

CHAPTER 9:22

ANTI-CORRUPTION COMMISSION ACT

Act 13/2004, 23/2004 (s. 282)

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SCHEDULE

Powers of Commission.

To provide for the establishment of the Anti-Corruption Commission in order to combat corruption, and to provide for matters connected with or incidental to the foregoing.

[Date of commencement : 14th January, 2005.]

WHEREAS section 108A of the Constitution provides as follows:

“108A Anti-Corruption Commission

(1) There shall be an Anti-corruption Commission consisting of at least four and not more than nine members appointed by the President.

(2) Persons appointed to the Anti-Corruption Commission shall be persons of integrity chosen for their knowledge of and experience in administration or the prosecution or investigation of crime or for their general suitability for appointment and—

- (a) at least one shall be entitled to practise as a legal practitioner; and*
- (b) at least one shall be entitled to practise as an auditor or public accountant in Zimbabwe; and*
- (c) at least one shall have had not less than ten years' experience in the investigation of crime.*

(3) The Anti-Corruption Commission shall have the following functions:—

- (a) to combat corruption, theft, misappropriation, abuse of power and other improprieties in the conduct of affairs in both the public and private sectors;*
- (b) to make recommendations to the Government and to organizations in the private sector on measures to enhance integrity and accountability and to prevent improprieties; and*
- (c) to exercise any other functions that may be conferred or imposed on the Commission by or under an Act of Parliament.*

(4) An Act of Parliament may confer powers on the Anti-Corruption Commission, including power—

- (a) to conduct investigations and inquiries on its own initiative or on receipt of complaints;*
- (b) to require assistance from members of the Police Force and other investigative agencies of the State; and*
- (c) through the Attorney-General, to secure the prosecution of persons for corruption, theft, misappropriation, abuse of power and other improprieties.”;*

AND WHEREAS Heads of States and of Governments of the Southern African Development Community have, by signing the SADC Protocol Against Corruption on the 14th of August, 2001 in Blantyre, Malawi, accepted that corruption is a serious problem that needs to be tackled as a matter of extreme urgency, and committed themselves to fight corruption and undertaken to put in place measures and mechanisms that would eliminate the scourge of corruption;

AND WHEREAS it is desirable to make further provision for the Anti-Corruption Commission and for persons employed in connection with that Commission;

NOW THEREFORE, be it enacted by the President and the Parliament of Zimbabwe as follows:—

1 Short title and date of commencement

This Act may be cited as the Anti-Corruption Commission Act [*Chapter 9:22*].

2 Interpretation

In this Act—

“Chairperson” means the Chairperson of the Commission appointed in terms of subsection (2) of section *four*;

“Commission” means the Anti-Corruption Commission constituted in terms of section 108A of the Constitution;

“Deputy Chairperson” means the Deputy Chairperson of the Commission appointed in terms of subsection (2) of section *four*;

“judicial officer” means a judge, president, magistrate, presiding officer or other person presiding over a court or tribunal;

“member” means a member of the Commission, including the Chairperson and Deputy Chairperson;

“Minister” means the Minister of Special Affairs in the President’s Office in charge of the Anti-Corruption and Anti-Monopolies Programme or any other Minister to whom the President may from time to time assign the administration of this Act;

“offence related to corruption” means—

- (a) any offence referred to in Chapter IX (“Bribery and Corruption”) of the Criminal Law Code; and
- (b) any other offence specified by the Minister by notice in a statutory instrument after consultation with the Commission;

[Definition as amended by section 282 of Act 23 of 2004]

“officer” means an officer of the Commission appointed in terms of subsection (1) of section *fourteen*;

“public office” means a paid office in the service of the State, a statutory body or a local authority;

“public officer” means—

- (a) the President, a Vice-President, Minister or Deputy Minister; or
- (b) a judicial officer; or
- (c) a governor appointed in terms of an Act referred to in section IIIA of the Constitution; or
- (d) a member of a council, board, committee or other authority which is a statutory body or local authority or which is responsible for administering the affairs or business of a statutory body or local authority; or
- (d) a person holding or acting in a public office;

“statutory body” means—

- (a) any Commission established by the Constitution; or
- (b) any body corporate established directly by or under an Act for special purposes specified in that Act, the membership of which consists wholly or mainly of persons appointed by the President, a Vice President or by a Minister.

3 Anti-Corruption Commission to be a corporate body

The Anti-Corruption Commission shall be a body corporate capable of suing and being sued in its corporate name and, subject to this Act, of performing all acts that bodies corporate may by law perform.

