

[Chap0704]CHAPTER 7:04

CORRUPT PRACTICES

ARRANGEMENT OF SECTIONS

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An Act to provide for the establishment of an Anti-Corruption Bureau; to make comprehensive provision for the prevention of corruption; and to provide for matters connected with or incidental to the foregoing

[15TH FEBRUARY 1996]

PART I

PRELIMINARY

[Ch0704s1]1. Short title

This Act may be cited as the Corrupt Practices Act.

[Ch0704s2]2. Application

(1) Save as otherwise provided, the provisions of this Act shall apply notwithstanding anything to the contrary contained in the Criminal Procedure and Evidence Code or in any other written law. Cap. 8:01

(2) Subject to subsection (1), all offences under this Act shall be inquired into, tried and otherwise dealt with in accordance with the provisions of the Criminal Procedure and Evidence code. Cap. 8:01

[Ch0704s3]3. Interpretation

17 of 2004In this Act, unless the context otherwise requires—

“advantage” means any benefit, service, enjoyment or gratification, whether direct or indirect, and includes a payment, whether in cash or in kind, or any rebate, deduction, concession or loan, and any condition or circumstance that puts one person or class of persons in a favourable position over another;

“agent” means any person who acts for or on behalf, or in the name, of a public body or a private body or any other person, and includes a trustee, an administrator, an executor and an employee;

“bank” has the meaning ascribed thereto in the Banking Act, and includes a financial institution; Cap. 44:01

“Bureau” means the Anti-Corruption Bureau established under section 4;

“corruptly” means the doing of, or the engaging in, any corrupt practice;

“corrupt practice” means—

(a) the offering, giving, receiving, obtaining or soliciting of any advantage to influence the action of any public officer or any official or any other person in the discharge of the duties of that public officer, official or other person;

(b) influence peddling;

(c) the extortion of any advantage;

“Director” means the person appointed under section 5 to be the Director of the Bureau;

“Deputy Director” means the person appointed under section 7 to be the Deputy Director of the Bureau;

“entertainment” means the provision of food or drink for consumption on the occasion when it is provided and any other entertainment connected with, or provided at the same time as, such food or drink;

“extortion”, in relation to corrupt practice, includes—

(a) the demanding or receiving by a person in office of a fee or other payment for services, work, supplies or other thing which should be performed, done, delivered, offered, provided or given gratuitously; or

(b) where compensation is permissible, the demanding or receiving of a fee or other payment larger than is justified or which is not due;

“financial institution” has the meaning ascribed thereto in the Banking Act; Cap. 44:01

“Government” includes any Ministry, Department, service or undertaking of the Government;

“influence” means any influence, whether or not the use of it leads to the intended result;

“pecuniary resources or property”, when used to denote the proceeds of crime or any thing obtained from or connected with, or suspected to have been obtained from or to be connected with, the commission of an offence under this Act, includes pecuniary resources or property of whatever description into which any pecuniary resources or property derived or realized from the commission of the offence was later successively converted, transformed or intermingled, as well as income, capital or other economic gains derived or realized from such pecuniary resources or property at any time since the commission of the offence;

“principal” includes an employer, a beneficiary under a trust, and a trust estate as though it were a person, and any person beneficially interested in the estate of a deceased person as though the estate were a person;

“private body” means any person or organization not being a public body, and includes a voluntary organization, charitable institution, company, partnership and a club;

“Public Appointments Committee” means the Public Appointments Committee of the National Assembly established under section 56 (7) of the Constitution;

“public body” means the Government, a statutory body or any other body appointed by the Government;

“public officer” means any person who is a member of, or holds office in, or is employed in the service of, a public body, whether such membership, office or employment is permanent or temporary, whole or part-time, paid or unpaid, and includes the President, a Vice-President, a Minister and a member of Parliament;

“senior police officer” means any police officer of or above the rank of Inspector;

“statutory body” has the meaning ascribed thereto in the Public Audit Act and includes the Reserve Bank of Malawi and any company, association, body, board or institution in which a statutory body has a financial interest. Cap. 37:01

PART II

THE ANTI-CORRUPTION BUREAU

[Ch0704s4]4. Establishment and composition of the Bureau

(1) There is hereby established a body to be known as the Anti-Corruption Bureau which shall consist of the Director, the Deputy Director and such other officers of the Bureau, as may be appointed under section 9.

(2) The Bureau shall be a Government Department and the finances of the Bureau shall be charged to the Consolidated Fund.

17 of 2004 (3) The Bureau shall exercise its functions and powers independent of the direction or interference of any other person or authority.

17 of 2004 (4) The Director shall submit reports to the President and to the Minister regarding the general conduct of the affairs of the Bureau.

[Ch0704s5]5. Appointment of Director

17 of 2004 (1) The President shall, on such terms and conditions as he thinks fit, appoint the Director, and the appointment of any person as Director shall be subject to confirmation by the Public Appointments Committee.

(2) The Director and other officers of the Bureau shall not, while holding such office, discharge the duties of any other office of emolument in the Republic.

[Ch0704s5A]5A. Civil suits by or against the Director

17 of 2004 Any civil suit arising from the exercise of the functions, duties and powers of the Bureau or the Director shall be instituted by or against the public office of the Director, but the provisions of the Civil Procedure (Suits by or against the Government or Public Officers) Act shall otherwise apply in respect of any such suit as they apply in respect of any suit by or against any other public officer. Cap. 6:01

[Ch0704s5B]5B. Legal representation

17 of 2004 The Director may, apart from the Attorney General, instruct any legal practitioner—

(a) to provide legal representation to the Director in any civil proceeding before any court, including any proceeding concerning appeals against the decisions of the Director on any aspect of the exercise of the functions, duties and powers of the Bureau or of the Director; or

(b) generally to provide legal advice or to act for on behalf of the Director.

[Ch0704s6]6. Qualifications and tenure of office of Director

(1) No person shall qualify for appointment as Director unless he is of high integrity and possesses qualifications and training necessary for the performance of the duties of that office.

(2) A person holding the office of Director may be removed from office by the President, with the confirmation of the Public Appointments Committee, for inability to perform the functions of his office (whether arising from infirmity of body or mind or from any other cause) or for misbehaviour.

(3) The President may, if he considers it desirable in the public interest so to do, suspend the Director from exercising the duties of the office of Director pending investigations to determine whether or not the Director may be removed from office under subsection (2).

[Ch0704s7]7. Appointment of Deputy Director

(1) The President may appoint a Deputy Director on such terms and conditions as the President thinks fit, and the appointment of any person as Deputy Director shall be subject to confirmation by the Public Appointments Committee.

(2) No person shall qualify for appointment as a Deputy Director unless he is of high integrity and possesses qualifications and training necessary for the performance of the duties of that office.

(3) A person holding the office of Deputy Director may be removed or suspended from office by the President in the same manner and on the same grounds as apply to the removal or suspension, as the case may be, of a person holding the office of Director.

[Ch0704s8]8. Acting Director

(1) If the office of the Director is vacant or the Director is absent from duty or unable for any other reason to perform the functions of his office, the Deputy Director shall act as Director.

