance, directly or indirectly, of any undue advantage to or by any person who directs or works for, in any capacity, a private sector entity, for himself or herself or for any other person, for him or her to act, or refrain from acting, in breach of his or her duties;

- (e) the offering, giving, solicitation or acceptance directly or indirectly, or promising of any undue advantage to or by any person who asserts or confirms that he or she is able to exert any improper influence over the decision making of any person performing functions in the public or private sector in consideration of the undue advantage, whether the undue advantage is for himself or herself or for any other person, as well as the request, receipt or the acceptance of the offer or the promise of the advantage, in consideration of that influence, whether or not the supposed influence leads to the intended result;
- (f) the fraudulent acquisition, use or concealment of property derived from any of the acts referred to in this section;
- (g) the participation as a principal, co-principal, agent, instigator, accomplice or accessory after the fact, or in any other manner in the commission or attempted commission of, or in any collaboration or conspiracy to commit, any of the acts referred to in this section;
- (h) any act or omission in the discharge of his or her duties by a public official for the purpose of illicitly obtaining benefits for himself or herself or for a third party; or
- (i) neglect of duty.

3. Corrupt transactions with agents.

If—

- (a) an agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or herself 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, any act in relation to his or her principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his or her principal's affairs or business;

- (b) a person corruptly gives or agrees to give or offers any gratification to any agent 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 or her principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his or her principal's affairs or business;
- (c) a person knowingly gives to an agent, or if an agent knowingly uses, with intent to deceive his or her principal, any receipt, account or other document in respect of the principal's affairs or business which contains any statement which is false or erroneous or defective in any material particular, and which to his or her knowledge is intended to mislead the principal;
- (d) an agent who corruptly gives or agrees to give or offers any gratification to any person as an inducement or reward for doing or omitting to do or for having done or omitted to do any act in relation to the business or affairs of his or her employer or for showing favour or disfavour to any person in relation to the business or affairs of his or her principal; or
- (e) a person who corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any agent for himself or herself or for any other person, any gratification as an inducement or reward for doing or omitting to do or, for having done or omitted to do any act in relation to the business or affairs of his or her principal or for showing favour or disfavour to any person in relation to the business or affairs of his or her principal,

commits an offence.

4. Corruptly procuring tenders.

- (1) A person—

- (a) who, with intent to obtain from any public body a contract for performing any work, providing any service, doing anything or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his or her withdrawing the tender; or
- (b) who solicits or accepts any gratification as an inducement or reward for his or her withdrawing a tender made by him or her for such contract,

commits an offence.

(2) A public official, who provides any information relating to a tender for—

- (a) performing any works;
- (b) providing any service; or
- (c) supplying any article, material or substance,

to enable a person obtain the tender from a public body, to the prejudice of another person interested in the tender, commits an offence.

5. Bribery of a public official.

A person who—

- (a) directly or indirectly by himself or herself or through any other person offers, confers, gives or agrees to offer any gratification to any member of a public body an inducement or reward so that the member—
 - (i) votes or abstains from voting at any meeting of that public body in favour of or against any measure, resolution or question submitted to that public body;
 - (ii) performs, or abstains from performing his or her duty in procuring, expediting, delaying, hindering or preventing the performance of any official act; or

- (iii) aids in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- (b) being a member as is referred to in paragraph (a) directly or indirectly solicits or accepts any gratification for himself or herself or for any other person, by himself or herself, or through any other person, as an inducement or reward for any act or abstaining from performing any act, referred to in subparagraphs (i), (ii) and (iii) of paragraph (a);

commits an offence.

6. Diversion of public resources.

A person who converts, transfers or disposes of public funds for purposes unrelated to that for which the resources were intended, for his or her own benefit or for the benefit of a third party, commits an offence.

7. Payment of compensation to aggrieved party.

(1) Where a person is convicted of an offence under section 6, the court, shall, in addition to the punishment imposed under section 26, order that person to pay by way of compensation to the aggrieved party, such sum as in the opinion of the court is just, having regard to the loss suffered by the aggrieved party.

(2) An order made under subsection (1) shall be deemed to be a decree under section 25 of the Civil Procedure Act and shall be executed in the manner provided under section 38 of the Civil Procedure Act. — Execution of Sentence**

8. Influence peddling.

A person who does or, omits to do an act in contravention of established principles or procedure as a result of improper influence, for his or her own benefit or for the benefit of a third party commits an offence.

9. Conflict of interest.

(1) An employee, or a member of a public body, public company or public undertaking who, in the course of his or her official duties, deals with a matter in which he or she or his or her immediate family has a direct or indirect interest or is in a position to influence the matter directly or indirectly and he or she knowingly, fails to disclose the nature of that interest and votes or participates in the proceedings of that body, company or undertaking, commits an offence and is liable on conviction to a term of imprisonment not exceeding twelve years or a fine not exceeding five thousand currency points or both.

