

**Note:**

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**THE PREVENTION OF CORRUPTION ACT 2002****Act No. 5 of 2002***I assent*

27 February 2002

K. A. OFFMAN  
*President of the Republic*

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**A BILL**

**To provide for the prevention and punishment of corruption and fraud and for the establishment of an Independent Commission Against Corruption**

ENACTED by the Parliament of Mauritius, as follows -

**PART I - PRELIMINARY****1. Short title**

This Act may be cited as the Prevention of Corruption Act 2002.

## 2. Interpretation

In this Act -

“act of corruption” -

- (a) means an act which constitutes a corruption offence; and
- (b) includes -
  - (i) any conduct whereby, in return for a gratification, a person does or neglects from doing an act in contravention of his public duties;
  - (ii) the offer, promise, soliciting or receipt of a gratification as an inducement or reward to a person to do or not to do any act, with a corrupt intention;
  - (iii) the abuse of a public or private office for private gain;
  - (iv) an agreement between 2 or more persons to act or refrain from acting in violation of a person's duties in the private or public sector for profit or gain;
  - (v) any conduct whereby a person accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification for inducing a public official, by corrupt or illegal means, or by the exercise of personal influence, to do or abstain from doing an act in the exercise of his duties to show favour or disfavour to any person;

“Advisory Committee” means a committee established under section 39;

“agent” –

- (a) means any person employed by or acting for another person;
- (b) includes a member or an officer of a public body, a trustee, a sub-contractor, and any person employed by or acting for such trustee or sub-contractor;

"Appointments Committee" means the Appointments Committee set up under section 18;

"associate", in relation to a person, means -

- (a) a person who is a nominee or an employee of that person ;
- (b) a person who manages the affairs of that person;

- (c) a firm of which that person, or his nominee, is a partner or a person in charge or in control of its business or affairs;
- (d) a company in which that person, or his nominee, is a director or is in charge or in control of its business or affairs, or in which that person, alone or together with his nominee, holds a controlling interest, or shares amounting to more than 30 per cent of the total issued share capital; or
- (e) the trustee of a trust, where -
  - (i) the trust has been created by that person; or
  - (ii) the total value of the assets contributed by that person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than 20 per cent of the total value of the assets of the trust;

"bank" has the same meaning as in the Banking Act and includes -

- (a) any person engaged in a deposit-taking business and authorised to do so under that Act; and
- (b) any person carrying on any business or activity regulated by the Bank of Mauritius;

"cash dealer" means a person authorised under the Foreign Exchange Dealers Act to carry on the business of foreign exchange dealer or money changer;

"Commission" means the Independent Commission Against Corruption established under section 19;

"Commissioner" means the person appointed as such under section 19;

"Community Relations and Corruption Prevention Advisory Committee" means the Community Relations and Prevention Advisory Committee set up under section 42;

"corruption offence" means an offence under Part II or under such other enactment as the Prime Minister may prescribe;

"Corruption Advisory Committee" means the Corruption Advisory Committee established under section 40;

"Corruption Investigation Division" means the Corruption Investigation Division set up under section 28;

"Corruption Prevention and Education Division" means the Corruption Prevention and Education Division set up under section 28;



"crime" -

- (a) has the same meaning as in the Criminal Code;
- (b) includes an activity carried out outside Mauritius and which, had it taken place in Mauritius, would have constituted a crime;
- (c) includes any act or omission occurring outside Mauritius, but which, had it taken place in Mauritius would have constituted a crime;

"Deputy-Commissioner" means a person appointed as such under section 19;

"Director of the Corruption Investigation Division" means the person appointed as such under section 29;

"Director of the Corruption, Prevention and Education Division" means the person appointed as such under section 30;

"financial institution" means an institution or person regulated by –

- (a) the Financial Services Development Act 2001;
- (b) the Immigration Act insofar as it relates to section 5A;
- (c) the Insurance Act;
- (d) the Securities (Central Depository, Clearing and Settlement) Act;
- (e) the Stock Exchange Act;
- (f) the Trusts Act 2001; and
- (g) the Unit Trusts Act;

"financial year" means the period of 12 months ending on 30 June in any year;

"FIU" means the Financial Intelligence Unit established under the Financial Intelligence and Anti-Money Laundering Act 2002;

"Government company" means a company registered under the Companies Act and in which the Government of Mauritius -

- (a) directly or indirectly or through any other corporate body, owns or controls not less than 50 per cent of the entire share capital; or

- (b) by reason of its financial input through loans, debentures or otherwise, or by reason of the presence of its representatives on the Board of Directors, is in a position to influence its policy or decisions;

"gratification" –

- (a) means a gift, reward, discount, premium or other advantage, other than lawful remuneration; and
- (b) includes -
  - (i) a loan, fee or commission consisting of money or of any valuable security or of other property or interest in property of any description;
  - (ii) the offer of an office, employment or other contract;
  - (iii) the payment, release or discharge of a loan, obligation or other liability; and
  - (iv) the payment of inadequate consideration for goods or services;
- (c) the offer or promise, whether conditional or unconditional, of a gratification;

“Legal Division” means the Legal Division set up under section 28;

"Member" means the Commissioner or a Deputy-Commissioner;

“member of relevant profession or occupation” –

- (a) means an accountant, an attorney, a barrister, a chartered secretary, a notary; and
- (b) includes a person carrying on the business of a casino, a bookmaker or totalisator under the Gaming Act;

“Minister” means the Minister to whom responsibility for the subject of corruption is assigned;

"money laundering offence" means an offence under Part II of the Financial Intelligence and Anti-Money Laundering Act 2002;

"officer" –

- (a) means an officer appointed under section 24; and
- (b) includes the Director of the Corruption Investigation Division, the Director of the Corruption Prevention and Education Division, and the Chief Legal Adviser;

“Operations Review Committee” means the Operations Review Committee set up under section 41;

"Parliamentary Committee" means the Parliamentary Committee set up under section 59;

"principal" includes an employer, a beneficiary under a trust, a person beneficially interested in the succession of a person, and, in the case of a person serving in or under a public body, the public body;

"public body" –

- (a) means a Ministry or Government department, a Commission set up under the Constitution or under the authority of any other law, a local authority, or a statutory corporation; and
- (b) includes a Government company;

"public official" –

- (a) means a Minister, a member of the National Assembly, a public officer, a local government officer, an employee or member of a local authority, a member of a Commission set up under the Constitution, an employee or member of a statutory corporation, or an employee or director of any Government company; and
- (b) includes a Judge, an arbitrator, an assessor or a member of a jury;

"relative", in relation to a person, means -

- (a) a spouse or conjugal partner of that person;
- (b) a brother or sister of that person;
- (c) a brother or sister of the spouse of that person; or
- (d) any lineal ascendant or descendant of that person;

"suspicious transaction" means a transaction which –

- (a) gives rise to a reasonable suspicion that it may involve the laundering of money or the proceeds of any crime including any offence concerning the financing of any activities or transaction related to terrorism as specified in Part III of the Prevention of Terrorism Act 2002;
- (b) is made in circumstances of unusual or unjustified complexity;
- (c) appears to have no economic justification or lawful objective;
- (d) is made by or on behalf of a person whose identity has not been established to the satisfaction of the person with whom the transaction is made; or
- (e) gives rise to suspicion for any other reason.

### **3. Application of Act**

A person shall commit an offence under this Act where –

- (a) the act or omission constituting the offence occurs elsewhere than in Mauritius; or
- (b) the act constituting the offence is done by that person, or for him, by another person.

## **PART II - CORRUPTION OFFENCES**

### **4. Bribery by public official**

(1) Any public official who solicits, accepts or obtains from another person, for himself or for any other person, a gratification for -

- (a) doing or abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- (b) doing or abstaining from doing, or having done or abstained from doing, an act which is facilitated by his functions or duties;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official, in the execution of the latter's functions or duties;

- (e) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 83, where in any proceedings against any person for an offence, it is proved that the public official solicited, accepted or obtained a gratification, it shall be presumed, until the contrary is proved, that the gratification was solicited, accepted or obtained for any of the purposes set out in subsection (1)(a) to (e).

## **5. Bribery of public official**

(1) Any person who gives, agrees to give, or offers a gratification to a public official for -

- (a) doing, or for abstaining from doing, or having done or abstained from doing, an act in the execution of his functions or duties;
- (b) doing or abstaining from doing, or for having done or abstained from doing, an act which is facilitated by his functions or duties;
- (c) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act in the execution of his functions or duties;
- (d) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act by another public official in the execution of the latter's functions or duties;
- (e) assisting, favouring, hindering or delaying or having assisted, favoured, hindered or delayed another person in the transaction of a business with a public body,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Notwithstanding section 83, where in any proceedings against any person for an offence under subsection (1) it is proved that the accused gave, agreed to give or offered gratification, it shall be presumed, until the contrary is proved, that the accused gave, agreed to give or offered the gratification for any of the purposes set out in subsection (1)(a) to (e).

## **6. Taking gratification to screen offender from punishment**

(1) Subject to section (2), any person who accepts or obtains, or agrees to accept or attempts to obtain, a gratification for himself or for any other person, in consideration of his concealing an offence, or his screening any other person from legal proceedings for an offence, or his not proceeding against any other person in relation to an alleged offence, or his abandoning or withdrawing, or his obtaining or endeavouring to obtain the withdrawal of, a prosecution against any other person, shall commit an offence and shall, on conviction -

- (a) where the offence is a crime, be liable to imprisonment for a term not exceeding 5 years;
- (b) where the offence is a misdemeanour, be liable to imprisonment for a term not exceeding one year;
- (c) where the offence is a contravention, be liable to imprisonment for a term not exceeding 6 months.

