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REPUBLIC OF THE GAMBIA

GAMBIA ANTI - CORRUPTION COMMISSION

ACT, 2012

GAMBIA ANTI – CORRUPTION COMMISSION ACT, 2012

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Gambia Anti-Corruption Commission Act, 2012



THE GAMBIA

NO. 05 OF 2012

Assented to by The President,
this 17th day of August, 2012


YAHYA A. J. J. JAMMEH
President

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AN ACT to prohibit and prescribe punishment for corruption and other related offences and for connected matters.

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ENACTED by the President and the National Assembly.

PART I – PRELIMINARY

1. Short title and commencement

This Act may be cited as the Gambia Anti-Corruption Commission Act, 2012 and shall come into force on such date as the Minister may designate by order in gazette.

2. Interpretation

In this Act, unless the context otherwise requires-

“agent” means any person employed by or acting for another and includes an officer of a public body or a corporate body or any institution, a trustee, an administrator or executor of the estate of a deceased person;

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“associate” In relation to a person includes any person who is an employee, agent, nominee or representative, trustee firm or incorporated company known to act subject to the directives or influence of such person;

“Attorney General” means the Attorney General and Minister responsible for Justice;

“bank” means a bank, a finance company, a commercial bank, or a merchant bank licensed under the Banking Act, 2009 or any other financial institution established or licensed under any other law;

“banker’s book” includes ledgers, day books, cash books, account books and all other books and documents or electronic devices used in the ordinary course of business of a bank;

“business” means any activity carried on for the purpose of gain or profit 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;

“Chairperson” means the Chairperson of the Commission appointed under section 3 of this Act;

“Commission” means the Gambia Anti-Corruption Commission established under section 3 of this Act;

“Constitution” means constitution of the Republic of The Gambia, 1997;

“corporate body” means any legal entity registered under any law or otherwise incorporated under the Companies Act;
[cap 94.01]

“corruption” includes bribery, fraud and other related offences;

“dealing” includes-

- (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; and

(c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part of any property being conferred on any person;

“Financial Institution” means any body or institution which carries on any banking business or financial transactions as defined in the Banking Act;
[Cap. 79.02]

“Government” means the Government of the Republic of The Gambia;

“gratification” means

(a) money, donation, gift, loan, fee, reward valuable security, property or interest in property being property of any description whether movable or immovable, or any other similar advantage, given or promised to any person with intent to influence such a person in the performance or non performance of his or her duties;

(b) any office, dignity, employment, contract of employment or services and any agreement to give employment or render services in any capacity;

(c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;

(d) any valuable consideration of any kind any discount Commission, rebate, bonus, deduction or percentage;

(e) any forbearance to demand any money or money's worth or valuable thing;

(f) any other service or favour of any description, such as 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 including the exercise or the forbearance from the exercise of any rights or any official power or duty; and

(g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the proceeding paragraphs (a) to (f);

“member” means a member of the Commission;

“official” means any director, functionary, officer, agent, servant, or employee serving in any capacity whatsoever in the public service or in any private organisation, corporate body, institution or other employment whether under a contract of services or contract or not;

“person” includes a natural person and a juristic person;

“principal” includes any employer, any beneficiary under a trust, any person beneficially interested in the estate of a deceased person; and in the case of any person serving in or under a public body, the public body;

“property” means real or personal property of every description, including money, whether situated in The Gambia or elsewhere, whether tangible or intangible, and includes an interest in any such real or personal property;

“public funds” includes-

- (a) moneys paid from funds appropriated by the National Assembly from the Consolidated Revenue Fund; and
- (b) any moneys, loan, grant in aid or donation for the benefit of the people of The Gambia;

“other related offences” means the non-violent criminal and illicit activity committed with the objective of earning wealth illegally either individually or in a group or organised manner thereby violating existing legislation governing the economic activities of government and its administration and includes any form of fraud, narcotic drug trafficking, money laundering, embezzlement, bribery, looting and any form of corrupt malpractices, illegal arms deal, smuggling, human trafficking and child labour, illegal oil exploration and illegal mining, tax evasion, foreign exchange malpractices including counterfeiting of currency, theft of intellectual property and piracy, open market abuse, dumping of toxic wastes and prohibited goods;

“Public Officer” means a person employed or engaged in any capacity in the Public Service of The Gambia, public corporations or a private company wholly or jointly floated by the Government or any of its agencies and includes judicial officers;

“purchaser in good faith for valuable consideration” means any transferee, assignee, chargee, mortgagagee, pledge, holder of a lien, or leasee, of any property which the transfer, assignment, charge, mortgage, lien, or lease was obtained by him or her for adequate consideration in money or money’s worth, without notice that the property was obtained in consequence of the commission of any offence under this Act;

“relation” includes father, mother, child, brother, sister, uncle, aunt and cousins where applicable and their spouses; and

“unexplained wealth” includes assets of a person-

- (a) acquired at or around the time the person is alleged to have committed an act of corruption or economic crime; and
- (b) whose value is disproportionate to his or her lawful sources of income or around that time and for which there is no reasonable or satisfactory explanation.

PART II – ESTABLISHMENT, COMPOSITION AND FUNCTIONS OF THE GAMBIA ANTI-CORRUPTION COMMISSION

3. Establishment of the Gambia Anti-corruption Commission

(1) There is established a body to be known as The Gambia Anti-Corruption Commission.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may-

- (a) sue and be sued in its corporate name;
- (b) enter into contracts, acquire, hold, manage and dispose of property; and

- (c) so far as is possible for a body corporate, exercise the rights, powers and privileges and incur the liabilities and obligations of a natural person of full age and capacity.