(2) If both the Director and the Deputy Director are absent from duty or unable for any other reason to perform the functions of their office, the President shall appoint another duly qualified person to act as Director during such temporary absence or vacancy:

Provided that where the period of such temporary absence has exceeded twenty-one days the President shall, within fourteen days thereafter, furnish to the Public Appointments Committee the reasons why the vacancy in both or either of the two offices cannot be substantively filled with immediate effect and an estimate of the time within which the vacancy shall be filled, being not longer than three months from the expiry of the period of twenty-one days herein referred to.

[Ch0704s9]9. Appointment of other officers of the Bureau

In addition to the Director and Deputy Director there shall be appointed in the public service, on terms and conditions approved by the President, investigating officers and such other officers of the Bureau as may be required for the proper performance of the functions of the Bureau but the appointment of officers under this section shall not require the confirmation of the Public Appointments Committee.

PART III

FUNCTIONS AND POWERS OF THE BUREAU

[Ch0704s10]10. Functions of the Bureau

17 of 2004(1) The functions of the Bureau shall be to—

(a) take necessary measures for the prevention of corruption in public bodies and private bodies, including, in particular, measures for—

(i) examining the practices and procedures of public bodies and private bodies in order to facilitate the discovery of corrupt practices and secure the revision of methods of work or procedures which in the opinion of the Bureau may be prone or conducive to corrupt practices;

(ii) advising public bodies and private bodies on ways and means of preventing corrupt practices, and on changes in methods of work or procedures of such public bodies and private bodies compatible with the effective performance of their duties, which the Bureau considers necessary to reduce the likelihood of the occurrence of corrupt practices;

(iii) disseminating information on the evil and dangerous effects of corrupt practices on society;

(iv) enlisting and fostering public support against corrupt practices;

(b) receive any complaints, report or other information of any alleged or suspected corrupt practice or offence under this Act;

(c) investigate any complaint, report or other information received under paragraph (b);

- (d) investigate any alleged or suspected offence under this Act;
- (e) investigate any offence under any written law disclosed in the course of investigating any alleged or suspected corrupt practice or offence under this Act;
- (f) subject to the directions of the Director of Public Prosecutions, prosecute any offence under this Act;
- (g) investigate the conduct of any public officer which, in the opinion of the Bureau, may be connected with, or conducive to, corrupt practices and to report thereon to the appropriate authority;
- (h) inquire into any matter in relation to the exercise of its other functions under this section.

(2) The Bureau may decline to conduct an investigation into any complaint alleging an offence under this Act or to proceed further with any investigation if the Bureau is satisfied that—

- (a) the complaint is trivial, frivolous, vexatious or not made in good faith; or
- (b) the investigation would be unnecessary, improper or futile.

(3) In any case in which the Bureau declines to conduct an investigation, or to proceed further with any investigation, the Bureau shall inform the complainant in writing of its decision.

17 of 2004 (4) Where the Bureau has carried out any investigation of any alleged or suspected corrupt practice or offence under this Act, it may, if it considers it necessary so to do, report its findings and recommendations to the appropriate authority regarding any matter which reveals, or points to, the existence or prevalence of any conduct connected with; or conducive to, corrupt practices; and in any such report, the Bureau may require the appropriate authority to take or institute such corrective action or measure as the Bureau shall reasonably specify in the report or to explain to the Bureau why such action or measure may not be taken or instituted or what other action or measure may instead be taken or instituted, and the Bureau may make such modification to its recommendations or requirements as it may consider desirable.

[Ch0704s11]11. Powers of the Bureau

17 of 2004(1) For the performance of the functions of the Bureau under this Act, the Director may—

- (a) authorize in writing any officer of the Bureau to conduct an inquiry or investigation into alleged or suspected offences under this Act;
- (b) require any public officer or other person to answer questions concerning the duties of that public officer or of any other public officer or other person, and order the production for inspection of any standing orders, directives or office instructions relating to the duties of the public officer or such other public officer or other person;

(c) require any person in charge of any office or establishment of the Government, or the head, chairman, manager or chief executive officer of any public body or private body or produce or furnish within such time as may be specified by the Bureau, any document or a certified true copy of any document which is in his possession or under his control and which the Bureau considers necessary for the conduct of investigation into any alleged or suspected offence under this Act;

(d) require any person, including any public officer, to provide any information, or to answer any question, in connexion with an inquiry or investigation under this Act;

(e) do or perform such other acts or things as are reasonably necessary or required for the exercise of the functions of the Bureau and the performance of his duties.

17 of 2004 (2) In the performance of his duties under this Act, the Director, the Deputy Director or other officer of the Bureau authorized in writing by the Director or Deputy Director, if so authorized by warrant issued, by a magistrate upon showing cause to the magistrate why the warrant should be issued shall have—

(a) access to all books, records, returns, reports and other documents relating to the work of the Government or any public body or private body;

(b) access at any time to the premises of any Government office, public body or private body, or to any vessel, boat, aircraft or other vehicle whatsoever, and may search such premises or such vessel, boat, aircraft or other vehicle if he has reason to suspect that any property corruptly acquired has been placed, deposited or concealed therein.

(3) In the exercise of the power of access and search under subsection (2) (b), the Director, the Deputy Director or other officer of the Bureau authorized in writing by the Director or Deputy Director may use such reasonable force as is necessary in the circumstances, and may be accompanied or assisted by such other persons as he deems necessary to assist him to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be.

(4) Any person who accompanies or assists the Director, the Deputy Director or other officer of the Bureau to enter into or upon any premises, or upon any vessel, boat, aircraft or other vehicle, as the case may be, shall, during the period of such accompaniment or assistance, enjoy the same immunity as is conferred under section 22 upon the Director, the Deputy Director or other officer of the Bureau.

[Ch0704s12]12. Special powers of investigation

(1) The Director may, by order in writing supported by a warrant issued by a magistrate upon showing cause to the magistrate why the order should be issued, authorize any officer of the Bureau of such category and such senior rank as the Director may determine, to investigate any bank account, share account, purchase account, expense account or any other account, or any safe box in any bank.

(2) An order made under subsection (1) shall be sufficient authority for the disclosure or production by any person of all or any information, accounts, documents or articles as may be required by the officer of the Bureau so authorized.

(3) Any person who fails to disclose such information or to produce such accounts, documents or articles to the officer of the Bureau so authorized shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for five years.

[Ch0704s12A]12A. Further powers of the Director to obtain information

17 of 2004(1) If, in the course of any investigation or proceedings relating to any offence under Part IV, the Director is satisfied that it would assist or expedite such investigation or proceedings, he may, by notice, require—

(a) any suspected person to furnish a sworn statement in writing enumerating all moveable or immovable property belonging to or possessed by him, and specifying the date on which every such property was acquired and the consideration paid therefor, and explaining whether the property was acquired by way of purchase, gift, bequest, inheritance or otherwise;

(b) any suspected person to furnish a sworn statement in writing of any moneys or other property sent out of Malawi by him during such period as may be specified in such notice;

(c) any other person with whom the Director believes that the suspected person had any financial transactions or other business dealing relating to an offence under Part IV to furnish a sworn statement in writing enumerating all moveable or immovable property belonging to or possessed by such other person at the material time:

Provided that the Director shall not require any such other person to furnish such sworn statement unless he has reasonable ground to believe that such information can assist in the investigation or proceedings;

(d) the Commissioner of Taxes, notwithstanding the provisions of section 6 of the Taxation Act, to furnish all information in his possession relating to the affairs of any suspected person and to produce or furnish any documents or a certified true copy of any document relating to such suspected person which is in the possession or under the control of the Commissioner of Taxes; Cap. 41:01

(e) the manager of any bank to furnish any information or the originals, or certified true copies, of the accounts or the statements of account at the bank of any suspected person.

