

in respect of that party doing any act in relation to the exercise, carrying out or performance of that party's powers, duties or functions within the scope of that party's employment relationship, is guilty of the offence of receiving or offering an unauthorised gratification.

Part 4: Offences in respect of corrupt activities relating to specific matters

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Offences in respect of corrupt activities relating to witnesses and evidential material during certain proceedings

11. (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, in return for—

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- (a) testifying in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony;
- (b) withholding testimony or withholding a record, document, police docket or other object at any such trial, hearing or proceedings;
- (c) giving or withholding information relating to any aspect at any such trial, hearing or proceedings;
- (d) altering, destroying, mutilating, or concealing a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;
- (e) giving or withholding information relating to or contained in a police docket;
- (f) evading legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or
- (g) being absent from such trial, hearing or proceedings,

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is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

(2) Any person who, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person, with the intent to—

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- (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or
- (b) cause or induce any person to—
 - (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony;
 - (ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings;
 - (iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings;
 - (iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings;
 - (v) give or withhold information relating to or contained in a police docket;
 - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or
 - (vii) be absent from such trial, hearing or other proceedings,

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is guilty of the offence of corrupt activities relating to witnesses and evidential material during certain proceedings.

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Offences in respect of corrupt activities relating to contracts

12. (1) Any person who, directly or indirectly—
- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or 5
 - (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person.
 - (i) in order to improperly influence, in any way—
 - (aa) the promotion, execution or procurement of any contract with a public body, private organisation, corporate body or any other organisation or institution; or 10
 - (bb) the fixing of the price, consideration or other moneys stipulated or otherwise provided for in any such contract; or
 - (ii) as a reward for acting as contemplated in paragraph (a).
- is guilty of the offence of corrupt activities relating to contracts. 15
- (2) Any person who, in order to obtain or retain a contract with a public body or as a term of such contract, directly or indirectly, gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person—
- (a) for the purpose of promoting, in any way, the election of a candidate or a category or party of candidates to the legislative authority; or 20
 - (b) with the intent to influence or affect, in any way, the result of an election conducted for the purpose of electing persons to serve as members of the legislative authority.
- is guilty of an offence. 25

Offences in respect of corrupt activities relating to procuring and withdrawal of tenders

13. (1) Any person who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person, as— 30
- (a) an inducement to, personally or by influencing any other person so to act—
 - (i) award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or
 - (ii) upon an invitation to tender for such contract, make a tender for that contract which has as its aim to cause the tenderee to accept a particular tender; or 35
 - (iii) withdraw a tender made by him or her for such contract; or
 - (b) a reward for acting as contemplated in paragraph (a)(i), (ii) or (iii).
- is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders. 40
- (2) Any person who, directly or indirectly—
- (a) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or the benefit of another person, as—
 - (i) an inducement to, personally or by influencing any other person so to act, award a tender, in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, to a particular person; or 45
 - (ii) a reward for acting as contemplated in subparagraph (i); or
 - (b) with the intent to obtain a tender in relation to a contract for performing any work, providing any service, supplying any article, material or substance or performing any other act, gives or agrees or offers to give any gratification to 50

any person who has made a tender in relation to that contract, whether for the benefit of that tenderer or for the benefit of any other person, as—

- (i) an inducement to withdraw the tender; or
- (ii) a reward for withdrawing or having withdrawn the tender.

is guilty of the offence of corrupt activities relating to procuring and withdrawal of tenders. 5

Offences in respect of corrupt activities relating to auctions

14. (1) Any auctioneer who, directly or indirectly—

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of another person— 10

(i) in order to conduct the bidding process at an auction in a manner so as to favour or prejudice a specific person; or

(ii) as a reward for acting as contemplated in subparagraph (i); or

(b) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person— 15

(i) in order to influence that person to—

(aa) refrain from bidding at an auction; or

(bb) participate, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so as to get a specific offer for the article or to sell the article at a specific amount or to sell the article to a specific bidder; or 20

(ii) as a reward for acting as contemplated in subparagraph (i).

is guilty of the offence of corrupt activities relating to auctions.

