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# Supplement No. 1 to Gazette No. 63 of 15th December, 2006

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## ACT NO. 8 OF 2006

**Prevention of Corruption and Economic Offences  
(Amendment) Act 2006**

An Act to amend the Prevention of Corruption and Economic Offences Act 1999<sup>1</sup>.

**Enacted by the Parliament of Lesotho**

**Short title and commencement**

1. This Act may be cited as the Prevention of Corruption and Economic Offences (Amendment) Act 2006 and shall come into operation on the date of its publication in the Gazette.

**General amendment**

2. The Prevention of Corruption and Economic Offences Act 1999 ( in this Act referred to as “the principal law”) is amended by inserting the words “ she”, “her” and “herself” immediately after the words “he”, “his” and “himself” wherever they appear in the Act.

**Interpretation**

3. The principal law is amended in section 2-

(a) by inserting the following definitions in their proper alphabetical order:

“ “Board” means the Directorate Appointment and Promotion Board established under section 3A;”;

“Public Officer”, for the purpose of this Act, includes the head of a statutory body;”;

“support staff” means members of the Directorate below the position of Principal Officer;”;

(b) by deleting the definition of “Director” and substituting the fol-

lowing:

“ “Director-General” means the Director-General of the Directorate on Corruption and Economic Offences appointed under section 4;”;

- (c) by deleting the definition of “Minister” and substituting the following:

“ “Minister” means the minister responsible for justice, human rights and rehabilitation and of law and constitutional affairs or any other Minister as may be assigned;”;

- (d) by deleting the definition of “serious economic offence”.

### **Establishment of Directorate**

4. The principal law is amended by deleting section 3 and substituting the following:

“3. (1) There shall continue in existence the Directorate on Corruption and Economic Offences which-

- (a) shall be a juristic person, having perpetual succession, capable of suing and being sued in its own name and of performing acts as are necessary for, or incidental to, the execution of its functions ; and
- (b) shall not be subject to the direction or control of any person or authority in the exercise of its functions except in accordance with this Act.

(2) The Directorate shall consist of-

- (a) the Director-General; and
- (b) 2 Deputy Directors-General and such other officer of the Directorate as may be appointed.

(3) The Minister shall determine the terms and conditions of employment of the Director-General-

- (a) in consultation with the Minister of Finance and the Minister of Public Service; and
- (b) after receiving recommendations from the Board.”.

5. The principal law is amended by adding the following section after section 3:

**“The Directorate Appointment and Promotion Board**

3A. (1) There shall be a Directorate Appointment and Promotion Board which shall be responsible for the appointment, promotion and conditions of service of staff of the Directorate except the Director-General.

(2) The Board shall consist of:

- (a) a member of the judicial Service Commission nominated by the Chairman of the judicial Service Commission, who shall be Chairman;
- (b) the Principal Secretary responsible for the Ministry to which the Directorate may be assigned;
- (c) a senior official to be appointed by the Minister responsible for the public service;
- (d) an eminent person from the private sector who has a track record and extensive knowledge and experience in management; and
- (e) the Director-General, who shall be Secretary.

(3) Members of the Board shall be appointed by the Minister by notice published in the Gazette.

(4) The Director-General shall, subject to the regulations made under this Act, be responsible for the appointment and promotion of the support staff.”

6. The principal law is amended by deleting section 4(1) and (2) and substituting the following:

**“The Director-General and Deputy Directors-General**

4. (1) There shall be a Director-General who shall be appointed, subject to subsection (4), by the Prime Minister for a term of not less than 5 years.

(2) The Director-General shall be responsible for the direction, discipline and administration of the Directorate.

(3) There shall be 2 Deputy Directors-General who shall be appointed, subject to subsection (4), by the Board for a term of not less than 5 years.

(4) A person shall not be appointed as a Director-General unless the person is admitted as a legal practitioner under the Legal Practitioners Act 1983<sup>2</sup> or is in possession of such other qualifications as the Minister may, by notice published in the Gazette, prescribe.”