(3) The Commission shall consist of a Chairperson and six other members.

(4) The members of the Commission shall be appointed by the President in consultation with the Public Service Commission from among persons of proven integrity

(5) The Chairperson shall hold office for a period of five years and other members of the Commission shall hold office for a period of four years and they may both be re-appointed for one more term.

(6) The Chairperson of the Commission shall serve on a full time basis and the other members of the Commission shall be part time.

(7) A member of the Commission may at any time be removed from office by the President for-

- (a) inability to discharge the functions of his or her office (whether arising from infirmity of mind or body or any other cause);
- (b) misconduct;
- (c) serious violation of the Constitution or any other law; or
- (d) bankruptcy.

(8) A member of the Commission may resign his or her appointment by notice in writing under his or her hand addressed to the President and the Chairperson.

(9) The members of the Commission shall hold office on such terms and conditions as may be specified in their instruments of appointment and in the exercise of their functions, they shall not be subject to any other authority except as provided by this Act.

4. Qualifications for appointment and functions of members of the Commission

(1) A person is qualified to be appointed as a member of the Commission if he or she-

- (a) is a person of integrity, competence and maturity of judgment;
- (b) has knowledge and experience of not less than fifteen years in any of the following fields-
 - (i) ethics and governance,
 - (ii) law,
 - (iii) public administration,
 - (iv) economics,
 - (v) audit or accounting; and
- (c) has had a distinguished career in his or her respective field.

(2) A person shall not be qualified for appointment as a member of the Commission if he or she-

- (a) is a member of the governing body of a political party;
- (b) is an undischarged bankrupt; or
- (c) has been convicted of a criminal offence.

(3) The functions of the members of the Commission are to-

- (a) assist the Commission in policy formulation and ensure that the Commission performs its duties to the highest standard possible;
- (b) give strategic direction to the Commission in the performance of its function;

- (c) establish and maintain strategic linkages and partnerships with other stakeholders in the rule of law and other governance sectors;
- (d) deal with reports, complaints of abuse of power, impropriety and other forms of misconduct on the part of the Commission or its staff; and
- (e) deal with reports of conduct amounting to mal-administration, including delay in the conduct of investigations and unreasonable invasion of privacy by the Commission or its staff.

5. Functions of the Commission

The Commission shall-

- (a) develop and promote standards and best practices in integrity and anti-corruption for public officers;
- (b) develop a code of ethics for public officers;
- (c) receive complaints on the breach of the code of ethics by public officers;
- (d) investigate and recommend to the Director of Public Prosecutions, the prosecution of any acts of corruption or other matters prescribed under this Act;
- (e) recommend appropriate action to be taken against public officers alleged to have engaged in unethical conduct;
- (f) oversee the enforcement of the code of ethics for public officers;
- (g) raise public awareness on ethical issues, educate the public on the dangers of corruption and enlist public support in combating corruption;
- (h) monitor the practices and procedures of public bodies to detect corrupt practices and to secure the revision of methods of work or procedures that may be conducive to corrupt practices; and

- (i) institute and conduct proceedings in court for purposes of the recovery or protection of public property, the freezing or confiscation of proceeds of corruption or the payment of compensation or other punitive and disciplinary measures-

6. General duties of the Commission to receive, investigate complaints and prosecute offenders

The Commission shall-

- (a) where reasonable grounds exist for suspecting that any person has conspired to commit, has attempted to commit or has committed an offence under this Act or any other law prohibiting corruption, to receive and investigate any report of the conspiracy to commit attempt to commit or the commission of such offence and in appropriate cases, to prosecute the offenders;
- (b) examine the practices, systems and procedures of public bodies and where in the opinion of the Commission, such practices, systems or procedures aid or facilitate fraud or corruption, direct and supervise a review of them;
- (c) instruct, advise and assist any officer, agency or public enterprise on ways by which fraud or corruption may be eliminated or minimised by such officer, agency or public enterprise;
- (d) advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of public bodies as the Commission thinks fit, to reduce the likelihood or incidence of bribery, corruption and related offences;
- (e) educate the public on and against bribery, corruption and related offences; and
- (f) enlist and foster public support in combating corruption and other offences.

7. Powers of the Commission

- (1) The Commission shall have all the powers necessary for the execution of its functions.

- (2) Without prejudice to the generality of sub-section (1), the Commission has the power to-
- (a) educate and create awareness on any matter within its mandate;
 - (b) undertake preventive measures against unethical and corrupt made by any person.
 - (c) conduct investigations on its own initiative or on a complaint made by any person.
- (3) In exercising its powers, the Commission shall not be under the direction or control of any person or authority.

8. Standing orders

The Chairperson may issue administrative orders to be called "standing orders," which shall conform with the provisions of the general control, training, duties and responsibilities of the officers of the Commission, and for such other matters as may be necessary or expedient for the good administration of the Commission and to ensure the efficient and effective functioning of the Commission.

PART III – STAFF OF THE COMMISSION

9. Appointment of the Executive Secretary

- (1) There is established for the Commission, a Secretariat which shall be headed by an Executive Secretary.
- (2) The Executive Secretary shall be appointed by the President after consultation with the Commission and the Public Service Commission.
- (3) The Executive Secretary shall be-
 - (a) the head of the Secretary of the Commission;
 - (b) responsible for the administration of the Secretariat and the keeping of the books and records of the Commission;
 - (c) subject to the supervision and control of the Chairperson and the Commission.

Gambia Anti-Corruption Commission Act, 2012



THE GAMBIA

NO. 05 OF 2012

Assented to by The President,

this day of , 2012

YAHYA A. J. J. JAMMEH
President

ACT to prohibit and prescribe punishment for corruption and related offences and for connected matters.

