

ACT NO. 5 OF 1999
PREVENTION OF CORRUPTION AND ECONOMIC OFFENCES ACT 1999

An Act to provide for the establishment of a Directorate on Corruption and Economic Crime; to make provision for the prevention of corruption and confer power on the Directorate to investigate suspected cases of corruption and economic crime and matters connected or incidental thereto

Enacted by the Parliament of Lesotho

PART I
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Prevention of Corruption and Economic Offences Act, 1999 and shall come into operation on the date of its publication in the Gazette.

Interpretation

2. In this Act, unless the context otherwise requires -

“agent“ includes any person employed by or acting for another;

"benefit" has the meaning assigned to it under section 20;

“book“ includes any book, record, return, report, data stored electronically on computer or otherwise and any other document;

“Deputy Director” means a person appointed by Public Service Commission as Deputy Director of the Directorate;

“Directorate” means the Directorate established under section 3;

“Director” means the Director of Prevention of Corruption and Economic Offences appointed under section 4;

“Minister” means the Minister of Justice and Human Rights;

“person” includes any company or association or body or persons, corporate or unincorporated;

“principal” includes an employer;

“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 the Government of Lesotho owns equity shares;

“Public officer”, for the purposes of this Act, means a person holding any public office and includes a Cabinet Minister, a holder of a statutory position and a member of Parliament;

“serious economic offence” means any offence which in the opinion of the Director due to the amount of money involved, the complexity, and nature calls for a different treatment in relation to investigation and prosecution.

PART II ESTABLISHMENT OF DIRECTORATE

Establishment of Directorate

3. (1) There is hereby established a Directorate to be known as the Directorate on Corruption and Economic Offences which shall consist of a Director, two Deputy Directors and such other officers of the Directorate as may be appointed.

(2) The Directorate shall be a public office; and accordingly, the provisions of the Public Service Act 1995¹ shall, with such modifications as may be necessary or set out in this Act, apply to the Directorate and its officers.

The Director

4. (1) There shall be a Director who shall be appointed, subject to subsections (2) and (3), by the Prime Minister for a term of 5 years, and who shall be responsible for the direction and administration of the Directorate.

(2) No person shall be appointed as a Director unless he is registered as a legal practitioner under the Legal Practitioners Act 1983².

(3) A person holding the office of Director may be removed from office only for inability to exercise the functions of his office (whether arising from infirmity of body or mind or any other cause) or for misbehaviour and shall not be removed except in accordance with the provisions of this section.

(5) If the Minister represents to the Prime Minister that the question of removing the Director under this section ought to be investigated, then -

- (a) the Prime Minister shall appoint a tribunal which shall consist of a Chairman and not less than two other members, selected by the Chief

Justice from among persons who hold or have held high judicial office;
and

- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Prime Minister and recommend to him whether the Director ought to be removed under this section.

(6) If the question of removing the Director has been referred to a tribunal under this section, the Prime Minister, acting in accordance with the advice of the Minister, may suspend the Director from the exercise of the functions of his office and any such suspension may at any time be revoked by the Prime Minister, acting in accordance with such advice as aforesaid, and shall in any case cease to have effect if the tribunal recommends to the Prime Minister that the Director should not be removed.

Acting Director

1. (1) If the office of the Director is vacant or the Director is absent from duty for any reason, any of the Deputy Directors shall act as a Director.
- (2) If the Director and the Deputy Directors are absent from duty, the Public Service Commission may appoint any other competent person to act as Director until the return to duty of either Director or any of the Deputy Directors.

