

CONFIDENTIAL

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## SUMMARY OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT NO 12 OF 2004

### 1. INTRODUCTION

The South African Prevention and Combating of Corrupt Activities Act No. 12 of 2004 (the Act) is much wider in its ambit than the previous Corruption Act of 1992. The broad definition of corruption is: Any person who directly or indirectly accepts, agrees to or offers any unlawful gratification from or to any other person to benefit himself/herself or a third party is guilty of corruption (my own formulation). Gratification is a broad concept and refers to any donations, gifts, a contract of employment or services and the avoidance of punishment or loss.

Snyman<sup>1</sup> defines corruption as: "Anybody who accepts any gratification from anybody else, or offers or gives any gratification to anybody else in order to influence the receiver to conduct herself or himself or itself (my addition) in a way which amounts to the unlawful or irregular exercise of any duties, commits corruption".

A person who offers to perform a corrupt service will be guilty of corruption even if he/she is not in a position to deliver the service. The Act reinstates the common-law offence of bribery and makes it easier to prosecute different forms of corruption by prohibiting six forms (called parts in the Act) of corruption.

The Act criminalises corruption in the public and the private sectors and corrupt practices by a South African on foreign soil. A South African citizen who corrupts a foreign public official may be prosecuted in South Africa.

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<sup>1</sup> Snyman, C.R. 2008, *Criminal Law* (Fifth Edition) Durban: Lexis Nexis, page 411.

## 1.1 CONTENT OF THE ACT

Chapter 1 contains the definitions and interpretation of the Act.

Chapter 2 describes offences in respect of corrupt activities in six different parts, namely:

### Part 1: General offence of corruption

3. Any person, including a person in the private sector, 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; 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, in order to act, personally or by influencing another person so to act, in a manner—
  - (i) that amounts to the—
    - (aa) illegal, dishonest, unauthorised, incomplete, or biased; or
    - (bb) 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;
  - (ii) that amounts to—
    - (aa) the abuse of a position of authority;
    - (bb) a breach of trust; or
    - (cc) the violation of a legal duty or a set of rules;
  - (iii) designed to achieve an unjustified result; or
  - (iv) that amounts to any other unauthorised or improper inducement to do or not to do anything, is guilty of the offence of corruption.

### Part 2: Offences in respect of corrupt activities relating to specific persons, namely:

- Public officers (section 4)
- Foreign public officials (section 5)
- Agents (section 6)
- Members of legislative authority (section 7)
- Judicial officers (section 8)
- Members of prosecuting authority (section 9)

### Part 3: Offences in respect of corrupt activities relating to receiving or offering of unauthorised gratification

- By or to a party to an employment relationship (section 10)

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

- Witnesses and evidential material (section 11)
- Contracts (section 12)
- Procuring and withdrawal of tenders (section 13)
- Auctions (section 14)
- Sporting events (section 15)
- Gambling games or games of chance (section 16)

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

- Acquisition of private interest in contract, agreement or investment of public body (section 17)
- Offences of unacceptable conduct relating to witnesses (section 18)
- Intentional interference with, hindering or obstructing of investigation of offence (section 19)

Part 6: Other offences relating to corrupt activities, namely:

- Accessory to or after an offence (section 20)
- Attempt, conspiracy and inducing another person to commit offence (section 21)

Chapter 3 regulates investigations regarding possession of property relating to corrupt activities.

Chapter 4 relates to presumptions and defences.

Chapter 5 delineates penalties and related matters.

Section 26 - Any person who is convicted of an offence referred to in part 1, 2, 3 or 4 and section 18 of the Act is liable to a fine or to imprisonment of up to life.

Chapter 6 establishes a register for tender defaulters.

Section 28 and 29 - The Minister of Finance must establish a Register for Tender Defaulters in terms which no offer in respect of an agreement from a person or enterprise so restricted may be considered by the National Treasury.

Chapter 7 deals with miscellaneous matters.

There is a duty on persons who hold a position of authority or who knew or ought reasonably to have known or suspected that any person has committed an offence in terms of the Act or theft, fraud, extortion, forgery or uttering involving more than R100 000 to report it to a police official. Failure to report is an offence (section 34).

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