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ACTED by the President and the National Assembly.

PART I – PRELIMINARY

Short title and commencement

This Act may be cited as the Gambia Anti-Corruption Commission Act, 2012 and shall come into force on such date as the Minister may designate by order in gazette.

Interpretation

This Act, unless the context otherwise requires-

"agent" means any person employed by or acting for another and includes an officer of a public body or a corporate body or any institution, a trustee, an administrator or executor of the estate of a deceased person;

"associate" in relation to a person includes any person who is an employee, agent, nominee or representative, trustee firm or incorporated company known to act subject to the directives or influence of such person;

"Attorney General" means the Attorney General and Minister responsible for Justice;

"bank" means a bank, a finance company, a commercial bank, or a merchant bank licensed under the Banking Act, 2009 or any other financial institution established or licensed under any other law;

"banker's book" includes ledgers, day books, cash books, account books and all other books and documents or electronic devices used in the ordinary course of business of a bank;

"business" means any activity carried on for the purpose of gain or profit 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;

"Chairperson" means the Chairperson of the Commission appointed under section 3 of this Act;

"Commission" means the Gambia Anti-Corruption Commission established under section 3 of this Act;

"Constitution" means constitution of the Republic of The Gambia, 1997;

"corporate body" means any legal entity registered under any law or otherwise incorporated under the Companies Act;
[cap 94.01]

"corruption" includes bribery, fraud and other related offences;

"dealing" includes-

- (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;

16. Expenditure of the Commission

The Commission may, from time to time apply its funds-

- (a) to the cost of administration of the Commission;
- (b) to payment of emoluments, allowances and benefits to members and other staff of the Commission or of any committee set up by the Commission for such expenses as may be expressly authorised by the Commission;
- (c) to the payment of salaries, fees or other remuneration or allowances, gratuities and pensions, and other benefits payable to the officers and other employees of the Commission, so however that no payment of any kind under this paragraph (except such as may be expressly authorised by the Commission) shall be made to any person who is in receipt of emoluments from the Government;
- (d) for and in connection with all or any of its functions under this Act; and
- (e) for the development and maintenance of any property vested in or owned by the Commission.

17. Estimates, Accounts and audit

(1) The Commission shall not later than three months before the end of each financial year, prepare and submit to the President for approval, estimates of the income and expenditure of the Commission for the ensuing year.

(2) The Commission shall keep proper records and books of accounts of its income, expenditure and transfers.

(3) The Commission shall, within three months after the end of each financial year, submit its statement of accounts to the Auditor-General for audit.

(4) The Audited accounts of the Commission and the Auditor-General's report on those accounts shall form part of the Auditor-General's overall annual report to the National Assembly.

18. Annual reports of Commission

(1) The Commission shall, not later than three months before the end of any year, submit to the President a report of its activities in that year.

(2) The Commission shall cause the report submitted under sub-section (1) to be tabled before the National Assembly.

(3) A report under sub-section (1) shall include-

- (a) the number and a detailed account of investigations carried out in the year;
- (b) the investigations which the Commission has decided to discontinue;
- (c) investigations which have lasted more than two months;
- (d) the number and status of matters pending in the courts;
- (e) key prevention measures instituted or implemented during the year;
- (f) key education and community relations activities undertaken during the year, and
- (g) the report of the audit conducted under this Act.

PART V - OFFENCES AND PENALTIES**19. Damage or injury to the property of public body**

(1) A person who being a public officer-

- (a) by any wilful act or omission or recklessly, causes any loss, damage or injury to the property of public body, whether monetary or otherwise, or receives or obtains any property or benefit of any kind for himself or herself or for any other person; or
- (b) agree or attempts to receive or obtain any property or benefit of any kind for himself or herself or for any other person, on account of-

(i) anything already done or omitted to be done, or for any favour or disfavour already shown to any person by himself or herself in the discharge of his or her official duties or in relation to any matter connected with the functions, affairs or business of a Government Department, or corporate body or other organisation or institution in which he or she is serving as an official, or

(ii) anything to be done or omitted to be done or favour or disfavour to be shown to any person by him or her in the discharge of his or her official duties or in relation to any such matters as aforesaid; or

(c) being a citizen or non citizen resident in or outside The Gambia-

(i) In the course of any transaction or business with a public body, intentionally or recklessly causes any damage, injury or loss, whether economic or otherwise to a public body,

(ii) engages in the acquisition, possession or use of property- knowing at the time of its acquisition, possession or use that such property was derived from any offence under this Act,

(iii) engages in the management, organisation or financing of any of the offences under this Act,

(iv) engages in the conversion or transfer of property which is derived from any offence under this Act,

commits an offence under this Act and is liable on conviction to a term of imprisonment for five years.

(2) A person who-

(a) being a citizen or non citizen of The Gambia resident in or outside The Gambia, unlawfully deals in any foreign currency in a manner injurious or damaging or in any other way adverse to the economy of The Gambia;

(b) being an officer of a bank or other financial institution or designated non financial institution, fails or neglects to

secure the authenticity of any statement submitted pursuant to the provisions of this Act;

(c) being a public officer, citizen of The Gambia or other person resident in The Gambia-

- (i) fraudulently acquires the property of a public body.
- (ii) receives anything which has been obtained by means of act constituting a felony or misdemeanour, or by means of any act done at a place outside The Gambia, which if it had been done in The Gambia would have constituted a felony or misdemeanour and which is an offence under the laws in force in the place where it was done, knowing the same to have been so obtained;

(d) being or having been a public officer in The Gambia, maintains a standard of living above that which is commensurate with his or her present or past official emoluments; or is in control of pecuniary resources or property disproportionate to his or her present or past official emoluments unless he or she gives a satisfactory explanation to the Commission as to how he or she was able to maintain such a standard of living or how such pecuniary resources or property came under his or her control,

commits an offence and is liable on conviction to imprisonment for a term not exceeding 5 years or to a fine of one million Dalasis or to both the imprisonment and fine.