4 Appointment of Chairperson and Deputy Chairperson of Commission

(1) The President shall appoint a Chairperson and a Deputy Chairperson from among the members of the Commission.

(2) If the office of the Chairperson is vacant or the Chairperson is absent from duty, the Deputy Chairperson shall, save where the President otherwise directs, act as Chairperson.

5 Qualifications of Chairperson

The Chairperson shall be a person who—

- (a) has at least ten years experience in the investigation of crime; or
- (b) has seven years post qualification experience as an auditor or public accountant; or

- (c) is eligible to be appointed as a judge or has been a judge of the High Court or Supreme Court of Zimbabwe; or
- (d) in the opinion of the President, is a person of ability and experience and distinguished in the public life of Zimbabwe.

6 Tenure of office of members

(1) The Chairperson shall hold office for a period of three years and may be re-appointed for another term of three years but shall not be eligible for reappointment thereafter.

(2) A member shall hold office for a period of two years and may be re-appointed for another term of two years but shall not be eligible for re-appointment thereafter.

7 Conditions of service of members

(1) The members shall hold office on such terms and conditions, including such terms and conditions relating to the payment of salary, allowances and pensions benefits as the President may fix in consultation with the Minister and the Minister responsible for finance.

(2) Each member shall, before entering upon his or her office, take and subscribe before the President, or some other person authorised by the President in that behalf, the oath or affirmation of office set out in Schedule 1 of the Constitution.

(3) The salaries, allowances and any pension benefits payable to the members shall be paid out of the Consolidated Revenue Fund, which is hereby appropriated for the purpose.

(4) The salary, allowances and pension benefits payable to a member under subsection (1) shall not be reduced during the period he or she holds the office concerned or acts as holder thereof.

(5) At the time of appointment every member shall undertake not to hold any other public office during his or her term of office.

8 Disclosure of interests by members

(1) Before any member performs any function as such, the member shall disclose in writing to the President the full extent of—

(a) every occupation, service or employment in which the member or his or her spouse engages for remuneration; and

(b) all assets held by the member or his or her spouse, in excess of such value as the President may specify.

(2) As soon as possible after the member or his or her spouse—

(a) commences any occupation, service or employment for remuneration; or

(b) acquires any asset in excess of such value as the President may have specified in terms of paragraph (b) of subsection (1);

the member shall disclose that fact in writing to the President.

9 Disqualification for appointment as a member

(1) The President shall not appoint a person as a member and no person shall be qualified to hold office if that person—

(a) is not a citizen of Zimbabwe; or

(b) is under the age of forty years; or

(c) has been adjudged or otherwise declared insolvent or bankrupt in terms of a law in force in any country, and has not been rehabilitated or discharged; or

(d) has made an assignment to or arrangement or composition with his or her creditors in terms of a law in force in any country, and the assignment, arrangement or composition has not been rescinded or set aside; or

(e) has been convicted—

(i) in Zimbabwe, in respect of an offence involving dishonesty; or

(ii) outside Zimbabwe, in respect of conduct which, if committed in Zimbabwe, would have constituted an offence involving dishonesty

(2) A person who is—

(a) a member of Parliament; or

(b) a member of a statutory body;

shall not be appointed as a member, nor shall that person hold office as a member.

(3) For the purposes of paragraph (b) of subsection (2) a person who is appointed to a council, board or other authority which is a statutory body, or which is responsible for the administration of the affairs of a statutory body, shall be regarded as a member of that statutory body.

10 Termination and suspension of membership

(1) For the purposes of subsections (5) and (6) there shall be a committee, hereinafter in this section referred to as “the Independent Disciplinary Committee”, consisting of—

- (a) a person, not being a member of the Commission, appointed by the President from a list of three registered legal practitioners recommended by the Minister, who shall be the chairperson of the Independent Disciplinary Committee; and
 - (b) a member of the Commission chosen by the President from a panel of three members of the Commission nominated by the Commission; and
 - (c) a person who shall not be a member of Parliament chosen by the President from a list of not less than three names submitted by the portfolio committee of Parliament responsible for legal affairs.
- (2) A member of the Commission shall vacate his or her office if the member—
- (a) has, subject to subsections (3), (4) and (5), been found to have conducted himself or herself in a manner that renders him or her unsuitable to continue as a member; or
 - (b) has failed to comply with any term or condition of office fixed by the President; or
 - (c) is mentally or physically incapable of efficiently carrying out his or her functions as a member; or
 - (d) has been absent without the permission of the Commission from three consecutive meetings of the Commission of which he or she was given at least seven days' notice, and there was no just cause for the member's absence; or
 - (e) has given one month's notice in writing to the Minister of his or her intention to resign office or after the expiry of such other period of notice as the member and the Minister may agree.
- (3) The President may suspend a member of the Commission—
- (a) whom he or she suspects on reasonable grounds of having been guilty of conduct referred to in paragraph (a) of subsection (2); or
 - (b) against whom criminal proceedings have been instituted for an offence in respect of which a sentence of imprisonment without the option of a fine may be imposed;

and while that member is so suspended he or she shall not carry out any functions as a member.

