

REPUBLIC OF SOUTH AFRICA

PREVENTION OF CORRUPTION BILL

(As introduced in the National Assembly as a section 75 Bill; explanatory summary of the Bill published in Government Gazette No 23336 of 18 April 2002) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

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GENERAL EXPLANATORY NOTE:

Words underlined with a solid line indicate insertions in existing enactments.

BILL

To provide anew for the prevention of corruption and related offences; and to provide for matters connected therewith.

PREAMBLE

WHEREAS the Constitution enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil all the rights as enshrined in the Bill of Rights;

AND WHEREAS corruption, bribery and related offences endanger the stability and security of societies, undermine the values of democracy and morality, jeopardise social, economic and political development, free trade and the credibility of governments and provide a breeding ground for organised crime;

AND WHEREAS there are links between corruption and other forms of crime, in particular organised crime and economic crime;

AND WHEREAS corruption is a phenomenon that crosses national borders and affects all societies and economies, so that international cooperation is essential to prevent and control corruption and related offences;

AND WHEREAS the United Nations has adopted various resolutions condemning all corrupt practices, including bribery, and urged member states to take effective and concrete action to combat all forms of corruption, bribery and related corrupt practices,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

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CHAPTER 1

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DEFINITIONS AND INTERPRETATION

Definitions

1. In this Act, unless the context indicates otherwise—
 - (i) **“agent”** includes any person employed by or acting for another, any trustee of an insolvent estate, the assignee of an estate assigned for the benefit or with the consent of creditors, the liquidator of a company which is being wound up, the executor of the estate of a deceased person, the legal representative of any person who is of unsound mind or is a minor or is otherwise under disability, any public officer or an officer serving in or under or acting for any public body, a trustee, an administrator or a subcontractor and any person appointed as an agent in terms of any law; 35
 - (ii) **“associate”**, in relation to a natural person, includes—
 - (a) any person who is an employee, agent, nominee or representative of such person;
 - (b) any person who manages the affairs of such person; 45
 - (c) any firm of which such person is a business partner or any person who is in charge or in control of the business or affairs of such firm;
 - (d) any juristic person whose board of directors acts in accordance with such person's directions, instructions or influence; or
 - (e) a trust controlled and administered by such person; 50
 - (iii) **“business”** means any business, trade, profession, calling, industry or undertaking of any kind, or any other activity carried on for gain or profit by any person within the Republic or elsewhere, and includes all property

- derived from or used in or for the purpose of carrying on such activity, and all the rights and liabilities arising from such activity;
- (iv) **“corruptly”** means in contravention of or against the spirit of any law, provision, rule, procedure, process, system, policy, practice, directive, order or any other term or condition pertaining to— 5
- (a) any employment relationship;
- (b) any sporting event;
- (c) any agreement; or
- (d) the performance of any function in whatever capacity;
- (v) **“dealing”** includes— 10
- (a) any purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts or extension of credit;
- (b) any agency or grant of power of attorney; or 15
- (c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole or in part of any property being conferred on any person;
- (vi) **“foreign public official”** means— 20
- (a) any person holding a legislative, administrative or judicial office of a foreign state;
- (b) any person performing public functions for a foreign state, including any person employed by a board, commission, corporation or other body or authority that performs a function on behalf of the foreign state; or
- (c) an official or agent of a public international organisation; 25
- (vii) **“foreign state”** means any country other than South Africa, and includes—
- (a) any foreign territory;
- (b) all levels and subdivisions of government of any such country or territory;
- (c) any agency of any such country or territory or of a political subdivision 30 of any such country or territory;
- (viii) **“gratification”** includes—
- (a) money or any donation, gift, loan, fee, reward, valuable security, property or interest in property of any description, whether movable or immovable, or any other similar advantage; 35
- (b) the avoidance of a loss, liability, penalty, forfeiture, punishment or other disadvantage;
- (c) any office, dignity, employment, contract of employment or services and any agreement to give employment or render services in any capacity;
- (d) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part; 40
- (e) any valuable consideration or benefit of any kind or any discount, commission, rebate, bonus, deduction or percentage;
- (f) any forbearance to demand any money or money’s worth or valuable thing; 45
- (g) any other service or favour or advantage of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and includes the exercise or the forbearance from the exercise of any right or any official power or duty; 50
- (h) any right or privilege;
- (i) any aid, vote, consent or influence or pretended aid, vote, consent or influence;
- (j) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of paragraphs (a) to (i); 55
- (ix) **“Minister”** means the Cabinet member responsible for the administration of justice;
- (x) **“official”** means any director, functionary, officer or agent serving in any capacity whatsoever in a public body, private organisation, corporate body, political party, institution or other employment, whether under a contract of service or otherwise, and whether in an executive capacity or not; 60
- (xi) **“partner”** means a person who permanently lives with another person in a manner as if married;