(2) This section shall not extend to any lawful compromise as to the civil interests resulting from the offence, but any such compromise shall not be a bar to any criminal proceedings which may be instituted by the State in respect of the offence.

## **7. Public official using his office for gratification**

(1) Subject to subsection (3), any public official who makes use of his office or position for a gratification for himself or another person shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) For the purposes of subsection (1), a public official shall be presumed, until the contrary is proved, to have made use of his office or position for a gratification where he has taken any decision or action in relation to any matter in which he, or a relative or associate of his, has a direct or indirect interest.

- (3) This section shall not apply to a public official who –
  - (a) holds office in a public body as a representative of a body corporate which holds shares or interests in that public body; and
  - (b) acts in that capacity in the interest of that body corporate.

## **8. Bribery of or by public official to influence the decision of a public body**

(1) Any person who gives, or agrees to give, or offers, to a public official, a gratification for -

- (a) voting or abstaining from voting, or having voted or abstained from voting, at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, or having performed or abstained from performing, or having aided in procuring, expediting, delaying, hindering or preventing, the performance of an act of a public body of which he is a member, director or employee;
- (c) aiding in procuring, or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any other person,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Any public official who solicits or accepts a gratification for -

- (a) voting or abstaining from voting, or having voted or abstained from voting at a meeting of a public body of which he is a member, director or employee, in favour of or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing, or aiding in procuring, expediting, delaying, hindering or preventing, the performance of, an act of a public body of which he is a member, director or employee;
- (c) aiding in procuring or preventing, or having aided in procuring or preventing, the passing of any vote or the granting of any contract or advantage in favour of any person,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

## **9. Influencing public official**

Any person who exercises any form of violence, or pressure by means of threat, upon a public official, with a view to the performance, by that public official, of any act in the execution of his functions or duties, or the non-performance, by that public official, of any such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

## **10. 'Trafic d'influence'**

(1) Any person who gives or agrees to give or offers a gratification to another person, to cause a public official to use his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Any person who gives or agrees to give or offers a gratification to another person to use his influence, real or fictitious, to obtain work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(3) Any person who gives or agrees to give or offers a gratification to public official to cause that public official to use his influence, real or fictitious, to obtain work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(4) Any person who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(5) Any public official who solicits, accepts or obtains a gratification from any other person for himself or for any other person in order to make use of his influence, real or fictitious, to obtain any work, employment, contract or other benefit from a public body, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

## **11. Public official taking gratification**

Any public official who accepts or receives a gratification, for himself or for any other person -

- (a) for doing or having done an act which he alleges, or induces any person to believe, he is empowered to do in the exercise of his functions or duties, although as a fact such act does not form part of his functions or duties; or
- (b) for abstaining from doing or having abstained from doing an act which he alleges, or induces any person to believe, he is empowered not to do or bound to do in the ordinary course of his function or duty, although as a fact such act does not form part of his functions or duties,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.



**12. Bribery for procuring contracts**

(1) Any person who gives or agrees to give or offers a gratification to a public official in consideration of that public official giving assistance or using influence in -

- (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- (b) the payment of the price provided for in a contract with a public body;
- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Any public official who solicits, accepts or obtains from any other person, for himself or for any other person, a gratification for giving assistance or using influence in -

- (a) promoting, executing, or procuring a contract with a public body for the performance of a work, the supply of a service, or the procurement of supplies;
- (b) the payment of the price provided for in a contract with a public body;
- (c) obtaining for that person or for any other person, an advantage under a contract for work or procurement,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

**13. Conflict of interests**

(1) Where -

- (a) a public body in which a public official is a member, director or employee proposes to deal with a company, partnership or other undertaking in which that public official or a relative or associate of him has a direct or indirect interest; and

- (b) that public official and/or his relative or associate of him hold more than 10 per cent of the total issued share capital or of the total equity participation in such company, partnership or other undertaking,

that public official shall forthwith disclose, in writing, to that public body the nature of such interest.

(2) Where a public official or a relation or associate of his has a personal interest in a decision which a public body is to take, that public official shall not vote or take part in any proceedings of that public body relating to such decision.

(3) Any public official who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

#### **14. Treating of public official**

Any person who, while having dealings with a public body, offers a gratification to a public official who is a member, director or employee of that public body shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

#### **15. Receiving gift for a corrupt purpose**

Any public official who solicits, accepts or obtains a gratification for himself or for any other person -

- (a) from a person, whom he knows to have been, to be, or to be likely to be, concerned in any proceeding or business transacted or about to be transacted by him, or having any connection with his functions or those of any public official to whom he is subordinate or of whom he is the superior; or
- (b) from a person whom he knows to be interested in or related to the person so concerned,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

#### **16. Corruption of agent**

(1) Any agent who, without the consent of his principal, solicits, accepts or obtains from any other person for himself or for any other person, a gratification for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business, or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

(2) Any person who gives or agrees to give or offers, a gratification to an agent for doing or abstaining from doing an act in the execution of his functions or duties or in relation to his principal's affairs or business or for having done or abstained from doing such act, shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years.

#### **17. Corruption to provoke a serious offence**

Where a person has committed an offence under this Part with the object of committing or facilitating the commission of a crime, that person shall, on conviction, be sentenced to penal servitude.

### **PART III – THE INDEPENDENT COMMISSION AGAINST CORRUPTION**

#### **18. The Appointments Committee**

(1) There shall, for the purposes of this Act, be an Appointments Committee which shall be composed of the President, the Prime Minister and the Leader of the Opposition.

(2) The President shall chair every meeting of the Appointments Committee and every decision shall, subject to section 31(1) of the Interpretation and General Clauses Act, be taken by a majority of the votes, but the President shall have no casting vote.

(3) Two members of the Appointments Committee shall constitute a quorum.

(4) The President shall designate such public officer as he considers appropriate to act as Secretary of the Appointments Committee.

(5) The Secretary shall keep a record of all proceedings of the Appointments Committee.

(6) The Appointments Committee shall –

- (a) appoint the Members; and
- (b) receive the disclosure of assets and liabilities to be deposited under section 25.

(7) In the exercise of its functions, the Appointments Committee may –

- (a) call for applications for appointment as Commissioner or Deputy-Commissioner by advertisement;
- (b) interview such candidates as it considers necessary;
- (c) delegate to such public officer as it may designate the power to establish a short-list of candidates;

- (d) hold consultations with such person as it considers appropriate; and
- (e) appoint the Commissioner or any Deputy-Commissioner without advertisement or interview.

## **19. Establishment of the Commission**

(1) There is established for the purposes of this Act a Commission which shall be known as the Independent Commission Against Corruption.

(2) The Commission shall be a body corporate.

(3) The Commission shall consist of 3 Members, namely a Commissioner and 2 Deputy-Commissioners.

(4) The Commissioner shall be a person who –

- (a) has served as a Judge of the Supreme Court;
- (b) has served as a Magistrate in Mauritius for not less than 10 years;
- (c) is, or has been, a practising barrister or law officer for not less than 10 years;
- (d) has served in an anti-corruption agency in another country at a level of seniority acceptable to the Appointments Committee.

(5) One of the Deputy-Commissioner shall be a professional who has proven senior managerial experience in a large organisation or proven experience in the field of banking or financial services.

(6) The other Deputy-Commissioner shall be a person with demonstrated abilities in community affairs, civil liberties or social services.

(7) Subject to this Act, the Commissioner may assign to each Deputy-Commissioner such functions, duties and responsibilities as he considers appropriate.

## **20. Functions of the Commission**

(1) The functions of the Commission shall be to –

- (a) educate the public against corruption;
- (b) enlist and foster public support in combating corruption;
- (c) receive and consider any allegation that a corruption offence has been committed;
- (d) detect or investigate any act of corruption;

- (e) investigate the conduct of any public official which, in its opinion, is connected with or conducive to, corruption;
- (f) monitor, in such manner as it considers appropriate, the implementation of any contract awarded by a public body, with a view to ensuring that no irregularity or impropriety is involved therein;
- (g) examine the practices and procedures of any public body in order to facilitate the discovery of acts of corruption and to secure the revision of methods of work or procedures which, in its opinion, may be conducive to corruption;
- (h) advise and assist any public body on ways and means in which acts of corruption may be eliminated;
- (i) undertake and assist in research projects in order to identify the causes of corruption and its consequences on, inter alia, the social and economic structure of Mauritius;
- (j) cooperate with all other statutory corporations which have as object the betterment of the social and economic life of Mauritius;
- (k) draft model codes of conduct and advise public bodies as to the adoption of such code of conduct as may be suited to such bodies;
- (l) co-operate and collaborate with international institutions, agencies or organisations in the fight against money laundering and corruption;
- (m) monitor current legislative and administrative practices;
- (n) advise the Parliamentary Committee on such legislative reform as it considers necessary to foster the elimination of acts of corruption;
- (o) detect and investigate any matter that may involve the laundering of money or suspicious transaction that is referred to it by the FIU;
- (p) execute any request for assistance referred to it by the FIU;
- (q) take such measures as may be necessary to counteract money-laundering in consultation with the FIU;
- (r) co-operate and collaborate with the FIU in fulfilling common objectives.

(2) The Commission shall act independently, impartially, fairly and in the public interest.

(3) Subject to this Act, the Commissioner shall not be under the control, direction of any other person or authority.

## **21. Terms and conditions of appointment**

(1) Subject to this section, the Appointments Committee shall determine the terms and conditions of the appointment of the Members.

(2) The Members shall be appointed for a term of not less than 5 years and not more than 10 years, and they shall not be re-eligible for appointment.

(3) The Members shall occupy their office in a full-time capacity and shall not engage in any other activity for which they are remunerated in whatever form.