(4) A member suspended in terms of paragraph (a) of subsection (3) shall be given notice in writing of the grounds for the suspension and may, within fourteen days of being so notified, make written representations to the Independent Disciplinary Committee showing cause why no finding of misconduct rendering him or her unsuitable to be a member of the Commission should not be made.

(5) The Independent Disciplinary Committee shall require a member suspended in terms of subparagraph (a) of subsection (3) to vacate his or her office if—

- (a) no representations are made by the member in terms of subsection (4); or
- (b) it finds that the member is guilty of the misconduct alleged under paragraph (a) of subsection (2).

(6) If the Independent Disciplinary Committee finds that a member suspended in terms of subparagraph (a) of subsection (3) is not guilty of the misconduct alleged, the suspension of the member shall, by virtue of that finding, be rescinded.

11 Objects of Commission

Subject to this Act, the objects of the Commission shall be—

- (a) to promote the investigation of serious cases of corruption and fraud;
- (b) to make proposals for the elimination of corruption in the public and private sectors;
- (c) to promote awareness among the public of the causes of corruption and its effects on society;
- (d) to propose new or more effective procedures for the administration of the Commission.

12 Functions of Commission

In addition to its functions under the Constitution, the Commission shall have the following functions—

- (a) to monitor and examine the practices, systems and procurement procedures of public and private institutions; and
- (b) to enlist and foster public support in combating corruption in society; and
- (c) to educate the public on the dangers of corruption in society; and
- (d) to instruct, advise and assist any officer, agency or institution in the elimination or minimisation of corruption; and
- (e) to receive and investigate any complaints alleging any form of corruption; and
- (f) to investigate any conduct of any person whom the Commission has reason to believe is connected with activities involving corruption; and
- (g) to assist in the formulation of practices, systems and procurement procedures of public and private institutions with a view to the elimination of corrupt practices; and
- (h) to advise on ways of strengthening anti-corruption legislation; and
- (i) to recommend to the Government that it ratify and domesticate relevant international legal instruments aimed at combating corruption.

13 Powers of Commission

(1) Subject to this Act, for the better exercise of its functions the Commission shall have power to do or cause to be done, either by itself or through its agents, all or any of the things specified in the Schedule, either absolutely or conditionally and either solely or jointly with others.

(2) The Commission shall exercise its powers concurrently with those of the police.

(3) In exercising its powers, the Commission shall be governed by the relevant provisions of the Criminal Procedure and Evidence Act [*Chapter 9:07*] which govern the police.

(4) An officer who intends to make any search, entry or seizure for the purposes of this section shall—

(a) notify the officer commanding the police district in which the officer intends to make the search, entry or seizure; and

(b) be accompanied by a police officer assigned to him or her or by the police officer referred to in paragraph (a):

Provided that where an officer has reason for believing that any delay involved in obtaining the accompaniment of a police officer would defeat the object of the search, entry or seizure, he or she may make such search, entry or seizure without such police officer.

(5) In the event of any conflict arising in the exercise of their powers between the Commission and the Zimbabwe Republic Police, the Attorney-General shall have the power to intervene and direct the parties to do anything that in his or her opinion must be done to resolve the conflict.

14 Staff of Commission

(1) The Commission in consultation with the Minister and the Minister responsible for finance may employ on such terms and conditions as it may determine officers who are necessary for the conduct of the business of the Commission and may suspend, discipline or discharge any such persons in accordance with standing orders referred to in paragraph 10 of the Schedule.

(2) The officers of the Commission shall not be members of the Public Service Commission.

15 Meetings of Commission

(1) The Chairperson shall, as often as he or she considers it necessary for the fulfilment of the objects and the exercise of the functions of the Commission, fix the date, time and place of meetings of the Commission.

(2) The Chairperson or Deputy Chairperson and any three members shall constitute a quorum.

(3) Any question arising at a meeting of the Commission shall be decided by a majority of the members present and voting and, in the event of there being equal votes, the Chairperson or Deputy Chairperson (as the case may be) shall have a casting vote.

