

CHAPTER 329

THE PREVENTION OF CORRUPTION ACT

[PRINCIPAL LEGISLATION]

ARRANGEMENT OF SECTIONS

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CHAPTER 329

THE PREVENTION OF CORRUPTION ACT

An Act to provide for the prevention of corruption.

[7th May, 1971]

[D.P.G.]

Acts Nos.

16 of 1971

2 of 1974

G.Ns. Nos.

108 of 1974

20 of 1990

27 of 1991

1 of 1993

9 of 1996

PART I

PRELIMINARY PROVISIONS (ss 1-2)

[PCh329s1]1. Short title

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

[PCh329s2]2. Interpretation Acts Nos. 2 of 1974; 27 of 1991; 1 of 1993 Sch.; 8 of 1995 Sch.

In this Act, unless the context otherwise requires—

"advantage" means a gift of any property, movable or immovable, loan, fee, reward or favour, and includes valuable consideration of any kind, discount, commission, rebate, bonus, deduction or percentage and also employment or services or an agreement to give employment or render services in any capacity;

"agent" includes—

(a) any person in the employment (whether under a contract of service, a contract for services or otherwise, whether permanent or temporary, whether paid or unpaid, and whether

full-time or part-time and whether such person is a natural person or a body of persons) of, or acting for, another;

(b) a trustee;

(c) an administrator or an executor;

(d) a public officer;

"appropriate officer" means any member of the Prevention of Corruption Bureau and includes the Director of the Bureau;

"Bureau" means the Prevention of Corruption Bureau established under section 3;

"Director" means a person appointed by the President to hold the office of Director under the Bureau;

"Director-General" means the Director-General of the Prevention of Corruption Bureau;

"favour" includes any office or dignity, any forbearance to demand any money or money's worth or valuable thing, any aid, vote, consent or influence, or pretended aid, vote, consent or influence, any promise or procurement of, or agreement or endeavour; to procure, or the holding out of any expectation of, any advantage;

"principal" includes an employer, a beneficiary under a trust, a trust estate as though it were a person, any person beneficially interested in the estate of a deceased person, the estate of a deceased person as though the estate were a person, and, in relation to a public officer, the authority or body of persons in which the public office is held;

"property" for the purposes of section 9 and section 10, means any property, whether movable or immovable, and includes any chose in action;

"public officer" means—

- (a) the Speaker or a member of the National Assembly;
- (b) [Omitted.]
- (c) the Chairman or a member of a local government authority;
- (d) an agent, employee, member or other officer (whether or not such member or officer is paid any remuneration in respect of his membership or office) of a specified authority or of any body of persons, whether corporate or unincorporate, which is an agent of a specified authority;
- (e) the Chairman or a member of any board, authority, tribunal, commission or body of persons, whether corporate or unincorporate, established or appointed under any written law for the performance of any statutory function provided for in such written law;
- (f) the holder of any office established by or under any written law;
- (g) the person holding any office (whether or not any remuneration is paid in respect of such office and whether or not the appointment to such office is permanent or temporary, full-time or part-time or under a contract of service, a contract for services or otherwise) in any corporation, company, society, co-operative society or other body of persons whatsoever, whether corporate or unincorporate, where the appointment or nomination of such person to such

office was made by the President, a Minister, or by or on behalf of any specified authority, and "public office" shall be construed accordingly;

"specified authority" means—

- (a) the Government;
- (b) and (c) [Omitted.];
- (d) a local government authority;
- (e) a body corporate established by or under any written law other than the Companies Act *;
- (f) [Omitted.];
- (g) a trade union registered under the Trade Unions Act *;
- (h) any company registered under the Companies Act not less than fifty percent of the issued share capital of which is owned by a specified authority or, where the company is limited by guarantee, a company in respect of which the amount that the specified authority which is a member of such company has undertaken to contribute in the event of the company being wound up is not less than fifty percent of the aggregate amount which all the members have undertaken to contribute; and references in this paragraph to a specified authority include references to any such company;

"to be in, or to have, possession of any property" for the purposes of section 8 and section 9 includes having any right, title or interest in a property.

PART II

THE PREVENTION OF CORRUPTION BUREAU (s 3)

[PCh329s3]3. Establishment of prevention of Corruption Bureau Acts Nos. 27 of 1991 s. 2; 31 of 1997

(1) The President shall establish the Prevention of Corruption Bureau which shall consist of a Director-General, a number of Directors and other officers as the President may determine.