PART III Functions of Directorate

6. The functions of the Directorate shall be -
 - (a) to receive and investigate any complaints alleging corruption in any public body;
 - (b) to investigate any alleged or suspected offences under this Act, or any other offence disclosed during such an investigation;
 - (c) to investigate any alleged or suspected contravention of any of the provisions of the fiscal and revenue law laws of Lesotho;
 - (d) to investigate any conduct of any person, which in the opinion of the Director, may be connected with or conducive to corruption;
 - (e) to prosecute, subject to section 43, any offence committed under this Act;
 - (f) to assist any law enforcement agency of the Government in the investigation of offences involving dishonesty or cheating of the public

- (g) procedures which in the opinion of the Director, may be conducive to corrupt practices;
- (h) to instruct, advise and assist any person, on the latter's request, on ways in which corrupt practices may be eliminated by such person;
- (i) to advise heads of public bodies of change in practices or procedures compatible with the effective discharge of the duties of such public bodies which the Director thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- (j) to educate the public against the evils of corruption;
- (k) to enlist and foster public support in combatting corruption; and
- (l) to undertake any other measures for the prevention of corruption and economic offences.

Powers of Director

7. For the performance of the functions of the Directorate, the Director may -
- (a) authorise any officer of the Directorate to conduct an inquiry or investigation into any alleged or suspected offences under this Act;
 - (b) require any person, in writing to produce, within a specified time, all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents in relation to the functions of any public or private body.

Power of Director to obtain information

8. (1) If in the course of any investigation into any offence under Part IV or V the Director is satisfied that it would assist or expedite such investigation, he may, by notice in writing, require -
- (a) any suspected person to furnish a statement in writing
 - (i) enumerating all movable or immovable property belonging to or possessed by him in Lesotho or elsewhere, and specifying the date on which every such property was acquired and the consideration paid therefor, and

explaining whether it was acquired by way of purchase, gift, bequest, inheritance or otherwise;

- (ii) specifying any moneys or other property acquired in Lesotho or elsewhere or sent out of Lesotho by him or on his behalf during such period as may be specified in such notice;
- (b) any other person with whom the Director believes that the suspected person has any financial transactions or other business dealing, relating to an offence under Part IV or V, to furnish a statement in writing enumerating all movable or immovable property acquired in Lesotho or elsewhere or belonging to or possessed by such other person at the material time;
- (c) any person to furnish, notwithstanding the provisions of any other enactment to the contrary, all information in his possession relating to the affairs of any suspected person and to produce or furnish any document or a certified true copy of any document relating to such suspected person, which is in the possession or the control of the person required to furnish the information;
- (d) the manager of any bank, in addition to furnishing any information specified in paragraph (c), to furnish any information of the originals, or certified true copies, or the accounts or the statements of account at the bank of any suspected person.

(2) Every person on whom a notice is served by the Director under subsection (1), shall, notwithstanding any oath of secrecy, comply with the requirements of the notice within such time as may be specified therein, and any person who without reasonable excuse fails to so comply commits an offence and shall be liable to the penalty prescribed under section 17(2).

Special identity card

9. The Director may issue to an officer of the Directorate a special identity card which shall be full proof of appointment as an officer of the Directorate.

Power of search and seizure

10. (1) Where an officer has arrested a person under section 38, he may -
- (a) search that person and his premises or place in which he was arrested;

- (b) seize and detain anything which such **officer** has reason to believe to be or to contain evidence of any of the offences referred to in Part IV or V.

(2) A person shall not be searched bodily under subsection (1) except by a person of the same gender.

Procedure after arrest

11. A person arrested under section 38 shall be taken as soon as possible to a police station to be dealt with in accordance with section 32 of the Criminal Procedure and Evidence Act of 1981³.

Search with warrant

12. (1) If it appears to the Director that there is reasonable cause to suspect that there is in any premises, place, vessel, boat, aircraft or other vehicle anything which is or contains evidence of the commission of any offence under Part IV or V, the Director or any officer of the Directorate may make an application on oath to a magistrate for a warrant to search such premises, place, vessel, boat, aircraft or other vehicle.

(2) If a magistrate to whom an application is made under subsection (1) is satisfied that there are reasonable grounds for suspecting that there is in the premises, place, vessel, boat, aircraft or other vehicle referred to in subsection (1) anything which is or contains evidence of the commission of any of the offences referred to in Part IV or V, he may by warrant direct the Director, or any officer authorised by him under section 7(a), to enter and search such premises, place, vessel, boat, aircraft or other vehicle and seize and detain anything which the Director, or the officer authorised by the Director, has reason to believe to be or to contain evidence of any of the offences referred to in part IV or V.