20. Frustration of investigation by the Commission

Any person who, with intent to defraud or conceal a crime or frustrate the Commission in its investigation of any suspected crime of corruption under this Act or under any other law-

- (a) destroys, alters, mutilates or falsifies, any book, document, valuable security, account, computer system, diskette, computer 'printout' or other electronic device which belongs

to or is in 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 any such book, document, accounts or electronic device, or is privy to any such act;

- (b) makes or is privy to making any false entry in any such book, document, account or electronic record; or
- (c) omits, or is privy to omitting, any material particulars from any such book, document, account or electronic record,

commits an offence and is liable on conviction to a term of seven years imprisonment.

21. Making false statement or return

A person who, being an officer charged with the receipt, custody, use or management of any part of the public revenue or property, knowingly furnishes any false statement or return in respect of any money or property received by him or her entrusted to his or her care, or of any balance of money or property in his or her possession or under his or her control, commits an offence and is liable on conviction to imprisonment for seven years.

22. Gratification by and through agents

(1) A person who corruptly-

- (a) accepts, obtains or agrees to accept or obtain or attempts to obtain from any person for himself or herself or for any other person, any gift or consideration as an inducement or reward for doing, for bearing to do, or for having done, or forborne to do, any act or thing;
- (b) gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having done, or forborne to do, any act or thing in relation to his or her principal's affairs or business;

- (c) knowingly gives to any agent, or being an agent knowingly uses with intent to deceive his or her 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 or her knowledge, is intended to mislead his or her principal or any other person,

commits an offence and is liable on conviction to imprisonment for five years.

(2) For the purposes of this section, the expression-

- (a) "consideration" includes valuable consideration of any kind;
- (b) "agent" includes any person employed by or acting for another; and
- (c) "principal" includes an employer.

23. Bribery of public officer

A person who offers to any public officer or being a public officer solicits, counsels or accepts any gratification as an inducement or a reward for-

- (a) voting or abstaining from voting at any meeting of the public body in favour or against any measure, resolution or question submitted to the public body;
- (b) performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of any official act;
- (c) aiding in procuring or preventing the passing of any vote or the granting of any contract, award, recognition or advantage in favour of any person; or
- (d) showing or forbearing to show any favour or disfavour in his or her capacity as such officer, notwithstanding that the officer did not have the power, right or opportunity so to do or that the inducement or reward was not in relation to the affairs of the public body,

commits an offence and liable on conviction to imprisonment for five years imprisonment with hard labour.

24. Offence of using office or position for gratification

A public officer who uses his or her office or position to gratify or confer any corrupt or unfair advantage upon himself or herself or any relation or associate of the public officer or any other public officer, commits an offence and is liable on conviction to imprisonment for five years without the option of a fine.

25. Bribery in relation to auction

(1) A person who, without lawful authority or reasonable excuse-

- (a) offers any advantage to any other person as an inducement to 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, and
- (b) solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his or her refraining or having refrained from bidding at any auction conducted by or on behalf of any public body,

commits an offence and is liable on conviction to a fine equivalent to the current price of the property and imprisonment for three years.

26. Bribery for giving assistance in regard to contract

(1) A person who, without lawful authority or reasonable excuse, offers an advantage to a Public Officer as an inducement to or reward for or otherwise on account of such public servant giving assistance or using influence in, or having given assistance or used influence in-

- (a) the promotion, execution, or procuring of-
- (i) any contract with a public body, for a performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance,

(ii) any sub-contract to perform any work, provide any article, materials or substance required for any contract with a public body; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or sub-contract as aforesaid,

commits an offence and is liable on conviction to imprisonment for three years.

(2) Any Public Officer who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his or her giving assistance or using influence in-

(a) the promotion, execution or procuring of; or

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in,

any contract, or sub-contract as is referred to in sub-section (1) commits an offence and is liable on conviction to imprisonment for three years..

(3) A Public Officer who in the course of his or her official duties, inflates the price of any goods or services above the prevailing market price or professional standards commits an offence and is liable on conviction to imprisonment for seven years and in addition a fine of five hundred thousand Dalasis.

(4) A Public Officer who in the discharge of his or her official duties awards or signs any contract without budgetary provision, approval and cash backing, commits an offence and is liable on conviction to imprisonment for three years and in addition a fine of two hundred thousand Dalasis.

(5) A Public Officer who transfers or spends any sum allocated for a particular project or service on another project or service, commits an offence and is liable on conviction to imprisonment for one year.

27. Duty to report bribery transactions

(1) A Public Officer to whom any gratification is given, promised or offered in contravention of any provision of this Act, shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him or her to the nearest officer of the Commission.

(2) A person from whom any gratification has been solicited or obtained, or from whom an attempt has been made to obtain such gratification in contravention of any provision of this Act, shall, at the earliest opportunity thereafter, report such soliciting or obtaining, or attempt to obtain the gratification together with the name if known, or a true and full description of the person who solicited, obtained, or attempted to obtain the gratification from him or her, to the nearest officer of the Commission.

(3) A person who fails, without reasonable excuse, to comply with subsections (1) and (2) commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Dalasis or to imprisonment for a term not exceeding two years or to both fine and imprisonment.