**Acting Director-General**

7. The Principal law is amended in section 5 by deleting subsection (2) and substituting the following:

“(2) If the Director-General and the Deputy Directors-General are absent from duty, the Prime Minister may appoint any other competent person from the Directorate to act as Director-General until the return to duty of either the Director-General or any of the Deputy Directors-General.”

## Functions of the Directorate

8. The Principal law is amended in section 6-
- (a) by deleting the figure “6” and substituting “6(1)”;
  - (b) by inserting the words “or private” immediately after the word “public” wherever it appears in the section;
  - (c) by adding the following subsection:
    - “(2) In the performance of its operational or investigate functions, the Directorate shall not be subject to the direction or control of any person except in accordance with this Act.”.

## Powers of the Director-General

9. The Principal Law is amended by deleting section 7 and substituting the following:

- “7. (1) For the Performance of the functions of the Directorate, the Director-General may-
- (a) authorise an officer of the Directorate to conduct an inquiry or investigation into an alleged or suspected offence under this Act;
  - (b) require a person, in writing, to produce, within a specified time, books, records, returns, reports, data stored electronically in a computer or otherwise and any other documents relating to the functions of a public or private body;
  - (c) require a person, within a specified time, to provide any information or to answer any question which the Director-General considers necessary in connection with an inquiry or investigation which the Director-General is empowered to conduct under this Act;
  - (d) require a private person to make a full declarat-

ion of his or her assets and resources of income in accordance with a prescribed form.

- (2) A person who fails-
  - (a) to produce a matter required under subsection (1)(b); or
  - (b) provide any information, or to answer the questions, or provides a false statement in answer to a question under subsection (1) (c), commits an offence and shall be liable on conviction to the penalty prescribed under section 17 (2).”.

### Procedure after arrest

10. The principal law is amended by deleting section 11 and substituting the following:

- “11. A person arrested under section 38 shall be taken, as soon as it is reasonably practicable, to a police station to be dealt with in accordance with section 32 of the Criminal Procedure and Evidence Act 1981<sup>3</sup>.”.

### Return of travel document

11. The principal law is amended by deleting section 16 and substituting the following :

- “16. (1) A person who has surrendered a travel document under section 15 may, at any time, make a written application to the Director-General for its return, and the application shall contain a statement of the grounds on which it is made.
- (2) The Director-General may-
- (a) grant the application either without conditions or subject to such conditions as to the further surrender of the travel document and the

appearance of the applicant at any time and place in Lesotho as may be specified by the Director-General in written notice served personally on the applicant; or

- (b) refuse the application and state, in writing, the reasons for the refusal.
- (3) A person aggrieved by the refusal of the Director-General to return his or her travel document to him or her may appeal to a Magistrate's Court."

### **Resisting or obstructing officers**

12. The principal law is amended by deleting section 17 and substituting the following:

- "17. (1) A person who resists or obstructs an officer of the Directorate in the execution of his or her duty commits an offence.
- (2) A person who commits an offence under this section or section 7 (2) or 8 (2) is, on conviction, liable to a fine of not less than M2, 000.00, or to a term of imprisonment not less than 2 years, or both."

### **Corruption by or with public officers**

13. The principal law is amended in section 21 by adding the following subsection after subsection (2):

- "(3) A person commits the offence of corruption-
- (a) if he or she embezzles, misappropriates or diverts for his or her benefit or for the benefit of another person, any property, public or private funds, securities or any other thing of value entrusted to him or her by virtue of his or her position;



- (b) if he or she, intentionally, abuses the functions or position of his or her office, in the performance or failure to perform an act, in violation of any law, or in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person.”.

### **Conflict of interest**

14. The principal law is amended in section 28 by deleting subsection (1) and substituting the following:

“(1) A member or an employee of public or private body commits the offence of corruption if he or she or an immediate member of his or her family has a direct or indirect interest in a company or undertaking with which the body proposes to deal, or he or she has a personal interest in a decision which that body has to make and he or she, knowingly, fails to disclose the nature of the interest, and votes or participates in the proceedings of the body relating to the dealing or decision.”.