Search without warrant in certain cases

13. (1) Whenever the Director, or an officer authorised by him under section 7(a), has reasonable cause to believe that there is in any premises, place, vessel, boat, aircraft or other vehicle any article or document which is evidence of the commission of an offence, or in respect of which an offence has been, is being, or about to be committed, under Part IV or V, or is being conveyed or is concealed or contained in any package in the premises, place, vessel, boat, aircraft or other vehicle, for the purpose of being conveyed, then and in any such case, if the Director or the officer authorised by him under section 7(a) considers that the special exigencies of the case so require, he may without a warrant enter the premises, place, vessel, boat, aircraft or other vehicle, and search, seize and detain such article, document or package.

(2) Any article, document or package seized and detained under subsection (1) shall be dealt with in accordance with Part VI of the Criminal Procedure and Evidence Act of 19 8 1.

Exercise of powers of search and seizure

14. (1) In the exercise of the powers of search, seizure and detention under section 12(2) or 13, the Director or any other officer of the Directorate may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by the police as he deems necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(2) Notwithstanding sections 7, 12 and 13, the Director, or any other officer of the Directorate shall not have access to any books, records, returns, reports or other documents, or data stored electronically, or to enter upon any premises, place, vessel, boat, aircraft or other vehicle if, in the opinion of the Attorney-General, such access or entry is likely to prejudice national security:

Provided that the Attorney-General shall first make an application in camera before a judge of the High Court in chambers stating grounds upon which his opinion is based.

Surrender of travel document

15. (1) A Judicial Officer may, on the application of the Director, by written notice, require a person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under Part IV or V to surrender to the Director any travel document in his possession.

(2) If a person whom a notice under subsection (1) has been served fails to comply with the notice forthwith, he may thereupon be arrested and taken before a Judicial Officer.

(3) Where a person is taken before a Judicial Officer under subsection (2) the Judicial officer may, unless that person thereupon complies with the notice under subsection (1) or satisfies the Judicial Officer that he does not possess a travel document, by warrant, commit him to prison to be kept in custody until he complies with the notice.

Return of travel document

16. A person who has surrendered a travel document under section 15 may at any time make a written application to court for its return.

Resisting or obstructing officers

17. (1) Any person who resists or obstructs an officer in the execution of his duty commits an offence.

(2) Any person who commits an offence under this section, or section 8(2) shall be liable on conviction to a fine not exceeding M2,000.00, or to a term of imprisonment not exceeding 2 years or both.

False reports to officers

18. Any person who knowingly -

- (a) makes or causes to be made to an officer a false report of the commission of any offence; or
- (b) misleads an officer by giving false information or by making false statements or accusations,

commits an offence and shall be liable on conviction to a fine not exceeding M2 000 or to a term of imprisonment not exceeding 2 years, or both.

Falsely pretending to be an officer

19. Any person who falsely pretends -

- (b) that he is an officer of the Directorate or has any of the powers of an officer under this Act or under any authorisation or warrant issued under this Act; or
- (b) that he is able to procure an officer of the Directorate or to do or refrain from doing anything in connection with the duty of such officer,

commits an offence and shall be liable on conviction to a fine not exceeding M2 000.00 or a term of imprisonment not exceeding 2 years or both.

PART IV

OFFENCES

Definition of benefit

20. For the purposes of this Part, “benefit” means -

- (a) any gift, fee, reward or commission consisting of money or of any valuable security or of other property or interest in property of any description;
- (b) any office, employment or contract;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

- (d) any other service, favour 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;
- (e) the exercise or forbearance from exercise of any right or any power or duty; and
- (f) any offer, undertaking or promise whether conditional or unconditional, of any benefit within the meaning of the provisions of any of the preceding paragraphs.