(2) Conflict of interest shall arise where the person referred to in subsection (1)—

- (a) deals with a matter in which he or she has personal interest and where he or she is in a position to influence the matter directly or indirectly, in the course of his or her official duties;
- (b) holds a position with or gives services to a person or a private body which is or are in conflict with his or her official duties;
- (c) participates in the deliberations of a public body, board, council, commission or committee, of which he or she is a member at any meeting at which any matter in which he or she has personal interest is to be discussed; or
- (d) attends a meeting of a public body, board, council, commission or committee and fails or neglects to disclose the nature and extent of his or her personal interest.

(3) “personal interest” in this section includes the personal interest of a spouse, child, dependant, agent, or business associate of which the person has knowledge or would have had knowledge if he or she has exercised due diligence having regard to all the circumstances.

10. Loss of public property.

(1) Where loss of public property results from an act or omission done by a person knowing or having reason to believe that, the act or omission will cause loss of public property, that person commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

(2) A public official who by an act or omission directly or indirectly causes or allows damage or loss to occur to any public property placed in his or her custody, possession or control, commits an offence and is liable on conviction to imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

(3) A public official who knowingly misuses or allows public property entrusted to his or her care to be misused, abused or left unprotected, commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

(4) In addition to any other penalty imposed upon conviction on a person referred to in subsection (1), (2) or (3), the court may order that person to make good the loss occasioned to the property; and the value of the property or damage to the property shall constitute a civil debt from the person to the Government or public body concerned and shall be recoverable from that person.

(5) In this section "public property" means any form of real or personal property of any kind in which the Government or public body has ownership and includes: a plant, equipment, leasehold or other property interest as well as any right or other intangible interest that is purchased with public funds including the services of contractor personnel, office supplies, telephones and other telecommunications equipment and services, mail, automated data, public body records and vehicles.

11. Abuse of office.

(1) A person who, being employed in a public body or a company in which the Government has shares, does or directs to be done an arbitrary act prejudicial to the interests of his or her employer or of any other person, in abuse of the authority of his or her office, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

(2) Where a person is convicted of an offence under subsection (1) and the act constituting the offence was done for the purposes of gain, the court shall, in addition to any other penalty it may impose, order that anything received as a consequence of the act, be forfeited to the Government.

12. Sectarianism.

A person who being the holder of an office does any act in connection with the office for the purpose of doing a favour or offering undue advantage to any person on the basis of that person's religion or sect, ethnic group or place of origin commits an offence.

13. Nepotism.

A person who being the holder of an office does any act in connection with the office for the purpose of doing favours to any person on the basis of blood relations between that person and that other person commits an offence.

14. Officers charged with administration of property of a special character, etc.

Where a person who is employed in the public service—

- (a) is charged by virtue of his or her employment with any judicial or administrative duties in respect of property of a special character or in respect of the carrying on of any manufacture, trade or business;
- (b) acquires or holds directly or indirectly a private interest in that property, manufacture, trade or business; and

- (c) discharges any of his or her duties in respect of property, manufacture, trade or business in which he or she has the interest or in respect of the conduct of any person in relation to the property, manufacture, trade or business,

commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

15. Unauthorised administration of oaths.

(1) Any person who administers an oath or takes a solemn declaration or an affirmation or an affidavit, touching any matter with respect to which he or she has not by law any authority to do so, commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or a fine not exceeding forty eight currency points or both.

(2) This section shall not apply to an oath, a declaration, an affirmation or an affidavit administered by or taken before a magistrate or a justice of the peace in any matter relating to the preservation of the peace or the punishment of offences or relating to inquiries respecting sudden deaths, nor to an oath, a declaration, an affirmation or an affidavit administered or taken for some purpose which is lawful under the laws of another country, or for the purpose of giving validity to an instrument in writing which is intended to be used in another country.

16. False assumption of authority.

A person who—

- (a) not being a judicial officer, assumes to act as a judicial officer;
- (b) without authority assumes to act as a person having authority by law to administer an oath or take a solemn declaration or affirmation or affidavit or to do any other act of a public nature which can only be done by persons authorised by law to do so; or

- (c) represents himself or herself to be a person authorised by law to sign a document testifying to the contents of any register or record kept by lawful authority, or testifying to any fact or event, and signs such document as being authorised, when he or she is not, and knows that he or she is not, authorised,

commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

17. Personating public officers.

A person who—

- (a) personates a public official on an occasion when the latter is required to do any act or attend in any place by virtue of his or her employment; or
- (b) falsely represents himself or herself to be a public official and assumes to do any act or to attend in any place for the purpose of doing any act by virtue of being a public official;

commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

18. Threat of injury to persons employed in public service.

A person who holds out a threat of injury to any person employed in the public service or to a person he or she believes is employed in the public service, for the purpose of inducing that person who is employed in the public service to do any act or to forbear or delay to do any act connected with the exercise of the public functions of that person employed in the public service, commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy currency points or both.