- (xii) **“principal”** includes—
- (a) any employer;
 - (b) any beneficiary under a trust and any trust estate;
 - (c) the estate of a deceased person and any person with a beneficial interest in the estate of a deceased person; 5
 - (d) in the case of any person serving in or under a public body, the public body;
 - (e) in the case of a legal representative referred to in the definition of “agent”, the person represented by such legal representative;
- (xiii) **“property”** means money or any other movable, immovable, corporeal or incorporeal thing, whether situated in the Republic or elsewhere and includes any rights, privileges, claims, securities and any interest therein and all proceeds thereof; 10
- (xiv) **“public body”** means—
- (a) any department of state or administration in the national or provincial sphere of government or any municipality in the local sphere of government; or 15
 - (b) any other functionary or institution when—
 - (i) exercising a power or performing a duty in terms of the Constitution or a provincial constitution; or 20
 - (ii) exercising a public power or performing a public function in terms of any law or the common law;
- (xv) **“public international organisation”** means—
- (a) an organisation—
 - (i) of which two or more countries are members; or 25
 - (ii) that is constituted by persons representing two or more countries;
 - (b) an organisation established by, or a group of organisations constituted by—
 - (i) organisations of which two or more countries are members; or
 - (ii) organisations that are constituted by the representatives of two or more countries; or 30
 - (c) an organisation that is—
 - (i) an organ of, or office within, an organisation described in paragraph (a) or (b);
 - (ii) a commission, council or other body established by an organisation or organ referred to in subparagraph (i); or 35
 - (iii) a committee or a subcommittee of a committee of an organisation referred to in paragraph (a) or (b) or of an organ, council or body referred to in subparagraph (i) or (ii);
- (xvi) **“public officer”** means any person who is a member, an officer, an employee or a servant of a public body, and includes— 40
- (a) a public servant;
 - (b) a member of Parliament, a provincial legislature or a municipal council;
 - (c) a member of the national or provincial executive authority;
 - (d) any member of the judicial authority or the prosecuting authority; 45
 - (e) any person receiving any remuneration from public funds;
 - (f) where the public body is a corporation, the person who is incorporated as such;
- (xvii) **“public service”** means the public service referred to in section 1(1) of the Public Service Act, 1994 (Proclamation No. 103 of 1994), and includes— 50
- (a) any organisational component contemplated in section 7(4) of that Act and specified in the first column of Schedule 2 to that Act;
 - (b) the National Defence Force;
 - (c) the National Intelligence Agency;
 - (d) the South African Secret Service; 55
- (xiii) **“relative”**, in relation to a person, means—
- (a) his or her spouse, partner or fiancé;
 - (b) his or her child, stepchild, parent or stepparent;
 - (c) his or her brother or sister;
 - (d) a brother or sister of his or her spouse or partner; 60
 - (e) the spouse or partner of any of the persons mentioned in paragraphs (b) to (d); or
 - (f) his or her foster parents and foster children;

- (xix) **“scheme in commerce”** means any scheme carried out in whole or in part through the use in national or foreign commerce of any facility for transportation or communication;
- (xx) **“sporting event”** includes—
- (a) any event or contest in any sport, between individuals or teams, or in which animals or birds compete, and which is usually attended by the public and is governed by rules; 5
 - (b) any gambling game as defined in section 1 of the National Gambling Act, 1996 (Act No. 33 of 1996); or
 - (c) any other game of chance which includes a lottery, lotto, numbers game, scratch game, sweepstake, or sports pool; 10
- (xxi) **“statutory authority”** means any authority, whether consisting of a single person or a body of persons, established by law.