Corruption by or with public officer

21. (1) A public officer commits the offence of corruption in relation to the duties of his office if he directly agrees or offers to permit his public conduct as a public officer to be influenced by a gift, promise or prospect of any benefit to be received by him, or by any person, from any person.

(2) A person commits the offence of corrupting a public officer if he endeavours directly to influence the conduct of the public officer in respect of the duties of his office by a gift, promise or prospect of any benefit to be received by the public officer, or by any person, from any person.

Corruption in respect of official transactions

22. (1) A public officer commits the offence of corruption if he accepts, or agrees or offers to accept, for himself, or for any other person a benefit as an inducement or reward for doing or forbearing to do anything in respect of any matter in which he is concerned in his capacity as a public officer.

(2) A person commits the offence of corrupting a public officer if he gives or agrees to offer to give any benefit to a public officer, whether for the benefit of that public officer or of another person as an inducement or reward for doing or forbearing to do anything in respect of any matter in which the public officer is concerned in his capacity as a public officer.

Acceptance of bribe by public officer after doing act

23. If, after a person has done any act as a public officer, he accepts, or agrees to offer to accept for himself or for any other person, any benefit on account of such act, he shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted the public officer in respect of such act.

Promise of bribe to public officer after doing act

24. If, after a public officer has done any act as such officer, any person agrees or offers to give or procure for him any benefit on account of such act, the person so agreeing or offering shall be presumed, until the contrary is shown, to have been guilty of having, before the doing of such act, corrupted the public officer in respect of such act.

Corrupt transaction by or with agents

25. (1) An agent commits the offence of corruption if he corruptly accepts, or agrees or offers to accept from any person, for himself or for any other person any benefit as an inducement or reward doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

(2) A person commits the offence of corruption if he corruptly gives or agrees to give or offers to give to any agent any benefit as inducement or reward for doing or forbearing to do, any act or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

(3) If any person knowingly gives to any agent, or if any agent knowingly gives to another agent, or if any agent knowingly uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, 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, such person commits the offence of corruption.

Bribery for giving assistance in regard to contracts

26. (1) A public officer commits the offence of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any benefit as inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring (including any amendment, suspension or cancellation) of any contract (including a subcontract) with a public body.

(2) A person commits the offence of corruption if he directly or indirectly gives, or agrees or offers to give any benefit to any public officer as inducement or reward for or otherwise on account of the public officer giving assistance or using influence in, or having given assistance or used influence in, promoting, administering, executing or procuring (including any amendment, suspension or cancellation) of any contract (including a subcontract) referred to in subsection (1).

Bribery for procuring withdrawal of tender

27. (1) A person commits the offence of corruption if he directly or indirectly accepts or agrees or offers to accept for himself or for any other person any benefit as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the

refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supply of any article, material or substance.

(2) A person commits the offence of corruption if he directly or indirectly gives, or agrees or offers to give any other person any benefit as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender for such contract as is referred to subsection (1).

Conflict of interest

28. (1) A member or an employee of a public body commits the offence of corruption if he or an immediate member of his family has direct or indirect interest in any company or undertaking with which such body proposes to deal, or he has a personal interest in any decision which such body is to make, and he, 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.

(2) It is a defence to a charge under this section if the person having an interest has first made, in writing, to the public body, the fullest disclosure of the exact nature of his 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 "family" includes a paramour.

Bribery in relation to auctions

29. (1) A person commits the offence of corruption if he directly or indirectly accepts or agrees to accept for himself or any other person any benefit as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

(2) A person commits the offence of corruption if he directly or indirectly gives or agrees or offers to give any other person any benefit as an inducement or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body.

Cheating of public revenue

30. A person commits the offence of cheating the public revenue if as a result of his fraudulent conduct money is diverted from the revenue and thereby deprive the revenue of money to which it is entitled.

Possession of unexplained property

31. (1) The Director or any officer of the Directorate authorised in writing by the Director may investigate any public officer where there are reasonable grounds to suspect that person -

- (a) maintains a standard of living above that which is commensurate with his present or past known source of income or assets reasonably suspected to have been acquired illegally; or
- (b) is in control or possession of pecuniary resources or property disproportionate to his present or past known sources of income or assets reasonably suspected to have been acquired illegally.