(2) Every person on whom a notice is served by the Director under subsection (1) shall, notwithstanding any oath of secrecy, comply with the requirements of the notice within such time as may be specified therein.

[Ch0704s12B]12B. Bail where suspect or accused is about to leave Malawi

17 of 2004 If any person against whom investigations or proceedings for an offence under Part IV are pending is preparing or about to leave Malawi, whether temporarily or permanently, the Director or any officer authorized by him in that behalf may apply to any court for an order requiring such person to furnish bail in any sum, or, if he has already been admitted to bail, in such greater sum and on such additional conditions, as the case may require, with or without sureties; and in any such application the court may make such order as it deems fit.

[Ch0704s13] 13. Obstructing of officers of the Bureau

17 of 2004 Any person who—

(a) assaults, resists, in any way threatens or otherwise obstructs the Director, the Deputy Director or other officer of the Bureau in the execution of his duties;

(b) unlawfully hinders or delays the Director, Deputy Director or other officer of the Bureau in effecting entry into or upon any premises, boat, aircraft or vehicle,

shall be guilty of an offence and liable to a fine of K70,000 and to imprisonment for seven years.

[Ch0704s14] 14. False reports of information to the Bureau

17 of 2004 (1) Any person who—

(a) gives or causes to be given to the Bureau testimony or information or a report which is false in any material particular in relation to any matter under investigation by the Bureau;

(b) makes or causes to be made to the Bureau a false report of the commission of an offence under this Act;

(c) misleads the Director, Deputy Director or other officer of the Bureau by giving or causing to be given to them or to the Bureau false information or by making or causing to be made to them or to the Bureau any false statements or accusations,

shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for ten years.

(2) It shall be a defence to a charge for an offence against subsection (1) that the accused did not know, or did not have reasonable ground to believe, that the matter in question was false.

[Ch0704s15] 15. Powers of arrest

The Director, the Deputy Director or any officer of the Bureau, of such category and such senior rank as the Director may determine, if authorized by warrant issued by a magistrate, may arrest any person if he reasonably suspects that the person has committed or is about to commit an offence under this Act.

[Ch0704s16] 16. Identity cards

Every officer of the Bureau including the Director and Deputy Director shall have an identity card which shall be prima facie evidence of the officer's appointment as such and which shall be issued—

- (a) in the case of the Director and Deputy Director, by the Minister; and
- (b) in the case of any other officer, by the Director.

[Ch0704s17]17. Impersonation, etc., of officers of the Bureau

Any person who falsely pretends that—

(a) he is an officer of the Bureau or has any of the powers of such officer under this Act, or under any authorization or warrant issued under this Act; or

(b) he is able to procure an officer of the Bureau to do or refrain from doing anything in connexion with the duties of such officer;

shall be guilty of an offence and liable to a fine of K70,000 and to imprisonment for seven years.

[Ch0704s18]18. Standing Orders

(1) The Director may make standing orders, which shall be subject to the approval of the Minister, providing for—

- (a) the control, direction and administration of the Bureau;
- (b) the discipline, training, classification and promotion of officers of the Bureau;
- (c) the duties of officers of the Bureau;
- (d) the financial regulations of the Bureau;

(e) such other matters as may, in his opinion, be necessary or expedient for preventing the abuse or neglect of duty and for upholding the efficiency and integrity of the Bureau, and may, in such standing orders, modify the application to the officers of the Bureau the procedures and regulations otherwise applicable to public officers in general.

(2) No standing order made by the Director shall be inconsistent with any provision of this Act or any other Act.

[Ch0704s19]19. Accounts

(1) The Director shall maintain proper accounts of such expenditure by the Bureau as the Secretary to the Treasury may require.

(2) As soon as may be after the end of each financial year, the Director shall cause a statement of accounts covering the operations of the Bureau during the previous financial year to be prepared.

[Ch0704s20]20. Audit

(1) The Auditor General shall, at any time, have access to all accounts maintained under section 19, and may require such information and explanation thereon as he thinks fit.

(2) The Auditor General shall audit the statement of accounts prepared under section 19 and report thereon to the President.

[Ch0704s21]21. Annual reports

17 of 2004(1) The Director shall, within three months after the end of every year, submit to the National Assembly and to the President, the Cabinet, and the Minister a report on the activities of the Bureau during the previous year.

(2) The Minister shall formally lay the report submitted under subsection (1) in the National Assembly within fourteen days of the date of the report or, if the National Assembly is then not sitting, within the first fourteen days of the next sitting of the National Assembly.

(3) Any competent committee of the National Assembly may at any time summon the Director to appear before it to answer questions on the contents of the report submitted under subsection (1) and generally to give account of the performance of the functions of the Bureau or of his duties.

[Ch0704s22]22. Immunity of officers of the Bureau

No action or other proceedings shall lie against the Director, the Deputy Director or other officer of the Bureau in respect of any act or thing done or omitted to be done in good faith in the exercise of his duties under this Act.

[Ch0704s23]23. Restriction on disposal of property, etc.

17 of 2004(1) Where the Bureau has instituted an investigation or a prosecution in respect of an offence under this Act, the Director may, by written notice to any person, direct that such person shall not, without the written consent of the Director, dispose of or otherwise deal with any property, or proceed with any contract, transaction, agreement or other arrangement, specified in such notice, which is the subject of, or is otherwise implicated in, such investigation or prosecution.

(2) A notice issued under subsection (1) may be served by delivering it personally to the person to whom it is addressed or may, where the Director is satisfied that such person cannot be found or is not in the Republic, be served on, or brought to the knowledge of, such person in such other manner as the Director may direct.

(3) A notice issued under subsection (1) shall have effect from the time of service and shall continue in force for a period of three months or until cancelled by the Director, whichever is earlier, but may upon expiry be renewed for further periods of three months on application to a magistrate showing cause why the notice should be renewed.

(4) Any person who, having been served with, or having knowledge of, a notice issued under subsection (1), disposes of or otherwise deals with any property specified in the notice other than in accordance with the consent of the Director, shall be guilty of an offence and liable to a fine of K200,000 and to imprisonment for fourteen years.

(5) Any person aggrieved by a directive contained in a notice issued under subsection (1) may, at any time, apply to the High Court for an order to reverse or vary such directive.

(6) A person making an application under subsection (5) shall give to the Director such notice of the day appointed for the hearing of the application as a judge of the High Court may order.

(7) On the hearing of an application under subsection (5) the High Court may—

- (a) confirm the directive;
- (b) reverse the directive and consent to the disposal of, or other dealing with, any property specified in the notice, subject to such terms and conditions as it thinks fit; or
- (c) vary the directive as it thinks just.