(2) Any person who, directly or indirectly— 25

(a) accepts or agrees or offers to accept any gratification from any other person or an auctioneer, whether for the benefit of himself or herself or for the benefit of another person—

(i) in return for that person—

(aa) refraining from bidding at an auction; or 30

(bb) participating, personally or by influencing any other person so to participate, at an auction in the bidding process in order to get a specific offer for the article or to buy the article for a specific amount or to sell the article to a specific bidder; or

(ii) as a reward for acting as contemplated in subparagraph (i); or 35

(b) gives or agrees or offers to give any gratification to an auctioneer, whether for the benefit of that auctioneer or for the benefit of another person—

(i) in order to influence that auctioneer to conduct the bidding process at an auction in such a manner so as to favour or prejudice a specific person; or

(ii) as a reward for acting as contemplated in subparagraph (i); or 40

(c) gives or agrees or offers to give any gratification to any other person, whether for the benefit of that other person or for the benefit of another person—

(i) in return for that other person—

(aa) refraining from bidding at an auction; or

(bb) participating, personally or by influencing any other person so to participate, in the bidding process at an auction in such a manner so as to get a specific offer for the article or to sell the article at a specific amount or to sell the article to a specific bidder; or 45

(ii) as a reward for acting as contemplated in subparagraph (i),

is guilty of the offence of corrupt activities relating to auctions. 50

Offences in respect of corrupt activities relating to sporting events

15. Any person who, directly or indirectly—

(a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or 55

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- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person—
- (i) in return for—
- (aa) engaging in any act which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event; or
- (bb) not reporting the act contemplated in this section to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station; or
- (ii) as a reward for acting as contemplated in subparagraph (i); or
- (c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any sporting event, including, in any way, influencing the run of play or the outcome of a sporting event,
- is guilty of the offence of corrupt activities relating to sporting events.

Offences in respect of corrupt activities relating to gambling games or games of chance

16. Any person who, directly or indirectly—
- (a) accepts or agrees or offers to accept any gratification from any other person, whether for the benefit of himself or herself or for the benefit of that other person or of another person; or
- (b) gives or agrees or offers to give to any other person any gratification, whether for the benefit of that other person or for the benefit of another person—
- (i) in return for engaging in any conduct which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance; or
- (ii) as a reward for acting as contemplated in subparagraph (i); or
- (c) carries into effect any scheme which constitutes a threat to or undermines the integrity of any gambling game or a game of chance, including, in any way, influencing the outcome of a gambling game or a game of chance,
- is guilty of the offence of corrupt activities relating to gambling games or games of chance.

Part 5: Miscellaneous offences relating to possible conflict of interest and other unacceptable conduct

Offence relating to acquisition of private interest in contract, agreement or investment of public body

17. (1) Any public officer who, subject to subsection (2), acquires or holds a private interest in any contract, agreement or investment emanating from or connected with the public body in which he or she is employed or which is made on account of that public body, is guilty of an offence.
- (2) Subsection (1) does not apply to—
- (a) a public officer who acquires or holds such interest as a shareholder of a listed company;
- (b) a public officer, whose conditions of employment do not prohibit him or her from acquiring or holding such interest; or
- (c) in the case of a tender process, a public officer who acquires a contract, agreement or investment through a tender process and whose conditions of employment do not prohibit him or her from acquiring or holding such interest and who acquires or holds such interest through an independent tender process.

Offences of unacceptable conduct relating to witnesses

18. Any person who, directly or indirectly, intimidates or uses physical force, or improperly persuades or coerces another person with the intent to—

- (a) influence, delay or prevent the testimony of that person or another person as a witness in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or any officer authorised by law to hear evidence or take testimony; or 5
 - (b) cause or induce any person to—
 - (i) testify in a particular way or fashion or in an untruthful manner in a trial, hearing or other proceedings before any court, judicial officer, committee, commission or officer authorised by law to hear evidence or take testimony; 10
 - (ii) withhold testimony or to withhold a record, document, police docket or other object at such trial, hearing or proceedings; 15
 - (iii) give or withhold information relating to any aspect at any such trial, hearing or proceedings; 15
 - (iv) alter, destroy, mutilate, or conceal a record, document, police docket or other object with the intent to impair the availability of such record, document, police docket or other object for use at such trial, hearing or proceedings; 20
 - (v) give or withhold information relating to or contained in a police docket; 20
 - (vi) evade legal process summoning that person to appear as a witness or to produce any record, document, police docket or other object at such trial, hearing or proceedings; or 20
 - (vii) be absent from such trial, hearing or other proceedings, 25
- is guilty of the offence of unacceptable conduct relating to a witness.