19. Embezzlement.

A person who being—

- (a) an employee, a servant or an officer of the Government or a public body;
- (b) a director, an officer or an employee of a company or a corporation;
- (c) a clerk or servant employed by any person, association or religious or other organisation;
- (d) a member of an association or a religious organisation or other organisation, steals a chattel, money or valuable security—
 - (i) being the property of his or her employer, association, company, corporation, person or religious organisation or other organisation;
 - (ii) received or taken into possession by him or her for or on account of his or her employer, association, company, corporation, person or religious organisation or other organisation; or
 - (iii) to which he or she has access by virtue of his or her office;

commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.

20. Causing financial loss.

(1) Any person employed by the Government, a bank, a credit institution, an insurance company or a public body, who in the performance of his or her duties, does any act knowing or having reason to believe that the act or omission will cause financial loss to the Government, bank, credit institution commits an offence and is liable on conviction to a term of imprisonment not exceeding fourteen years or a fine not exceeding three hundred and thirty six currency points or both.

(2) In this section—

- (a) “bank” and “credit institution” have the meanings assigned to them by the Financial Institutions Act; and
- (b) “insurance company” means an insurance company within the meaning of section 4 of the Insurance Act.

21. Fraudulent disposal of trust property.

(1) A person who, being a trustee of any property, destroys the property with intent to defraud, or, with intent to defraud, converts the property to any use not authorised by the trust, commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty currency points or both.

(2) For the purposes of this section, the term “trustee” means the following persons and no others—

- (a) a trustee upon an express trust created by a deed, will or instrument in writing, whether for a public or private or charitable purpose;
- (b) a trustee appointed by or under the authority of a written law for any such purpose described in paragraph (a);
- (c) a person upon whom the duties referred to in paragraph (a) and (b) devolve;
- (d) an executor and an administrator.

22. False accounting by public officer.

A person who, being an officer charged with the receipt, custody or management of any part of the public revenue or property, knowingly furnishes any false statement or return of money or property received by him or her or entrusted to his or her care, or of any balance of money or property in his or her possession or under his or her control, commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

23. Fraudulent false accounting.

A person who, being a clerk or servant, or being employed or acting in the capacity of a clerk or servant, does any of the following acts with intent to defraud—

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security or account which belongs to or is in the possession of his or her employer, or has been received by him or her on account of his or her employer, or entry in that book, document or account, or is privy to any such act;
- (b) makes, or is privy to making, any false entry in any book, document or account; or
- (c) omits or is privy to omitting, any material particular from any such book, document or account,

commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

24. False claims by officials.

A person who, being employed in the public service in such a capacity as to require him or her or to enable him or her to furnish returns or statements touching any sum payable or claimed to be payable to himself or herself or to any other person, or touching any other matter required to be certified for the purpose of any payment of money or delivery of goods to be made to any person, makes a return or statement touching any matter which is to his or her knowledge, false in any material particular commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

25. False certificates by public officers.

A person who, being authorised or required by law to give a certificate touching a matter that may affect or prejudice the rights of any person, gives a certificate which is, to his or her knowledge, false in any material particular, commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

PART III—OFFENCES AND PENALTIES.

26. Punishment for offences under sections 3, 4, 5, 6, 7, 8, 12, and 13.

(1) A person convicted of an offence under sections 2, 3, 4, 5, 6, 7, 8, 12, and 13 is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

(2) Notwithstanding subsection (1), a person convicted of an offence under section 2 or 3 is, where the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with any public body or a subcontract to execute any work comprised in such a contract, is liable on conviction to a term of imprisonment not exceeding twelve years or a fine not exceeding two hundred and eighty eight currency points or both.

27. Penalty to be imposed in addition to other punishment.

Where a person is convicted of an offence committed by the acceptance of any gratification in contravention of any provision of this Act, then, if that gratification is a sum of money or if the value of that gratification can be assessed, the court shall, in addition to imposing on that person any other punishment, order him or her to pay as a penalty, within such time as may be specified in the order, a sum which is equal to the amount of the gratification or is, in the opinion of the court, the value of that gratification, and any such penalty shall be recoverable as a fine.

28. Principal may recover amount of secret gift.

(1) Where any gratification has, in contravention of this Act, been given by any person to an agent, the principal may recover as a civil debt the amount or the money value of the gratification either from the agent or from the person who gave the gratification to the agent, and no conviction or acquittal of the accused person in respect of an offence under this Act shall operate as a bar to proceedings for the recovery of the amount or money value.

(2) Nothing in this section shall prejudice or affect any right which a principal has under any written law or rule of law to recover from his or her agent any money or property.

29. Acceptor of gratification to be guilty notwithstanding that purpose not carried out, etc

(1) Where, in any proceedings against an agent for any offence under section 3(a), it is proved that the agent corruptly accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that the gratification was offered as an inducement or reward for his or her doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his or her principal's affairs or business, the agent commits an offence under that section notwithstanding that he or she did not have the power, right or opportunity to do so, show or forbear or that he or she accepted the gratification without intending to do so, show or forbear or that he or she did not in fact do so, show or forbear or that the act, favour or disfavour was not in relation to his or her principal's affairs or business.

