

THE ANTI-CORRUPTION TRIBUNAL ACT 1993

Act No. 45 of 1993

Proclaimed by [Proclamation No. 4 of 1994] w.e.f 1.5.1994

I assent

C. UTEEM

21 December 1993

President of the Republic

ARRANGEMENT OF SECTIONS

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An Act

To provide for the establishment of an Anti-Corruption Tribunal

ENACTED by the Parliament of Mauritius, as follows—

1. Short title

This Act may be cited as the Anti-Corruption Tribunal Act 1993.

2. Interpretation

In this Act—

“assessor” means an assessor appointed under section 3;

“Chairman” means the Chairman of the Tribunal;

“Tribunal” means the Anti-Corruption Tribunal established under section 3;

3. Anti-Corruption Tribunal

- (1) There is established for the purposes of this Act an Anti-Corruption Tribunal.
- (2) The Tribunal shall consist of—
 - (a) a Chairman, who shall be a person who took the oath to practise at the Bar at least 10 years before his appointment; and
 - (b) two assessors.
- (3) The Chairman and assessors shall be appointed by the President, acting after consultation with the Prime Minister and the Leader of the Opposition, on such terms and conditions as he thinks fit.
- (4) The Tribunal shall in the conduct of its business under this Act be assisted by such public officers as may be designated for that purpose.
- (5) The Chairman or any assessor shall not be liable to any prosecution, action or suit in respect of any matter or thing done by him in the discharge of his functions under this Act.

4. Oath of office

- (1) The Chairman and the assessors shall, before performing the duties of their respective offices, take such oath as may be prescribed.
- (2) Every public officer designated to assist in conducting the business of the Tribunal shall take such oath as may be prescribed.

5. Jurisdiction of Tribunal

- (1) The Tribunal shall, subject to this Act, investigate any allegation of fraud or corruption made against a person, other than a Judge of the Supreme Court, who holds or has held an office specified in the Schedule, concerning an act or omission related to the exercise of the duties of that person.
- (2) The Tribunal may investigate any allegation of fraud and corruption under subsection (1)—
 - (a) made to it in writing; or
 - (b) of its own motion.
- (3) For the purposes of this Act, an “allegation of fraud or corruption” means an allegation that the person concerned has, by an act or omission, rendered himself liable to be prosecuted for an offence involving fraud or corruption which is punishable under the Criminal Code or such other enactment as may be prescribed.
- (4) The Tribunal shall not conduct an investigation in respect of an allegation made under subsection (1) where it considers that—

- (a) the allegation is frivolous or vexatious;
- (b) the subject matter of the allegation is trivial;
- (c) the making of the allegation has, without reasonable cause, been delayed for more than 12 months.

6. Preliminary enquiry by Tribunal

- (1) Where the Tribunal receives an allegation of fraud or corruption pursuant to section 5, it shall afford to the person against whom the allegation is made an opportunity to comment thereon.
- (2) The Tribunal may obtain information from such persons and in such manner as it thinks fit.
- (3) The procedure for conducting a preliminary enquiry shall be such as the Tribunal considers appropriate in the circumstances of the case.
- (4) Where after hearing the person concerned and after making such preliminary enquiry as it may deem fit, the Tribunal is of the opinion that the allegation is groundless or should not be entertained for any reason set out in section 5(3), it shall—
 - (a) not proceed to an investigation;
 - (b) inform the maker of the allegation as well as the person against whom the allegation was made accordingly.

7. Investigation by Tribunal

Where after making a preliminary enquiry, the Tribunal is of the opinion that an investigation is necessary, it shall inform the maker of the allegation as well as the person against whom the allegation was made accordingly.

8. Evidence

- (1) The law of evidence shall apply to an investigation under section 7.
- (2) For the purposes of proceedings before the Tribunal, the Tribunal shall have the same powers as the Supreme Court in respect of the attendance and examination of witnesses, including the administration of oaths, and in respect of the production of documents.
- (3) No person shall be compelled for the purposes of proceedings before the Tribunal to give evidence or produce any document which he could not be compelled to give or produce in proceedings before a court of law.
- (4) The Tribunal shall hold its proceedings in camera.

- (5) No person shall in any manner publish a report of, or comment on, any matter and allege expressly or impliedly that—
 - (a) the matter is before the Tribunal; or
 - (b) any person has been or is being summoned by the Tribunal.

9. Report

- (1) On the completion of an investigation under this Act the Tribunal shall make a report to the President.
- (2) On receipt of a report under this section, the President shall submit a copy thereof to the Prime Minister who shall within one month of the receipt thereof refer it to the Director of Public Prosecutions.
- (3) Where the allegation of fraud or corruption was made against a Member of the National Assembly, the Prime Minister shall lay a copy of the report before the Assembly—
 - (a) where the Assembly is sitting, within 1 month of the receipt thereof;
 - (b) where the Assembly is not sitting, on the day on which the Assembly resumes its sitting.