Intentional interference with, hindering or obstruction of investigation of offence

19. Any person who, at any stage, with intent to defraud or to conceal an offence in terms of this Chapter or to interfere with, or to hinder or obstruct a law enforcement body in its investigation of any such offence— 30

- (a) destroys, alters, mutilates or falsifies any book, document, valuable security, account, computer system, disk, computer printout or other electronic device or any entry in such book, document, account or electronic device, or is privy to any such act; 30
 - (b) makes or is privy to making any false entry in such book, document, account or electronic device; or 35
 - (c) omits or is privy to omitting any information from any such book, document, account or electronic device, 35
- is guilty of an offence.

Part 6: Other offences relating to corrupt activities 40**Accessory to or after offence**

20. Any person who, knowing that property or any part thereof forms part of any gratification which is the subject of an offence in terms of Part 1, 2, 3 or 4, or section 21 (in so far as it relates to the aforementioned offences) of this Chapter, directly or indirectly, whether on behalf of himself or herself or on behalf of any other person— 45

- (a) enters into or causes to be entered into any dealing in relation to such property or any part thereof; or 45
 - (b) uses or causes to be used, or holds, receives or conceals such property or any part thereof, 45
- is guilty of an offence. 50

Attempt, conspiracy and inducing another person to commit offence

21. Any person who—

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- (a) attempts;
 - (b) conspires with any other person; or
 - (c) aids, abets, induces, incites, instigates, instructs, commands, counsels or procures another person,
- to commit an offence in terms of this Act, is guilty of an offence. 5

CHAPTER 3

INVESTIGATIONS REGARDING POSSESSION OF PROPERTY RELATING TO CORRUPT ACTIVITIES

Investigation regarding property relating to corrupt activities

22. (1) Whenever the National Director has reason to suspect that there may be in any building, receptacle or place, or in the possession, custody or control of any person any property which— 10

- (a) may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under Chapter 2;
- (b) may have facilitated the commission of such an offence, or enabled any person or entity to commit such an offence, or provided financial or economic support to a person or entity in the commission of such an offence; or 15
- (c) may be the proceeds of such an offence,

he or she may, prior to the institution of any asset forfeiture or criminal proceedings, under written authority direct that a particular Director of Public Prosecutions or a Special Director of Public Prosecutions, shall have the power to institute an investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to such property. 20

(2) For purposes of subsection (1), a reference in the said Chapter 5 to—

- (a) the “**head of the Directorate of Special Operations**” or an “**Investigating Director**” shall be construed as a reference to a Director of Public Prosecutions or a Special Director of Public Prosecutions, as the case may be: Provided that for purposes of section 28(2)(a) of the said Act, a Director of Public Prosecutions or Special Director of Public Prosecutions, may only designate a Deputy Director of Public Prosecutions; and 25 30
- (b) a “**special investigator**” shall be construed as to include a police official.