(4) The Chairperson may, with the approval of the Commission, invite any person with special knowledge or experience of any matter under consideration in terms of this Act to attend a meeting of the Commission, but such person shall not vote on any question before the Commission.

(5) The Commission may regulate the proceedings at its meetings as it thinks fit, and shall keep minutes of the proceedings.

16 Committees of Commission

(1) For the consideration of any matter in terms of this Act, the Commission may appoint one or more committees on which it may confer such of the functions of the Commission as it thinks fit:

Provided that the vesting of any functions in a committee in terms of this section shall not thereby divest the Commission of such functions, and the Commission may amend or rescind any decision of any committee in the exercise of its functions.

(2) In appointing a committee in terms of subsection (1), the Commission shall appoint not fewer than three and not more than five persons, who may be chosen from members and from persons having special knowledge or experience of the matter to be considered by the committee:

Provided that at least one person appointed to the committee shall be a member.

(3) Members appointed in terms of subsection (1) shall elect one of their number to be chairperson of the committee.

(4) A member of a committee appointed in terms of subsection (1) who is not a member of the Commission and is not in full-time employment of the State, a statutory body or a local authority shall be paid from the funds of the Commission such allowances as the Commission may fix with the approval of the Minister responsible for finance.

(5) Section *fifteen* shall apply, with any changes that may be necessary, to meetings and reports of a committee appointed in terms of subsection (1).

(6) Any report of a committee appointed in terms of subsection (1) shall, if such report is approved by the Commission, be deemed to be a report of the Commission.

17 Reports of Commission

(1) The Commission shall, in addition to its annual report referred to in subsection (5), submit to the Minister—

- (a) such reports as the Minister may require; and
- (b) such occasional or periodic reports as it considers advisable;

in connection with any matter related to its functions.

(2) In the case of dissent from the majority recommendations of a report, the Commission shall, at the request of the dissenting member, record the dissent and the reasons therefor.

(3) At any time, before making a final report the Commission may, or, if so directed by the Minister, shall make an interim report on any matter under consideration by it.

(4) The Commission may, after submitting a report to the Minister, publish such report in such manner as it thinks fit.

(5) The Commission shall, as soon as practicable after the 31st December in each year, prepare and submit to the Minister an annual report on all its activities during the year ended on that date.

(6) The Minister shall lay before Parliament, on one of the fourteen days on which Parliament next sits after the report is received by him or her—

- (a) the annual report submitted to him in terms of subsection (5); and
- (b) any other report submitted to him or her in terms of this section which the Commission has requested should be laid before Parliament;

together with any comments as the Minister thinks fit to make thereon.

18 Funds of Commission

(1) The funds of the Commission shall consist of such moneys as may be payable to the Commission from moneys appropriated for the purpose by Act of Parliament.

(2) The Commission's financial year shall be the period of twelve months ending on the 31st December in each year or such other date as the Minister may prescribe.

(3) The Commission shall ensure that proper accounts and other records relating to the accounts are kept in respect of all its activities, funds and property, including such particular accounts and records as the Minister may direct.

(4) Not later than three months after the end of each financial year of the Commission, the Commission shall prepare and submit to the Minister a statement of accounts in respect of that financial year or such other period as the Minister may direct.

(5) Subject to the Audit and Exchequer Act [Chapter 22:03], the Commission shall appoint as auditors one or more persons who are registered as public auditors in terms of the Public Accountants and Auditors Act [Chapter 27:12].

(6) The accounts kept by the Commission in terms of subsection (3) shall be examined by the auditors appointed in terms of subsection (5).

(7) The auditors appointed in terms of subsection (5) shall make a report to the Commission and to the Minister on the statement of accounts prepared in terms of subsection (4), and in their report shall state whether or not in their opinion the statement of accounts gives a true and fair view of the Commission's financial affairs.

19 Regulations

The Minister after consultation with the Commission may make regulations providing for all matters which by this Act are required or permitted to be prescribed or which, in his or her opinion, are necessary or convenient to be provided for in order to carry out or give effect to this Act.