(2) Where, in any proceedings against a person for an offence under section 3(b), it is proved that the person corruptly gave, agreed to give or offered any gratification to an agent as an inducement or reward for doing or forbearing to do an act or for showing or forbearing to show any favour or disfavour to a person having reason to believe or suspect that the agent had the power, right or opportunity to do so, show or forbear and that the act, favour or disfavour was in relation to his or her principal's affairs or business, that person commits an offence under that section notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his or her principal's affairs or business.

(3) Where, in any proceedings against an agent for an offence under section 3(d), it is proved that the agent corruptly gave or agreed to give or offer any gratification to an agent as an inducement or reward for doing or omitting to do or having done or omitted to do in relation to the business or affairs of his or her employer or for showing or omitting to show favour or disfavour to any person in

relation to the business or affairs of his or her employer, the first mentioned agent commits an offence under that section notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to the business or affairs of his or her employer.

30. Evidence of pecuniary sources or property.

In a trial by a court for an offence under this Act, the fact that an accused person is in possession, for which he or she cannot satisfactorily account, of pecuniary resources or property disproportionate to the accused person's known sources of income, or that the accused person had, at or about the time of the alleged offence, obtained an accretion of his or her pecuniary resources or property for which he or she cannot satisfactorily account, that fact may be proved and may be taken into consideration by the court as corroborating the testimony of any witness in the trial or inquiry that the accused person accepted or obtained or agreed to accept or attempted to obtain any gratification and as showing that the gratification was accepted or obtained or agreed to be accepted or attempted to be obtained corruptly as an inducement or reward.

31. Illicit enrichment.

(1) The Inspector General of Government or the Director of Public Prosecutions or an authorised officer, may investigate or cause an investigation of any person where there is reasonable ground to suspect that the person—

- (a) maintains a standard of living above that which is commensurate with his or her current or past known sources of income or assets; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his or her current or past known sources of income or assets.

(2) A person found in possession of illicitly acquired pecuniary resources or property commits an offence and is liable on conviction to a term of imprisonment not exceeding ten years or a fine not exceeding two hundred and forty currency points or both.

(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that having regard to the closeness of his or her relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused, or acquired such resources or property as gift or loan without adequate consideration, from the accused, those resources or property shall, until the contrary is proved, be deemed to have been under the control or in possession of the accused.

(4) In any prosecution for corruption or proceedings under this Act, a certificate of a Government Valuer or a valuation expert appointed by the Inspector General of Government or the Director of Public Prosecutions as to the value of the asset or benefit or source of income or benefit is admissible and is proof of the value, unless the contrary is proved.

32. Evidence of accomplice.

Notwithstanding any rule of practice or written law to the contrary, no witness in a trial by a court of an offence under this Act shall be regarded by the court as being unworthy of credit by reason only of any payment or delivery by him or her or on his or her behalf of any gratification to an agent or member of a public body.

33. Special investigation powers of the Inspector General of Government and Director of Public Prosecutions.

(1) Notwithstanding anything in any other law except the Constitution, the Inspector General of Government, or the Director of Public Prosecutions, if satisfied that there is a reasonable ground for suspecting that an offence under this Act has been committed by a person, may, by order authorise a police officer of or above the rank of Assistant Superintendent or an inspectorate officer named in the order or a special investigator named in the order to investigate any bank account, share account or purchase account of that person and that authority shall be sufficient warrant for the production of the accounts and documents, as may be required for scrutiny by the officer authorised in the order.

(2) A person who fails to disclose the information required to be disclosed by him or her under subsection (1) to a person authorised in an order under that subsection, commits an offence and is liable on conviction to imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

34. Court to restrict disposal of assets or bank accounts of accused, etc..

(1) A court may, upon application by the Director of Public Prosecutions or Inspector General of Government issue an order placing restrictions as they appear to the court to be reasonable, on the operation of any bank account of the accused person or a person suspected of having committed an offence or any person associated with such an offence or on the disposal of any property of the accused person, the suspected person or a person associated with the offence or the suspected person for the purpose of ensuring the payment of compensation to any victim of the offence or otherwise for the purpose of preventing the dissipation of any monies or other property derived from or related to an offence under this Act.

(2) A restriction imposed under subsection (1) on the operation of the bank account of a person shall be limited to the amount which is necessary to compensate the victim of the offence or an amount not exceeding the amount involved in the commission of the offence whichever is higher; and any money in the account in excess of that amount shall continue to be at the disposal of the person to whom the order under subsection (1) relates.

(3) The order imposing a restriction shall be reviewed by the court every six months if it is still in force.

(4) The order shall, unless earlier revoked, expire six months after the death of the person against whom it was made.

(5) The Director of Public Prosecutions shall ensure that an order issued by a court under subsection (1) is served on the banker, or an accused person or a suspected person and any other person to whom the order relates.