Interpretation

2. (1) For purposes of this Act a person is regarded as having knowledge of a fact if— 15
- (a) the person has actual knowledge of the fact; or
 - (b) the court is satisfied that—
 - (i) the person believes that there is a reasonable possibility of the existence of that fact; and
 - (ii) the person has failed to obtain information to confirm the existence of that fact. 20
- (2) Nothing in Chapter 2 may be construed so as to limit prosecution under any other law.

CHAPTER 2

OFFENCES AND PENALTIES 25

Offence of corruptly accepting gratification

3. (1) A person is guilty of an offence if he or she, directly or indirectly, corruptly accepts or agrees to accept for himself or herself or for any other person any gratification as an inducement to do or not to do anything or as a reward for having done or not having done anything. 30
- (2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.
- (3) Whenever a person is charged with the offence referred to in subsection (1), proof that that person, or someone else at the instance of that person, accepted or agreed to accept any gratification from a person— 35
- (a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person charged was serving as an official; 40
 - (b) who is concerned, or who is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person charged or public body, private organisation, corporate body, political party or other organisation or institution in which the person charged was serving as an official; or 45
 - (c) acting on behalf of or related to a person contemplated in paragraph (a) or (b), is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the person charged accepted or agreed to accept such gratification corruptly as an inducement or as a reward contemplated in subsection (1) if the State can show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of or agreement to accept the gratification to any lawful motive on the part of the person charged. 50
- (4) Without derogating from the provisions of subsection (3), where a person whose duties include the detection, prosecution or punishment of offenders is charged with the offence referred to in subsection (1) arising from— 55
- (a) the arrest, detention or prosecution of any person for an alleged offence;

- (b) the omission to arrest, detain or prosecute any person for an alleged offence;
or
- (c) the investigation of an alleged offence,

it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a) to (c) had been committed.

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Offence of corruptly giving gratification

4. (1) A person is guilty of an offence if he or she, directly or indirectly, corruptly gives or agrees to give to any person, whether for the benefit of that person or of another person, any gratification as an inducement to do or not to do anything or as a reward for having done or not having done anything.

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(2) A person convicted of an offence referred to in subsection (1), is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.

(3) Whenever a person is charged with the offence referred to in subsection (1), proof that that person, or someone else at the instance of that person, gave or agreed to give any gratification to a person—

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- (a) holding or seeking to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person who benefited was serving as an official;

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- (b) who is concerned, or who is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person who benefited or public body, private organisation, corporate body or other organisation or institution in which the person who benefited was serving as an official; or

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- (c) acting on behalf of or related to a person contemplated in paragraph (a) or (b), is, in the absence of evidence to the contrary which raises reasonable doubt, sufficient evidence that the person charged gave or agreed to give such gratification corruptly as an inducement or as a reward contemplated in subsection (1) if the State can show that, despite having taken reasonable steps, it was not able with reasonable certainty to link the giving of, or agreement to give, the gratification to any lawful motive on the part of the person charged.

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Offence of corruptly accepting gratification by or giving gratification to agent

5. (1) Any agent is guilty of an offence if the agent in relation to his or her principal's affairs or business, directly or indirectly, corruptly accepts or agrees to accept from any person a gratification as an inducement to do or not to do anything or as a reward for having done or not having done anything.