(2) The Bureau shall be a public department under the control and supervision of the President.

(3) The functions of the Bureau shall be—

(a) to take necessary measures for the prevention of corruption in the public, parastatal and private sectors;

(b) to investigate and, subject to the directions of the Director of Public Prosecutions, to prosecute for offences under this Act and other offences involving corrupt transactions;

(c) to advise the Government and other parastatal organisation on ways and means to prevent corruption.

(4) In the performance of their functions the members of the Bureau shall each have all the powers of a police officer of or above the rank of Assistant Superintendent of Police and the provisions of the Police Force and Auxiliary Services Act * conferring upon police officers powers necessary or expedient for the prevention, investigation and prosecution of offences,

whether such powers are conferred generally or to officers of certain rank only shall apply in relation to the members of the Bureau as if references in those provisions to police officer or to police officers of specified rank included references to the members of the Bureau and for the avoidance of doubts it is hereby declared that a member of the Bureau shall have the power to arrest, enter premises, detain suspects and seize property where that member reasonably suspects that any offence involving corruption has been or is about to be committed by the suspect in the premises or, as the case may be, in relation to the property, and the powers may be exercised to the same extent and subject to the same limitations as a police officer of or above the rank of Assistant Superintendent of Police may exercise them in relation to offences.

(5) Where any property is seized in pursuance of the powers conferred under subsection (4), the officer seizing the property shall issue a receipt acknowledging the seizure of that property, bearing the signature of the owner or occupier of the premises or his near relative or other person for the time being in possession or control of the premises, and the signature of witnesses to the search if any.

(6) Any person, being empowered by law to order, authorise or conduct the search of any person, place, building, vessel, carriage or receptacle, vexatiously and without reasonable ground for so doing, orders, authorises or conducts such search commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings, or imprisonment for a term not exceeding two years or to both.

(7) Any member of the Bureau who seizes any property in pursuance of the powers conferred under subsection (4) shall institute criminal proceedings against the owner of that property within six months from the date of seizure.

(8) The member of the Bureau who fails to institute criminal proceedings as provided under subsection (7) and continues to detain the property and if he thinks that there is a reasonable cause for him to continue with the detention of that property he shall apply to the Attorney-General for an extension of time stating reasons for an extension, which time shall not exceed six months from expiry of the period of six months referred to, in subsection (7).

(9) Any person who having intentionally failed to institute proceedings against the owner of the property as provided under subsection (7) or (8), maliciously refuses to restore that property to the owner, commits an offence and upon conviction is liable to a fine not exceeding five hundred thousand shillings or to imprisonment not exceeding two years or to both.

(10) Without prejudice to the right of private prosecution under section 99 of the Criminal Procedure Act *, no prosecution against any person for an offence under this section shall be instituted except with the consent in writing of the Director of Public Prosecutions.

(11) The provisions of the Public Officers (Recovery of Debts) Act * shall apply to any officer who occasions the Government to incur loss, costs or damages as a result of his failure to discharge his duties in a reasonable manner.

[s. 2A]

PART III

CORRUPTION OFFENCES (ss 4-10)

[PCh329s4]4. Corrupt transactions

(1) Any person who by himself or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to obtain, from any person for himself or for any other person, any advantage as an inducement to, or reward for, or otherwise on account of, any agent (whether or not such agent is the same person as such first-mentioned person) doing, or forbearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business, shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to any person, whether for the benefit of that person or of another person, as an inducement to, or reward for, or otherwise on account of, any agent (whether or not such agent is the person to whom such advantage is given, promised or offered) doing, or forbearing to do, or having done or forborne to do, anything in relation to his principal's affairs or business, shall be guilty of an offence.

(3) Where any person is convicted of an offence against this section—

(a) he shall be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding fifty thousand shillings, or to both such imprisonment and fine; and

(b) in addition, the court may—

(i) where such person is an agent, order him to pay to his principal, in such manner as the court may direct, the amount or value of any advantage received by him or any part thereof; or

(ii) where such person is an agent, order that he pay to his principal, in such manner as the court may direct, part of the amount or value of any advantage received by him, and that the whole or part of the residue be forfeited; or

(iii) whether such person is an agent or not, order that the amount or value of any advantage received by him, or any part thereof, be forfeited.