(6) A person who knowingly fails to comply with an order issued under this section commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points or both.

35. Payment of compensation out of resources of convicted person.

(1) Where it is proved to the satisfaction of the court that a principal whose agent has been convicted of an offence under this Act has suffered loss as a result of the commission of the offence, the court may order any sums standing to the credit of the convicted person or any property which the court is satisfied was acquired directly from any gratification obtained by the agent to be applied in making good the loss; and in the case of property which is not money, the court may order the sale of the property and the proceeds of sale paid to the principal.

(2) Any monies remaining from the proceeds of sale of property after payment to the principal of any loss under subsection (1) shall be refunded to the convicted person.

(3) Any transfer of any property contrary to any restriction imposed under section 34 is void and, in particular, the court may by order set aside any transaction aimed at defeating the purposes of subsection (1).

(4) Any person who obstructs the implementation of the order of a court under subsection (1) or (3) commits an offence and is liable on conviction to a term of imprisonment not exceeding five years or a fine not exceeding one hundred and fifty currency points or both.

PART IV—POWERS OF INSPECTOR GENERAL OF GOVERNMENT
AND DIRECTOR OF PUBLIC PROSECUTIONS

36. Powers of the Inspector General of Government and the Director of Public Prosecutions, to order inspection of documents.

(1) The Inspector General of Government or the Director of Public Prosecutions, may, if satisfied that any evidence of the commission of an offence under this Act by a person employed by a public body is likely to be found in any document relating to that person, his or her spouse or child or to a person reasonably believed

by the Inspector General of Government or Director of Public Prosecutions to be a trustee or agent for that person, by order, authorise any police officer of or above the rank of Assistant Superintendent of Police or an inspectorate officer named in the order or any special investigator named in the order to inspect the document.

(2) A police officer, an inspectorate officer or special investigator authorised under subsection (1) may, at a reasonable time, enter the place specified in the order and inspect the document referred to in subsection (1) kept in that place and may take copies of the documents.

37. Orders of search and seizure.

(1) If it is shown to a Judge, Chief Magistrate, a Magistrate Grade 1, the Inspector General of Government or the Director of Public Prosecutions, upon information and after such inquiry as he or she thinks necessary, that there is reasonable cause to believe that there is, in any place a document containing evidence of the commission of an offence under this Act, the Judge, Chief Magistrate, Magistrate Grade 1, Inspector General of Government or Director of Public Prosecutions may, by warrant, directed to an inspectorate officer or a police officer, or a special investigator, empower a police officer, inspectorate officer or special investigator to enter the place by force, if necessary and search for, seize and detain that document.

(2) Where it appears to a police officer not below the rank of Assistant Superintendent of Police, or an inspectorate officer, or special investigator that there is reasonable cause to believe that there is concealed or deposited in any place any document containing evidence of the commission of an offence under this Act and the police officer, inspectorate officer or special investigator, has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he or she may exercise, in respect of that place, all the powers mentioned in subsection (1) as if he or she were empowered to do so by warrant issued under subsection (1).

(3) Where a person in or about a place that is searched under subsection (1) or (2) is reasonably suspected of concealing about his or her person any document for which a search should be made, that person may be searched and any document found may be seized and detained.

(4) Where it is necessary to cause a woman to be searched under this section, the search shall be conducted by a woman.

38. Obligation to give information.

A person who is required by a police officer or special investigator to give information on a subject which it is the police officer's or investigator's duty to inquire into under this Act and which it is in his or her power to give shall be legally bound to give that information.

39. Obstruction of search, etc.

A person who—

- (a) refuses a police officer or special investigator, authorised to enter or search, access to a place;
- (b) assaults, obstructs, hinders or delays a police officer or special investigator in effecting any entrance which he or she is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) fails to comply with a lawful demand of a police officer or special investigator in the execution of his or her duty under this Act; or
- (d) refuses or neglects to give a police officer or special investigator any information which may reasonably be required of him or her and which he or she has in his or her power to give,

commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or to both.

40. Obstruction of investigations.

A person who, with the intent to conceal an offence or frustrate the investigation of a suspected offence of corruption under this Act—

- (a) destroys, alters, mutilates or falsifies, any book, document, valuable security, account, computer system, diskette, computer printout or other electronic device which belongs to or is in the possession of his or her principal, or was received by him or her on account of his or her employment, or any entry in any such book, document, account or electronic device;
- (b) makes or is privy to making any false entry in a book, document, account or electronic record referred to in paragraph (a); or
- (c) omits, or is privy to omitting, any material particular from any book, document, account or electronic record referred to in paragraph (a),

commits an offence and is liable on conviction to a term of imprisonment not exceeding seven years or a fine not exceeding one hundred and sixty eight currency points or both.