28. Dealing with, using, holding, receiving or concealing gratification

A person who, whether within or outside The Gambia, whether directly or indirectly, whether on behalf of himself or herself or on behalf of any other person, enters into or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives or conceals any property or any part thereof which was the subject-matter of an offence under this Act, commits an offence and is liable on conviction to imprisonment not exceeding five (5) years.

29. Making of statement which is false or intended to mislead

(1) A person who makes or causes any other person to make to an officer of the Commission or to any other public officer, in the course of the exercise by such public officer of the duties of his or her office, any statement which to the knowledge of the person making the statement, or causing the statement to be made-

- (a) is false or intended to mislead or is untrue in any material particular; or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law to receive, or require to be made such other statement notwithstanding that the person making the statement is not under any legal or other obligation to tell the truth,

commits an offence and is liable on conviction to a fine not exceeding fifty thousand Dalasis or to imprisonment not exceeding two (2) years or to both the fine and imprisonment.

(2) Where a person-

- (a) who has made a statement to an officer of the Commission or to the Attorney-General in the course of such officer or Attorney-General exercising any power conferred by this Act; and
- (b) subsequently thereto makes any other statement to any person having authority or power under any law to receive or require to be made such other statement, regardless of whether or not the person making the statement is under a legal or other obligations to tell the truth,

he or she shall, if such other statement is 'inconsistent' with any statement previously made to an officer of the Commission or such other public officer commits an offence and is liable on conviction to a fine not exceeding ten thousand Dalasis or to imprisonment for a term not exceeding two years or to both.

(3) For the avoidance of any doubt, it is declared that for the purpose of subsection (1) and (2), any statement made in the course of any legal proceedings before the court, whether civil or criminal, or any statement made by any person in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under the law to receive the statement so made.

30. Impeding investments

(1) A Public Officer who knowingly-

- (a) performs or abstains from performing any act in his or her capacity as a Public Officer;
- (b) expedites, delays, hinders or prevents the performance of any act, whether by himself or herself or by any other public officer, in his or her or that other Public Officer's capacity as a Public Officer; or
- (c) assists, favours, hinders or delays any person in the transaction of any business with a public body,

in order that an investor or potential investor is coerced, compelled or induced to abandon his or her investment or, as the case may be, is prevented from proceeding with his or her initial investment, commits an offence and is liable on conviction to a fine not less than three years or to a fine of not less than one hundred thousand dalasis or to both such fine and imprisonment.

(2) For the purposes of sub-section (1), "investor" or "potential investor" includes a development partner or potential development partner, and "investment" includes development projects intended for the benefit of the people of The Gambia.

31. Attempts, preparation, abetment and criminal conspiracies

(1) A person who-

- (a) attempts to commit any offence under this Act;
- (b) does any act preparatory to or in furtherance of the commission of any offence under this Act; and
- (c) abets or is engaged in a criminal conspiracy to commit any offence under this Act,

commits an offence and is liable on conviction to the punishment provided for such offence.

32. Delegation of Attorney-General's power to prosecute

Prosecution for an offence under this Act shall be initiated by the Attorney-General or any person or authority to whom he or she shall delegate his or her authority, in any superior court of record so designated by the Chief Justice and every prosecution for an offence under this Act or any law prohibiting bribery, corruption, fraud or any other related offence shall be deemed to be initiated by the Attorney-General.

33. Jurisdiction and special powers of court

- (1) The High Court has jurisdiction to try offenders under this Act.
- (2) The court shall have power, notwithstanding anything to the contrary in any other enactment-
 - (a) to impose the penalties provided for in this Act;
 - (b) to ensure that all matters brought before the court by the Commission against any person, body or authority shall be conducted with dispatch and given accelerated hearing;
 - (c) to adopt all legal measures necessary to avoid unnecessary delays and abuse in the conduct of matters brought by the Commission before it or against any person, body or authority;

PART VI - FORFEITURE OF ASSETS OF PERSONS CONVICTED OF OFFENCES UNDER THIS ACT

34. Forfeiture after conviction in certain cases

- (1) A person convicted of an offence under this Act shall forfeit to the Government all the assets and properties which may be or are the subject of an interim order of the court after an attachment by the Commission,
- (2) The court in imposing a sentence on any person under this section, shall order, in addition to any other sentence imposed pursuant to this Act, that the person forfeit to the Government all properties described in sub-section (1) of this section.

- (3) The Commission shall, through the office of the Attorney-General, ensure that the forfeited assets or properties are effectively transferred and vested in the Government.

35. Forfeiture of passports

The passport of a person convicted of an offence under this Act shall be forfeited to the Government and shall not be returned to that person until he or she has served any sentence or paid any fine imposed, or unless and until the President directs otherwise after the grant of a pardon or on the exercise of the prerogative of mercy under the constitution.

36. Power to investigate reports and enquire into information

- (1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission, and if made orally shall be reduced into writing and read over to the person making the report; and every such report, shall be signed or thumb-printed by the person making it, and where the person making the report is an illiterate the officer obtaining the report shall endorse that fact on the report together with a statement to the effect that it was read over and interpreted to the maker.
- (2) Every report whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour at which such report was made.
- (3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under sub-section (1) or information otherwise received by him or her, he or she shall cause investigation to be made and for such purpose may exercise all the powers of investigation provided for under this Act or any other law.
- (4) A report made under sub-section (1) shall not be disclosed by a person to any person other than officers of the Commission or the Attorney-General until the accused person has been arrested or charged to court for an offence under this Act or any other written law arising from such report.