(2) A public officer is presumed to have committed the offence of corruption if he fails to give a satisfactory explanation to the Director or the officer conducting the investigation under subsection (1) as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control or possession.

(3) Where a court is satisfied in any proceedings for an offence under subsection (2) that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property as a gift, or loan without adequate consideration from the accused, such resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

Certain matters not to constitute defence

32. (1) If, in any proceedings for an offence under this Part it is proved that the accused accepted any benefit, believing or suspecting or having reasonable grounds to believe or suspect that the benefit was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in the Part, it shall be no defence that -

- (a) he did not actually have the power, right or opportunity to do so or forbear;
- (b) he accepted the benefit without intending to do so or forbear;
- (c) he did not in fact do so or forbear.

(2) If, in any proceedings for an offence under this Part, it is proved that the accused offered any benefit to any other person as an inducement or reward for or

otherwise on account of that other person's doing or forbearing to do, or having done or forborne to do, any act referred to in this Part, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity to do so or forbear, it shall be no defence that such other person had no such power, right or opportunity.

Failure to keep ledgers etc.

33. (1) Any person who in specially aggravating circumstances -
- (a) makes incorrect or misleading statements in ledgers or accounts which he is under an obligation to keep by law; or
 - (b) fails to keep ledgers or accounts as he is under an obligation to keep by law; or
 - (c) fails to file ledgers or vouchers or other accounting materials as is prescribed by law, or destroys such material,

commits an offence and shall be liable on conviction to a fine not less than M500.00 and not more than M1000.00 or to imprisonment for a term not less than 6 months and not more than 1 year, or both.

- (2) Where an act or omission has been done through gross negligence in the circumstances referred to in subsection (1), the penalty shall be a fine not less than M2,500.00 and not more than M5,000.00 or for a term of imprisonment not less than 2 1/2 years and not more than 5 years, or both.

Penalty

34. Any person who commits the offence of corruption or cheating the revenue under this Part shall, upon conviction, be liable to a fine not less than M5, 000.00 and not more than M10,000.00 or to imprisonment for a term not less than 5 years and not more than 10 years or both and in the case of juristic persons the, fine shall not be less than M10,000.00.

**PART V
POWERS OF THE DIRECTORATE**

Laying of certain matters before the Director

35. If a person has reasonable grounds to suspect that a serious economic offence has been or is being committed or that an attempt has been made or is being made to commit such an offence, he may lay the matter in question before the Director by means of an affidavit or affirmed declaration specifying -

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) all other relevant information known to the declarant.

Inquiries by the Director

36. (1) If the Director has reason to suspect that a serious economic offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he may hold an inquiry on the matter in question, whether or not it has been laid before him under section 35.

(2) If the Attorney-General refers a matter in relation to the alleged commission or attempted commission of a serious economic offence to the Director, the Director shall hold an inquiry on that matter.

(3) If the Director, at any time during the holding of an inquiry on a matter referred to in subsection (1) or (2), considers it desirable to do so in the interest of the administration of justice or in the public interest, he may extend the inquiry so as to include any offence, whether or not it is a serious economic offence, which he suspects to be connected with the subject of the inquiry.

(4) The procedure to be followed in conducting an inquiry shall be determined by the Director at his discretion, having regard to the circumstances of each case.

(5) The proceedings and evidence at an inquiry shall be recorded in such manner as the Director may think fit.

(6) For the purposes of an inquiry -

(a) the Director may summon any person who is believed to be able to furnish any information on the subject of the inquiry or to have in his possession or under his control any book, document or other thing relating to that subject, to appear before the Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object;

(b) the Director or a person designated by him may question that person, under oath or affirmation administered by the Director, and examine or retain for further examination or for safe custody such a book, document or other object.