### **Bribery in relation to auctions**

15. The principal law is amended in section 29 by inserting the words “or private”, immediately after the word “public” wherever it appears in the section.

16. The principal law is amended by inserting the following section after section 30:

#### **“Declaration of assets**

- 30A. (1) A public officer shall be required to make a full declaration of all assets belonging to him or her prior to his or her assumption of office, which declaration shall always be expected to remain commensurate to his or her overall earnings and interests, in accordance with a form to be prescribed by the Minister.

- (2) A public officer may be required, at any time after his or her assumption of office, to comply with subsection (1).
- (3) The Director-General may require a public officer under investigation to make a full declaration of all assets belonging to him or her.
- (4) Where a public officer fails to make a full declaration, and after an inquiry it is established that the person is the owner of undisclosed assets, the assets shall be forfeited and disposed of as the Director-General may direct.”

17. The principal law is amended by inserting the following section after section 31:

**“Private persons**

31A. Sections 21, 22, 23, 24, 26 and 31 shall, with necessary modifications, apply to persons who are not public officers.”.

**Failure to keep ledgers**

18. The principal law is amended by deleting section 33 and substituting the following:

- “33. (1) A person who, in specially aggravating circumstances-
- (a) makes incorrect or misleading statements in ledgers or accounts which he or she is under an obligation to keep by law;
  - (b) fails to keep ledgers or accounts which he or she is under an obligation to keep by law; or
  - (c) fails to file ledgers or vouchers or other accounting material as is prescribed by law, or destroys such material,

commits an offence and shall be liable on conviction to a fine not less than M10,000 or to imprisonment for a term not less than 5 years, or both.

- (2) Where an act or omission has been done through gross negligence in the circumstances referred to in subsection (1), the penalty shall, upon conviction, be a fine not less than M5,000 or a term of imprisonment not less than 5 years, or both.”.

19. The principal law is amended by adding the following section after section 33:

**“Serious economic offence**

- 33A. (1) The Director-General may, by notice published in the Gazette, declare an offence to be a serious economic offence.
- (2) Before declaring an offence to be a serious economic offence, the Director-General shall take into consideration the amount of money involved, the complexity and nature of the offence, and whether or not the offence calls for a different treatment in relation to investigation and prosecution.
- (3) A person who commits a serious economic offence shall, upon conviction, be liable to a fine not less than M10,000 or imprisonment for a term not less than 10 years, or both.”.

**Penalty**

20. The principal law is amended by deleting section 34 and substituting the following:

- “34. A person who commits the offence of corruption or cheating the public revenue under this Part shall, upon conviction, be liable to a fine not less than M10,000 or to imprisonment for a term not less than 10 years or both, and in the case of a juristic person the fine shall not be less than M100,000.”.

**Bank accounts**

21. The principal law is amended by deleting section 37 and substituting the following:

“37. The Attorney-General may upon request by the Director-General and upon obtaining an urgent court order to that effect, seize, freeze or confiscate bank accounts or assets of any person who the Director-General suspects, on reasonable grounds, to have committed an offence under this Act.”.

**Compensation regarding expenses**

22. The principal law is amended in section 40 by deleting the words “the Principal Secretary responsible for the Ministry of Justice, Human Rights and Rehabilitation” and substituting “the Principal Secretary responsible for the Ministry of Finance.”.

**Penalty**

23. The principal law is amended by deleting section 42 and substituting the following:

“42. A person who commits an offence under section 38 or 39 shall be liable to a fine not less than M5,000 or to imprisonment for a term not less than 5 years, or both.”.