## **22. Vacancy in office of Commissioner**

(1) Where –

(a) the office of the Commissioner is vacant; or

(b) the Commissioner is absent from duty or is, for any other reason, unable to perform the duties of his office,

the President may appoint one of the Deputy-Commissioners to act as Commissioner.

(2) An appointment made under subsection (1) shall not exceed 3 months.

## **23. Termination of appointment**

(1) Where –

(a) the Appointments Committee has reason to believe that a Member has been guilty of such misconduct that his appointment ought to be terminated; or

(b) a Member is unable to discharge the functions of his office, whether such inability arises from infirmity of body or mind or any other cause,

the Appointments Committee may, by unanimous decision of its members, suspend the Member from office.

(2) Where the Appointments Committee suspends a Member under subsection (1), it shall forthwith refer the matter to the Attorney-General.

(3) Where a matter is referred to the Attorney-General under subsection (2), the Attorney-General shall advise the Appointments Committee whether disciplinary proceedings should be taken against the Member under this section.

(4) Where the Attorney-General does not, within 7 days of the date on which the Member was suspended, advise that proceedings be taken against the Member, the suspension shall be lifted and the Member reinstated forthwith in his office.

(5) Where the Attorney-General advises that proceedings be taken against the Member –

- (a) the Attorney-General shall forward to the Appointments Committee the charge which the Member will be required to answer, and designate a law officer to sustain the charge;
- (b) the President shall, on such terms and conditions as he may determine, appoint a Judge to hear and determine the charge;
- (c) the Judge appointed under paragraph (b) shall promptly hear and determine the charge.

(6) The Judge shall, within 7 working days of the date on which the hearing is completed, forward his findings to the President.

(7) Where the Judge has found the charge established –

- (a) the President shall refer the matter to the Appointments Committee; and
- (b) the Appointments Committee shall decide whether the appointment of the Member ought to be terminated.

(8) Where the Appointments Committee decides that the appointment of the Member ought to be terminated, the President shall forthwith inform the Member accordingly in writing and his appointment shall be terminated.

#### **24. Officers of the Commission**

(1) Subject to subsection (2), the Commission shall employ such officers it considers necessary to discharge its functions on such terms and conditions as it thinks fit.

(2) The Commission shall not select a person for employment unless–

- (a) it has advertised its intention to do so in the *Gazette* and in at least 3 daily newspapers having a wide circulation in Mauritius;
- (b) it has considered all applications received ;
- (c) it has interviewed the best qualified candidates; and

- (d) it is satisfied that, on the basis of qualifications, experience and merit, the candidate who has been selected is of a standard which qualifies him to be appointed as an officer in the grade for which he has been selected.

(3) The Commission shall, with the approval of the Parliamentary Committee, establish the salaries, wages, allowances and conditions of employment of officers.

(4) Employment by the Commission under subsection (1) shall not be deemed to be employment in a public office.

(5) Notwithstanding subsection (1), the Commission may –

- (a) with the approval of the relevant Service Commission, recruit a public officer or an officer of a local authority on contract; or
- (b) for the purpose of this Act, make use of the services of a police officer or other public officer designated for that purpose by the Commissioner of Police or the Head of the Civil Service, as the case may be.

(6) Where the Commission recruits an officer under subsection (5)(a), that officer shall be granted leave without pay from his service for the duration of his contract of employment with the Commission.

(7) Notwithstanding any condition contained in the contract of employment of an officer employed under subsections (1) and (5)(a), the Commission may, where it is satisfied that it is in the interests of the Commission to do so, but subject to subsection (8), terminate the employment of an officer.

(8) The Commission shall not terminate the employment of an officer unless –

- (a) it has provided the officer with a complete statement of the reasons why it is contemplated that his employment be terminated;
- (b) it has given the officer a full and fair opportunity to show cause why his employment should not be terminated;
- (c) it has, within 7 days of the date on which a hearing held under paragraph (b) is completed, referred the matter to the Corruption Advisory Committee for its advice ; and
- (d) the termination of the employment of the officer is effected within 7 days from the date on which the matter was referred to the Corruption Advisory Committee under paragraph (c).



(9) Where the Commission terminates the employment of an officer who was employed under subsection (5)(a) -

- (a) that officer shall be reinstated to the office which he held immediately prior to his appointment as an officer;
- (b) the Commission may, where the officer's employment was terminated on grounds of fraud, corruption or dishonesty, recommend to the relevant Service Commission that disciplinary proceedings be taken against that officer.

## **25. Disclosure of assets and liabilities**

(2) A Member or officer shall-

- (a) not later than 30 days after the date of his appointment;
- (b) not later than 30 June in every year until he ceases to be a Member; and
- (c) upon the termination of his appointment,

deposit with the Secretary of the Appointments Committee a declaration of his assets and liabilities in relation to himself, his spouse, children and grand children in the form specified in the First Schedule.

## **26. Use of independent professionals**

The Commission may, where it considers it expedient to do so, retain the services of an independent professional or specialized agency from Mauritius or overseas for such specific purpose as the Commission may require.

## **27. Meetings of the Commission**

- (1) The Commission shall meet at least once a month.
- (2) Every meeting shall be convened by the Commissioner.
- (3) The Commissioner shall chair every meeting of the Commission.

(4) Where the Commissioner does not attend a meeting of the Commission, he shall designate one of the Deputy-Commissioners to chair the meeting.

(5) All matters shall be decided by majority of the votes and the Chairman of the meeting shall have a second and casting vote.

## **28. Divisions of the Commission**

- (1) There shall be within the Commission -
  - (a) a Corruption Investigation Division;

- (b) a Corruption Prevention and Education Division;
- (c) a Legal Division;
- (d) such other Divisions as the Commission may set up.

(2) Subject to sections 29 and 35, every Division shall be under the direct responsibility of a Director.

**29. Director of the Corruption Investigation Division**

The Director of the Corruption Investigation Division shall –

- (a) be appointed by the Commission, after consultation with the Prime Minister;
- (b) be responsible for any investigation relating to corruption which the Commission may refer to him;
- (c) be responsible for any investigation relating to money laundering which the FIU may refer to the Commission;
- (d) subject to any condition set, exercise such powers of the Commission as are entrusted to him by the Commission in relation to corruption;
- (e) report to the Commission on any investigation referred to him; and
- (f) comply with all directives of the Commission in relation to his functions.

**30. Director of the Corruption Prevention and Education Division**

(1) The Director of the Corruption Prevention and Education Division shall -

- (a) be appointed by the Commission after consultation with the Prime Minister;
- (b) in respect of such public body as the Commission may direct –
  - (i) exercise vigilance and superintendence over its integrity systems;
  - (ii) enquire into the manner in which contracts for the procurement of goods or for the performance of works is being carried out and performed;
  - (iii) enquire into possibilities of acts of corruption within that public body;

- (iv) report to the Commission on the manner in which integrity systems should be improved;
- (c) under the directions of the Commission –
  - (i) conduct public campaigns to alert the public on the dangers of corruption;
  - (ii) assist in enhancing the school curriculum so as to educate children on the dangers of corruption;
  - (iii) inform the general public on the manner in which complaints of acts of corruption should be made;
  - (iv) conduct campaigns to encourage the formation and strengthening of non-governmental organisations to fight corruption;
  - (v) liaise with private sector organisations and trade-unions for the setting up of anti-corruption practices;
  - (vi) conduct workshops and other activities to promote campaigns for the prevention and elimination of corruption;
  - (vii) promote links between the Commission and international organisations so as to foster international co-operation in the fight against corruption;
  - (viii) encourage links between the Commission and similar agencies in other countries; and
  - (ix) enhance education on the dangers of corruption.

(2) The Director of the Corruption Prevention and Education Division shall -

- (a) subject to any directive given by the Commission, exercise such powers of the Commission as are entrusted to him;
- (b) report to the Commission; and
- (c) comply with every directive of the Commission in relation to his functions.

### **31. The Chief Legal Adviser**

(1) The Legal Division shall be under the responsibility of a Chief Legal Adviser, who shall be a barrister with at least 5 years standing at the Bar, appointed by the Commission.

(2) The Legal Division shall in addition to the powers conferred under section 82 be responsible for tendering legal advice to the Commission.

### **32. General Fund**

(1) The Commission shall establish a General Fund comprising funds derived from the Consolidated Fund, or derived by or accruing to it, from any other source.

(2) The Commission may accept donations, grants and sponsorship after the approval of the Parliamentary Committee and all funds received under this subsection shall be credited to the General Fund.

### **33. Funds of the Commission**

(1) Subject to subsection (2), the funds of the Commission shall be applied only -

- (a) in payment or discharge of any cost, expense and other obligation of the Commission; and
- (b) in payment of any remuneration or allowance payable to any person under this Act.

(2) Funds of the Commission not immediately required for the purposes of the Commission shall be paid into the Consolidated Fund if so directed by the Parliamentary Committee.

### **34. Commission accounts**

The Commission shall open and maintain any account as it thinks fit, with any bank, in the name of the Commission.

### **35. Estimates**

(1) The Commission shall, not less than 3 months before the commencement of every financial year, submit for approval, to the Minister responsible for finance, an estimate of the income and expenditure of the Commission.

(2) Notwithstanding any review of such estimates or any consideration given to them by the Parliamentary Committee prior to their submission to the Minister, the final decision shall rest with the Minister.

(3) Subsection (1) shall not apply to the first financial year of the Commission.

### **36. Audit and annual reports**

(1) The Commission shall, not later than 6 months after the close of every financial year, issue an annual report on the activities, and furnish audited accounts, of the Commission for that financial year, to the Parliamentary Committee.