[Ch0704s23A]23A. Seizure of property, etc.

At any stage during the investigation of, or the proceedings for, an offence under this Act, a court may issue a warrant authorizing the Director, the Deputy Director or a senior police officer to seize or freeze any document, or other records or evidence or any asset, account, money or other pecuniary resource, wealth, property, or business or other interest.

PART IV

OFFENCES

[Ch0704s24]24. Corrupt practices by or with public officers

17 of 2004(1) Any public officer who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to any public officer, whether for the benefit of that public officer or of any other public officer, as an inducement or reward for doing or forbearing to do anything in relation to any matter or transaction, actual or proposed, with which any public body is or may be concerned shall be guilty of an offence.

[Ch0704s25]25. Corrupt use of official powers and procuring corrupt use of official powers

17 of 2004(1) Any public officer who, being concerned with any matter or transaction falling within, or connected with, his jurisdiction, powers, duties or functions, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain for himself or for any other person any advantage in relation to such matter or transaction shall be guilty of an offence.

(2) Any person who, being concerned with any matter or transaction falling within the scope of authority, or connected with the jurisdiction, powers, duties or functions of any public officer, by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage, whether directly or indirectly, to such public officer either for himself or for any other person shall be guilty of an offence.

[Ch0704s25A]25A. Public officers performing functions corruptly

17 of 2004(1) Any public officer who, being concerned with any matter or transaction falling within or connected with the jurisdiction, powers, duties or functions of his office, exercises or performs his powers, duties or functions corruptly, or otherwise acts corruptly, in relation to such matter or transaction shall be guilty of an offence.

(2) Any person who uses his influence on, or induces or persuades, a public officer concerned with any matter or transaction falling within or connected with that public officer's jurisdiction, powers, duties or functions to exercise or perform his powers, duties or functions corruptly, or otherwise to act corruptly, in relation to such matter or transaction shall be guilty of an offence.

[Ch0704s25B]25B. Misuse of public office

17 of 2004(1) Any public officer who uses, misuses or abuses his public office, or his position, status or authority as a public officer, for his personal advantage or for the advantage of another person or to obtain, directly or indirectly, for himself or for another person, any advantage, wealth, property, profit or business interest shall be guilty of an offence.

(2) Any person who uses his influence on, or induces or persuades, a public officer to use, misuse or abuse his public office, or his position, status or authority as a public officer, for such person's advantage or for the advantage of another person or to obtain, directly or indirectly, for such person or for another person any advantage, wealth, property, profit or business interest shall be guilty of an offence.

(3) Where in any proceedings for an offence under this section the prosecution proves that the accused did or directed to be done, or was in any way party to the doing of, any arbitrary act which resulted in the loss or damage of any property of the Government or of a public body, or the diversion of such property to or for purposes for which it was not intended, the accused shall, unless he gives proof to the contrary, be presumed to have committed the offence charged.

(4) For purposes of this section "arbitrary", in relation to actions of a public officer concerning the duties of his office, includes the doing, or directing the doing, of anything contrary to—

- (a) procedures prescribed by or under any written law; or
- (b) established practice or any agreed rules or arrangement which is known or ought to be known to him or is, in relation to the matter under consideration, brought to his attention in writing or other sufficient means.

[Ch0704s25C]25C. Dealing in contracts

17 of 2004(1) This section shall apply to any information which—

- (a) a public officer holds by virtue of his office;
- (b) would not be expected, or it would not be reasonable for it, to be disclosed by a public officer except in the proper performance of the functions of his office; or
- (c) the public officer holding the information knows or ought to know that it is unpublished tender information in relation to any contract or proposed contract of a public body.

(2) Any public officer who holds information to which this section applies, or any person who has, directly or indirectly, obtained any such information from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his office, and who—

- (a) deals in any contract or proposed contract to which the information relates and in which the public body is involved;
- (b) counsels or procures another person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that such other person would deal in such contract or proposed contract;
- (c) communicates to any other person the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that such other person or any other person would make use of the information for the purpose of dealing in, or counselling or procuring any person to deal in, any contract or proposed contract to which the information relates and in which a public body is involved,

shall be guilty of an offence.

[Ch0704s25D]25D. Disclosure of interest by public officers

17 of 2004(1) Where a contract or proposed contract in which a public officer or any member of his immediate family, or other close associate of his, has a direct or indirect interest is, to his knowledge, being, or is to be, considered—

- (a) at a meeting at which the public officer is or will be present; or
- (b) in any other circumstances relating to his duties as a public officer,

such public officer shall, at the commencement of the meeting or at any time upon becoming so aware, declare to the meeting or to the appropriate authority or in the manner prescribed the nature of such interest and shall not take part in, or be in attendance during, the discussion or consideration of the contract or proposed contract or vote on any matter or do any other thing relating to the contract or proposed contract.

(2) Any public officer who—

- (a) fails to make a declaration of interest as required by subsection (1);
- (b) in making a declaration of interest pursuant to subsection (1), makes a false declaration or a false statement;
- (c) otherwise contravenes subsection (1),

shall be guilty of an offence.

(3) It shall be a defence to a charge for an offence against subsection 2 (b) that the accused did not know, or did not have reasonable ground to believe that the declaration or statement was false.

(4) In this section—

“interest” means interest in a private capacity; and

“member of immediate family” in relation to a public officer, includes that public officer’s spouse, child, parent, brother, sister, grandchild, grandparent, uncle, aunt and other close relative.

[Ch0704s26]26. Corrupt transactions by or with private bodies

17 of 2004(1) Any person who by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned shall be guilty of an offence.

(2) Any person who by himself, or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to any person, whether for the benefit of that person or of any other person, as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to any matter or transaction, actual or proposed, with which any private body is or may be concerned shall be guilty of an offence.

[Ch0704s27]27. Corrupt transactions by or with agents

17 of 2004(1) Any agent who solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal’s affairs or business, or for showing or having shown favour or disfavour to any person in

relation to his principal's affairs or business or otherwise acts corruptly in relation to his principal's affairs or business shall be guilty of an offence.

(2) Any person who gives, promises or offers any advantage to any agent as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, anything in relation to his principal's affairs or business, for showing or having shown favour or disfavour to any person in relation to his principal's affairs or business or otherwise acts corruptly in relation to his principal's affairs or business shall be guilty of an offence.

(3) Any person who gives to an agent, or any agent who with intent to deceive his principal uses, any receipt, account or other document in respect of which the principal is interested or which relates to this principal's affairs or business and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge or belief is intended to mislead the principal shall be guilty of an offence.

(4) Any person who, having, or claiming or pretending to have influence with a public body or a public officer, demands, accepts, offers or agrees to accept for himself or another person an advantage or does anything in order to corruptly exercise influence in connexion with any matter or business with the public body or public officer shall be guilty of an offence.

(5) For the purposes of subsections (1) and (2), the permission of a principal to the soliciting, accepting or obtaining of any advantage by his agent shall constitute a valid defence.

[Ch0704s28]28. Corruption of members of public bodies in regard to meetings, etc.