(5) A document certified by any officer of the Commission under sub-section (2) in respect of a report under sub-section (1) shall be admissible as evidence of the contents of the original and of the time, place and manner in which the report was recorded.

37. Power to examine persons

(1) An officer of the Commission investigating an offence under this Act may-

- (a) order any person to attend before him or her for the purpose of being examined in relation to any matter which may, in his or her opinion, assist in the investigation of the offence;
- (b) order any person to produce before him or her any book, document or any certified copy thereof, or any other article which may, in his or her opinion, assist in the investigation of the offence; or
- (c) by written notice, require any person to furnish a statement in writing made under oath or affirmation setting out therein all such information required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation of the offence.

(2) Sub-section (1) (b) shall not apply to banker's books save in accordance with the provisions of the Evidence Act.

(3) A person to whom an order under sub-section (1) (a) has been given shall-

- (a) attend in accordance with the terms of the order, to be examined and shall continue to attend from day to day where so directed until the examination is completed; and
- (b) during such examination disclose all information which is within his or her knowledge.

(4) A person to whom an order has been given under subsection (1) (b) shall not conceal, destroy, remove from The Gambia, mutilate, expend or dispose of any book, document, or article specified in the order or relevant to the investigation, or order, or deface any entry in such book or document or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom a written notice has been given under subsection (1) (c) shall in his or her statement, furnish and disclose truthfully all information required under the notice which is within his or her knowledge, or which is available to him or her.

(6) A person to whom an order or notice is given under subsection (1) shall comply with such order or notice and with the provisions of sub-sections (3) (4) and (5).

(7) Where any person discloses any information or produces any book, document or article pursuant to subsections (1) (3) and (5), neither that person nor any other person on whose behalf or direction or as whose agent or employee that person may be acting shall, on account of such disclosure or production, be liable to any prosecution, except a prosecution for an offence relating to any offence under or by virtue of any written law, or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement or arrangement, or otherwise.

38. Forceful entry of premises

(1) Where it appears to the Chairperson upon information and after such inquiry as he or she thinks necessary that there is reasonable cause to suspect that in any place there is any evidence of the Commission of any offence under this Act, he or she may by written order direct an officer of the Commission to obtain a court order to-

- (a) enter any premises and search for, seize and take possession of any book, document or other article evidencing the commission of such offence;
- (b) inspect, make copies of or take extracts from any book, record or document;
- (c) search any person who is in or on such premises and for the purpose of such search, detain such person and remove him or her to such place as may be necessary to facilitate such search and seize and detain any article found on such person;
- (d) break open, examine, and search any article, container or receptacle; or

(e) stop, search, and seize any vehicle or conveyance.

(2) Where it is necessary so to do, an officer of the Commission exercising any power under sub-section (1) shall obtain a warrant from a judge to-

(a) break open any outer or inner door or window of any premises and enter into, or otherwise forcibly enter the premises and every part thereof;

(b) remove by force any obstruction to such entry, search, seizure or removal as he or she is empowered to effect; or

(c) detain any person found in or on any premises or in any conveyance searched under sub-section (1), or until such premises or conveyance has been searched.

(3) A person shall not be searched under this section except by a person who is of the same gender as the person to be searched.

39. Seizure of movable and immovable property

(1) Where in the course of an investigation into an offence under this Act, an officer of the Commission has reasonable cause to suspect that any movable or immovable property is the subject matter of an offence or evidence relating to the offence, he or she shall seize such property.

(2) A list of all movable or immovable property seized pursuant to sub-section (1) and of the places in which they are respectively found shall be prepared by the officer of the Commission effecting the seizure and signed by him or her.

(3) A copy of the list referred to in sub-section (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.

40. Custody of seized property

(1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an officer of the Commission may determine.

(2) Where it is not practicable or it is otherwise not desirable to effect removal of any property under subsection (1), the officer referred to in that sub-section may leave it at the premises in which it is seized under the custody of such persons as he or she may determine for the purpose.

41. Legal obligation to give information

Subject to such limitation as is provided under this Act, every person required by an officer of the Commission to give any information on any subject which it is the duty of such officer to inquire into under this Act and which it is in that person's statutory power to give, shall be legally bound to give the information, failing which he or she commits an offence and is liable on conviction to a fine of fifty thousand dalasis or imprisonment for two years or both.

42. Obstruction of inspection and search

A person who-

(a) refuses any officer of the Commission access to any premises, or fails to submit to a search by a person authorized to search him or her under this Act;

(b) assaults or obstructs any officer of the Commission or any person authorised by the Commission in the execution of his or her duty under this Act;

(c) fails to comply with any lawful demand, notice, order or requirements of an officer of the Commission in the execution of his or her duty under this Act;

(d) fails to produce to, or conceals or attempts to conceal from an officer of the Commission, any book or article in relation to which such officer has reasonable grounds for suspecting or believing to be relevant to the commission of an offence under this Act;

(e) escapes or endeavors to escape or causes the escape of any person who has been duly arrested or anything which has been duly seized;

- (f) destroys anything to prevent the seizure thereof, or the securing of the thing,

commits an offence and is liable on conviction to imprisonment for two years without the option of a fine.