(2) The Chairman of the Parliamentary Committee shall, at the earliest available opportunity, but not later than one month after receiving a report under subsection (1), lay a copy of the report and audited accounts of the Commission before the National Assembly.

### **37. Exemptions**

(1) The Commission shall be exempt from payment of any duty, levy, rate, charge, fee or tax.

(2) No registration fee shall be payable in respect of any document signed or executed by the Commission under which the Commission is a beneficiary.

### **38. Protection of Members and officers**

A Member or an officer acting in the exercise of his duties under this Act shall, for the purposes of the Public Officers' Protection Act, be deemed to be a public officer.

## **PART IV – ADVISORY COMMITTEES**

### **39. Establishment of Advisory Committees**

(1) There are established for the purposes of this Act the following Advisory Committees –

- (a) the Corruption Advisory Committee;
- (b) the Operations Review Committee; and
- (c) the Community Relations and Prevention Advisory Committee.

(2) An Advisory Committee –

- (a) shall meet at least once a month; and
- (b) may be convened by the Commissioner or the Chairperson of the Advisory Committee.

(3) The Chairperson or, in his absence, the Deputy-Chairperson of an Advisory Committee, shall preside its meetings.

(4) The Commission shall designate an Officer to be the Secretary of the Advisory Committees.

- (5) Four members shall constitute the quorum of an Advisory Committee.
- (6) A question arising at a meeting of an Advisory Committee shall be determined by a majority of the members present and voting.
- (7) Where a member of an Advisory Committee –
  - (a) has a direct or indirect interest in a matter being considered or about to be considered at a meeting of an Advisory Committee;
  - (b) is a member of, in the employment of or otherwise related to a person, company, public body or other body corporate whose affairs are being considered or about to be considered at a meeting of an Advisory Committee;
  - (c) is a relative of a person who is referred to in a report made by the Commissioner to that Advisory Committee,

he shall, at the meeting where such matter is being considered, disclose that fact to the Advisory Committee and shall not attend that part of the deliberations of the Advisory Committee where such matter is being discussed.

(8) The Chairperson of an Advisory Committee shall submit an annual report to the Parliamentary Committee.

(9) The Commission shall not be bound by advice given by an Advisory Committee.

#### **40. The Corruption Advisory Committee**

- (1) The Corruption Advisory Committee which shall be composed of –
  - (a) a Chairperson and a Deputy Chairperson, to be appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and the Chairperson of the Parliamentary Committee;
  - (b) the Chairperson of the Operations Review Committee;
  - (c) the Chairperson of the Community Relations and Prevention Advisory Committee;
  - (d) 3 representatives of the public to be appointed by the President acting in his own deliberate judgment;
  - (e) one representative of a non-governmental organisation engaged in anti-corruption matters, to be appointed by the President in his own deliberate judgment;
  - (f) a representative of the Prime Minister's Office;

- (g) the Financial Secretary; and
  - (h) the Members and the Chief Legal Adviser, who shall be ex-officio members with no right to vote.
- (2) The appointment of a person under subsection (1)(a), (d) and (e) shall –
- (a) be for a term of not less than 3 years;
  - (b) be renewable; and
  - (c) terminate on the expiry of his term of office or on his resignation from office.
- (3) The Corruption Advisory Committee shall –
- (a) advise the Commission on any aspect of the problem of corruption in Mauritius;
  - (b) review the operational, staffing and administrative policies of the Commission;
  - (c) advise the Commission prior to the termination of the appointment of an officer under section 23;
  - (d) receive reports by the Commission on any other disciplinary action which the Commission intends to take against an officer;
  - (e) consider the annual estimates of expenditure of the Commission and make such observations as it considers necessary;
  - (f) consider the annual report of the Commission before its submission to the Parliamentary Committee.

#### **41. The Operations Review Committee**

- (1) There shall be an Operations Review Committee which shall be composed of –
- (a) a Chairperson and a Deputy Chairperson, to be appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and the Chairperson of the Parliamentary Committee;
  - (b) the Chairperson of the Corruption Advisory Committee;
  - (c) 3 representatives of the public to be appointed by the President of the Republic after consultation with the Prime Minister and the Leader of the Opposition;

- (d) the Commissioner of Police;
  - (e) the Members, the Director of the Corruption Investigation Division and the Chief Legal Adviser, who shall be ex-officio members, with no right to vote.
- (2) The appointment of a person under subsection (1)(a) or (c) –
- (a) shall be for a term which shall be not less than 3 years, and which shall be renewable;
  - (b) shall terminate on the expiry of his term of office or on his resignation from office.
- (3) The Operations Review Committee shall receive or call for reports from the Commissioner and advise the Commission on –
- (a) complaints of corruption made to the Commission and the manner in which the Commission is dealing with them;
  - (b) investigations being carried out by the Commission;
  - (c) investigations which the Commission has decided to discontinue;
  - (d) investigations which have lasted more than 6 months;
  - (e) the number of, and the justification for, search warrants authorised by the Commission;
  - (f) any other matter relating to an investigation which the Operations Review Committee may require.

#### **42. The Community Relations and Corruption Prevention Advisory Committee**

- (1) There shall be a Community Relations and Corruption Prevention Advisory Committee which shall be composed of –
- (a) a Chairperson and a Deputy Chairperson, to be appointed by the President after consultation with the Prime Minister, the Leader of the Opposition and the Chairperson of the Parliamentary Committee;
  - (b) the Chairperson of the Media Trust established under the Media Trust Act;
  - (c) two members of trade unions to be appointed by the President in his own deliberate judgment;



- (d) one representative of a non-governmental organisation to be appointed by the President acting in his own deliberate judgment;
- (e) two representatives of the public to be appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.
- (f) the Members, the Director of the Corruption Prevention and Education Division and the Chief Legal Adviser, who shall be ex-officio members with no right to vote.

(2) The Community Relations and Prevention Advisory Committee shall receive, call for reports from and advise the Commission on -

- (a) the establishment of strategies to reduce corruption hazards;
- (b) educational programs to be implemented so as to involve the community in anti-corruption strategies;
- (c) the manner in which the Director of the Corruption Prevention and Education Division should perform his functions;
- (d) practices and procedures of public bodies and of the private sector which may be conducive to corruption and on the specific public bodies and areas of the private sector which should be attended to; and
- (e) the relationship between the Commission and the press.

## **PART V – PROCEEDINGS OF THE COMMISSION**

### **43. Notification of corruption offence**

- (1) Any person may –
  - (a) without disclosing his identity; and
  - (b) orally or in writing,

notify the Commission or an officer of the existence or possible existence of a corruption offence.

(2) The Commission shall take all steps that may be necessary to facilitate the notification to the Commission of the possible existence of an act of corruption.

### **44. Duty to report acts of corruption**

(1) Where an officer of a public body suspects that an act of corruption has been committed within or in relation to that public body, he shall forthwith make a written report to the Commission.

(2) The Commission shall issue such guidelines as it considers appropriate to ensure compliance with subsection (1).

#### **45. Referrals to the Commission**

- (1) Notwithstanding sections 43 and 44, where in the exercise of his functions-
- (a) a Judge or Magistrate;
  - (b) the Ombudsman;
  - (c) the Director of Public Prosecutions;
  - (d) the Director of Audit; or
  - (e) the chief executive of a public body,

is of the opinion that an act of corruption may have occurred, he may refer the matter to the Commission for investigation.

- (2) Where in the course of a Police enquiry –
- (a) it is suspected that an act of corruption has been committed; and
  - (b) the Commissioner of Police is of the opinion that the matter ought to be investigated by the Commission,

the Commissioner of Police may refer the matter to the Commission for investigation.

#### **46. Investigation by the Commission**

- (1) (a) Where, under sections 43, 44 and 45 or on its own initiative, the Commission becomes aware that a corruption offence may have been committed, it shall refer the matter to the Director of the Corruption Investigation Division who shall forthwith make a preliminary investigation of the matter.
- (b) The Director of the Corruption Investigation Division shall, within 7 days of a referral under subsection (1) or within such other period as the Commission may direct, report to the Commission on the matter.

(2) The Director of the Corruption Investigation Division shall, within 7 days of a referral to him of an information referred to the Commission by the FIU under section 13 of the Financial Intelligence and Anti-Money Laundering Act 2002, investigate and report to the Commission on the matter.

- (3) Upon receipt of a report under subsection (2), the Commission shall –
- (a) proceed with further investigations; or
  - (b) discontinue the investigation.

(4) Where the Commission discontinues an investigation under subsection (3)(b), the Commissioner shall report the matter to the Operations Review Committee, stating the reasons for discontinuing the investigation.

(5) On receiving a report under subsection (4), the Operations Review Committee shall consider the report and –

- (a) approve the decision of the Commission to discontinue the investigation;
- (b) advise the Commission as to such further investigation on the matter;
- (c) instruct the Commission on such further action as it considers necessary; or
- (d) instruct that the matter be referred to the Commissioner of Police for investigation.

(6) The Commission shall comply with an instruction given under subsection (5).

#### **47. Further investigation by the Commission**

(1) Where further investigation is carried out under section 46(3) or (5)(b), the Commissioner and one Deputy-Commissioner designated by the Commissioner shall conduct the investigation.

(2) For the purposes of such an investigation, the Members specified in subsection (1) may delegate such of their powers as they consider appropriate to the Director of the Corruption Investigation Division or to any other officer.