17 of 2004(1) Any person who, being a member of any public body, by himself or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person, for himself or for any other person, any advantage as an inducement or reward for—

(a) his voting or abstaining from voting at any meeting of such public body in favour of or against any measure, matter, resolution or question submitted to such public body; or

(b) his performing, or abstaining from performing, or for his aid in procuring, expediting, delaying, hindering or preventing the performance of, any official act by such public body; or

(c) his aid in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person,

shall be guilty of an offence.

(2) Any person who, by himself or by or in conjunction with any other person, corruptly gives, promises or offers any advantage to a member of any public body in any such circumstances as are referred to in subsection (1) shall be guilty of an offence.

[Ch0704s29]29. Advantage for giving assistance, etc., in regard to contracts

17 of 2004(1) Any public officer who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain, from any person for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of his giving assistance or using influence in, or having given assistance or used influence in—

(a) the promotion, execution, or procurement of—

(i) any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance; or

(ii) any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract with a public body or private body; or

(b) the payment of the price; consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract,

shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any public officer as an inducement or reward for or otherwise on account of such public officer giving assistance or using influence in, or having given assistance or used influence in—

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

(b) the payment of the price, consideration or other moneys stipulated or otherwise provided for in any such contract or subcontract as is referred to in subsection (1),

shall be guilty of an offence.

[Ch0704s30]30. Advantage for procuring withdrawal of tenders

17 of 2004(1) Any person who directly or indirectly, by himself or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body or private body for the performance of any work, the provision of any service, the doing of anything or the supplying of any article, material or substance, shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any other person as an inducement or reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1) shall be guilty of an offence.

[Ch0704s31]31. Advantage in regard to bidding at auction sales

17 of 2004(1) Any person who directly or indirectly by himself, or by or in conjunction with any other person, corruptly solicits, accepts or obtains, or agrees to accept or attempts to receive or obtain from any person, for himself or for any other person, any advantage as an inducement or reward for or otherwise on account of his refraining or having refrained from bidding at any sale by auction conducted by or on behalf of any public body or private body shall be guilty of an offence.

(2) Any person who corruptly gives, promises or offers any advantage to any other person as an inducement or reward for or otherwise on account of that other person refraining or having refrained from bidding at any auction as is referred to in subsection (1) shall be guilty of an offence.

[Ch0704s32]32. Possession of unexplained property

17 of 2004(1) The Director, the Deputy Director or any officer of the Bureau authorized in writing by the Director may investigate any public officer where there are reasonable grounds to believe that such public officer—

(a) maintains a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;

(b) is in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or

(c) is in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act.

(2) Any public officer who, after due investigation carried out under the provisions of subsection (1), is found to—

(a) maintain a standard of living above that which is commensurate with his present or past official emoluments or other known sources of income;

(b) be in control or possession of pecuniary resources or property disproportionate to his present or past official emoluments or other known sources of income; or

(c) be in receipt directly or indirectly of the benefit of any services which he may reasonably be suspected of having received corruptly or in circumstances which amount to an offence under this Act, shall, unless he gives a reasonable explanation, be charged with having or having had under his control or in his possession pecuniary resources or property reasonably suspected of having been corruptly acquired and, unless he gives a satisfactory explanation to the court as to how else he was able to maintain such a standard of living, or such pecuniary resources or property came under his control or his possession, or he came to enjoy the benefits of such services, he shall be guilty of an offence.

(3) In this section—

- (a) "official emoluments" includes a pension, gratuity or other terminal benefits;
- (b) "public officer" includes any person who has held office as a public officer on or after 6th July, 1964.

[Ch0704s33]33. Certain matters not to constitute defence

17 of 2004(1) If, in any proceedings for an offence under any section of this Part, it is proved that the accused accepted any advantage, believing or suspecting or having reasonable grounds to believe or suspect that the advantage was given as an inducement or reward for or otherwise on account of his doing or forbearing to do, or having done or forborne to do, any act referred to in that section, it shall be no defence that—

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

(2) If, in any proceedings for an offence under any section of this Part, it is proved that the accused offered any advantage to any other person as an inducement or reward for or otherwise on account of that other person doing or forbearing to do, or having done or forborne to do, any act referred to in that section, believing or suspecting or having reasonable grounds to believe or suspect that such other person had the power, right or opportunity so to do or forbear, it shall be no defence that such other person had not such power, right or opportunity.

[Ch0704s34]34. Penalty

17 of 2004 Any person who is guilty of an offence under this Part shall be liable to imprisonment for twelve years.

[Ch0704s35]35. Attempts, conspiracies, etc.

Any person who attempts to commit, or who aids, abets or counsels, or conspires with, any person to commit an offence under this Part shall be guilty of committing that offence.

[Ch0704s36]36. Duty of public officers to make reports, etc.

17 of 2004(1) A public officer to whom any advantage is corruptly given, promised or offered shall make a full report of the circumstances of the case to a police officer or an officer of the Bureau within forty-eight hours of the occurrence of the event; and if he fails to do so without reasonable cause he shall be guilty of an offence and liable to a fine of K10,000 and to imprisonment for three years.

(2) Any police officer or officer of the Bureau may, if authorized by warrant issued by a magistrate, arrest any person in respect of whom a report is made under subsection (1).

(3) Any police officer or officer of the Bureau may, if authorized by warrant issued by a magistrate, search any person arrested for an offence under this Act and take possession of all articles found upon such person which the police officer or officer of the Bureau believes upon reasonable grounds to constitute evidence of the commission of an offence by such person under this Part.

[Ch0704s36A]36A. Tracing of property

17 of 2004 Where a court is satisfied in proceedings for an offence under this Part that, having regard to the closeness of his relationship to the accused and to other relevant circumstances, there is reason to believe that any person was holding pecuniary resources or property in trust for or otherwise on behalf of the accused or acquired such pecuniary resources or property as a gift or loan from the accused without adequate consideration, such pecuniary resources or property shall, until the contrary is proved, be deemed to have been under the control or in the possession of the accused.

[Ch0704s36B]36B. Value of property

17 of 2004 In any proceedings for an offence under this Part, the court may infer that property was obtained or derived as a result of the commission of an offence where there is evidence establishing that the value after the commission of the offence of all the property of the accused exceeds the value of all his property before the commission of the offence, and the court is satisfied that his income from sources unrelated to the offence he is alleged to have committed cannot reasonably account for that increase in value.

PART V

ADDITIONAL PENALTIES AND RECOVERY OF CORRUPT ADVANTAGE

[Ch0704s37]37. Penalty additional to other punishment

17 of 2004 Where any person is convicted of an offence under Part IV, the court shall, in addition to any other penalty that it may pass under section 34—

(a) order that any money or other pecuniary resources, wealth, property, profit, asset, business interest or other advantage, or the value thereof, as is ascertained by the court to have been acquired through or to be tainted with or otherwise connected with the commission of the offence shall be forfeited to the Government; and for the purpose of such forfeiture, the court may, immediately upon such conviction, or at any time after conviction upon application by the Bureau, make further orders—

(i) requiring the convicted person to effect or facilitate, by any means possible in the circumstances, the return, transfer or repatriation to Malawi of any money or other financial resources or any property or the value of any property maintained or located outside Malawi that may be attached to the order of forfeiture under this paragraph; or

(ii) for otherwise effecting the order of forfeiture under this paragraph as the court may consider necessary, and failure by the convicted person to comply with any such further order shall render him liable to conviction, without further procedure, for contempt of court;

(b) where appropriate, order the convicted person to pay to the rightful owner the amount or value, as determined by the court, of any advantage actually received or obtained by him:

Provided that where, after reasonable inquiry, the rightful owner cannot be found, or is himself implicated in the giving of the advantage, the court shall order that the amount or value thereof shall be forfeited to the Government.