[s. 3]

[PCh329s5]5. Increase of maximum penalty in certain cases

Where a person is convicted of an offence under section 4 and the matter or transaction in relation to which the offence was committed was a contract or a proposal for a contract with a specified authority, or a subcontract to execute any work comprised in such contract, paragraph (a) of subsection (3) of section 4 shall be read as if there were substituted for the reference to imprisonment for a term not exceeding ten years a reference to imprisonment for a term not exceeding fourteen years.

[s. 4]

[PCh329s6]6. Use of documents intended to mislead principal

If any person knowingly gives to any agent, or any agent knowingly uses with intent to deceive his principal, any receipt, account or other document relating to his principal's affairs or

business, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal, he shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine not exceeding twenty thousand shillings, or to both such imprisonment and fine.

[s. 5]

[PCh329s7]7. Public officer obtaining advantage without consideration or without adequate consideration

Any person who, being a public officer, solicits, accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person, any advantage without lawful consideration or for a lawful consideration which he knows or has reason to believe to be inadequate, from any person whom he knows or has reason to believe to have been, or to be, or to be likely or about to be, concerned in any matter or transaction with himself as a public officer, or having any connection with the official functions of himself or of any public officer to whom he is subordinate, or from any person whom he knows or has reason to believe to be interested in or related to or acting for or on behalf of the person so concerned, or having such a connection, shall be guilty of an offence and shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding twenty thousand shillings or to both such imprisonment and such fine, and, in addition, the court may order that the amount or value of any advantage received by him, or any part thereof, be forfeited.

[s. 6]

[PCh329s8]8. Advantage received on behalf of accused

For the purposes of sections 4 and section 7, where any advantage has been received with the knowledge of the accused person, by any person other than the accused person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that such person has received the advantage for or on behalf of the accused person, or by reason of his relationship to the accused person or otherwise on account of or in connection with the official functions of the accused person, the advantage shall be deemed to have been received by the accused person.

[s. 7]

[PCh329s9]9. Public officers may be required to give account of their properties Act No. 2 of 1974 s. 4

(1) Any appropriate officer or any police officer of, or above the rank of, the rank of Superintendent authorised in writing in that behalf by the President, the Attorney-General or the Director may, by notice in writing addressed to any public officer require such public officer to give, within such time and in such manner as may be specified in the notice, a full and true account of all or any class of properties which such public officer or his agent has in his possession or which he or his agent had in his possession at any time during which the public officer held any public office, and he may also, by the same or subsequent notice, require such public officer to give a true account of how he acquired such property.

(2) Any public officer who fails to comply with any of the provisions of a notice addressed to him pursuant to this section, or knowingly gives a false account in relation to any

property, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding two years.

(3) For the purposes of this section—

"agent" means the husband, wife or child of the public officer, any debtor of the public officer, or any other person acting for or on behalf of the public officer;

"public officer" includes any person who held a public office at any time during the five years immediately preceding the date on which a notice under subsection (1) is sent to him.

(4) In a prosecution for an offence under subsection (2), evidence of the fact that a notice under subsection (1) was given by a police officer of or above the rank of Superintendent shall be conclusive evidence that such police officer was authorised to give such notice by the President, the Attorney-General or, as the case may be, the Director-General.

[s. 8]

[PCh329s10]10. Being in possession of property corruptly acquired Act No. 23 of 1973
Sch; G.N. No. 108 of 1974

(1) Where, in consequence of any investigation made pursuant to section 9 or of a search conducted pursuant to section 14 or of an investigation of a bank account pursuant to section 13 or of any investigation carried out by or under the directions of the Director of Public Prosecutions, any public officer is found to be or to have been in possession of any property, or is found to have received the benefit of any services, which he may reasonably be suspected of having corruptly acquired or received when he held a public office, such public officer may be

charged with having or having had in his possession property reasonably suspected of having been corruptly acquired or, as the case may be, with having received the benefit of services reasonably suspected of having been corruptly received, and if the public officer fails to satisfy the court that he did not corruptly acquire the property or, as the case may be, that he did not corruptly receive the benefit of services, he shall be liable on conviction to imprisonment for a term not exceeding five years, and in addition thereto the court may order that the property acquired by him be forfeited.