(3) In carrying out an investigation under this section, the Commission may conduct such hearings as it considers appropriate and, for that purpose –

- (a) the hearing shall be conducted by the Commissioner or such Deputy-Commissioner or officer as the Commissioner considers appropriate;
- (b) the Chief Legal Adviser, or a member of the Legal Division deputed by the Chief Legal Adviser, shall be in attendance and shall provide legal advice to the Commission;
- (c) the hearing may be conducted in public or in private as the Commissioner may, in his discretion, determine;
- (d) where the Commissioner decides that the hearing shall not be conducted in public, no person shall make any report of the hearing unless he has obtained the prior permission of the Commissioner in writing;

- (e) any person who is required by the Commission to attend the hearing shall be entitled to be represented by the law practitioner of his choice;
- (f) where the hearing is conducted by the Commissioner, the Commissioner may take a deposition on oath or solemn affirmation and may administer the oath or solemn affirmation to any person attending the hearing.

(4) Any person who, in the course of a hearing under subsection (3), knowingly makes a statement which is false or misleading in a material particular, shall commit an offence and shall, on conviction, be liable to a fine of not more than 500,000 rupees and imprisonment for a term not exceeding 5 years.

(5) After conclusion of an investigation under this section, the Commission shall submit the matter to the Operations Review Committee for its opinion.

(6) After receipt of the opinion of the Operations Review Committee, the Commission shall submit a report to the Director of Public Prosecutions which shall include –

- (a) all the material, information, statements and other documents obtained in the course of the investigation;
- (b) a description of the articles of evidence which have remained in the custody of the Commission;
- (c) the recommendations of the Commission;
- (d) the opinion of the Operations Review Committee.

(7) After consideration of the report submitted under subsection (6), the Director of Public Prosecutions may, where he does not advise prosecution or any other action, require the Commission to conduct such further inquiries as the Director of Public Prosecutions considers fit to advise.

#### **48. Protection of informers**

(1) Where the Commission receives information in confidence to the effect that an act of corruption has occurred, that information and the identity of the informer shall be secret between the Commission and the informer, and all matters relating to such information shall be privileged and shall not be disclosed in any proceedings before any court, tribunal or other authority.

(2) Where any record, which is given in evidence or liable to inspection in any civil, criminal or other proceedings, contains an entry relating to the informer or the information given by the informer, the Commissioner shall cause all parts relating to the informer or the information given to be concealed from view so as to protect the identity of the informer.

#### 49. Protection of witnesses

- (1) Subject to subsection (6), where a person -
- (a) discloses to a Member or an officer that a person, public official, body corporate or public body is or has been involved in an act of corruption; and
  - (b) at the time he makes the disclosure, believes on reasonable grounds that the information he discloses may be true and is of such a nature as to warrant an investigation under this Act,

he shall incur no civil or criminal liability as a result of such disclosure.

- (2) Subject to subsection (6), where a public official –
- (a) discloses to his responsible officer or to the Commissioner that an act of corruption may have occurred within the public body in which he is employed; and
  - (b) believes on reasonable grounds that the information is true,

he shall incur no civil or criminal liability as a result of such disclosure and no disciplinary action shall be started against him by reason only of such disclosure.

(3) A person who makes a disclosure under subsection (1) or (2) shall assist the Commission in any investigation which the Commission may make in relation to the matters disclosed by him.

(4) A person to whom a disclosure is made under subsection (1) or (2) shall not, without the consent of the person making the disclosure, divulge the identity of that person except where it is necessary to ensure that the matters to which the information relates are properly investigated.

(5) A person who commits an act of victimisation against a person who has made a disclosure under subsection (1) or (2) shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.

(6) A person who makes a false disclosure under subsection (1) or (2) knowing it to be false shall be guilty of an offence and shall, on conviction, be liable to pay a fine not exceeding 50,000 rupees and to imprisonment not exceeding one year.

- (7) In this section, “victimisation” means an act –
- (a) which causes injury, damage or loss;
  - (b) of intimidation or harassment;

- (c) of discrimination, disadvantage or adverse treatment in relation to a person's employment; or
- (d) amounting to threats of reprisals.

**50. Powers of the Commission to examine person**

(1) Where the Commission decides to proceed with further investigations under section 46 or 47, the Commissioner may –

- (a) order any person to attend before him for the purpose of being examined orally in relation to any matter;
- (b) order any person to produce before him any book, document, record or article;
- (c) order that information which is stored in a computer, disc, cassette, or on microfilm, or preserved by any mechanical or electronic device, be communicated in a form in which it can be taken away and which is visible and legible;
- (d) by written notice, order a person to furnish a statement in writing made on oath or affirmation setting out all information which may be required under the notice.

(2) A person on whom an order under subsection (1) has been served shall –

- (a) comply with the order;
- (b) attend before the Commissioner in accordance with the terms of the order;
- (c) continue to attend on such other days as the Commissioner may direct until the examination is completed; and
- (d) subject to subsection (3), answer questions and furnish all information, documents, records or statements as ordered by the Commissioner.

(3) A person may refuse to answer a question put to him or refuse to furnish information, documents, records or statements where the answer to the question or the production of the document or class of documents might tend to incriminate him.

(4) Subsection (3) shall not apply where the Commissioner, after consultation with the Director of Public Prosecutions, gives an undertaking in writing to a person that any answer given or document or class of document produced will not be used in evidence in any criminal proceedings against him for an offence other than proceedings for perjury.

(5) Where an undertaking has been given under subsection (4), no court of law shall admit the answer or document or class of documents referred to in the undertaking in any criminal proceedings against the person to whom the undertaking was given, except in proceedings for perjury.

(6) A person who after having been served with an order under subsection (1) –

- (a) fails, without reasonable excuse, to comply with any of the terms of the order;
- (b) conceals, destroys, alters, tampers with, removes from the place where it is habitually kept, or otherwise disposes of, a book, document, record or article referred to in the order,

shall commit an offence and shall, on conviction, be liable to a term of imprisonment not exceeding 5 years.

### **51. Orders to search certain premises**

(1) Subject to subsections (3) and (4), where, upon notification or after consultation with the FIU, the Commission has reasonable grounds to believe that –

- (a) a bank, financial institution or cash dealer has failed to keep a business transaction record as required under section 17 of the Financial Intelligence and Anti-Money Laundering Act 2002;
- (b) a bank, financial institution, cash dealer or a member of a relevant profession or occupation, has failed to report any suspicious transaction as required under section 14 of the Financial Intelligence and Anti-Money Laundering Act 2002;  
or
- (c) a bank, financial institution, cash dealer or a member of a relevant profession or occupation is in possession of documents, books or records or other information which may assist the Commission in an investigation,

the Commission may apply to a Judge in Chambers for an order allowing the Commission, or any officer delegated by it, to enter premises belonging to, or in the possession or control of, the bank, financial institution, cash dealer or member of a relevant profession or occupation and to search the premises and remove therefrom any document or material.

(2) An application under subsection (1) shall be supported by an affidavit by the Commissioner disclosing the reason why an order is sought under this section.

(3) No order shall issue under subsection (1) with respect to a law practitioner unless the Judge is satisfied that, having regard to the need to protect legal professional privilege, it is in the public interest that the order be made without requiring the law practitioner to show cause why the order should not be made.

## **52. Power of entry and search**

(1) Where the Commission has reasonable ground to believe that there is, on specified premises or in any place of business, evidence which may assist it in its investigation, it may issue a warrant to an officer authorising him to enter and search, at all reasonable times, the said premises or place of business and remove therefrom any document or material which may provide evidence relevant to an investigation being conducted by the Commission.

(2) A search under subsection (1) shall, so far as is practicable, be conducted in the presence of the occupier of the premises or his duly authorised agent.

(3) Prior to a search under subsection (1), the Officer shall deliver a photocopy of the warrant to the occupier of the premises or his duly authorised agent against receipt acknowledged by a signature on the original of the warrant.

(4) Where a search is effected under subsection (1), the officer effecting the search may –

- (a) seize and take possession of any book, document, computer disk or other article;
- (b) inspect, make copies of, or take extracts from, any book, record or document;
- (c) search any person who is on the premises, detain him for the purpose of the search, and seize any article found on such person;
- (d) break open, examine, and search any article, safe, container or receptacle.

## **53. Powers of arrest**

(1) Where the Commissioner is satisfied that a person who may assist him in his investigation –

- (a) is about to leave Mauritius;
- (b) has interfered with a potential witness; or
- (c) intends to destroy documentary evidence which is in his possession and which he has refused to give to the Commission,

the Commission may, in writing, direct an officer to arrest that person.

(2) Where a person is arrested under subsection (1), he shall –

- (a) forthwith be brought to the office of the Commission;



- (b) be explained his constitutional rights and given the right to contact his lawyer;
- (c) be allowed prompt access to his lawyer;
- (d) not be questioned unless a video recording is made of the proceedings;
- (e) unless the Commission is satisfied that it is necessary that his detention be prolonged, be released immediately upon furnishing such surety in a reasonable amount as the Commissioner may determine; and
- (f) be brought before a Magistrate, who may impose such conditions as he considers necessary for his release.

#### **54. Property tracking and monitoring order**

(1) Where, for the purposes of an investigation under section 46, the Commission –

- (a) needs to determine whether any property belongs to, is in the possession or under the control of, a person; or
- (b) has reasonable ground for suspecting that a person has committed, is committing, or is about to commit an offence which the Commission has power to investigate,

the Commission may issue a directive under subsection (2) to the Director of the Corruption Investigation Division.

(2) A directive under subsection (1) may direct –

- (a) that any document relevant to the –
  - (i) identification, location or quantification of any property; or
  - (ii) identification or location of any document necessary for the transfer of any property,

belonging to, or in the possession or under the control of, the person named in the directive be delivered forthwith to the Director of the Corruption Investigation Division;

- (b) that a bank, financial institution, cash dealer or member of a relevant profession or occupation forthwith produces to the Director of the Corruption Investigation Division, all information obtained by it about any business transaction conducted by or for that person with it during such period before or after the date of the order as the Judge may direct.

