

CORRUPTION AND ECONOMIC CRIME (AMENDMENT) ACT, 2013

No. 6



of 2013

ARRANGEMENT OF SECTIONS

SECTION

1. Short title
2. General amendments to Cap. 08:05
3. Amendment of section 2 of the Act
4. Substitution of Part II of the Act
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7. Insertion of section 25A in the Act
8. Substitution of section 31 of the Act
9. Insertion of section 42A in the Act
10. Insertion of section 45A in the Act

An Act to amend the Corruption and Economic Crime Act.

Date of Assent: 19.07.2013

Date of Commencement: 26.07.2013

ENACTED by the Parliament of Botswana.

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| <p>1. This Act may be cited as the Corruption and Economic Crime (Amendment) Act, 2013.</p> <p>2. The Corruption and Economic Crime Act, (in this Act referred to as “the Act”), is amended —</p> <p>(a) by substituting for the word “Director” wherever it appears in sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 13, 14, 15, 16, 17, 21, 22, 34, 39 and 45 of the Act, the words “Director-General”;</p> <p>(b) by substituting for the words “Deputy Director” wherever they appear in the Act, the words “Deputy Director-General”; and</p> <p>(c) by substituting for the word “he” wherever it appears in the Act, the words “he or she”.</p> <p>3. The Act is amended in section 2 —</p> <p>(a) by substituting for the definition of “Deputy Director”, the following new definition —</p> <p>““Deputy Director-General” means the Deputy Director-General of the Directorate;”;</p> <p>(b) by substituting for the definition of “public body”, the following new definition —</p> <p>““public body” means any office, organisation, establishment or body created by or under any enactment or under powers conferred by any enactment, and includes any company in which government has equity shares or any organisation or body where public moneys are used;”;</p> | <p>Short title</p> <p>General amendments to Cap. 08:05</p> <p>Amendment of section 2 of the Act</p> |
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- (c) by substituting for the definition of “public officer”, the following new definition —
- ““public officer” includes any person —
- (a) holding an office by election or appointment under any enactment or under powers conferred by any enactment;
 - (b) who is or was at the relevant time paid from public funds; or
 - (c) who is or was at the relevant time responsible for the custody, safekeeping or collection of public funds or other property or public funds or other moneys;”.

Substitution
of Part II of
the Act

4. The Act is amended by substituting for Part II, the following new Part II —

“PART II – *Establishment of Directorate (ss 3 – 5C)*”

Establishment
of Directorate

3. (1) There is established a Directorate to be known as the Directorate on Corruption and Economic Crime (in this Act referred to as “the Directorate”).

(2) The Directorate shall consist of the Director-General, Deputy Director-General, other officers and support staff of the Directorate as may be appointed.

Cap. 26:01

(3) The Directorate shall be a public office; and accordingly the provisions of the Public Service Act shall apply *mutatis mutandis* to the Directorate and the officers thereof.

Appointment
of Director-
General

4. (1) The President shall appoint the Director-General on such terms and conditions as the President deems fit.

(2) The Director-General shall be responsible for the direction and administration of the Directorate.

(3) Any decision, including investigations by the Director-General shall not be subject to the direction and control of any person or authority.

Acting
Director-
General

5. (1) If the office of the Director-General is vacant or the Director-General is absent from duty, the Deputy Director-General shall, except where the President otherwise directs, act as Director-General.

(2) If the Director-General and the Deputy Director-General are absent from duty, the President may appoint another person to act as Director-General until the return to duty of either the Director-General or the Deputy Director-General.

Conditions
of service of
Directorate

5A. (1) The Minister shall prescribe such conditions of service of the Directorate setting out the terms and conditions for the appointment of officers and support staff.

- (2) The conditions of service prescribed under subsection (1) shall provide for —
- (a) the designation and grades of officers and support staff;
 - (b) the scale of salaries and allowances of officers and support staff; and
 - (c) the promotions, resignations and termination of appointments of officers and support staff.

Disciplinary
code by
Minister

5B. (1) The Minister shall prescribe a disciplinary code for the Directorate, which disciplinary code shall provide for —

- (a) disciplinary offences;
- (b) the investigation, hearing and determination of disciplinary offences and the hearing of any appeals; and
- (c) the delegation, by the Director-General, to officers and support staff, of such disciplinary powers as he or she may consider appropriate.

(2) The disciplinary code prescribed under subsection (1) shall provide for the following disciplinary penalties or any combination thereof —

- (a) dismissal from the Directorate;
- (b) reduction in rank or grade;
- (c) suspension from duty for a specified period;
- (d) reprimand;
- (e) admonition; and
- (f) recovery of the cost or part thereof in respect of any loss or damage to the property of the Directorate caused by the default or negligence of any officer subject to disciplinary proceedings where such recovery has not been effected through any other Government procedure.

Conduct of
officers and
support staff

5C. An officer of the Directorate shall not become a member of any trade union, or any body or association affiliated to a trade union, or any body or association the object of which or one of the objects of which is to control or influence conditions of employment in any trade or profession:

Provided that an officer may become a member of any such body or association which may be constituted and regulated pursuant to this Act.”.

Insertion of sections 19A and 19B in the Act

5. The Act is amended in section 19 by inserting the following new sections —

“Protection of disclosure of identity

19A. Notwithstanding the provisions of section 21, a person who discloses the identity of another person which he or she obtained or to which he or she has had access by virtue of —

(a) the performance of his or her duties or functions under this Act; or

(b) his or her position as a person who holds or has held any office in the Directorate, and from which the identity of any person who —

(i) is or was a confidential source of information to the Directorate, or

(ii) is or was an officer or support staff engaged in covert operational activities of the Directorate,

can be inferred,

and who discloses such information to any person other than a person to whom he or she is authorised to disclose it to or to whom it may lawfully be disclosed, shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding three years.