[Ch0704s38]38. Recovery of advantage by distress, etc.

17 of 2004Any fine imposed under the provision of Part IV and the amount or value of any advantage ordered to be paid under section 37 may be recovered by distress and sale of such movable and immovable property of the person sentenced as is ascertained to have been acquired through, or is tainted or otherwise connected with, the commission of the offence of which he is convicted.

[Ch0704s39]39. Principal may recover advantage corruptly received by agent

17 of 2004(1) Where any advantage has been given by any person to or for or on account of an agent in contravention of any provision of this Act, the principal may recover, as a civil debt, the amount or value of such advantage from the agent, and the acquittal of the agent or such person in respect of an offence under Part IV shall not operate as a bar to any proceedings for such recovery.

(2) Nothing in subsection (1) shall be deemed to prejudice or affect any right which any principal may have under any written law or rule of law to recover from his agent any money or property.

[Ch0704s40]40. Effect of conviction of an offence under Part IV

Any person convicted of an offence under Part IV shall, by reason of such conviction, be disqualified for a period of seven years from the date of such conviction from being elected or appointed to, or from holding or continuing to hold, any office or position in any public body.

[Ch0704s41]41. Certificate of Government valuation officer or other specialist valuer

17 of 2004In any proceedings under this Act, a certificate by a Government valuation officer or other specialist valuer with respect to the value of any advantage or to any movable or immovable property shall be sufficient proof of such value, unless the contrary is proved.

PART VI

POWERS OF THE DIRECTOR OF PUBLIC PROSECUTIONS

[Ch0704s42]42. Consent of the Director of Public Prosecutions

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

17 of 2004(2) Where under subsection (1) the Director of Public Prosecutions withholds consent to any prosecution under this Act, he shall—

(a) provide to the Director reasons in writing, devoid of any consideration other than those of fact and the law, for the withholding of consent; and

(b) in addition to providing reasons to the Director, inform the Legal Affairs Committee of Parliament of his decision within thirty days of the decision.

(3) The Director of Public Prosecutions shall give consent under subsection (1), or reasons in writing under subsection (2) (a), as the case may be, within thirty days, failing which the Director shall be entitled to proceed as if consent to prosecute had been given under subsection (1).

(4) Notwithstanding the provisions of subsection (1), a person may be arrested and charged with an offence under Part IV or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that the written consent of the Director of Public Prosecutions to the institution of a prosecution for the offence with which he is charged has not been obtained, but no such person shall continue to be remanded in custody or on bail for a period longer than fourteen days on such charge unless in the meantime the written consent of the Director of Public Prosecutions aforesaid has been obtained.

(5) When a person is brought before a court before the written consent of the Director of Public Prosecutions to the institution of a prosecution against him is obtained, the charge shall be explained to the person accused but he shall not be called upon to plead.

(6) No proceedings for an offence under Part IV shall be commenced after the expiry of twelve months from the date the written consent of the Director of Public Prosecutions is given.

[Ch0704s43]43. Power of the Director of Public Prosecutions to obtain information

[Repealed by Act No. 17 of 2004]

[Ch0704s44]44. Bail where suspect or accused is about to leave Malawi

[Repealed by Act No. 17 of 2004]

PART VII

EVIDENCE AND PRESUMPTIONS

[Ch0704s45]45. Presumptions of corrupt intention

17 of 2004(1) Where, in any proceedings under this Act, it is proved that any advantage has been received by any person with the knowledge and acquiescence or consent of the accused person,

and the court is satisfied, having regard to his relationship to the accused person or to any other circumstances, that such person has received the advantage for or on behalf of the accused person, or otherwise on account of or in connexion with the office or duties of the accused person, then, unless the contrary is proved, the advantage shall be presumed to have been received by the accused person.

(2) Where, in any proceedings for an offence under Part IV, it is proved that any person solicited, accepted or obtained or agreed to accept or attempted to receive or obtain any payment in any of the circumstances set out in the relevant section under which he is charged, then, unless the contrary is proved, such payment shall be presumed to have been solicited, accepted or obtained or agreed to be accepted, received or obtained, corruptly.

(3) For the purposes of subsection (2) "payment" means any corrupt payment, whether in cash or in kind.

[Ch0704s46]46. Evidence of custom

17 of 2004(1) In any proceedings for an offence under Part IV, it shall not be a defence that any advantage solicited, accepted or obtained or agreed to be accepted, given, offered or promised, is customary in any profession, business, trade, vocation or calling.

(2) Notwithstanding the provisions of subsection (1), no entertainment offered or accepted under such conditions as may be prescribed in regulations made under this Act shall constitute an offence under Part IV.

PART VIII

MISCELLANEOUS PROVISIONS

[Ch0704s47]47. Absence of power, authority or opportunity no defence

17 of 2004Where any public officer has corruptly solicited, accepted, obtained, or agreed to accept or attempted to receive or obtain any advantage, it shall not be a defence in any trial in respect of an offence under Part IV—

(a) that the appointment, nomination or election of such person or any other person as a public officer was invalid or void; or

(b) that such public officer or any other public servant did not have the power, authority or opportunity of doing or of forbearing from doing the act, favour or disfavour to which the advantage related; or

(c) that the public officer did not actually do any act, favour or disfavour to induce the advantage, or never had the intention of doing so.

[Ch0704s48]48. Corrupt practice coming to the notice of a commission

Where any commission established by or under the Constitution, or appointed under the Commissions of Inquiry Act, in the course, or upon conclusion, of any proceedings before it, is of the opinion that the conduct of any person appears to constitute an offence under this Act and ought to be inquired into for the purposes of this Act, the commission concerned shall, subject to any prohibition, restriction or restraint imposed upon it by or under the Constitution or any other written law, communicate its opinion to the Bureau together with the particulars of the person concerned and such other facts of the case as the commission may deem necessary. Cap. 18:01

[Ch0704s49]49. False, frivolous or groundless complaints or allegations

(1) Where, at the conclusion of the trial of a person charged with an offence under Part IV, the court is of the opinion that any person has wilfully, and with intent to harm or injure the accused person in any manner, made a false, frivolous or groundless complaint or allegation against him, the court shall certify that opinion in writing and shall transmit it together with a certified copy of the record of the proceedings to the Director of Public Prosecutions to consider possible prosecution.

(2) Any person who, in the opinion of the court certified under subsection (1) has made a false, frivolous or groundless complaint or allegation to the effect that any person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with any other person to commit any offence under Part IV, shall be guilty of an offence and liable to a fine of K100,000 and to imprisonment for seven years.