43. Chairperson's power to obtain information

(1) Notwithstanding the provision of any written law or rule of law to the contrary, the Chairperson of the Commission, if he or she has reasonable grounds to believe' arising from investigation carried out by an officer of the Commission, that any offence under this Act has been committed, he or she may by written notice-

- (a) require any person suspected of having committed such offence to furnish a statement in writing, on oath or affirmation and-

(i) identify every property, whether movable or immovable, whether within or outside The Gambia belonging to him or her or in his or her possession, or in which he or she has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner,

(ii) identify every property sent out of The Gambia by him or her during such period as may be specified in the notice,

(iii) set out the estimated value and location of each of the properties identified under sub-paragraphs (i) and (ii), its location and if any of such properties cannot be located, the reason therefore,

(iv) state in respect of each of the properties identified under sub-paragraphs (i) and (ii), whether the property is held by him or her or by any other person on his or her behalf or whether it has diminished in value since its acquisition by him or her and whether it has been co-mingled with other property, which cannot be separated or divided without difficulty,

- (v) set out all other information relating to his or her properties, business, travel or other activities as may be specified in the notice, and

- (vi) set out all of his or her sources of income, including earnings and gifts or other assets for such period;

(b) require any relative or associate of the person referred to in sub-section (1) (a), or any other person whom the Chairperson has reasonable grounds to believe is able to assist in the investigation to furnish a statement in writing on oath or affirmation and-

(i) identify every property, whether movable or immovable whether within or outside The Gambia, belonging him or her or in his or her possession, or in which such person has any interest, whether legal or equitable, and specifying the date on which each of the properties identified was acquired and the manner in which it was acquired whether by way of any dealing, bequest devise, inheritance, or any other manner,

(ii) identify every property sent out of The Gambia by him or her during such period as may be specified in the notice,

(iii) set out the estimated value and location of each of the properties identified under sub-paragraphs (i) and (ii) and if any of such properties cannot be located, the reason therefor,

(iv) set out all the sources of income, earnings, gifts or other assets for such period, and

(v) require any officer of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraphs (a) (b).

(2) Where the Chairperson has reasonable grounds to believe that any Public Officer who has been served with the written notice referred to in sub-section (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his or her present or past emoluments and all other relevant circumstances, the Chairperson may by written direction require

him or her to furnish a statement on oath or affirmation explaining how he or her was able to own, possess, control or hold such excess and if he or she fails to explain satisfactorily such excess, he or she shall be presumed to have used his or her office to corruptly enrich or gratify himself or herself.

(3) Every person to whom a notice or direction is sent by the Chairperson under this section shall state the truth and disclose all information which is within his or her knowledge or which is available to him or her, or which is capable of being obtained by him or her.

(4) Where a person discloses any accounts, documents or records, in response to a notice under sub-section (1), such person, his or her agent or employee, or any other person acting on his or her behalf or under his direction, shall not by reason only of such disclosure or production, be liable to prosecution for any offence or civil claim under or by virtue of any law, contract, agreement or arrangement or otherwise.

(5) Sub-section (4) shall not bar, prevent or prohibit the institution of any prosecution for any offence under this section or for giving false evidence in relation to any statement on oath or affirmation furnished to the Chairperson pursuant to this section or provided for in section 29 of this Act.

44. Seizure of movable property in bank and notice of seizure

(1) Where the Chairperson is satisfied on information given to him or her by an officer of the Commission that any movable property, including any monetary instrument or any accretion thereto which is the subject matter of any investigation under this Act or evidence in relation to the commission of such offence is the possession, custody or control of a bank or financial institution, he or she may, notwithstanding any other written law or rule of law to the contrary, by order direct the bank or financial institution not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.

(2) A bank, agent or employee of a bank shall not on account of such compliance, be liable to any prosecution or to any civil proceedings or claim by any person under or by virtue of any law, contract, agreement, or otherwise.

(3) A person who fails to comply with an order of the Chairperson under sub-section (1) commits an offence and is liable on conviction to a fine not exceeding two times the amount which was paid out in contravention of the order or one hundred thousand dalasis, whichever is the higher or to imprisonment for a term not exceeding two years.

(4) The subject matter of an offence under this Act or which is evidence of the commission of such offence shall be liable to seizure, and the seizure shall be effected-

- (a) by the issuance of a notice of seizure signed by the Chairperson or any other person authorised by him or her, setting out therein the particulars of the movable property which is to be seized in so far as such particulars are within his or her knowledge, and prohibiting all dealings in such movable property;
- (b) by publishing a copy of such notice in the official gazette; or
- (c) by serving a copy of such notice on the officer of the bank or financial institution where property is situated.

45. Prohibition of dealing with property outside The Gambia

Where the Chairperson is satisfied that any property is the subject matter of an offence under this Act or was used in the commission of the offence, and such property is held or deposited outside The Gambia, he or she may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

46. Forfeiture of property upon prosecution for an offence

(1) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where-

- (a) the offence is proved against the accused; or
- (b) the offence is not proved against the accused but the court is satisfied-

- (i) that the accused is not the true and lawful owner of such property, and
- (ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

(2) Where the offence is proved against the accused and the property referred to in sub-section (1) has been disposed of or cannot be traced, the court shall order the accused to pay as a penalty, a sum which is equivalent to the amount of the gratification or is in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.

47. Surrender of travel document

(1) Notwithstanding any written law to the contrary, the Chairperson may upon a court order where he or she has reasonable grounds to believe that any person who is the subject of investigation in respect of any offence under this Act is likely to leave The Gambia, by written notice require such person to surrender his or her passport or exit permit or any other travel documents in his or her possession.

(2) A notice under sub-section (1) shall be served personally on the person to whom it is addressed.

48. Chairperson's power to amend or revoke any order or notice under this Act

(1) The Chairperson may at any time amend or revoke any order or notice which has been made or given by him or her in exercise of any power conferred on him or her under this Act.

(2) The revocation of any such notice or order shall not debar the Chairperson from issuing any fresh orders or notices against any person or thing affected by the earlier order or notice.