(7) A summons referred to in subsection (6) shall -

(a) be in the prescribed form;

- (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Director;
- (c) be served in the prescribed manner.

(8) The law regarding privilege as applicable to a witness summoned to give evidence in a criminal case in a magistrate's court shall apply in relation to the questioning of a person in terms of subsection (6)(a):

Provided that such a person shall not be entitled to refuse to answer any question upon the ground that the answer would tend to expose him to a criminal charge.

(9) No evidence regarding any questions and answers contemplated in subsection (8) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 131 of the Criminal Procedure and Evidence Act 1981.

(10) A person appearing before the Director by virtue of subsection (6) -

- (a) may be assisted at his examination by an advocate or an attorney;
- (b) shall be entitled to such witness fees as he would be entitled to if he was a witness for the Crown in criminal proceedings in a magistrate's court.

(11) Any person who has been summoned to appear before the Director and who -

- (a) without sufficient cause (the onus of proof of which shall rest upon him) fails to appear at the time and place specified in the summons or to remain in attendance until he is excused by the Director from further attendance;
- (b) at his appearance before the Director -
 - (i) fails to produce a book, document or other object in his possession or under his control which he has been summoned
 - (ii) Refuses to be sworn or to make an affirmation after he been asked by the Director to do so;

(c) having been sworn or having made an affirmation, fails to answer fully and to the best of his ability any question lawfully put to him, gives false evidence knowing that evidence to be false or not knowing or not believing it to be true,

commits an offence.

(12) The Director may, whether or not he holds an inquiry, and if he does hold an inquiry, at any time prior to during or after the holding of the inquiry, if he is of the opinion that the facts disclose the commission of an offence by any person, notify the Attorney-General.

(13) Upon the completion of an inquiry, the Director shall furnish the Minister with a report on his findings and recommendations, if any, and send a copy of the report to the Attorney-General.

Bank accounts etc.

37. The Attorney-General may, upon request by the Director and upon obtaining a court order to that effect, seize or freeze bank accounts or assets of any person the Director reasonably suspects to have committed an offence under this Act,

Entering upon premises by Director

38. (1) The Director or any person authorised by him in writing may, subject to this section, for the purposes of an inquiry, at any reasonable time, and without prior notice or with such notice as he may deem appropriate, enter any premises on or in which anything connected with that inquiry is or is suspected to be, and may -

- (a) inspect and search those premises and there make such enquires as he may deem necessary;
- (b) examine any object found on or in the premises, which has a bearing or might have a bearing on the inquiry in question and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
- (c) make copies of or take extracts from any book or document found on or in the premises which has a bearing or might have a bearing on the inquiry in question, and request from any person (whom he suspects) suspected of having the necessary information, and explanation of any entry therein;
- (d) seize, against the issue of a receipt, anything on or in the premises which (in his opinion) has a bearing or might have a bearing on

the inquiry in question. or if he wishes to retain it for further information or for safe custody;

- (e) without a warrant arrest a person if he reasonably suspects that, that person has committed or is about to commit an offence under this Act.

(2) Where, during an investigation by an officer of the Directorate of a suspected offence under this Act, another offence is disclosed, the officer may, without warrant, arrest a person if he reasonably suspects that that person has committed that other offence, and he reasonably suspects that that other offence was connected with, or that either directly or indirectly its commission was facilitated by the suspected offence under this Act.

(3) An officer referred to in this section may -

- (a) use such force as is reasonable in the circumstances in effecting an arrest under this section; and

- (b) for the purpose of effecting an arrest, enter and search any premises or place, in accordance with this section, if he has reason to believe that there is, in the premises or place, a person who is to be arrested.

(4) Any person who .

- (a) obstructs or hinders the Director or any other person in the performance of his functions under subsection (1);

- (b) when he is asked in terms of subsection (1) for information or an explanation relating to a matter within his knowledge, refuses or fails to give that information or explanation or gives information or explanation which is false or misleading, knowing it to be false or misleading,

commits an offence.

(5) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including .