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(2) A person is guilty of an offence if that person, in relation to the affairs or business of an agent's principal, directly or indirectly, corruptly gives or agrees to give any gratification to that agent, whether for the benefit of the agent or of another person, as an inducement to do or not to do anything or as a reward for having done or not having done anything.

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(3) A person who knowingly gives to an agent, or an agent who knowingly uses, any receipt, account or other document in respect of which the principal has an interest and which contains any statement which is false or erroneous or defective in any material respect and which to his or her knowledge is intended to mislead the principal or any other person is guilty of an offence.

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(4) A person convicted of an offence referred to in subsection (1), (2) or (3) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.

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(5) For purposes of subsection (1), it is not a valid defence to contend that the agent—

- (a) did not have the power, right or opportunity to perform or not to perform any act contemplated in that subsection;

- (b) accepted the gratification without intending to perform or not to perform the act in relation to which the gratification was offered; or

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- (c) failed to perform or not to perform the act in relation to which the gratification was offered.

(6) Whenever any person is charged with an offence referred to in subsection (2), and it is proved that he or she corruptly gave or agreed to give any gratification to any agent

as an inducement for doing or as a reward for not having done anything, he or she is guilty of an offence under that subsection regardless of whether the agent had the power, right or opportunity to perform, or not to perform the act contemplated in that subsection.

Offence of fraudulent acquisition of private interest 5

6. (1) Any person employed in the public service who knowingly acquires or holds, directly or indirectly, otherwise than as a member of a registered joint stock company consisting of more than 20 persons, a private interest in any contract, agreement or investment emanating from or connected with the department, component or office in which he or she is employed or which is made on account of the public service is guilty of an offence. 10

(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

Offences in respect of tenders 15

7. (1) A person is guilty of an offence if that person, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, corruptly, directly or indirectly—

- (a) with intent to obtain such contract from any public body, private organisation, corporate body or other organisation or institution, offers any gratification to any person who has made a tender for the contract, as an inducement or as a reward for his or her withdrawing the tender; 20
- (b) accepts or agrees to accept any gratification for withdrawing a tender made by him or her for such contract; or
- (c) upon an invitation to tender for such contract, makes an offer which has as its aim to cause the tenderer or person organising the tender to accept a particular offer. 25

(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment. 30

Bribery of public officer

8. (1) A person is guilty of an offence if he or she gives or agrees to give to any public officer any gratification as an inducement to or as a reward for—

- (a) voting or not voting at any meeting of a public body; 35
- (b) performing or not performing any official function;
- (c) expediting, delaying, hindering or preventing the performance of an official act, whether by that public officer or by any other public officer;
- (d) aiding, assisting or favouring any person in the transaction of any business with a public body;
- (e) aiding or assisting in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person in relation to the transaction of any business with a public body; or 40
- (f) showing any favour or disfavour to any person in performing a function as a public officer,

regardless of whether the public officer had the power, right or opportunity to act or not to act in a manner contemplated in paragraphs (a) to (f). 45

(2) A public officer is guilty of an offence if he or she accepts or agrees to accept any gratification as an inducement to, or as a reward for, performing or not performing any act or omission referred to in subsection (1)(a) to (f), regardless of whether the public officer had the power, right or opportunity so to act or so not to act. 50

(3) Any person convicted of an offence referred to in subsection (1) or (2) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment.

Corruption of witnesses

- 9.** (1) A person is guilty of an offence if he or she, directly or indirectly, corruptly gives or agrees to give any gratification to any person, whether for the benefit of that person or of another person, with the intent to—
- (a) influence the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or 5
 - (b) influence that person or another witness to absent himself or herself from such trial, hearing or other proceedings or to withhold true testimony. 10
- (2) A person is guilty of an offence if he or she, directly or indirectly, corruptly accepts or agrees to accept any gratification, whether for himself or herself or for the benefit of another person, in return for—
- (a) testifying in a particular or untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony; or 15
 - (b) not testifying at any such trial, hearing or proceedings.
- (3) A person convicted of an offence referred to in subsection (1) or (2) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 20