SCHEDULE (SECTION 13)

POWERS OF COMMISSION

1. To make recommendations to the police to arrest and detain any persons reasonably suspected of committing any of the following offences and to communicate any such recommendation to the Attorney-General—
 - (a) any offence related to corruption;
 - (b) contravening section 63 ("Money-laundering") of the Serious Offences (Confiscation of Profits) Act [Chapter 9:17];
 - (c) the sale, removal or disposal outside Zimbabwe of any controlled product in contravention of the Grain Marketing Act [Chapter 18:14];
 - (d) any offence under any enactment relating to the unlawful possession of, or dealing in, precious metals or precious stones;

- (e) any offence referred to in Chapter VII (“Crimes Involving Dangerous Drugs”) of the Criminal Law Code, other than unlawful possession or use of dangerous drugs where the dangerous drug in question is cannabis;
- (f) fraud or forgery—
 - (i) involving prejudice or potential prejudice to the State, except where the magnitude of the prejudice or potential prejudice is less than such amount as the Minister responsible for justice may prescribe by notice in a statutory instrument; or
 - (ii) committed by a person, group of persons, syndicate or enterprise acting in execution or furtherance of a common purpose or conspiracy; or
 - (iii) where the magnitude of the prejudice or potential prejudice to any person is more than such amount as the Minister responsible for justice may prescribe by notice in a statutory instrument;
- (g) contravening section 42 (“Offences relating to banknotes”) of the Reserve Bank Act [*Chapter 22:15*] or committing any offence relating to the coinage;
- (h) contravening subparagraph (i) of paragraph (a) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] as read with—
 - (i) subsection (1) of section 4 of the Exchange Control Regulations, 1996, published in Statutory Instrument 109 of 1996, (in this paragraph and paragraph 8 called “the Exchange Control Regulations”), by dealing in any foreign currency in contravention of paragraph (a) or (b) of that section of the Regulations without the permission of an exchange control authority;
 - (ii) subsection (1) of section 10 of the Exchange Control Regulations, by unlawfully making any payment, placing any money or accepting any payment in contravention of paragraph (a), (b), (c) or (d) of that section of the Regulations;
 - (iii) paragraph (a) or (b) of subsection (1) of section 11 of the Exchange Control Regulations, by unlawfully making any payment outside Zimbabwe or incurring an obligation to make any payment outside Zimbabwe;
 - (iv) paragraph (b), (e) or (f) of subsection (1) of section 20 of the Exchange Control Regulations, by unlawfully exporting any foreign currency, gold, silver or platinum, or any article manufactured from or containing gold, silver or platinum, or any precious or semiprecious stone or pearl from Zimbabwe;
 - (v) subsection (2) of section 21 of the Exchange Control Regulations, by unlawfully exporting any goods from Zimbabwe in contravention of that provision of the Regulations;
- (i) contravening paragraph (b) of subsection (1) of section 5 of the Exchange Control Act [*Chapter 22:05*] by making any false statement or producing any false document in connection with a contravention of subsection (2) of section 21 of the Exchange Control Regulations;
- (j) theft of a motor vehicle as defined in section 2 of the Road Traffic Act [*Chapter 13:11*];
- (k) theft or forgery of—
 - (i) a document issued to a person in terms of subsection (1) or (2) of section 7 of the National Registration Act [*Chapter 10:17*], or a passport or drivers licence issued by or on behalf of the Government of Zimbabwe; or
 - (ii) any visitors entry certificate or other certificate or permit issued to a person in terms of the Immigration Act [*Chapter 4:02*], or in terms of any enactment relating to refugees; or
 - (iii) any passport, identity document or drivers licence issued by a foreign government; or
 - (iv) a vehicle registration plate; or
 - (v) any documentation relating to the registration or insurance of a motor vehicle;
- (l) stock theft involving a bovine or equine animal;
- (m) a conspiracy, incitement or attempt to commit any offence referred to in subparagraphs (a) to (l).

[Paragraph 1 as substituted by section 282 of Act 23 of 2004]

2. To obtain search warrants from a magistrate or justice of the peace.
3. To seize any travel documents or anything which is reasonably believed to contain evidence of the commission of an offence related to corruption.
4. To seek through the Attorney-General’s Office court orders for the freezing of any assets or accounts of persons suspected to be involved in any offence related to corruption.
5. To protect and safeguard any persons assisting in investigations involving any offence related to corruption.
6. To enter any public or private premises and require any public officer or agent of a public officer (as defined in section 2 of the Prevention of Corruption Act [*Chapter 9:16*]) therein to answer any questions related to the investigation of any offence related to corruption.
7. To cause to be prosecuted through the Attorney-General’s Office, any person reasonably believed to have committed any offence related to corruption.
8. To seek court orders through the Attorney-General’s Office for confiscation of proceeds of corruption.

9. To recommend that any public officer, agency or institution follow a recommended system to improve administrative efficiency.
10. To make standing orders related to the control and administration of the Commission, the discipline, training, classification of and promotion of officers, the duties of officers and the financial regulation of the Commission and any other matters expedient or necessary for preventing the abuse or neglect of duty and for upholding the integrity of the Commission.

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