- (a) a person's right to, respect for and the protection of his or her

dignity;

- (b) the right of a person to his or her personal privacy.

(6) No evidence regarding any questions and answers contemplated in subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him, except in criminal proceedings where the person concerned stands trial on a charge contemplated in section 131 of the Criminal Procedure and Evidence Act of 1981.

- (7) Subject to subsection (8), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate of the district within which the premises are situated or a judge of the High Court:

Provided that such warrant may be issued by a magistrate in respect of premises situated in another district, if he deems it justified.

(8) A warrant contemplated in subsection (7) may only be issued if it appears to the magistrate or judge from information on oath or affirmation, stating -

- (a) the nature of the inquiry in terms of section 36;
- (b) the suspicion which gives rise to the inquiry; and
- (c) the need, in regard to the inquiry, for a search and seizure in terms of this section, that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.

(9) A warrant issued in terms of this section may be issued on any day and shall be of force until -

- (a) it has been executed;
- (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
- (c) the expiry of 3 months from the day of its issue,

whichever may occur first.

(10) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises:

Provided that such person shall first audibly demand admission.

Preservation of secrecy and admissibility of evidence

39. (1) Notwithstanding any oath of secrecy, but subject to subsection (3), no person shall without the permission of the Director disclose to any other person .

- (a) any information which came to his knowledge in the performance of his functions in terms of this Act and relating to the business or affairs of any other person;

the contents of any book or document in possession of the

Director; or (c) the record of any evidence given at an inquiry,

except -

- (i) for the purpose of performing his functions in terms of this Act; or
- (ii) when required to do so by order of a court of law.

(2) Any person who contravenes subsection (1) commits an offence.

(3) A person from whom a book or document has been taken under section 36(6) shall, as long as it is in the possession of the Director, at his request be allowed, at his own expense and under the supervision of the Director, to make copies thereof or to take extracts thereof at any reasonable time.

Compensation regarding expenses

40. The Principal Secretary responsible for the Ministry of Justice and Human Rights may, in his discretion and on the recommendation of the Director and with concurrence of the Minister of Finance, order that the expenses or any part of the expenses incurred by any person in the course of or in connection with an inquiry be paid from State funds to that person.

Limitation of liability

41. No person shall be liable in respect of anything done in good faith under this Act.

Penalties

42. Any person convicted of an offence referred to in section 38 or 39 shall be liable to a fine of not less than M1000.00 and not more than M2,000.00 or imprisonment for a term not less than 1 year and not more than 2 years, or both.

PART VI PROSECUTION OF OFFENCES

Prosecution of offences

43. (1) If, after an investigation of any person under this Act, it appears to the Director that an offence under Part IV or V has been committed by that person, the Director shall refer the matter to the Director of Public Prosecutions for his decision.

(2) No prosecution for an offence under Part IV or V shall be instituted except by or with the written consent of the Director of Public Prosecutions.

PART VII EVIDENCE

Evidence of pecuniary resources or property

44. (1) In any proceedings **against a** person for an offence **under** Part IV, the fact that the accused was, at or about the date of or at the time since the date or the alleged offence, in possession, for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his present or past known source of income or assets, or that he had, at or about the date of or at any time since the date of the alleged offence, obtained an accretion to his pecuniary resources or property for which he cannot satisfactorily account, may be proved and may be taken by the court .

(a) as corroborating the testimony of any witness giving evidence in such proceedings that the accused accepted or agreed or offered to accept any benefit; and

(b) as showing that the consideration was accepted or agreed or offered to be accepted as a benefit as an inducement or reward.

(2) For the purpose of subsection (1) an accused person shall be presumed to be or to have been in possession of pecuniary resources of property, or to have obtained an accretion thereto, where such resources or properties are or were held, or such accretion was obtained, by any other person whom, having regard to his relationship to the accused or to any other circumstances, there is reason to believe is or was holding such resources or property or obtained such accretion in trust of or otherwise on behalf of

the accused or as a gift from the accused.