Bribery of foreign public officials

- 10.** (1) A person is guilty of an offence if he or she, in order to obtain or retain business or an improper advantage in the course of business, corruptly gives or agrees to give a gratification, whether directly or indirectly, to a foreign public official—
- (a) as consideration for such official performing or failing to perform any of his or her public functions; or 25
 - (b) to induce that official to use his or her position to influence any acts or decisions of the foreign state or public international organisation concerned.
- (2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding 15 years, or to both a fine and such imprisonment. 30

Bribery in relation to auctions

- 11.** (1) A person is guilty of an offence if he or she corruptly—
- (a) gives or agrees to give any gratification to any other person as an inducement to refrain or as a reward for having refrained from bidding at any auction; or 35
 - (b) accepts or agrees to accept any gratification as an inducement to refrain or as a reward for having refrained from bidding at any auction.
- (2) A person convicted of an offence referred to in subsection (1)(a) or (b) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment. 40

Bribery for giving assistance in regard to contracts

- 12.** (1) A person is guilty of an offence if he or she corruptly gives or agrees to give any gratification to any other person as an inducement to give or as a reward for giving or having given assistance or as an inducement to use or as a reward for using or having used influence in—
- (a) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or other organisation or institution; or 45
 - (b) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.
- (2) A person is guilty of an offence if he or she corruptly accepts or agrees to accept any gratification as an inducement to give or as a reward for giving or having given assistance or as an inducement to use or as a reward for using or having used influence in—
- (a) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or other organisation or institution; or 50
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(b) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract.

(3) Any person convicted of an offence referred to in subsection (1) or (2) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

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Offence of corruptly using office or position for gratification

13. (1) Any public officer who, directly or indirectly, corruptly uses his or her office or position in a public body in order to obtain any gratification for himself, herself or any other person is guilty of an offence.

(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding seven years, or to both a fine and such imprisonment.

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(3) 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 such 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, if the State can show that despite having taken reasonable steps it was not able with reasonable certainty to link the acceptance of or agreement to accept the gratification to any lawful motive on the part of the public official.

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Corruption in relation to sporting events

14. (1) A person is guilty of an offence if he or she, directly or indirectly, corruptly—

(a) accepts or agrees to accept any gratification, whether for himself or herself or for the benefit of another person, as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event;

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(b) gives or agrees to give to any other person any gratification as an inducement to influence or as a reward for influencing or having influenced the run of play or the outcome of a sporting event; or

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(c) carries into effect any scheme in commerce to influence the run of play or outcome of a sporting event.

(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

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Offence of dealing with, using, holding, receiving or concealing gratification in relation to any offence

15. (1) A person is guilty of an offence if he or she, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person—

(a) enters into or causes to be entered into any dealing in relation to any property;

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or

(b) uses or causes to be used, or holds, receives or conceals any property or any part thereof,

which forms part of any gratification which was the subject of an offence in terms of this Chapter.

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(2) A person convicted of an offence referred to in subsection (1) is liable to a fine or to imprisonment for a period not exceeding seven years, or to both a fine and such imprisonment.

Offences relating to corrupt accepting and giving of gratification

16. Any person who—

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(a) demands, solicits, receives or in any manner whatsoever obtains or offers or promises to receive or obtain any gratification under the circumstances and in the manner contemplated in section 3(1), 5(1), 7(1)(b), 8(2), 9(2), 11(1)(b), 12(3) or 14(1)(a); or

- (b) lends, grants, confers, procures, offers or promises to lend, grant, confer or procure any gratification under the circumstances and in the manner contemplated in section 4(1), 5(2) or (3), 8(1), 9(1), 10(1), 11(1)(a), 12(1) or 14(1)(b),

is guilty of the offence contemplated in the section in question as if he or she had corruptly accepted or agreed to accept a gratification or had corruptly given or agreed to give a gratification, as the case may be, and on conviction is liable to the punishment prescribed for such offence. 5

Additional offences

17. (1) A person is guilty of an offence if he or she— 10

- (a) attempts to commit an offence in terms of this Chapter;
 (b) conspires with any other person to commit an offence in terms of this Chapter;
 (c) aids, abets, induces, incites, instigates, instructs or commands another person to commit an offence under this Chapter.