10. Offences

- (1) Any person who—
 - (a) fails to attend the Tribunal after having been required to do so;
 - (b) refuses to take an oath before the Tribunal or to answer fully and satisfactorily to the best of his knowledge and belief any question lawfully put to him before the Tribunal or to produce any document when required so to do by the Tribunal;
 - (c) wilfully insults the Chairman or an assessor or wilfully interrupts the proceedings of the Tribunal or wilfully commits a contempt of the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5,000 rupees and to imprisonment for a term not exceeding 12 months.

- (2) Any person who—
 - (a) contravenes section 8 (5);

- (b) knowingly gives false evidence or evidence which he knows to be misleading before the Tribunal,

shall commit an offence and shall, on conviction, be liable to a fine not exceeding 5000 rupees together with imprisonment for a term not exceeding 12 months.

11. Regulations

The Prime Minister may make such regulations as he thinks fit for the purposes of this Act.

12. The Criminal Code amended

The Criminal Code is amended—

- (a) by repealing section 126 and replacing it by the following section—

126. Officer of a public body accepting bribe

- (1) Any officer of a public body who—

- (a) accepts an offer or promise;
- (b) receives any gift or reward,

for any act in the execution of his functions or employment, or to abstain from doing any such act, shall commit an offence and shall, on conviction, be punished by penal servitude for a term not exceeding 10 years.

- (2) In this section, “officer of a public body” includes any member of the National Assembly, public officer, local government officer, member of a local authority, member of a Commission appointed under the Constitution, and any employee or member of a statutory body.

- (3) It shall not be a defence to a charge under sub-section (1) that the accused, at the time he did the act or abstained from doing it, had not yet entered into any agreement concerning the gift or reward.

- (b) by repealing section 128 and replacing it by the following section—

128. Bribery of officer of a public body

- (1) Any person who—

- (a) by any promise, offer, gift or reward, bribes or endeavours to bribe an officer of a public body;

- (b) exercises or endeavours to exercise any form of violence, or pressure by means of threat, upon such an officer,

with a view to the performance, by that officer, of any act in the execution of his functions or employment, or the non-performances by that officer, of any such act, shall commit an offence and shall, on conviction, be liable to the penalty that is provided for in section 126.

- (2) In this section, “officer of a public body” has the same meaning as in section 126.

- (c) by repealing section 132 and replacing it by the following sections—

132. Officer of a public body taking reward

- (1) Any person of a public body who accepts any offer or promise, or obtains or receives from any person, for himself or for any other person, any gift or reward—
 - (a) for doing an act which he alleges, or induces any person to believe, he is empowered to do in the ordinary course of his duty, although as a fact such act does not form part of his duties;
 - (b) for forbearing to do an act which he alleges, or induces any person to believe, he is bound not to do in the ordinary course of his duty,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 7 years.

- (2) In this section, “officer of a public body” has the same meaning as in section 126.
- (3) It shall not be a defence to a charge under sub-section (1) that the accused, at the time he did the act or abstained from doing it, has not yet entered into an agreement concerning the gift or reward.

132A. Person charged with an offence under section 126 or 132

- (1) Where, on the trial of a person charged in a criminal information for an offence under section 126, it is proved that the act was not in the execution of the officer’s functions, and that the requirements of section 132 are satisfied, that person shall not be acquitted and may be found guilty of an offence under section 132.

- (2) Where on the trial of a person charged in a criminal information for an offence under section 132 it is proved that the act did form part of the duties of the officer, and the requirements of section 126 are satisfied, that person shall not be acquitted and may be found guilty of an offence under section 126.
- (d) by repealing section 133 and replacing it by the following sections—

133. Taking reward to screen offender from punishment

- (1) Any person who accepts or obtains, or agrees to accept or attempts to obtain, any payment, gift or reward for himself or any other person, in consideration of his concealing an offence, or of his screening any person from legal proceedings for any offence or of his not proceeding against any person in relation to an alleged offence, or of his abandoning or withdrawing, or of his obtaining or endeavouring to obtain the withdrawal of a prosecution against any person, shall commit an offence and shall, on conviction,—
- (a) where the offence is a crime, be liable to penal servitude for a term not exceeding 5 years;
- (b) where the offence is a misdemeanour, be liable to imprisonment for a term not exceeding one year;
- (c) where the offence is a contravention, be liable to imprisonment for a term not exceeding 6 months.
- (2) This section shall not extend to any lawful compromise as to the civil interests resulting from the offence, but any such compromise shall not be a bar to any criminal proceedings which may be instituted by the State in respect of the offence.

133A. Consent of the Director of Public Prosecutions

No prosecution under section 126, 128, 132 or 133 shall be instituted except with the consent of the Director of Public Prosecutions.

13. Commencement - Proclaimed by [Proclamation No. 4 of 1994] w.e.f 1.5.1994

This Act shall come into operation on a day to be fixed by Proclamation.

Passed by the National Assembly on the fourteenth day of December one thousand nine hundred and ninety-three.

ANDRE POMPON
Clerk of the National Assembly

SCHEDULE
(section 5)

Minister
Member of the National Assembly
Member of a Local Authority
Public officer
Member of the Police Force
Local Government officer
Employee or member of the controlling body of a statutory corporation