### **55. Enforcement of property tracking and monitoring order**

A Judge in Chambers may, on good cause shown by the Commission that any person is failing to comply with, is delaying or is otherwise obstructing a directive made in accordance with section 54, order that the Commission or any officer authorised by it may enter any premises of the bank, financial institution, cash dealer or member of a relevant profession or occupation, search the premises and remove any document, material or other thing therein for the purposes of executing such order.

### **56. Application for attachment order**

(1) Notwithstanding any other enactment, where a Judge in Chambers, on an application by the Commission, is satisfied that the Commission has reasonable ground to suspect that a person has committed an offence under this Act or the Financial Intelligence and Anti-Money Laundering Act 2002, he may make an attachment order under this section.

(2) An order under this section shall –

- (a) attach in the hands of any person named in the order all money and other property due or owing or belonging to or held on behalf of the suspect;
- (b) require the person named in the order to declare in writing to the Commission, within 48 hours of service of the order, the nature and source of all moneys and other property so attached; and
- (c) prohibit the person from transferring, pledging or otherwise disposing of any money or other property so attached except in such manner as may be specified in the order.

(3) Where an order is made under this section, the Commission shall –

- (a) cause notice of the order to be published in the next issue of the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius; and
- (b) give notice of the order to –
  - (i) all notaries;
  - (ii) all banks, financial institutions and cash dealers; and
  - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the suspect.

### **57. Features of attachment order**

(1) An attachment order shall be served on each of the persons named in the order and on the suspect by an usher of the Supreme Court.

(2) Subject to subsection (3), an attachment order shall, unless revoked by a Judge in Chambers, remain in force for 60 days from the date on which it is made.

(3) An attachment order may be renewed for successive periods of 60 days on application made by the Commission, where the Judge in Chambers is satisfied that the Commission has obtained or is likely to obtain substantial new information relating to an offence under this Act.

(4) Any period of time during which the suspect is absent from Mauritius, as certified to the Judge in Chambers by the Commission, shall not be reckoned as part of any period of validity of an attachment order.

### **58. Seizure of movable property**

(1) Where in the course of an investigation under this act, the Commissioner is satisfied that movable property is the subject-matter of or relates to an offence under this Act, the Commissioner may seize that property.

(2) The Commissioner shall keep a record of property seized under subsection (1) and shall cause a copy of that record to be served on the person from whom the property was seized.

(3) A seizure effected under subsection (1) shall be effected by placing the property seized under the custody of such person and at such place as the Commissioner may determine.

(4) Notwithstanding subsection (3), where the Commissioner considers that it is not practicable to remove the property, he may leave it at the premises on which it is found under the custody of such person as he may direct for that purpose.

(5) Where movable property seized under subsection (1) is under the custody of a third party, the Commissioner may direct that third party not to dispose of the property without his consent in writing.

## **PART VI – THE PARLIAMENTARY COMMITTEE**

### **59. The Parliamentary Committee**

(1) There shall, for the purposes of this Act, be a Parliamentary Committee for the monitoring of the Independent Commission Against Corruption.

(2) The Parliamentary Committee shall be composed of 10 members, 5 of whom shall be designated by the Prime Minister and 5 of whom shall be designated by the Leader of the Opposition.

(3) The members shall designate, from among themselves, the Chairperson of the Parliamentary Committee.

(4) Where the members of the Parliamentary Committee are unable to agree on the designation of the Chairperson under subsection (3), the Speaker shall, upon receiving a report from the Secretary of the Parliamentary Committee to that effect, designate one of the members to be the Chairperson of the Parliamentary Committee.

(5) The Clerk of the Assembly shall be the Secretary of the Parliamentary Committee.

(6) Subject to subsection (7), the Commissioner and the Financial Secretary shall, and the Director of Audit, if so requested, may, attend every meeting of the Parliamentary Committee.

(7) The Chairperson of the Parliamentary Committee may excuse the Financial Secretary from attending a meeting of the Parliamentary Committee.

#### **60. Proceedings of the Parliamentary Committee**

(1) The Parliamentary Committee shall meet at least once every month and on such other date as the Chairperson of the Parliamentary Committee may determine.

(2) The proceedings of the Parliamentary Committee shall be governed by the Standing Orders of the Assembly relating to Select Committees of the Assembly and by such other Orders as the Speaker may make.

#### **61. Functions and powers of the Parliamentary Committee**

- (1) Subject to subsection (3), the Parliamentary Committee shall—
- (a) monitor and review the manner in which the Commission fulfils its functions under this Act;
  - (b) review the budgetary estimates of the Commission;
  - (c) issue such instructions as it considers appropriate with regard to —
    - (i) the financial management of the Commission;
    - (ii) the staffing requirements of the Commission; and
    - (iii) the allocation of resources to the various operations of the Commission;
  - (d) subject to subsection (4), issue guidelines and give general directives to the Commission with regard to the manner in which the Commission is to perform its functions and exercise its powers;

- (e) receive reports from the Commission at such intervals as the Parliamentary Committee may require ;
- (f) make a report to the Assembly where the Committee considers that it is expedient that the attention of the Assembly be directed to –
  - (i) the manner in which the Commission is discharging its functions and exercising its powers;
  - (ii) the financial situation of the Commission;
  - (iii) the need for further legislative reforms; or
  - (iv) any other matter relating to this Act;
- (g) consider the annual report and other reports of the Commission and report to the Assembly on any matter appearing in or arising out of such report ; and
- (h) report to the Prime Minister on any matter relating to this Act.

(2) In the exercise of its functions under this Act, but subject to subsection (3), the Parliamentary Committee may –

- (a) examine a member or an officer; and
- (b) summon a public official to answer questions and produce documents.

(3) Notwithstanding this Act –

- (a) the Parliamentary Committee shall not –
  - (i) exercise its powers or discharge its functions in relation to a specific case under investigation by the Commission;
  - (ii) require the Commission to reconsider a decision to investigate or not to investigate or to discontinue the investigation of a particular complaint ;
  - (iii) reconsider the findings of the Commission in relation to a particular investigation or complaint ;
  - (iv) question a member, an officer or a public official concerning, or otherwise enquire into, a matter which is under investigation by the Commission;

- (b) A member, an officer or a public official may refuse to answer a question which –
  - (i) is in relation to a specific matter which is the subject of an investigation by the Commission ;
  - (ii) in his opinion, would tend to disclose facts relating to a matter which is the subject of an investigation by the Commission.

(4) Where the Parliamentary Committee issues a guideline under subsection (1)(d) -

- (a) the Chairperson of the Parliamentary Committee shall lay the guideline on the table of the Assembly within 14 days from the date on which such guideline was issued ;
- (b) a Member of the Assembly may, within 30 days of the date on which the guideline has been tabled, move the Assembly that the guideline be disallowed and, on such motion being tabled, it shall be debated and put to a vote at the next sitting of the Assembly.

(5) Where –

- (a) a guideline under subsection (1)(d) has not been laid on the table of the Assembly under subsection (4) (a); or
- (b) a motion of disallowance under subsection (4)(b) has been voted by the Assembly,

the guideline shall cease to have effect.

## **PART VII – RESTRAINT AND FORFEITURE OF PROCEEDS OF CORRUPTION AND MONEY LAUNDERING**

### **62. Freezing of assets**

(1) Where a person is charged or is about to be charged in any Court with a corruption offence or a money laundering offence, the Supreme Court may, on an application by the Director of Public Prosecutions, order, subject to such conditions as to the duration of the order or otherwise as the Court deems fit -

- (a) the attachment in the hands of any person named in the order all moneys and other property due or owing or belonging to or held on behalf of the accused; and
- (b) the prohibition of the accused or any person acting on his behalf or any other person named in the order from transferring, pledging or otherwise disposing of any money or other property so attached.

(2) The Supreme Court may, in respect of any order under subsection (1), specify moneys or salaries, wages, pensions or other benefits that shall be paid to or received by the accused indicating the source, manner and circumstance of payment or receipt.

(3) In making an order under subsection (1), the Supreme Court may authorise -

- (a) the payment of debts incurred in good faith and due to creditors of the accused, before the request for the order was made by the Director of Public Prosecutions;
- (b) the sale, transfer or disposal of any property by the accused where the Supreme Court is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.

(4) The Supreme Court may appoint the Official Receiver or any suitable person to manage the assets of the accused under the supervision of the Supreme Court.

(5) An order under this section shall take effect forthwith and the Director of Public Prosecutions shall -

- (a) cause notice of the order to be published in the next issue of the *Gazette* and in at least 2 daily newspapers published and circulated in Mauritius; and
- (b) give notice of the order to -
  - (i) all notaries;
  - (ii) banks, financial institutions and cash dealers; and
  - (iii) any other person who may hold or be vested with property belonging to or held on behalf of the accused.

(6) An order under this section shall, subject to any condition to the contrary imposed under subsection (1), remain in force -

- (a) until the Director of Public Prosecutions decides not to proceed with a charge or intended charge under subsection (1);
- (b) until the final determination of the charge under subsection (1);  
or
- (c) in the event of a conviction, until an order for forfeiture is made by the Court under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002 or any proceedings relating thereto are concluded.

(7) Where an order under this section ceases to have effect or is revoked, the Director of Public Prosecutions shall cause notice to be published in the Gazette and in at least 2 daily newspapers published and circulated in Mauritius.

(8) Any payment, transfer, pledge or other disposition of property made in contravention of an order made under this section shall be void.

(9) In this section, "accused" means a person who is charged or is about to be charged with a corruption offence or a money laundering offence.