(3) If property seized under any power exercised under subsection (1) consists of cash or funds standing to the credit of a bank account, the Director of Public Prosecutions or a Special Director of Public Prosecutions who has instituted the investigation under that subsection shall cause the cash or funds to be paid into a banking account which shall be opened with any bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and the Director of Public Prosecutions or a Special Director of Public Prosecutions shall forthwith report to the Financial Intelligence Centre the fact of the seizure of the cash or funds and the opening of the account. 35

Application for, and issuing of investigation direction in respect of possession of property disproportionate to a person’s present or past known sources of income or assets 40

23. (1) The National Director, or any person authorised in writing thereto by him or her (hereinafter referred to as the applicant), may apply to a judge in chambers for the issuing of an investigation direction in terms of subsection (3). 45

(2) An application referred to in subsection (1) must be in writing and must—

- (a) indicate the identity of the—
 - (i) applicant and, if known, the identity of the person who will conduct the investigation; and
 - (ii) person to be investigated (hereinafter referred to as the suspect); 50
- (b) specify the grounds referred to in subsection (3) on which the application is made;

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- (c) contain full particulars of all the facts and circumstances alleged by the applicant in support of his or her application;
- (d) include the basis for believing that evidence relating to the ground on which the application is made will be obtained through the investigation direction;
- (e) indicate whether any previous application has been made for the issuing of an investigation direction in respect of the same suspect in the application and, if such previous application exists, must indicate the current status of that application; and 5
- (f) indicate the period for which the investigation is required.
- (3) (a) A judge in chambers may upon an *ex parte* application made to him or her in terms of subsection (1), issue an investigation direction. 10
- (b) An investigation direction may only be issued if the judge concerned is satisfied that—
- (i) there has been compliance with the provisions of subsection (2); and
- (ii) on the facts alleged in the application concerned, there are reasonable grounds to believe that— 15
- (aa) a person—
- (aaa) maintains a standard of living above that which is commensurate with his or her present or past known sources of income or assets; or 20
- (bbb) is in control or possession of pecuniary resources or property disproportionate to his or her present or past known sources of income or assets; and
- (bb) that person maintains such a standard of living through the commission of corrupt activities or the proceeds of unlawful activities or that such pecuniary resources or properties are instrumentalities of corrupt activities or the proceeds of unlawful activities; and 25
- (cc) such investigation is likely to reveal information, documents or things which may afford proof that such a standard of living is maintained through the commission of corrupt activities or the proceeds of unlawful activities or that such pecuniary resources or properties are instrumentalities of corrupt activities or the proceeds of unlawful activities. 30
- (c) An investigation direction—
- (i) must be in writing;
- (ii) must indicate the identity of the suspect and, if known, the person who will conduct the investigation; 35
- (iii) must specify the period for which it has been issued;
- (iv) may specify conditions of restriction relating to the conducting of the investigation; and
- (v) may be issued in respect of any place in the Republic. 40
- (d) An application must be considered and an investigation direction issued without any notice to the suspect to whom the application applies and without hearing that suspect: Provided that where any previous investigation direction has been issued in respect of a suspect, the applicant may only apply for a further investigation direction in respect of that suspect on the same facts, after giving reasonable notice to the suspect concerned. 45
- (e) A judge considering an application may require the applicant to furnish such further information as he or she deems necessary.
- (4) If an investigation direction has been issued under subsection (3), the National Director or the person authorised thereto in the investigation direction, may, for the purposes of an investigation direction— 50
- (a) summon the suspect or any other person, specified in the investigation direction, who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any property, book, document or other object relating to that subject, to appear before the National Director or the person so authorised, at a time and place specified in the summons, to be questioned or to produce that property, book, document or other object; 55
- (b) question that suspect or other person, under oath or affirmation administered by the National Director or the person so authorised, and examine or retain for 60

further examination or for safe custody such property, book, document or other object; or

- (c) at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises where the suspect is or is suspected to be or any premises on or in which anything connected with that investigation is or is suspected to be, and may—
- (i) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
 - (ii) examine any property found on or in the premises which has a bearing or might have a bearing on the investigation in question, and request from the suspect or the owner or person in charge of the premises or from any person in whose possession or charge that property is, information regarding that property;
 - (iii) 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 investigation in question, and request from any person suspected of having the necessary information, an explanation of any entry therein; or
 - (iv) seize, against the issue of a receipt, anything on or in the premises which has a bearing or might have a bearing on the investigation in question, or if he or she wishes to retain it for further examination or for safe custody: Provided that any person from whom a book or document has been taken under paragraph (b) or (c)(iv), may, as long as it is in the possession of the person conducting the investigation, at his or her request be allowed, at his or her own expense and under the supervision of the person conducting the investigation, to make copies thereof or to take extracts therefrom at any reasonable time.