(2) A person convicted of an offence referred to in subsection (1) is liable to the punishment laid down in this Chapter for the offence which that person attempted or conspired to commit or aided, abetted, induced, instigated, instructed or commanded another person to commit. 15

Intentional obstruction of investigation of offence

18. (1) A person is guilty of an offence if he or she, with intent to defraud or to conceal an offence in terms of this Act or to obstruct a law enforcement body in its investigation of any such offence— 20

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device which belongs to or is in the possession of his or her employer, or has been received by him or her on account of his or her employment, or any entry in such book, document, account or electronic device, or is privy to any such act; 25
 (b) makes or is privy to making any false entry in such book, document, account or electronic device; or
 (c) omits or is privy to omitting any information from any such book, document, account or electronic device. 30

(2) A person convicted of an offence referred to in subsection (1) is liable to imprisonment for a period not exceeding 10 years, or to both a fine and such imprisonment.

Possession or control of property corruptly acquired by public officer 35

19. (1) Any public officer is guilty of an offence if he or she is in possession or control of property or resources which have been acquired corruptly.

(2) Evidence that a public officer—

- (a) maintains a standard of living above that which is commensurate with his or her present or past lawful sources of income; or 40
 (b) is in control of resources or property disproportionate to his or her present or past lawful sources of income,

is, in the absence of evidence to the contrary which raises a reasonable doubt, sufficient proof that the property or resources have been acquired corruptly.

(3) Whenever a person is charged with an offence referred to in subsection (1) and the court is satisfied that— 45

- (a) the accused placed the property or resources in the possession or control of another person for a reason other than in the ordinary course of business; and
 (b) the accused, by virtue of the closeness of his or her relationship with the other person, still has access to and can use the property or resources, 50

such circumstances are, in the absence of evidence to the contrary which raises a reasonable doubt, sufficient evidence that the property or resources have been acquired corruptly.

(4) A prosecution for the offence referred to in subsection (1) may only be instituted—

- (a) by the National Director of Public Prosecutions or a member of the prosecuting authority authorised in writing by the National Director of Public Prosecutions; and 55

- (b) after the public officer concerned has been afforded an opportunity by the prosecuting authority to explain how he or she acquired the property or resources concerned.

Duty to report corrupt transactions

20. (1) Any public officer to whom any gratification is promised, offered, given or lent in contravention of any provision of this Chapter must, as soon as possible, report such fact, together with the name, if known, of the person or persons concerned to his or her supervisor or at his or her nearest police station. 5

(2) If any gratification has been demanded, solicited, accepted, received or obtained from any person in contravention of any provision of this Chapter, or if an attempt has been made to demand, solicit, accept, receive or obtain any gratification from any person in contravention of any provision of this Chapter, such person must, as soon as possible, report such fact, together with the name, if known, of the other person or persons involved at his or her nearest police station. 10

(3) Any person who fails to comply with subsection (1) or (2) is guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three years, or to both a fine and such imprisonment. 15

Extraterritorial application of Act and jurisdiction

21. (1) An act constituting an offence in terms of this Act is also an offence if it is committed in any country outside the Republic by any— 20

(a) South African citizen or a person domiciled in the Republic, whether the act is an offence or not at the place of its commission; or

(b) foreigner, if—

(i) the act constituted an offence under the law in force in that country;

(ii) that foreigner is found to be in the Republic; and 25

(iii) that foreigner is for one or other reason not extradited.

(2) Any offence committed in a country outside the Republic as contemplated in subsection (1) is deemed to have been committed in the Republic.