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## PART VIII - MISCELLANEOUS

### Application for attachment

24. The principal law is amended by deleting section 46 and substituting the following:

- “46. (1) Where a person has been convicted of corruption or cheating the public revenue under Part IV, the Court may, in addition to the sentence imposed and upon application by the prosecution, order forfeiture to the State of all assets accrued to the convict or held on his or her behalf.
- (2) Notwithstanding the Subordinate Courts Order 1988, a judgement under sub-section (1) shall be deemed to be valid and binding judgement of a subordinate court whether or not the amount of judgement exceeds the civil jurisdiction of the court.”.

### Frivolous, false or groundless complaints

25. The principal law is amended in section 48 by deleting subsection (2) and substituting the following:

- “(2) A 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 a person has committed or attempted to commit, or aided, abetted or counselled the commission of, or conspired with, any other person to commit an offence under Part IV, commits an offence and shall be liable on conviction to a fine not less than M5,000 or to imprisonment for a period not less than 5 years or both.”.

### Prohibition of disclosure of information

26. The principal law is amended by deleting section 49 and substituting the following:

- “49. A person who, without lawful authority or reasonable excuse discloses to a person who is the subject or suspect of an investigation in respect of an offence alleged of such investigation, any details of such investigation or publishes or discloses to any other person either the identity of any person who is the subject or suspect of such an investigation, commits an offence and shall be liable on conviction to a fine not less than M5,000 or to imprisonment for a period not less than 5 years or both.”.

### **Protection of informers**

27. The principal law is amended in section 50 by adding the following subsections after subsection (3):

- “(4) A person shall not be held or deemed to have breached a disciplinary code of conduct, contract, oath of secrecy, a binding declaration of an undertaking he or she might have made by virtue of his or her office or status, if he or she divulges to the Director-General, or an official of the Directorate an act of corruption committed in terms of sections 35 and 36, taking place at his or her work place or elsewhere within Lesotho or any other place.
- (5) No civil, disciplinary, or criminal action shall be instituted against a person referred to in subsection (4) if the disclosure of information is made in good faith, and not for personal gain, and on a reasonable belief when disclosing the information that the disclosure of the information is made as evidence of impropriety.”.

### **Annual Report**

28. The principal law is amended by deleting section 52 and substituting the following:

- “52. The Director-General shall, on or before 21 March in each year or by a later date as the Attorney-General may allow, submit to the Minister a report on the activities of the Directorate in the previous year for tabling before Parliament.”.

## Regulations

29. The principal law is amended by deleting section 53 and substituting the following:

- “53. (1) The Minister may make regulations generally for the carrying into effect of the provisions of this Act.
- (2) Without prejudice to the generality of subsection (1), regulations may provide for-
- (a) the qualifications of the Director-General and other members of the Directorate;
  - (b) the prescription of any forms or documents under this Act;
  - (c) the amendment of any of the penalties imposed under this Act;
  - (d) the establishment, composition, procedure of a tribunal or body referred to in this Act;
  - (e) the periodic declaration of assets, earnings, gifts and interests including the minimum value to be declared under this Act; and
  - (f) the establishment of a Central Registry for the declared Assets.”.

## Transitional provision relating to declaration of assets

30. A person who is a public officer immediately before the coming into operation of this Act shall, within 6 months, make a full declaration of all assets belonging to him or her in accordance with section 16.

## Existing staff

31. (1) Any person who, immediately before coming into operation of this Act, was employed full time at the Directorate may, within

the period of 6 months of the coming into operation of this Act, if he or she so wishes, elect to terminate his or her employment with the Public Service and thereafter serve under the Directorate.

- (2) A person employed by the Directorate who, on or after commencement of this Act, elects to serve under the Directorate shall-
  - (a) be regarded as an employee of the Directorate; and
  - (b) subject to Pensions Proclamation 1964<sup>4</sup> be paid any pension and or gratuity accruing at the time of his or her election to serve under the Directorate.

#### NOTE

- 1. Act No. 1 of 1999
- 2. Act No. 11 of 1983
- 3. Act No. 9 of 1981
- 4. Proclamation No. 7 of 1964

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