(5) (a) 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 suspect or any person referred to in subsection (4): 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 or her to a criminal charge.

(b) No evidence regarding any questions and answers contemplated in paragraph (a) shall be admissible in any criminal proceedings, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (7)(b), or in section 319(3) of the Criminal Procedure Act, 1955 (Act No. 56 of 1955).

(6) Subject to any directions, conditions or restrictions determined by the judge under subsection (3)(c)(iv), the provisions of sections 28(1)(d), (2) to (10) and 29(2), (7)(a), (9), (10)(b) and (11) of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to the conducting of an investigation and the execution of a warrant in terms of those provisions, apply, with the necessary changes, in respect of an investigation conducted in terms of subsection (4).

(7) Any person who—

- (a) obstructs or hinders the person conducting the investigation or any other person in the performance of his or her functions in terms of this section; or
- (b) when he or she is asked in terms of subsection (4) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading,

shall be guilty of an offence.

CHAPTER 4

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PRESUMPTIONS AND DEFENCES

Presumptions

24. (1) Whenever a person is charged with an offence under Part 1 or 2, or section 21 (in so far as it relates to the aforementioned offences) of Chapter 2, proof that that person, or someone else at the instance of that person—

- (a) accepted or agreed or offered to accept any gratification from; or
- (b) gave or agreed or offered to give any gratification to,

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any other person—

- (i) who holds or seeks to obtain a contract, licence, permit, employment or anything whatsoever from a public body, private organisation, corporate body or other organisation or institution in which the person charged was serving as an official; 5
 - (ii) who is concerned, or who is likely to be concerned, in any proceedings or business transacted, pending or likely to be transacted before or by the person charged or public body, private organisation, corporate body, political party or other organisation or institution in which the person charged was serving as an official; or 10
 - (iii) who acts on behalf of a person contemplated in subparagraph (i) or (ii).
- and, if the State can further show that despite having taken reasonable steps, it was not able with reasonable certainty to link the acceptance of or agreement or offer to accept or the giving or agreement to give or offer to give the gratification to any lawful authority or excuse on the part of the person charged, and in the absence of evidence to the contrary which raises reasonable doubt, is sufficient evidence that the person charged accepted or agreed or offered to accept such gratification from that person or gave or agreed or offered to give such gratification to that person in order to act, in a manner— 15
- (aa) that amounts to the—
 - (aaa) illegal, dishonest, unauthorised, incomplete, or biased; or 20
 - (bbb) misuse or selling of information or material acquired in the course of the,
 - exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation; 25
 - (bb) that amounts to—
 - (aaa) the abuse of a position of authority;
 - (bbb) a breach of trust; or
 - (ccc) the violation of a legal duty or a set of rules; 30
 - (cc) designed to achieve an unjustified result; or 30
 - (dd) that amounts to any other unauthorised or improper inducement to do or not to do anything. 30
- (2) Whenever a public officer whose duties include the detection, investigation, prosecution or punishment of offenders, is charged with an offence involving the acceptance of a gratification, arising from— 35
- (a) the arrest, detention, investigation or prosecution of any person for an alleged offence;
 - (b) the omission to arrest, detain or prosecute any person for an alleged offence; or
 - (c) the investigation of an alleged offence, 40
- it is not necessary to prove that the accused person believed that an offence contemplated in paragraphs (a) to (c) or any other offence had been committed.