(3) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after the offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or, in case of an omission, should have acted. 30

(4) The acquittal or the conviction of an accused person by a foreign court of law on a criminal charge similar to a charge referred to in this Act, which would be a bar to subsequent charges against such accused person for the same offence if committed in the Republic, is a bar to further proceedings against him or her under any law relating to the extradition of persons, in respect of the same offence, outside the Republic. 35

Reinstatement of common law crime of bribery

22. The common law crime of bribery, which was repealed by section 4 of the Corruption Act, 1992 (Act No. 94 of 1992), is hereby reinstated. 40

CHAPTER 3

GENERAL PROVISIONS

Jurisdiction of magistrates' courts

23. Any magistrate's court has jurisdiction to impose any penalty mentioned in this Act. 45

Repeal and amendment of laws

24. (1) The Corruption Act, 1992 (Act No. 94 of 1992), is hereby repealed.

(2) The Criminal Procedure Act, 1977 (Act No. 51 of 1977), is hereby amended by the insertion after section 269 of the following section:

“Bribery and statutory corruption

269A. If evidence on a charge of common law bribery, an attempt to commit common law bribery or a charge in terms of any provision of Chapter 2 of the Prevention of Corruption Act, 2002, does not prove the crime or offence charged but—

- (a) proves the crime of fraud;
- (b) proves the crime of extortion;
- (c) in the case of a charge of common law bribery, proves an offence contemplated in Chapter 2 of the Prevention of Corruption Act, 2002; or
- (d) in the case of a charge in terms of Chapter 2 of the Prevention of Corruption Act, 2002, proves the common law crime of bribery,

the accused may be found guilty of the crime or offence so proved.”.

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Interpretation of certain references

25. Any reference in any law to the “Prevention of Corruption Act, 1958”, the “Prevention of Corruption Act, 1958 (Act No. 6 of 1958)”, the “Corruption Act, 1992” or the “Corruption Act, 1992 (Act No. 94 of 1992)”, in relation to an offence in terms of those Acts, must, unless the context indicates otherwise, be construed as a reference to any corresponding offence contemplated in Chapter 2 of this Act.

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Short title

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26. This Act is called the Prevention of Corruption Act, 2002.

MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF CORRUPTION BILL, 2002

1. BACKGROUND TO AND OBJECTS OF BILL

- 1.1 Since the enactment in 1992 of legislation dealing with corruption, various proposals have been received relating to the amendment of this legislation. For example, it has been suggested that the common law crime of bribery be reinstated and further that—
- (a) the crime of corruption be broadened to cover all agents, public or private; and
 - (b) the legislation should apply extraterritorially in order to cover any gifts given or received outside our borders.

It has also been suggested that “anti-corruption legislation” should create a crime when public officials are used or manipulated to commit irregularities.

- 1.2 Rather than amending the Corruption Act, 1992 (Act No. 94 of 1992), (hereinafter referred to as the “current Act”), on a piecemeal basis, the Bill aims to give effect to recommendations emanating from a total review of the current legislation. This will contribute to Government’s initiatives in developing an overall anticorruption strategy. The provisions contained in the Bill follow the trend of modern international legislation, namely the “unbundling” of corruption, in terms of which various specific corrupt actions and corrupt practices are defined and prohibited.
- 1.3 Following the trend of modern legislation internationally, the Bill envisages the incorporation and development of a number of different provisions regarding various types of corrupt practices. Some of the important provisions of the Bill are highlighted hereunder:
- 1.3.1 Clause 3(1) creates an offence in respect of any person (which includes a public officer) who corruptly accepts or agrees to accept any undue gratification as an inducement to do or not do or reward for doing or not doing, among others, anything in the performance of his her or her functions. The word “gratification” has been defined to include a wide range of benefits and avoidance of losses. The sentence proposed for the offence (clause 3(2)) is in line with comparative legislation. Clause 3(3) provides for the application of a presumption, subject to strict requirements. The provisions of this presumption, as is the case in respect of the other presumptions in the Bill, are in line with the guidelines laid down by the Constitutional Court in recent decisions.
 - 1.3.2 Clause 4(1) creates an offence in respect of any person who corruptly gives or agrees to give to any person any undue gratification as an inducement to do or not do or reward for doing or not doing, among others, anything in the carrying out or performance of his or her duties or functions.
 - 1.3.3 Clause 5(1) creates an offence where an agent corruptly accepts or agrees to accept from any person, for himself or herself or for any other person, any undue gratification as an inducement to do or not do or reward for doing or not doing anything. Secondly, clause 5(2) creates an offence where any person corruptly gives or agrees to give any gratification to any agent, as an inducement to do or not do or reward for doing or not doing anything. Clause 5(4) provides for a maximum penalty of 15 years’ imprisonment for a contravention.
 - 1.3.4 Clause 7(1) creates an offence in respect of corrupt practices relating to tenders. This provision applies in respect of the public service, other public bodies, private organisations, corporate bodies or any other