### **63. Proceedings consequent on forfeiture**

(1) Where an order for forfeiture of property has been made pursuant to section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002, or as a result of an application made under section 70, the convicted person or any other person claiming an interest in the property may apply by way of motion to the Supreme Court for a declaration that the property subject of the order is not the proceeds of a corruption offence or a money laundering offence nor otherwise involved in such an offence, nor acquired nor obtained directly or indirectly from, by, or through, any such proceeds.

(2) An application under subsection (1) shall be filed in the Registry of the Supreme Court not later than 3 months after the date of the order for forfeiture, in default of which the order shall become final.

(3) The Supreme Court, after hearing the application, may -

- (a) if the applicant has satisfied it, on the balance of probabilities, that the property is not the profits or proceeds of a corruption offence or a money laundering offence, grant the application and annul the order of forfeiture or any part of such order; or
- (b) if not so satisfied, dismiss the application, and confirm the order of forfeiture which shall thereupon become final.

(4) Where the Supreme Court grants an application under subsection (3)(a) in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment, and the applicant shall thereupon be entitled to the recovery of any income received by the Government from such property during the period of its forfeiture.

### **64. Payment in lieu of forfeiture**

Where the Supreme Court is satisfied that the order for forfeiture under section 82 of this Act or section 8(2) of the Financial Intelligence and Anti-Money Laundering Act 2002, or pursuant to an application made under section 70, cannot be enforced and, in particular that the property -

- (a) cannot, with due diligence, be located;



- (b) has been transferred to a third party in circumstances which give rise to a reasonable inference that the property has been transferred for the purpose of avoiding the forfeiture of that property;
- (c) is located outside Mauritius;
- (d) has been substantially diminished in value and rendered worthless; or
- (e) has been commingled with other property that cannot be divided without difficulty,

the Supreme Court may, instead of ordering the property or part thereof or interest therein to be forfeited, order the person to pay an amount equal to the value of the property, part or interest.

## **PART VIII – MUTUAL ASSISTANCE IN RELATION TO CORRUPTION OR MONEY LAUNDERING OFFENCES**

### **Sub-Part I – Authentication of documents**

#### **65. Authentication of documents**

For the purposes of this Part, a document is authenticated if –

- (a) it purports to be signed or certified by a Judge, Magistrate or officer in or of the requesting State; and
- (b) it purports to be authenticated by the oath or affirmation of a witness or to be sealed with an official or public seal –
  - (i) of a Minister, Department of State or Department or officer in or of the Government of the requesting State; or
  - (ii) in the case of a territory, protectorate or colony, of the person administering the Government of the requesting territory, protectorate or colony, or of a person administering a department of that territory, protectorate or colony.

### **Sub-Part II – Providing assistance to foreign State**

#### **66. Co-operation with foreign States**

(1) Subject to section 71, where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commissioner shall, after consultation with the Minister responsible for foreign affairs and the Attorney-General –

- (a) execute the request; or

- (b) inform the foreign State making the request of any reason –
  - (i) for not executing the request forthwith; or
  - (ii) for delaying the execution of the request.

(2) Where a request relating to a money laundering offence is referred to the Commission under the Financial Intelligence and Anti-Money Laundering Act 2002, the Commission shall execute the request by making, if necessary, any application that he is empowered to make under sections 67 to 70 as if the application were an application in relation to a money laundering offence.

#### **67. Power of Commissioner to obtain search order**

(1) Where the Commissioner decides to execute a request under section 66, the Commissioner may apply to a Judge in Chambers for an order to -

- (a) enter any premises belonging to, or in the possession or control of, any person named in the application and search the premises;
- (b) search any person named in the application; and
- (c) remove any document or material for the purpose of executing the request.

(2) The Judge shall not make an order unless he is satisfied that –

- (a) the documents emanating from the foreign State and accompanying the request in support of the application are duly authenticated;
- (b) there are reasonable grounds to believe that a corruption offence has been committed in the requesting State; and
- (c) that the order sought is necessary for the purpose of the investigation or prosecution, as the case may be.

#### **68. Order for property tracking**

(1) Where the Commissioner decides to execute a request for assistance from a foreign State, the Commissioner may apply to a Judge in Chambers for an order under section 54.

(2) An application for the issue of an order under this section shall be supported by a copy of the request from the foreign State.

## **69. Order for freezing of property**

(1) Where the Commissioner decides to execute a request for assistance from a foreign State, the Commissioner may apply to a Judge in Chambers for an order to freeze the property of or in the possession or under the control of the person named in the request for such period as may be specified in the order.

(2) An application under subsection (1) shall be accompanied by the request from the foreign State and –

- (a) an authenticated copy of an order of a Court in the requesting foreign State ordering the freezing of property of a person who has been charged with a relevant offence in the requesting State; or
- (b) an affidavit of a competent officer in or of the requesting State stating that a person has been charged with a relevant offence in that State.

(3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted a corruption offence or money laundering offence.

(4) The Judge in Chambers may, in an order under subsection (1), authorise –

- (a) the payment of debts incurred in good faith and due to creditors of the accused, before the request for the order was made; or
- (b) the sale, transfer of, disposal of, any property by the accused where the Judge in Chambers is satisfied that such sale, transfer or disposal is necessary in order to safeguard the property rights of any other person claiming an interest in the property.

## **70. Order for forfeiture of property**

(1) Where the Commissioner, after consultation with the Minister responsible for foreign affairs and the Attorney General, decides to execute a request from a foreign State for assistance, the Commissioner may apply to a Judge in Chambers for an order to freeze the property of, or in the possession or under the control of, the person named in the request.

(2) An application under subsection (1) shall be accompanied by –

- (a) the request from the foreign State;
- (b) an authenticated copy of an order of a Court in the requesting State ordering the forfeiture of property of a person who has been convicted of a relevant offence in the requesting State; and

- (c) an affidavit of a competent officer of the requesting State stating that the conviction and the forfeiture order are final and that no further appeal lies in respect of either.

(3) For the purposes of this section, a relevant offence is an offence constituted by any act or omission which, had it occurred in or within the jurisdiction of Mauritius, would have constituted a corruption offence or a money laundering offence.

#### **71. Limitations on compliance with request**

- (1) The Commissioner may refuse to comply with a request made under section 66 where –
  - (a) the action sought by the request contravenes, or is likely to contravene, the Constitution;
  - (b) the execution of the request is likely to prejudice the national interest; or
  - (c) the requesting State has not provided an undertaking that it would comply with a similar request made by Mauritius.
- (2) An undertaking of reciprocity is not required in any case where –
  - (a) there is a treaty between Mauritius and the requesting State relating to the provision of assistance in relation to the proceeds of money laundering or corruption offences; or
  - (b) the law of the requesting State permits it to grant assistance to Mauritius in similar circumstances.

#### **72. Relationship with Letters of Request Rules**

Nothing in this Part shall affect the operation of the Letters of Request Rules 1985.

### **Sub-Part III – Obtaining assistance from foreign States**

#### **73. Request to foreign States**

- (1) The Commissioner may, after consultation with the Minister responsible for foreign affairs and the Attorney General, make a request to a foreign State –
  - (a) which he considers may be able to provide evidence or information relating to a corruption offence; or
  - (b) for the restraint and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a corruption offence.

(2) Where the foreign State, to which a request for assistance is made under subsection (1), requires the request to be signed by an appropriate competent authority, the Commissioner shall, for the purposes only of making such a request, be considered as the appropriate competent authority.

#### **74. Issuing order against a person resident in a foreign State**

The Commissioner may, in respect of any proceedings for corruption offence or money laundering offence, apply to a Judge in Chambers for an order directed to any person resident in a foreign State to deliver himself or any document or material in his possession or under his control to the jurisdiction of the Supreme Court or, subject to the approval of the foreign State, to the jurisdiction of the Court of the foreign state for the purpose of giving evidence in relation to those proceedings.

#### **75. Evidence pursuant to a request**

Evidence taken pursuant to a request in any proceedings in a Court of a foreign State may, if it is authenticated, be *prima facie* admissible in any proceedings to which such evidence relates.

### **Sub-Part IV - General**

#### **76. Requests**

(1) A request under this Part shall be in writing and shall be dated and signed by or on behalf of the person making the request.

(2) A request may be transmitted by facsimile or by any other electronic device or means.

#### **77. Requirements for request**

A request shall -

- (a) confirm either that an investigation or prosecution is being conducted in respect of a suspected corruption offence or that a person has been convicted of any such offence;
- (b) state the grounds on which any person is being investigated or prosecuted for any corruption offence, or give details of the conviction of the person;
- (c) give sufficient particulars of the identity of the person;
- (d) give particulars sufficient to identify any bank, financial institution, cash dealer or other person believed to have information, documents or material which may be of assistance to the investigation or prosecution;

- (e) request assistance to obtain from a bank, financial institution, cash dealer or other person all and any information, documents or material which may be of assistance to the investigation or prosecution;
- (f) specify the manner in which and to whom any information, document or material obtained pursuant to the request is to be produced;
- (g) state whether a freezing order or forfeiture order is required and identify the property to be the subject of such an order; and
- (h) contain such other information as may assist the execution of the request.

**78. Request not to be invalidated**

A request shall not be invalidated for the purposes of this Act or any legal proceedings by virtue of any failure to comply with any provisions of this Part, where the Commissioner is satisfied that there is sufficient compliance to enable him to execute the request.

**79. Asset sharing**

Where the Minister to whom responsibility for the subject of finance is assigned considers it appropriate, either because an international arrangement so requires or permits or in the public interest, he may order that the whole or any part of any property forfeited under this Part, or the value thereof, be given or remitted to the requesting State.