Defences

- 25.** Whenever an accused person is charged with an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2, it is not a valid defence for that accused person to contend that he or she— 45
- (a) did not have the power, right or opportunity to perform or not to perform the act in relation to which the gratification was given, accepted or offered;
 - (b) accepted or agreed or offered to accept, or gave or agreed or offered to give the gratification without intending to perform or not to perform the act in relation to which the gratification was given, accepted or offered; or 50
 - (c) failed to perform or not to perform the act in relation to which the gratification was given, accepted or offered. 50

CHAPTER 5

PENALTIES AND RELATED MATTERS

Penalties

26. (1) Any person who is convicted of an offence referred to in—
- (a) Part 1, 2, 3 or 4, or section 18 of Chapter 2, is liable— 5
 - (i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment up to a period for imprisonment for life;
 - (ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years; or
 - (iii) in the case of a sentence to be imposed by a magistrate's court, to a fine 10 or to imprisonment for a period not exceeding five years;
 - (b) section 17(1), 19, 20, 23(7)(a) or (b) or 34(2), is liable—
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 10 years; or
 - (ii) in the case of a sentence to be imposed by a magistrate's court, to a fine 15 or to imprisonment for a period not exceeding three years; or
 - (c) section 28(6)(b), is liable to a fine of R250 000 or to imprisonment for a period not exceeding three years.
- (2) A person convicted of an offence referred to in section 21, is liable to the punishment laid down in subsection (1) for the offence which that person attempted or conspired to commit or aided, abetted, induced, instigated, instructed, commanded, counseled or procured another person to commit. 20
- (3) In addition to any fine a court may impose in terms of subsection (1) or (2), the court may impose a fine equal to five times the value of the gratification involved in the offence. 25

Authorisation by National Director, Deputy National Director or Director to institute proceedings in respect of certain offences

27. The institution of a prosecution for an offence referred to in section 17(1), 23(7)(b) or 34(2), must be authorised in writing by the National Director, a Deputy National Director of Public Prosecutions or the Director of Public Prosecutions concerned and only after the person concerned has been afforded a reasonable opportunity by the investigating or prosecuting authority, as the case may be, to explain, whether personally or through a legal representative— 30
- (a) in the case of section 17(1), how he or she acquired the private interest concerned; 35
 - (b) in the case of section 23(7)(b), how he or she acquired the property or resources concerned; or
 - (c) in the case of section 34(2), why he or she failed to report in terms of section 34(2).

Endorsement of Register 40

28. (1) (a) A court convicting a person of an offence contemplated in section 12 or 13, may, in addition to imposing any sentence contemplated in section 26, issue an order that—
- (i) the particulars of the convicted person;
 - (ii) the conviction and sentence; and 45
 - (iii) any other order of the court consequent thereupon,
- be endorsed on the Register.
- (b) If the person so convicted is an enterprise, the court may also issue an order that—
- (i) the particulars of that enterprise;
 - (ii) the particulars of any partner, manager, director or other person, who wholly 50 or partly exercises or may exercise control over that enterprise and who was

- involved in the offence concerned or who knows or ought reasonably to have known or suspected that the enterprise committed the offence concerned; and
- (iii) the conviction, sentence and any other order of the court consequent thereupon,
- be endorsed on the Register. 5
- (c) The court may also issue an order contemplated in paragraph (a) in respect of—
- (i) any other enterprise owned or controlled by the person so convicted; or
- (ii) the particulars of any partner, manager, director or other person, who wholly or partly exercises or may exercise control over such other enterprise.
- and which— 10
- (aa) enterprise, partner, manager, director or other person was involved in the offence concerned; or
- (bb) partner, manager, director or other person knew or ought reasonably to have known or suspected that such other enterprise was involved in the offence concerned. 15
- (d) Whenever the Register is endorsed as contemplated in paragraph (a), (b) or (c), the endorsement applies, unless the court directs otherwise, to every enterprise to be established in the future, and which enterprise will be wholly or partly controlled or owned by the person or enterprise so convicted or endorsed, and the Registrar must, in respect of every such enterprise, endorse the Register accordingly. 20
- (2) Where a court has issued an order under subsection (1), the registrar or clerk of such court must forthwith forward the court order to the Registrar and the Registrar must forthwith endorse the Register accordingly.
- (3) (a) Where the Register has been endorsed in terms of subsection (2), in addition to any other legal action, the following restrictions may or must, as the case may be, be imposed: 25
- (i) The National Treasury may terminate any agreement with the person or enterprise referred to in subsection (1)(a) or (b): Provided that—
- (aa) in considering the termination of an agreement, the National Treasury must take into account, among others, the following factors, namely— 30
- (aaa) the extent and duration of the agreement concerned;
- (bbb) whether it is likely to conclude a similar agreement with another person or enterprise within a specific time frame;
- (ccc) the extent to which the agreement has been executed;
- (ddd) the urgency of the services to be delivered or supplied in terms of 35 the agreement;
- (eee) whether extreme costs will follow such termination; and
- (fff) any other factor which, in the opinion of the National Treasury, may impact on the termination of the agreement; and
- (bb) if that agreement involves any purchasing authority or Government 40 Department, such restriction may only be imposed after consultation with the purchasing authority or Government Department concerned;
- (ii) the National Treasury must determine the period (which period may not be less than five years or more than 10 years) for which the particulars of the convicted person or the enterprise referred to in subsection (1)(a), (b), (c) or 45 (d) must remain in the Register and during such period no offer in respect of any agreement from a person or enterprise referred to in that subsection may be considered by the National Treasury; or
- (iii) during the period determined in subparagraph (ii), the National Treasury, the purchasing authority or any Government Department must— 50
- (aa) ignore any offer tendered by a person or enterprise referred to in subsection (1)(a), (b), (c) or (d); or
- (bb) disqualify any person or enterprise referred to subsection (1)(a), (b), (c) or (d), from making any offer or obtaining any agreement relating to the procurement of a specific supply or service. 55