organisation or institution. Clause 7(2) prescribes a maximum penalty of 15 years' imprisonment for any contravention of this provision.

- 1.3.5 Clause 8 creates the offence of bribery of public officers. It is an offence for any person to give or agree to give to any public officer any gratification, or being a public officer, to accept or agree to accept any gratification, as an inducement to that public officer to perform or not to perform or a reward for that public officer for having or not having performed certain prescribed acts. Clause 8(3) prescribes a maximum penalty of 15 years' imprisonment for this offence.
- 1.3.6 Clause 9 creates offences in respect of corrupt practices relating to witnesses. Clause 9(1) provides that it is an offence for any person to give or agree to give any gratification to any person with the intent to influence the testimony of a witness in a trial, hearing or other proceedings, or to influence any person to absent himself or herself therefrom or to withhold true testimony. Clause 9(2) provides that it is an offence for any person to accept or agree to accept any gratification in return for being influenced in testimony in a trial, hearing or other proceedings, or in return for being influenced to absent himself or herself therefrom or to withhold true testimony. Clause 9(3) provides for a maximum penalty of 10 years' imprisonment for this offence.
- 1.3.7 Clause 10(1) creates an offence in respect of the bribery of foreign officials. This clause emanates from the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions adopted by the OECD Member countries on 21 November 1997. A penalty of imprisonment not exceeding 15 years is prescribed.
- 1.3.8 Clause 11 creates the offence of bribery in relation to auctions for which a maximum penalty of 10 years' imprisonment is prescribed.
- 1.3.9 Clause 12(1) creates the offence of bribery for giving assistance, etc, in regard to contracts. A penalty of imprisonment for a period not exceeding 10 years is prescribed.
- 1.3.10 Clause 14 creates the offence of corruption in relation to sporting events. This is a new provision. The object of this provision is to combat corrupt practices, for example the fixing of sporting events as recently experienced in cricket.
- 1.3.11 Clause 16 is a very important provision in that it provides for the creation of other offences relating to the corrupt accepting and giving of gratification.
- 1.3.12 Clause 17 deals with an attempt and conspiracy to commit a crime and the preparation and abetment relating to the commission of a crime.
- 1.3.13 Clause 19 provides for the offence of the possession of property suspected to have been acquired corruptly and in respect of which the person concerned is unable to give an account.
- 1.3.14 Clause 21 provides for the extraterritorial application of the Act and clause 24 provides for the reinstatement of the common law crime of bribery.

2. DEPARTMENTS/BODIES/PERSONS CONSULTED

The Department of Public Service and Administration, the Department of Finance, all Directors of Public Prosecutions, Unit Heads within the National Prosecuting Authority and members of the Policy Unit of the Department of Justice have been consulted.

3. IMPLICATIONS FOR PROVINCES

None.

4. FINANCIAL IMPLICATIONS FOR STATE

None.

5. PARLIAMENTARY PROCEDURE

The State Law Advisers and the Department of Justice and Constitutional Development are of the view that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provisions to which the procedures set out in section 74 or 76 of the Constitution apply.