41. Director of Public Prosecutions and Inspector General of Government's powers to obtain information.

(1) In the course of an investigation or proceedings into or relating to an offence by any person employed by any public body under this Act, the Director of Public Prosecutions or the Inspector General of Government may, notwithstanding anything in any other written law to the contrary, by written notice—

- (a) require that person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by the person and by the spouse, sons and daughters of the person, and specifying the date on which each of the properties enumerated was acquired whether by way of purchase, gift, bequest, inheritance or otherwise;

- (b) require that person to furnish a sworn statement in writing of any money or other property sent out of Uganda by him or her during such period as may be specified in the notice;
- (c) require any other person to furnish a sworn statement in writing enumerating all movable or immovable property belonging to or possessed by that person where the Director of Public Prosecutions has reasonable grounds to believe that the information can assist the investigation;
- (d) require the regional commissioner of income tax to furnish, as specified in the notice, all information available to him or her relating to the affairs of any person where the Director of Public Prosecutions or Inspector General of Government has reasonable grounds to believe that the information can assist the investigation and to produce or furnish, as specified in the notice, any document or a certified copy of any document relating to that person which is in his or her possession or under his or her control;
- (e) require the Minister responsible for any department, office or establishment of the Government, or the president, chairperson, manager or chief executive officer of any other public body or the secretary, manager or principal officer of any company or association or body of persons whether incorporated or not, or a partner in any partnership to produce or furnish, as specified in the notice, any document or a certified copy of any document which is in his or her possession or under his or her control; or
- (f) require the manager of a bank to give copies of the accounts of that person or of the spouse or son or daughter of that person at the bank.

(2) A person to whom a notice is sent by the Director of Public Prosecutions or the Inspector General of Government under subsection (1) shall, notwithstanding any written law or an oath of secrecy to the contrary, comply with the terms of that notice within such time as may be specified in the notice and any person who

willfully neglects or fails to comply commits an offence and is liable on conviction to a term of imprisonment not exceeding three years or a fine not exceeding seventy two currency points or both.

(3) The Director of Public Prosecutions or the Inspector General of Government may, in the course of any investigation into or relating to an offence under this Act, invite any person who has given a sworn statement under subsection (1)(a) or (b) to give an explanation or amplification of that statement, if he or she considers that it is necessary or desirable to do so.

(4) In any prosecution for an offence under this Act, the sworn statement of any person given under subsection (1)(a) or (b) may be used in evidence against him or her.

42. Evidence and defence of custom.

(1) In proceedings under this Act, evidence shall not be admissible to show that the gratification mentioned in this Act is customary in any profession, trade, social occasion, vocation or calling or in the course of any particular business transaction.

(2) It shall not be a defence to an offence under this Act to establish that any gratification mentioned in this Act is customary in any profession, trade, social occasion, vocation or calling, or in the course of any particular business transaction or social occasion.

43. Duty to arrest.

(1) A person who is employed by a public or a private body to whom any gratification is corruptly given or offered, shall arrest or cause the arrest of, or report the person who gives or offers the gratification to, a police officer or an inspectorate officer.

(2) A person who fails to comply with subsection (1) without reasonable excuse commits an offence and is liable on conviction to a term of imprisonment not exceeding two years or a fine not exceeding forty eight currency points or both.

44. Protection of informers.

(1) Except as hereafter provided, a complaint to an offence under this Act shall not be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his or her discovery.

(2) If a book, a paper or other document, or a visual or a sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in court or other authority as referred to in subsection (1), contains an entry or other matter in which the informer is named or described or shown, or which might lead to his or her discovery, the court before which the proceedings are held shall cause all those parts of them or passages from them to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect that person from discovery.

(3) If on a trial for any offence under this Act, the court, after full inquiry into the case, is of the opinion that the informer willfully made in his or her complaint a material statement which he or she knew or believed to be false or did not believe to be true, or if in any other proceeding the court is of the opinion that justice cannot be fully dispensed between the parties to the proceeding without the discovery of the informer, the court may require the production of the original complaint, if in writing, permit inquiry and require full disclosure concerning the informer.

(4) Subsection (1) shall not have effect where a prosecution is instituted against any person for an offence under section 45.

45. Penalty for giving false information.

(1) A person who gives information knowing that the information is false or which he or she believes to be false, intending to cause or knowing it to be likely that he or she will by giving the information cause an investigation or prosecution to be commenced under this Act, commits an offence and is liable on conviction to—

- (a) a term of imprisonment not exceeding five years or a fine not exceeding one hundred and twenty currency points, or both; and
- (b) compensate the person in respect of whom an investigation or a prosecution under this Act is commenced as in the opinion of the court is just, having regard to all the circumstances; and any such order shall be deemed to be a decree and may be executed in the manner provided by the Civil Procedure Act.

(2) Nothing in this section shall prevent proceedings to recover damages by any person being instituted in a civil court, but at the time of awarding damages in a subsequent civil suit relating to the same matter, the court shall take into consideration any sum paid or recovered as compensation awarded under subsection (1).

46. Disqualification.

A person who is convicted of an offence under section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 shall be disqualified from holding a public office for a period of ten years from his or her conviction.