- (b) A restriction imposed under paragraph (a) only comes into effect after any appeal against the conviction or sentence or both has been finalised by the court: Provided that if the appeal court sets aside, varies or amends the order referred to in subsection (1), the National Treasury must, if necessary, amend the restrictions imposed under paragraph (a) accordingly. 5
- (c) Where the National Treasury has terminated an agreement in terms of paragraph (a)(i), it may, in addition to any other legal remedy, recover from the person or enterprise any damages—
- (i) incurred or sustained by the State as a result of the tender process or the conclusion of the agreement; or 10
 - (ii) which the State may suffer by having to make less favourable arrangements thereafter.
- (4) The National Treasury—
- (a) may at any time vary or rescind any restriction imposed under subsection (3)(a)(i) or (ii); and 15
 - (b) must, when the period determined in terms of subsection (3)(a)(ii) expires, remove the particulars of the person or enterprise concerned, from the Register.
- (5) When the National Treasury imposes a restriction under subsection (3)(a)(i) or (ii), or amends or rescinds such a restriction, it must within 14 days in writing notify— 20
- (a) the person whose particulars have been so endorsed;
 - (b) any purchasing authority on which it may decide; and
 - (c) all Government departments,
- of any resolution or decision relative to such restriction or the amendment or rescinding thereof, and request such authorities and departments to take similar steps. 25
- (6) (a) Any person whose particulars, conviction and sentence have been endorsed on the Register as contemplated in this section and who has been notified as contemplated in subsection (5)(a), must in any subsequent agreement or tender process involving the State, disclose such endorsement, conviction and sentence.
- (b) Any person who fails to comply with paragraph (a), is guilty of an offence. 30
- (7) For purposes of this section—
- (a) “**agreement**” includes an agreement to procure and supply services, to arrange the hiring or letting of anything or the acquisition or granting of any right for or on behalf of the State;
 - (b) “**enterprise**” includes any individual, partnership, corporation, association, 35 or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity;
 - (c) “**Registrar**” means the Registrar of the Register designated under section 30; and
 - (d) “**Register**” means the Register established under section 29. 40

CHAPTER 6

REGISTER FOR TENDER DEFAULTERS

Establishment of Register

29. Within six months after the commencement of this Chapter, the Minister of Finance must establish a register, to be known as the Register for Tender Defaulters, 45 within the Office of the National Treasury.

Designation of Registrar

30. The Minister of Finance must designate a fit and proper person, with due regard to his or her experience, conscientiousness and integrity, as Registrar.

Powers, duties and functions of Registrar 50

31. (1) The Registrar must, subject to the provisions of section 28 and this Chapter, exercise and perform his or her powers, duties and functions subject to the control and directions of the National Treasury.