(3) The revocation or amendment of an order or notice under sub-section (1) may contain consequential, ancillary or incidental matters relevant to such revocation or amendment.

PART VII – PROSECUTION OF OFFENCES

49. Prosecution of offences

(1) Every prosecution for an offence under this Act or any other law prohibiting bribery, corruption and other related offences shall be deemed to be done with the consent of the Attorney General.

(2) Without prejudice to any other laws prohibiting bribery, corruption, fraud or any other related offences by public officers or other persons, a Public Officer or other person may be prosecuted by the appropriate authority for an offence of bribery, corruption, fraud or any other related offences committed by such Public Officer or other person contrary to any laws in force before or after the coming into effect of this Act and nothing in this Act shall be construed to derogate from or undermine the right or authority of any persons or authority to prosecute offenders under any other laws.

(3) The Chief Justice of the Republic of The Gambia shall, by order, designate a court or Judge of the High Court to hear and determine all cases of bribery, corruption, fraud or other related offences arising under this Act or any other laws prohibiting fraud, bribery or corruption.

50. Evidence of custom inadmissible as a defence

In any proceedings under this Act, evidence shall not be admissible to show that any such gratification mentioned in this Act is customary in any profession, trade, vocation or calling or on a social occasion.

51. Liability for offences outside The Gambia

(1) The provision of this Act shall, in relation to citizens of The Gambia and persons granted permanent residence in The Gambia, have effect outside as well as within The Gambia, and when an offence under this Act is committed in any place outside The Gambia by any citizen or person granted permanent residence in The Gambia, he or she may be dealt with in respect of such offence as if it was committed in any place within The Gambia.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in The Gambia shall be a bar to further proceedings against him or her under a any written law relating to the extradition of persons, in respect of the same offence, outside The Gambia.

(3) The Commission shall have the power to engage the services of INTERPOL, or such local or international institution, body or person possessing special knowledge or skill on the tracing of properties or detection of cross border crimes.

52. Application of provisions of this Act to any prescribed offence

Notwithstanding any other written law to the contrary, the provisions of this Act shall apply to a prescribed offence regardless of whether the prosecution or any other proceedings in respect of such offence are instituted or taken by an officer of the Commission, or a police officer or any other officer having powers to investigate, prosecute or take any proceeding in respect of such offence.

53. Powers of police officers under this Act

Nothing contained in this Act shall derogate from the powers of a police officer to investigate any offence under this Act or to prosecute any person in respect of any such offence provided that the police shall bring to the attention of the Commission every case of bribery, corruption or fraud being investigated or prosecuted by them after the coming into force of this Act.

54. Right of appeal

A person convicted for an offence under this Act or any other law prohibiting bribery or corruption shall have and exercise any or all such rights of appeal as conferred by the constitution.

PART VIII - MISCELLANEOUS PROVISIONS

55. Standing orders

The Chairperson may issue administrative orders to be called "Standing Orders", which shall conform to the provisions of the

general control, training, duties and responsibilities of officers of the Commission, and for such other matters as may be necessary or expedient for the good administration of the Commission and to ensure the efficient and effective functioning of the Commission.

56. Commission's power to make rules

The Chairperson may make rules for giving effect to the provisions of this Act and without prejudice to the generality of this provisions, may make rules-

- (a) providing for the form of any notice, order, declaration or any other matter under this Act; and
- (b) for the service or delivery of any notice, order, direction, instruction, or other thing to be done under this Act.

57. Additional powers conferred on the Commission by this Act

(1) In addition to the powers conferred on the Commission by this Act, the Commission shall be the co-ordinating agency for the enforcement of the provisions of-

- (a) this Act;
- (b) the Economic Crimes (Specified Offences) Act;
[cap.13.07]
- (c) The Hoarding (Prohibition) Act;
[cap.13.06]
- (d) Drug Control Act;
[cap. 13.05]
- (e) Trafficking in Persons Act; and
[cap. 13.04]
- (f) any other Law or regulation relating to corruption, economic and Financial Crimes, including the Criminal Code.
[cap. 10.01]

(2) Any offence committed or proceedings instituted before the commencement of this Act under the provisions of the enactments mentioned in sub-section (1) shall as the case may require, be

enforced or continue to be enforced by the Anti-corruption and other related offences Commission established under this Act.

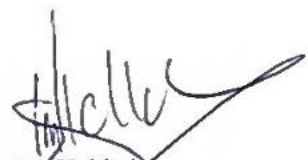
58. Confidentiality

- (1) The Chairperson and members of the Commission shall maintain confidentiality and secrecy on any matter, document, report and other information relating to the administration of this Act that becomes known to him or her, or comes in his possession or under their control.
- (2) Except in accordance with this Act, or as otherwise authorised by law, the Chairperson, or any officer of the Commission shall not-
- (a) divulge any information obtained in the exercise of a power, or in the performance of a duty under this Act;
 - (b) divulge the source of such information or the identity of any informer or the maker, writer or issuer of a report given to the commission.
- (3) Notwithstanding the provisions of sub-sections (1) and (2), the Chairperson may disclose, for the purpose of publication in the media, such information as he or she considers necessary in the public interest.
- (4) A person who without lawful excuse, fails to comply with this section commits an offence and is liable on conviction, of not less than fifty thousand dalasis or to imprisonment for a term not exceeding two years or both such fine and imprisonment.

PASSED in the National Assembly this 28th day of June
in the year of Our Lord Two Thousand and Twelve.


D. C. M. Kebbeh
Clerk of the National Assembly

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed in the National Assembly, and found by me to be a true and correct copy of the said Bill.


D. C. M. Kebbeh
Clerk of the National Assembly