(2) Where in any proceedings under subsection (1) the court is satisfied that there were no reasonable grounds for suspecting that the accused corruptly acquired the property but that the circumstances were such as to give rise to a reasonable suspicion that the accused may have otherwise unlawfully acquired the property, the court may, if the accused convict the accused fails to satisfy the court that he did not acquire the property unlawfully, convict the accused of an offence under section 312 of the Penal Code, and the fact that the accused was not found conveying the property or in possession of the property by any police officer or a police officer of any particular rank shall not affect such conviction if the accused was found, to be or to have been in possession of the property upon any investigation or search carried out under this Act; and where the court proceeds under this subsection, the court may order that the property so acquired be forfeited. [ss. (1A)]

(3) For the purposes of this section—

(a) "corruptly acquired or received" means received, accepted or obtained in circumstances in which it is an offence under section 3 or section 6 to receive, accept or obtain;

"public officer" includes any person who held a public office at any time during the period of five years immediately preceding the date on which any prosecution under subsection (1) is commenced;

(b) a public officer shall be deemed to be or to have been in possession of property where such property is or was in possession of any other person and the court is satisfied, having regard to such other person's relationship to the accused person, or to any other circumstances, that such other person is holding or held such property for or on behalf of, or as a debtor of, the accused person or, in the case of such other person being the husband, wife, child, father, mother, sister or brother of the accused person, the property was acquired as a gift from the accused person or with the knowledge, consent or connivance of the accused person;

(c) a public officer shall be deemed to have received the benefit of any services where such services were received by any other person and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that that other person received such benefit for or on behalf of that accused person or that the services were rendered to that other person at the request of the accused person or by reason of his relationship to the accused person. [ss. (2)]

[s. 9]

PART IV

MISCELLANEOUS PROVISIONS (ss 11-21)

[PCh329s11]11. Presumption of corruption in certain cases Act No. 8 of 1995 Sch.

Where, in any proceedings under section 4, it is proved that any advantage was offered, promised or given to, or solicited, accepted or obtained or agreed to be accepted or obtained by a public officer by or from a person, or agent of a person, holding or seeking to obtain a contract from a specified authority, the advantage shall be deemed to have been offered, promised or given and solicited, accepted or obtained or agreed to be accepted or obtained corruptly as such inducement or reward as is mentioned in section 4 unless the contrary is proved.

[s. 10]

[PCh329s12]12. Defect in appointment, nomination or election

No conviction for an offence against this Act shall be invalid by reason only of a defect in the appointment, nomination or election of a person to any office.

[s. 11]

[PCh329s13]13. Special power of investigation Act No. 2 of 1974 s. 5

(1) Notwithstanding any provision in any other written law, the Director-General may, if he considers that any evidence of the commission of an offence against this Act by any person is likely to be found in any bank account relating to such person, his wife or child, or of any person reasonably believed by the Director-General to be a trustee or agent of such person, authorise in writing any appropriate officer or any named police officer, of or above the rank of Superintendent, either alone or with any other person (hereinafter referred to as an authorised person), to investigate the bank account and the authorisation shall be sufficient warrant for the

production of the account for scrutiny by the officer or authorised person, and such officer or authorised person may take copies of any relevant entry in that account.

(2) Any person who fails to produce a bank account referred to in subsection (1) to the officer or to permit the officer or authorised person to scrutinize it or to take copies of any relevant entry therein, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding two years or to a fine not exceeding five thousand shillings or to both such imprisonment and fine.

(3) In this section—

"bank account" includes any ledger, day book, cash book, account book and any other document used in the ordinary course of business by any person carrying on, whether on his own behalf as an agent for another, and whether exclusively or otherwise, any banking business whatsoever, whether or not such person is a bank within the meaning of any law for the time being in force relating to banks.

[s. 12]

[PCh329s14]14. D.P.P. may authorise search Act No. 2 of 1974 s. 6

(1) The Director-General may, by writing, authorise any appropriate officer or any police officer of, or above, the rank of Superintendent to search any person, if it is reasonably suspected that such person is in possession of property corruptly acquired or to search any premises, vessel, boat, aircraft or other vehicle whatsoever in or upon which there is reason to suspect that any property corruptly acquired has been placed, deposited or concealed.

(2) The appropriate officer or the police officer authorised to make any search under this section may make such search and, for the purpose of so doing, may enter, using any necessary force and accompanied by such other persons as he deems necessary to assist him, into or upon any premises, vessel, boat, aircraft or other vehicle whatsoever.