Presumption of corruption

45. Where in any proceedings for an offence under Part IV or V, it is proved that the accused offered or accepted a benefit, the benefit shall be presumed to have been offered and accepted as such inducement or reward, as is alleged in the particulars of offences unless the contrary is proved.

PART VIII MISCELLANEOUS

Application for attachment

46. Where a person has been convicted of corruption or cheating the public revenue under this Part, the Attorney-General may apply for attachment under section 322 of the Criminal Procedure and Evidence Act of 1981.

Application for restraining order

47. Where a person, who is the subject of an investigation under this Act has been or is about to be charged with an offence under Part IV or V, the Attorney-General may apply to the High Court for a restraining order.

Frivolous, false or groundless complaints

48. (1) At the conclusion of any proceedings for an offence under Part IV or V, the court may, if it is of the opinion that the complainant or any other person has knowingly, and with intent to harm the accused, made a false, frivolous or groundless allegation against him, so certify' in writing and transmit the certificate and the record of the proceedings to the Director of Public Prosecutions.

49. (2) Any person who, in the opinion of the court, certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counseled the commission of, or conspired with, any other person to commit any offence under Part IV, commits an offence and shall be liable on conviction to a fine not less than M2,500.00 or to imprisonment for a period not less than 2 1/2 years and not more than 5 years, or both.

Prohibition of disclosure of information

49. Any person who, without lawful authority or reasonable excuse, discloses to any person who is the subject of an investigation in respect of an offence alleged or suspected to have been committed by him under this Act the fact that he is subject to such an investigation or any details of such investigation, or publishes or discloses to any other person either the identity of any person who is the subject of such an investigation,

commits an offence and shall be liable on conviction to a fine not less than M500.00 and not more than M1,000.00 or to imprisonment for a term not less than 6 months and not more than 1 year.

Protection of informers

50. (1) In any trial in respect of an offence under Part IV or V, a witness shall not be obliged to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) Where any books, documents, or papers which are in evidence or liable to inspection in any civil or criminal proceedings under this Act contain an entry in which any such informer or person is named or described or which might lead to his discovery, the court, before which the proceedings are held, shall cause all such persons to be concealed from view or to be obliterated so far as may be necessary to protect the informer or such person from discovery.

(3) If in any proceedings before a court for an offence under this Act the court, after full inquiry into the case, is satisfied that an informer wilfully made a material statement which he knew or believed to be false or did not believe to be true, or if in any other proceedings of court is of the opinion that justice cannot be fully done between the parties thereto without disclosure of the name of an informer or a person who has assisted the Director, the court may permit inquiry and require full disclosure concerning the informer or such person.

Jurisdiction

51. (1) The provisions of this Act shall have effect as relates to acts committed by any person within the territory of Lesotho, despite where the actual or intended consequence of his act has taken effect or has been intended to take effect. If the actual or intended consequence of an offence under Part IV or V of this Act has taken effect or has been intended to take effect in the territory outside Lesotho, that act shall also be deemed to have taken place in Lesotho.

(2) Offences under Part IV or V of this Act committed outside Lesotho by a citizen of Lesotho or a person who habitually resides in Lesotho shall also be subject to criminal jurisdiction in Lesotho according to this Act, despite where the actual or intended consequence of his act has taken effect or has been intended to take effect:

Provided an act of the kind in question corresponds to offences of the same nature, which are punishable under the law in force in that territory.

(3) Offences under Part IV or V of this act committed outside the territory recognised by international law as belonging to any State by a citizen of Lesotho or a person who habitually resides in Lesotho shall also be subject to criminal jurisdiction in Lesotho according to this Act, despite where the actual or intended consequences of his act has taken effect or has been intended to take effect.

Annual report

52. The Director shall, on or before 31 March in each year or by such later date as the Attorney-General may allow, submit to the Minister a report on the activities of the Directorate in the previous year.

Regulations

53. The Minister may make Regulations for the carrying into effect the provisions of this Act.

NOTE

1. ActNo.13of1995
2. ActNo.11 of 1983
3. ActNo.9 of 1981