Prohibition of unauthorised disclosure of information

19B. (1) Without prejudice to any other written law, an officer or support staff of the Directorate shall not disclose or use any information gained by him or her by virtue of his or her employment otherwise than in the strict course of his or her official duties or with the authority of the Director-General.

(2) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a term of imprisonment not exceeding three years.”.

Insertion of section 24A in the Act

6. The Act is amended by inserting immediately after section 24, the following new section —

“Abuse of public office

24A. (1) A public officer is guilty of corruption if he or she directly or indirectly, uses his or her public office or position in a public body to obtain any valuable consideration whether for the benefit of himself or herself or any other person.

(2) For the purposes of subsection (1), proof that a public officer in a public body has made a decision or taken action in relation to any matter in which the public officer, or any relative or associate of his or hers has an interest, whether directly or indirectly, is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the public officer has corruptly used his or her office or position in the public body in order to obtain a gratification.

(3) Any person who contravenes subsection (1) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding P5 000 or to imprisonment for a term not exceeding three years or to both.”.

7. The Act is amended by inserting, immediately after section 25, the following new section —

“Trading in influence

25A. (1) A person is guilty of corruption if he or she directly or indirectly promises, offers or gives to a public body or any other person, a valuable consideration, in order that the public body or the person abuses his or her real or supposed influence with a view to obtaining from that person an undue advantage for himself or herself or for any other person’s own benefit.

(2) A public officer or any other person shall be guilty of an offence if he or she directly or indirectly solicits or accepts, a valuable consideration for himself or herself or for another person, in order that the public officer or the person abuses his or her real or supposed influence with a view to obtaining from a public body a valuable consideration.”.

Insertion of section 25A in the Act

8. The Act is amended by substituting for section 31, the following new section —

“Conflict of interest

31. (1) A member or employee of a public body is guilty of corruption if —

- (a) he or she, the immediate member of his or her family has a direct or indirect interest, in any company or undertaking with which such body proposes to deal; or
- (b) he or she has a personal interest in any decision which such body is to make,

and he or she, knowingly fails to disclose the nature of such interest, or votes or participates in the proceedings of such body relating to such dealing or decision without disclosing the nature of his or her interest.

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

(3) For the purposes of this section —

(a) “direct interest in a company or undertaking” means a member or employee of a public body or the immediate member of the family of the member or employee of a public body —

- (i) holds a position in,
- (ii) is an employee of,
- (iii) is a shareholder in, or
- (iv) gives services for remuneration or reward to,

a company or undertaking referred to in subsection (1);

Substitution of section 31 of the Act

- (b) “immediate member of the family” means the spouse, son, daughter, sibling or parent of the member or employee of a public body; and
- (c) “indirect interest in a company or undertaking” means an employee, agent or nominee of a member or employee of a public body or his or her immediate member of the family has a direct interest in a company or undertaking referred to in subsection (1).”.

Insertion of section 42A in the Act

9. The Act is amended by inserting immediately after section 42, the following new section —

“Endorsement of conviction in register

42A. (1) A court convicting a person under section 28 or 29 may, in addition to imposing a sentence provided for in section 36, issue an order that —

- (a) the particulars of the person;
- (b) the conviction and sentence; and
- (c) any other order of the court consequent thereupon,

be endorsed in the register kept under section 124 of the Public Procurement and Asset Disposal Act.

Cap. 42:08

(2) If the person referred to in subsection (1) is a body corporate or unincorporated body, the court may in addition to the conviction, issue an order that —

- (a) the particulars of the body corporate or unincorporated body;
- (b) the particulars of any partner, manager, director or other person, who wholly or partly exercises or may exercise control over that body corporate or unincorporated body and who was involved in the offence or who ought reasonably to have known or suspected that the body corporate or unincorporated body committed the offence; and
- (c) the conviction, sentence and any other order of the court consequent thereupon,

be endorsed in the register.

(3) The court may in addition to the conviction issue an order provided for in subsection (1) in respect of —

- (a) any body corporate or unincorporated body owned or controlled by the person so convicted; or
- (b) the particulars of any partner, manager, director or other person, who wholly or partly exercises or may exercise control over such other body corporate or unincorporated body,

and which —

- (i) body corporate or unincorporated body, partner, manager, director or other person was involved in the offence; or
- (ii) partner, manager, director or other person knew or ought reasonably to have known or suspected that the body corporate or unincorporated body was involved in the offence.

(4) Whenever the register is endorsed as stipulated in subsections (1), (2) and (3), the endorsement applies, unless the court directs otherwise, to every body corporate or unincorporated body to be established in the future and which body corporate or unincorporated body will be wholly or partly controlled or owned by the person or the body corporate or unincorporated body so convicted or endorsed, and the register shall in respect of every such body corporate or unincorporated body, be endorsed accordingly.

(5) Where a court has issued an order under subsection (1), the clerk of such court shall forward the court order to the Public Procurement and Asset Disposal Board established under the Public Procurement and Asset Disposal Act.”.

10. The Act is amended by inserting immediately after section 45, the following new section —

“Intimidation
of informers

45A. Any person who threatens or intimidates another person for reporting allegations of corruption under this Act shall be guilty of an offence and shall be liable, on conviction, to a fine not exceeding P10 000 or to imprisonment for a term not exceeding five years, or to both.”.

Insertion of
section 45A
in the Act

PASSED by the National Assembly this 9th day of April, 2013.

BARBARA N. DITHAPO,
Clerk of the National Assembly.