[s. 13]

[PCh329s15]15. Special rules of evidence

(1) In proceedings for an offence under this Act, the fact that an accused person is in possession, for which he cannot satisfactorily account to the court, of pecuniary resources, or of a property the market value of which is disproportionate to his known sources of income, or that he had, at or about the time of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account to the court, may be proved and may be taken into consideration by the court as corroborating any other evidence in the proceedings that the accused person received or obtained any advantage or corruptly acquired any property.

(2) An accused person shall, for the purposes of subsection (1) of this section, be deemed to be in possession of resources or property or to have obtained an accretion thereto where the resources or property are held or the accretion is obtained by any other person, and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that that other person is holding the resources or property or has obtained the accretion for or on behalf of, or as a debtor of, the accused person or, in the case of the husband, wife, child, father mother, sister or brother of an accused person, as a gift from the accused person.

(3) In any prosecution for an offence under section 4, 6, 9 or 10, any statement or account in writing given by the accused person pursuant to a notice given to him under subsection (1) of section 9 shall be admissible in evidence notwithstanding any provisions to the contrary in the Evidence Act * (including section 27 and section 28 of that Act) or any other written law.

[s. 14]

[PCh329s16]16. Attorney-General may prohibit transfer of advantage or property corruptly acquired

(1) Where the Attorney-General has reason to suspect any person of having corruptly received or acquired an advantage or property, he may, by notice addressed to that person or to any other person to whom the advantage or property, or the proceeds or value, or any part of the proceeds or value, of the advantage or property may be believed to have been transferred or conveyed by the person suspected of having corruptly received or acquired it or by an agent of such person, direct the person to whom the notice is addressed not to transfer, dispose of or part with the possession of the sum of money or other property specified in the notice, and every such notice shall remain in force and be binding on the person to whom it is addressed and every other person to whom such money or other property may pass by the operation of law for a period of six months from the date of the notice or, where proceedings for an offence under this Act or any other written law in relation to the advantage or property have been commenced against any person, until the determination of those proceedings:

Provided that the Minister for the time being responsible for legal affairs may, in any case, by order under his hand, extend the period during which the notice shall remain in force for such further period or periods as he may specify.

(2) Any person who has been served with a notice under subsection (1) and who, in contravention of the notice, transfers, disposes of, or parts with, the possession of the sum of money or property specified in the notice, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding twelve months.

(3) In any proceeding for an offence under subsection (2), the accused person shall be acquitted if he satisfies the court—

(a) that the sum of money or other property specified in the notice was delivered to a police officer, or to some other person as directed in the notice; or

(b) that the sum of money or other property specified in the notice was produced to a court and has been retained by such court; or

(c) that the notice was subsequently withdrawn by the Attorney-General by notification in writing.

[s. 15]

[PCh329s17]17. Forfeiture and payment of sum to principal

Where a court orders the forfeiture or payment of the amount or value, or any part thereof, of any advantage, or the forfeiture of any property, under the provisions of section 4, 7, or section 10—

(a) the payment of any sum ordered to be paid or forfeited may be enforced in the same manner and subject to the same incidents as in the case of the payment of a fine;

(b) all moneys forfeited shall be paid into the Treasury and shall form part of the general revenue;

(c) where any property other than money is forfeited, it shall be disposed of in accordance with the provisions of section 76 of the Interpretation of Laws Act *; and

(d) any such order shall, for the purpose of any appeal, be deemed to form part of the sentence of the court.

[s. 16]

[PCh329s18]18. Principal may recover any secret gifts

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

(2) Nothing in this section shall be deemed to prejudice or affect any right which any principal may have under any law in force to recover from any person any money or property.

[s. 17]

[PCh329s19]19. Sanction of D.P.P. to prosecute

Where any person is charged before any court with an offence under section 7, 9, 10, or 16, no further proceedings in respect thereof shall be taken against him without the consent in writing of the Director of Public Prosecutions except such as the court may think necessary by remand (whether in custody or on bail) or otherwise to secure the due appearance of the person charged, so, however, that if that person is remanded in custody he shall, after the expiration of a period of twenty-eight days from the date on which he was so remanded, be entitled to be discharged from custody on entering into a recognisance without sureties unless within that period the Director of Public Prosecutions has consented to such further proceedings.

[s. 18]

[PCh329s20]20. Offences triable by High Court or subordinate court

An offence under this Act may be tried by the High Court or a court of a Resident Magistrate or a District Court.

[s. 19]

[PCh329s21]21. Repeal of R.L. Cap 400

[Repeals the Prevention of Corruption Ordinance.]

[s. 20]