[Ch0704s49A]49A. Non-compliance with Bureau's orders, directions, etc.

17 of 2004Any person who contravenes or fails to comply with any order, direction, notice, requirement or demand of the Bureau issued, given or made under this Act shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

[Ch0704s49B]49B. Unauthorized disclosure by employees, etc., of the Bureau

17 of 2004Any person in the service of the Bureau as an employee, an agent or a consultant or in any other capacity, and having taken an oath of secrecy in the prescribed form in relation thereto, who—

(a) except as a witness in any court or in pursuance of his duties in relation to the Bureau, directly or indirectly, provides or discloses to any unauthorized person the nature or contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties in relation to the Bureau;

(b) makes use for his own purposes or for the purposes of any other person any knowledge acquired from any document, communication or information which he has acquired or obtained in the course of his duties in relation to the Bureau,

shall be guilty of an offence and shall be liable to a fine of K50,000 and imprisonment for two years.

[Ch0704s50]50. Alternative convictions and amending particulars

(1) If, on the trial of any offence under Part IV, it is not proved that the accused is guilty of the offence charged but it is proved that the accused is guilty of some other offence under Part IV, the accused may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of such other offence, be convicted of such other offence.

(2) If, on the trial of any person for any offence under Part IV, there is any material variance between the particulars of the offence charged and the evidence adduced in support thereof, such variance shall not, of itself, entitle the accused to an acquittal of the offence charged if, in the opinion of the court, there is prima facie evidence of the commission of that offence; and in such a case the court may, notwithstanding the absence of the written consent of the Director of Public Prosecutions in respect of the particulars supported by the evidence adduced, make the necessary amendment to the particulars, and shall thereupon read and explain the same to the accused and parties shall thereupon be allowed to recall and examine on matters relevant to such amendment any witness who may have been examined and, subject to subsection (3), to call any further witness.

(3) If an amendment is made under subsection (2) after the prosecution case is closed, no further witness may be called by the prosecution other than a witness on such matters only as it would, apart from this subsection, be permissible to call and put in evidence in rebuttal.

[Ch0704s51]51. Legal practitioners and privileged information

(1) Save as provided in this section, nothing in this Act shall require the disclosure by a legal practitioner of any privileged information, communication, book, document or other article.

(2) Subject to subsection (3), a legal practitioner may be required by notice under paragraph (c) of subsection (1) of section 43—

(a) to state whether, at any time during such period as is specified in the notice, he has acted on behalf of any person named or otherwise identified in the notice in connexion with—

- (i) the transfer by such person of any moneys out of Malawi; or
- (ii) the investment by such person within or outside Malawi of any moneys; and

(b) if so, to furnish information in his possession with respect thereto, being information relating to—

- (i) the date of the transfer or investment;
- (ii) the amount of the transfer or investment;
- (iii) in the case of a transfer, the name and address of the bank and the name and number, if any, of the account to which the money was transferred;
- (iv) in the case of investment, the nature of the investment,

notwithstanding that the effect of compliance with such requirement would be to disclose any privileged information or communication.

(3) Nothing in subsection (2) shall require a legal practitioner to comply with any such requirement as is specified therein to the extent to which such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any proceedings, began or contemplated before a court or to enable him to give legal advice to his client.

(4) The protection conferred by this section on a legal practitioner shall extend to a clerk or servant of, or employed by, a legal practitioner.

[Ch0704s51A]51A. Protection of whistle-blowers and other informers

17 of 2004(1) Any person believing that the public interest overrides the interest of the institution, organization or office in or under which he serves or to which he is subject or overrides the interest of a particular community, association or society to which he belongs, and any other person whosoever, may inform the Bureau or the police of an alleged or suspected corrupt practice, or other offence connected therewith, which he knows or believes is being perpetrated by or in that institution, organization, office, community, association or society.

(2) Except as provided in subsections (3) and (4), no information relating to a whistle-blower or to any other informer who has provided information to the Bureau or to the police pursuant to subsection (1) as to an offence under this Act shall be admitted in evidence in any civil or criminal proceeding, and no witness shall be obliged or permitted to disclose the name or address of such whistle-blower or other informer, or state any matter which might lead to his discovery.

(3) If any books, documents or papers which are in evidence or liable to inspection in any civil or criminal proceeding contain any entry in which the whistle-blower or other informer is named or described or which might lead to his discovery, the court before which the proceeding is heard shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the whistle-blower or other informer from discovery, but no further.

(4) If on a trial for any offence under this Act the court, after full inquiry into the case, is of the opinion that the whistle-blower or other informer wilfully provided information which he knew or believed to be false, or did not believe to be true, in material particular, or if in any other proceeding the court is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the whistle-blower or other informer, the court may permit inquiry and require full disclosure concerning the whistle-blower or other informer, and, if the information was provided in writing, require the production of the original thereof.

(5) Any person who, having knowledge that any person referred to in this section as a whistle-blower or an informer, has informed the Bureau or the police of an alleged or a suspected corrupt practice, or other offence connected therewith, takes, by himself or through another person, an action

of any kind to punish or victimize such whistle-blower or informer in any way shall be guilty of an offence and liable to a fine of K50,000 and to imprisonment for two years.

[Ch0704s52]52. Defences

17 of 2004In any proceedings for an offence under this Act it shall be a valid defence that the advantage offered or accepted is an entertainment.

[Ch0704s52A]52A. Appeals

17 of 2004In any proceedings for an offence under this Act, the prosecution may appeal against any final judgment or order, including a finding of acquittal, of the trial court if, and only if, dissatisfied upon a point of law; but, save as so provided, no appeal shall lie by the prosecution against a finding of acquittal by the trial court.

[Ch0704s53]53. Liability of citizens and residents of Malawi for offences committed outside Malawi

(1) The provisions of this Act shall have effect, in relation to citizens or residents of Malawi, outside as well as within Malawi; and where an offence under this Act is committed by a citizen or resident of Malawi in any place outside Malawi, he may be dealt with in respect of such offence as if it had been committed within Malawi.

(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 had been committed in Malawi shall be a bar to further proceedings against him under any written law for the time being in force relating to the extradition of persons to a country outside Malawi in respect of the same offence.

[Ch0704s54]54. Regulations

17 of 2004The Minister may make regulations for the effective carrying out of this Act and, without prejudice to the generality of the foregoing, such regulations may provide for—

- (a) the prevention of corruption generally;
- (b) the disclosure by public officers of interest in contracts or proposed contracts;
- (c) situations of conflict of interest;
- (d) the disposal of recovered advantage and gifts;
- (e) any matter required to be prescribed under this Act.

SUBSIDIARY LEGISLATION

CORRUPT PRACTICES (DISPOSAL OF RECOVERED, SEIZED OR FROZEN PROPERTY) REGULATIONS

under s. 54

G.N. 37/1999

1. Citation

These Regulations may be cited as the Corrupt Practices (Disposal of Recovered, Seized or Frozen Property) Regulations

2. Interpretation

In these Regulations, unless the context otherwise requires—

“recovered, seized or frozen property” means any monies, property or thing of any description which was the subject of investigation into, or prosecution in relation to, any offence alleged or suspected to have been committed under the Act.