**PART IX - EXTRADITION**

**80. Corruption offence extraditable**

Any corruption offence shall be deemed to be an extradition crime for which extradition may be granted or obtained under the Extradition Act.

**PART X – MISCELLANEOUS**

**81. Confidentiality**

(1) Every Member and every officer shall take the oath specified in the Second Schedule.

(2) No member or officer shall, except in accordance with this Act, or as otherwise authorised by law-

- (a) divulge any information obtained in the exercise of a power, or in the performance of a duty, under this Act;
- (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the Director of the Corruption Investigation Division.

(3) Every Member and every officer shall maintain confidentiality and secrecy of any matter, document, report and other information relating to the administration of this Act that becomes known to him, or comes in his possession or under his control.

(4) Notwithstanding subsections (2) and (3), the Commissioner may disclose, for the purposes of publication in the press, such information as he considers necessary in the public interest.

(5) For the purpose of an investigation in respect of an offence committed in Mauritius under this Act and the Financial Intelligence and Anti-Money Laundering Act 2002, the Commissioner may, with the express written concurrence of the Director of Public Prosecutions, impart to an agency in Mauritius or abroad, such information, other than the source of the information, as may appear to him to be necessary to assist an investigation into money laundering or any other offence.

(6) Any person who, without lawful excuse, contravenes this section shall commit an offence and shall, on conviction, be liable to a fine not exceeding 10,000 rupees and to imprisonment for a term not exceeding 2 years.

## **82. Prosecution, conviction and forfeiture**

(1) Subject to subsection (2), no prosecution for an offence under this Act shall be instituted except by, or with the consent of, the Director of Public Prosecutions.

(2) The Commissioner, the Director of the Corruption Investigation Division, or any other officer designated by the Commission, may swear an information and conduct the prosecution in respect of any offence under this Act.

(3) Subsection (2) shall be without prejudice to the Chief Legal Adviser, or any officer of the Legal Division designated by him conducting any prosecution as specified in that subsection.

(4) Where a person is convicted of an offence under this Act, the Court may, in addition to any penalty imposed, order the forfeiture of the property the subject-matter of the offence.

## **83. Burden of proof**

In the course of a trial of an accused for a corruption offence, it shall be presumed that at the time a gratification was received, the recipient knew that such gratification was made for a corrupt purpose.

#### **84. Possession of unexplained wealth**

- (1) The Commission may –
- (a) order any public official or any person suspected of having committed a corruption offence to make a statement under oath of all his assets and liabilities and of those of his relatives and associates;
  - (b) investigate whether any public official or any person suspected of having committed a corruption offence –
    - (i) has a standard of living which is commensurate with his emoluments or other income;
    - (ii) owns, or is in control of, property to an extent which is disproportionate to his emoluments or other income; or
    - (iii) is able to give a satisfactory account as to how he came into ownership, possession, custody or control of any property.

(2) Where, in proceedings for an offence under this Act, it is established that the accused -

- (a) was maintaining a standard of living which was not commensurate with his emoluments or other income;
- (b) was in control of property to an extent which is disproportionate to his emoluments or other income;
- (c) held property for which he, his relative or associate, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control,

that evidence shall be admissible to corroborate other evidence relating to the commission of the offence.

#### **85. Civil proceedings**

Where the Commission is satisfied that a person has been a party to corruption and has benefited from it, the Commission shall refer the matter to the Attorney-General who may enter civil proceedings for damages for any prejudice caused to the State.

#### **86. Donations and legacies**

Article 910 of the Code Napoleon shall not apply to the Commission.



**87. Regulations**

(1) The Prime Minister may make such regulations as he thinks fit for the purposes of this Act.

(2) Regulations made under this Act may provide for –

- (a) the levying of fees by the Commission;
- (b) rules of procedure governing the exercise of its functions by the Commission;
- (c) rules governing the communication of information to the press;
- (d) rules governing the interrogation of persons in the course of hearings held by the Commission.

**88. Consequential amendments**

(1) The Banking Act is amended in section 39 –

- (a) in subsection (2), by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and replaced by a semi-colon –
  - (g) the bank has been directed to produce any information pursuant to a directive issued by the Independent Commission Against Corruption under the Prevention of Corruption Act 2002.
- (b) in subsection (5), by deleting the words “the Director or”;
- (c) in subsection (12), by deleting the definition of “Director”.

(2) The Declarations of Assets Act is amended –

- (a) by deleting the word “Clerk” wherever it appears and replacing it by the word “Commission”;
- (b) in section 2 –
  - (i) by deleting the definition of “Clerk”;
  - (ii) by inserting in its appropriate alphabetical place, the following new definition -

“Commission” means the Independent Commission Against Corruption established under the Prevention of Corruption Act 2002.

(3) The Trusts Act 2001 is amended by repealing sections 53 and 54, and replacing them by the following sections –

**53. Constructive trust**

- (1) A person holding any fiduciary obligations who –
- (a) derives a profit from a breach of his fiduciary duties; or
  - (b) obtains property as a result of such a breach,

shall be deemed to be a trustee of the profit or property for the person to whom the duties are owed.

- (2) A trustee who –
- (a) derives a profit from a breach of trust; or
  - (b) obtains property as a result of such a breach,

shall be deemed to be a trustee of the profit or property for the beneficiary of the trust.

(3) Without prejudice to any other remedy provided by law, the person referred to in subsection (1) to whom fiduciary duty is owed, or the beneficiary referred to in subsection (2), may apply to the Court for an order that the profit or property obtained from the breach of fiduciary duties or of trust be traced and recovered to him.

(4) A person shall not be liable for breach of trust or of fiduciary duty under this section where he established that the profit or property was obtained in good faith.

(5) This section does not exclude any other circumstances in which a constructive trust may arise.

**54. Tracing**

Without prejudice to the personal liability of a trustee, or a person in breach of his fiduciary duty, trust property which has been charged or dealt with in breach of trust or fiduciary duty, or the property into which it has been converted, may be followed and recovered unless –

- (a) it is no longer identifiable;
- (b) it is in the hands of a bona fide purchaser for value without notice of the breach of trust, or of any other defect in the title;

- (c) it has been charged in favour of a person who bona fide acquired his rights therein for value and without notice of the breach of trust or any other defect in the title;
- (d) a person, other than the trustee, derived his title through a bona fide purchaser or charge holder for value without notice of the breach of trust or defect.

## **89. Repeal**

The following enactments are repealed -

- (a) the Economic Crime and Anti Money Laundering Act; and
- (b) sections 125 to 133A of the Criminal Code.

## **90. Savings and transitional provisions**

(1) Notwithstanding section 89, any judicial proceedings to which the Economic Crime Office or its Director, or the Revenue Authority or its Director-General by virtue of the Economic Crime and Anti Money Laundering (Temporary Provisions) Act 2001, was a party shall continue as if the Commission established under this Act, or the Commissioner referred to under section 19, were a party to the proceedings.

(2) The Commissioner of Police may -

- (a) commence any investigation, swear any information or conduct any prosecution in respect of an offence committed or alleged to be committed against an enactment repealed by section 89 of this Act as if this Act had not come into operation;
- (b) continue or do any act, thing or investigation commenced by him and which was pending before the coming into operation of this Act.

(3) Subject to subsection (4), the Commission shall take over and continue any investigation commenced under the Economic Crime and Anti-Money Laundering Act or commenced or taken over, pursuant to the Economic Crime and Anti-Money Laundering (Temporary Provisions) Act 2001, and any prosecution in respect of any Act, or allegation, so investigated may be instituted under an enactment repealed by section 89 of this Act as if this Act had not come into operation.

(4) No investigation in respect of a money laundering offence shall be proceeded with under this section, unless the prior approval is obtained.

(5) The Court shall, in respect of any proceedings instituted following any investigation under subsections (2) and (3), have all the powers that it could exercise pursuant to the enactments repealed by section 89.

**91. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections.

Passed by the National Assembly on the fourth day of February two thousand and two.

ANDRÉ POMPON  
*Clerk of the National Assembly*

**FIRST SCHEDULE**  
(section 25)

I, ....., of ..... make oath/solemn affirmation as a  
..... and declare that –

1. I am unmarried/married under the system of .....  
.....(matrimonial regime).
2. My assets are as follows:
  - (a) landed property: .....
  - (b) residential, commercial or industrial building .....
  - (c) motor vehicles  
.....
  - (d) boats  
.....
  - (e) shares .....
  - (f) bank accounts  
.....
  - (g) interest in partnerships, sociétés, companies or trusts  
.....
3. My liabilities are:  
.....
4. The assets of my spouse, minor children, grand-children are:
  - (a) landed property: .....
  - (b) residential, commercial or industrial building .....
  - (c) motor vehicles  
.....
  - (d) boats  
.....
  - (e) shares .....
  - (f) bank  
accounts.....
  - (g) interest in partnerships, sociétés, companies or trusts  
.....
5. The liabilities of my spouse, minor children, grand-children are:  
.....

.....  
Signature

Sworn/solemnly affirmed by the above-named before me at .....this .....  
day ..... of .....20 .....

Master & Registrar  
Supreme Court

**SECOND SCHEDULE**

*(section 81)*

**Oath of Secrecy**

I .....  
hereby make oath/solemn affirmation as a  
..... and declare that in the discharge  
of my duties under the Prevention of Corruption Act 2002, I will deal with and regard  
all documents and information relating to the operations of the Commission and to  
which I have access as SECRET AND CONFIDENTIAL and refrain from disclosing  
any such documents and information to any unauthorized person.

Sworn solemnly affirmed by the deponent in Chambers,

This ..... 20.....

Before me,  
District Magistrate for