47. Protection of persons acting in pursuance of the Act.

An act, matter or thing done or omitted by a person authorised by this Act to perform the duty or exercise a function shall not, if the act, matter or thing was done or omitted in good faith, render the person personally liable to any action, liability, claim or demand.

48. Invalidity of appointment as bar to prosecution.

A person shall not be exempt from prosecution under this Act by reason of the invalidity of his or her appointment, nomination or election to his or her office.

49. Prosecution of offences.

A prosecution under this Act shall not be instituted except by or with the consent of the Director of Public Prosecutions or the Inspector General of Government; but a person charged with such an offence

may be arrested, or a warrant for his or her arrest may be issued and executed, and the person may be detained or released on police bond, notwithstanding that the consent of the Director of Public Prosecutions or the Inspector General of Government, to the institution of a prosecution for the offence has not been obtained, but no further or other proceedings shall be taken until that consent has been obtained.

50. Appointment of special investigators.

(1) Where the Inspector General of Government or the Director of Public Prosecutions considers it necessary for the purposes of an investigation under this Act, he or she may appoint any person who in his or her opinion possesses the necessary skill or experience to be a special investigator.

(2) A special investigator shall be appointed for the purpose of conducting special investigations in a specified case and his or her remuneration shall be charged to the operational funds of the Inspector General of Government or the Director of Public Prosecutions in accordance with the financial regulations governing the procurement of specialized services for the time being in force.

(3) A certificate signed by the Inspector General of Government or the Director of Public Prosecutions shall be issued to a special investigator and shall be evidence of his or her appointment for the purposes of this Act.

PART V—JURISDICTION

51. Jurisdiction to try offences.

Jurisdiction to try an offence under this Act shall be exercised only by—

- (a) the High Court;
- (b) a magistrate's court presided over by a Chief Magistrate; or
- (c) a magistrate's court presided over by a Magistrate Grade 1.

52. Punishment for attempts, preparations, abetments and criminal conspiracies.

A person who—

- (a) attempts to commit an offence under this Act;
- (b) does a thing which is preparatory to, or in furtherance of the commission of an offence under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit an offence under this Act,

commits an offence and is liable on conviction to any penalty prescribed respectively for such an offence by the Penal Code Act.

PART VI—RESTRAINING ORDER**53. Application for restraining order.**

Where a person has been charged or is about to be charged with an offence under this Act, an authorised officer may make an application to the court for an order, in this Act referred to as a restraining order, restraining the disposal of the property of, or in possession or under the control of that person, wherever that property is situated.

54. Contents of application for restraining order.

An application made under section 53 shall be accompanied by an affidavit setting out—

- (a) the offence under investigation;
- (b) a description of the property in respect of the restraining order sought;
- (c) the name and address of the person believed to be in the possession of the property;
- (d) the grounds for the belief that the property is tainted in relation to the offence or that the person being investigated derived a benefit directly or indirectly from the commission of the offence under investigation;

- (e) where the application is for a restraining order against property of a person other than the person being investigated, the grounds for the belief that the property is tainted property in relation to the offence under investigation and is subject to the effective control of the accused; and
- (f) the grounds for the belief that a confiscation order or a pecuniary order may be or is likely to be made under this Act in respect of the property.

55. Issue of a restraining order.

Where the court is satisfied that there are reasonable grounds to believe that there exists property in respect of which a restraining order may be made under this Act, the court may make an order—

- (a) prohibiting any person from disposing of, or otherwise dealing with property specified in the order other than in a manner specified in the order; and
- (b) at the request of the authorised officer, and where the court is of the opinion that the circumstances so require, appoint a person to take control of or to manage or otherwise deal with the property.

56. Contents of a restraining order.

(1) The court in making a restraining order under section 55 may give directions as to the management of property in question for the purpose of—

- (a) determining any dispute as to the ownership of the property or any part of it;
- (b) paying for its proper administration during the period when the restraining order remains in force;
- (c) in regard to the person subject to the order—
 - (i) paying that person for the reasonable subsistence of that person and his or her family;

- (ii) permitting the use of the property in order to enter into a recognizance required of that person by a court;
- (iii) paying that person's reasonable expenses in defending the criminal charge and any proceedings under this Act; and
- (iv) paying any specified debt incurred by that person in good faith.

(2) The person appointed by the court under this section to manage property subject to a restraining order shall be accountable to the court for the management of the property.

57. Notice of application for restraining order.

Before making a restraining order, the court may require notice to be given to, and may hear any person who, in the opinion of the court, appears to have an interest in the property, unless the court is of the opinion that giving the notice before making the order would result in the disappearance, disposal, dissipation or reduction in the value of the property.

58. Service of restraining order.

A copy of the restraining order shall be served on the person affected by the restraining order in a manner directed by the court or prescribed by law.

59. Registration of restraining order.

(1) A copy of a restraining order which affects land shall be registered with the Registrar of Titles or a recorder.