3. Disposal of recovered, seized or frozen property

(1) Any recovered, seized or frozen property which comes into the possession of the Bureau shall, subject to sub-regulation (2), vest in the State if such recovered, seized or frozen property cannot be returned to the rightful owner because—

(a) the rightful owner thereof, being the subject of an investigation or prosecution in respect of an offence alleged or suspected to have been committed by him under the Act, leaves Malawi for the purpose or apparent purpose of evading the consequences of such investigation or prosecution brought against him;

(b) the rightful owner or the person in possession thereof absconds;

(c) the rightful owner cannot be traced or ascertained;

(d) the person in possession thereof admits his involvement in the alleged corrupt act and agrees to surrender such recovered, seized or frozen property to the State because of such involvement;

(e) the Court has so ordered on an application by the Director.

(2) No recovered, seized or frozen property shall vest in the State under paragraphs (a), (b) or (c) of subregulation (1) unless—

(a) the Director gives, in accordance with these Regulations, notice to the effect that such recovered, seized or frozen property is liable to vest in the State if it is not claimed within three months from the date of the publication of such notice in the Gazette;

(b) three months after the giving of such notice, such recovered, seized or frozen property remains unclaimed.

(3) The notice referred to in subregulation (2) shall be deemed to have been duly given if it is published in the Gazette and a copy is—

- (a) served on the person concerned; or
- (b) left at or posted to the usual or last known place of home or business of the person concerned; or
- (c) published in such a newspaper as the Director may decide if the person concerned is unknown or if his address or whereabouts are unknown.

4. Fast decaying property

(1) Where the Director is of the opinion that any recovered, seized or frozen property is subject to speedy or unnatural decay or that its immediate sale would be for the benefit of the owner, the Director may, at any time, direct that such property be sold or destroyed:

Provided that no sale or disposal of any such recovered, seized or frozen property shall be ordered without first obtaining leave from the Court.

(2) On the completion of any sale under subregulation (1) the right of any person to take legal proceedings for the recovery of the property sold shall cease; but a claim may be established to the proceeds of such sale.

5. Payment into Consolidated Fund

All monies and proceeds from the sale or other disposal of any recovered, seized or frozen property which vest in the State in accordance with these Regulations shall be paid into the Consolidated Fund.

CORRUPT PRACTICES (PROHIBITION OF ABUSE OF INFORMATION OBTAINED IN OFFICIAL CAPACITY) REGULATIONS

under s. 54

G.N. 46/1999

1. Citation

These Regulations may be cited as the Corrupt Practices (Prohibition of Abuse of Information Obtained in Official Capacity) Regulations.

2. Application

These Regulations shall apply to any information which—

- (a) a public officer holds by virtue of his office;
- (b) it would not be reasonable or expected to be disclosed by a public officer except in the proper performance of the functions of his office;

(c) the public officer holding the information knows or ought to know that it is unpublished tender information in relation to any contract or proposed contract of a public body.

3. Dealing in contracts

A public officer holding information to which these Regulations apply or any other person who has obtained any such information directly or indirectly from a public officer whom that person knows or has reasonable cause to believe held the information by virtue of his position as a public officer shall not—

(a) deal in any contract or proposed contract to which the information relates and in which a public body is involved;

(b) counsel or procure any other person to deal in any such contract or proposed contract, knowing or having reasonable cause to believe that the other person would deal in such contract or proposed contract;

(c) communicate to any other person the information held or, as the case may be, obtained by him if he knows or has reasonable cause to believe that that person or some other person would make use of that information for the purpose of dealing in or counselling or procuring any other person to deal in any contract or proposed contract to which the information relates in which a public body is involved.

4. Offences and penalty

Any public officer or any other person who contravenes these Regulations shall be guilty of an offence and shall be liable, upon conviction, to a fine of K50,000.00 and to imprisonment for five years.

CORRUPT PRACTICES (DISCLOSURE BY PUBLIC OFFICERS OF INTEREST IN CONTRACTS AND PROPOSED CONTRACTS) REGULATIONS

under s. 54

G.N. 47/1999

1. Citation

These Regulations may be cited as the Corrupt Practices (Disclosure by Public Officers of Interest in Contracts and Proposed Contracts) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“immediate family member”, in relation to any public officer, means that public officer's spouse, child, parent, brother, sister, grandchild or grandparent;

“interest” means interest in a private capacity.

3. Disclosure of interest

Where a public officer is present at any meeting at which a contract or proposed contract is the subject of discussion or consideration, or becomes aware of any contract or proposed contract in which the public officer or any immediate family member of his family has a direct or indirect interest, the public officer shall, immediately after the commencement of such meeting or within three days of his becoming aware of such contract or proposed contract, declare the nature of such interest and shall not take part in any discussion, or vote on any matter or do any other such thing touching upon the said contract or proposed contract.

4. Offences and penalty

Any public officer who—

- (a) fails to disclose any interest as required to be disclosed under regulation 3;
- (b) in disclosing any such interest, makes any statement which he knows to be false or which he has no reason to believe is true;
- (c) otherwise contravenes the provisions of regulation 3,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding K50,000.00 and to a term of imprisonment of five years.

CORRUPT PRACTICES (OATH OF SECRECY) REGULATIONS

under s. 54

G.N. 48/1999

1. Citation

These Regulations may be cited as the Corrupt Practice (Oath of Secrecy) Regulations

2. Interpretation

In these Regulations, unless the context otherwise requires—

“officer” means any person employed in the service of the Anti-Corruption Bureau, whether temporarily or permanently, and shall include any agent of the Anti-Corruption Bureau who is required by the Director to take an Oath of Secrecy.

3. Oath of secrecy

(1) The oath of secrecy required to be taken by every employee of the Bureau and every consultant in the service of the Bureau shall be in the form set out in the Schedule.

(2) Instead of taking an oath, a person referred to in subregulation (1) may make an affirmation which shall be in the like form applicable to him with the substitution of the word "affirm" for the word "swear" and the omission of the last sentence.

4. Offences and penalty

Any officer or consultant in the service of the Bureau who—

(a) except as a witness in any court or in pursuance of his duties directly or indirectly reveals to any unauthorized person or otherwise the contents of any document, communication or information whatsoever which has come to his knowledge in the course of his duties as such officer or consultant;

(b) makes use for his own purposes, any knowledge acquired from such document, communication or information,

shall be guilty of an offence and liable, upon conviction, to a fine not exceeding K50,000.00 and to a term of imprisonment of five years.

SCHEDULE

OATH OF SECRECY

I, having been appointed as an employee of the Anti-Corruption Bureau or a consultant in the service of the Anti-Corruption Bureau do solemnly swear that I will not, directly, reveal the business or proceedings of the Anti-Corruption Bureau or the nature or contents of any document communicated to me or any matter coming to my knowledge in my capacity as an employee of the Anti-Corruption Bureau or a consultant in the service of the Anti-Corruption Bureau and that I will well and truly perform the functions and duties of that office. So help me God.

SWORN atthisday of
.....Signature of Deponent.....Before me:
.....(Commissioner for Oaths)