(2) Where the restraining order affects any other property, a copy of the order shall be registered with the relevant authority

(3) Where the particulars of a restraining order are registered under the Registration of Titles Act or the Land Act, a person who subsequently deals with the property shall, for the purposes of section 57 be taken to have had notice of the order at the time of the dealing.

(4) A person who does not register a restraining order which affects land or any other property commits an offence and is liable on conviction to a term of imprisonment not exceeding six months or a fine not exceeding twelve currency points or both.

60. Setting aside disposition.

(1) Where a restraining order is made against property and the property is disposed of, or otherwise dealt with, in contravention of the restraining order, the disposition or dealing is null and void and an authorised officer may apply to the court that made the restraining order for an order that the disposition or dealing be set aside.

(2) Where an authorised officer makes an application under this section in relation to a disposition or dealing, the court may set aside the disposition or dealing as from the day on which the disposition or dealing took place.

(3) A person who disposes of restrained property or a person who willingly acquires interest after knowing the property has been restrained commits an offence and is liable on conviction to a term of imprisonment not exceeding four years or a fine not exceeding ninety six currency points or both.

61. Duration of restraining order.

A restraining order remains in force until—

- (a) it is discharged, reviewed, revoked or varied by the court;
- (b) the expiration of six months from the date on which it is made or such later time as the court may determine; or
- (c) a confiscation order or a pecuniary penalty order is made in respect of property which is the subject of the order.

62. Review of restraining order.

(1) A person who has an interest in property in respect of which a restraining order is made may, at any time, apply to the court for a review.

(2) An application for review shall not be heard by the court unless the applicant has given the authorised officer at least three working days notice in writing of the application.

(3) The court may require notice of the application to be given to any other person who, in the opinion of the court, appears to have an interest in the property.

(4) Upon application, the court may revoke or vary the restraining order or make the order subject to such conditions as the court thinks fit.

(5) For the purposes of this section, the court may—

- (a) require the applicant to enter into a recognisance;
- (b) vary the restraining order to permit the payment of reasonable expenses of the applicant, including those of his or her dependants if any, and reasonable legal or business expenses of the applicant.

(6) An order under this section may be made only if the court is satisfied that the—

- (a) applicant is the lawful owner of the property, has a legal interest in or is entitled to lawful possession of the property, and appears to be innocent of any complicity in the commission of an offence or of any collusion in relation to an offence; and
- (b) the property will no longer be required for the purposes of any investigation or as evidence in any proceedings.

PART VII—CONFISCATION ORDER

63. Confiscation order.

(1) Where a person is convicted of an offence under this Act, in addition to the penalties imposed under this Act, the court may make an order confiscating the property that is the subject of or derived directly or indirectly from the act of corruption.

(2) Where court makes a confiscation order against any property, the property shall vest in the Government.

(3) Where property is registerable property the order shall be registered with the appropriate authority.

64. Confiscation notice.

The court shall issue notice of sixty days to persons to whom the confiscation order relates.

65. Procedure for confiscation order in relation to property where person dies or absconds.

(1) Where a person has been charged with the commission of an offence under this Act and the person dies or absconds, the Inspector General of Government or the Director of Public Prosecutions or an authorised officer may apply to the court for a confiscation order in respect of any tainted property of the person being charged, and the court may, if satisfied beyond reasonable doubt, that the property is tainted property, order that the property of the person as is specified by the court be confiscated.

(2) For the purposes of subsection (1), a person is taken to have absconded if reasonable attempts to arrest the person under a warrant have been unsuccessful during the period of one year commencing on the day the warrant was issued, and the person shall be taken to have absconded on the last day of that period.

66. Voidable transfers.

The court may, before making a confiscation order and, in the case of property in respect of which a restraining order is made, notice of which is given and the order served in accordance with this Act, set aside any conveyance or transfer of the property that occurred after the seizure of the property or the service of the restraining order, unless the conveyance or transfer was made for valuable consideration to a person acting in good faith and without notice.

PART VIII—MISCELLANEOUS.

67. Minister's power to amend Schedule.

The Minister responsible for justice may, by statutory instrument, with the approval of the Cabinet, amend the Schedule to this Act.

68. Repeal of Cap. 121.

The Prevention of Corruption Act is repealed.

69. Consequential amendment of Cap. 120.

The Penal Code Act is amended by repealing sections 85, 86, 87, 88, 89 90, 91, 92, 93, 268, 269, 322, 325 and 326.

70. Consequential amendment of Act No. 17 of 2002.

The Leadership Code Act is amended—

- (a) by repealing sections 8, 9 and 13;
- (b) in subsection 20(3) by replacing “five years” with “ten years”.

SCHEDULE.

CURRENCY POINT

A currency point is equivalent to twenty thousand shillings.

Cross References

1. Civil Procedure Act, Cap. 71.
2. Cooperative Societies Act, Cap. 112.
3. Financial Institutions Act, 2004, Act No. 2 of 2004
4. Insurance Act, Cap. 213.
5. Land Act, Cap. 227.
6. Registration of Titles Act, Cap. 230