

## OFFICE OF THE SPECIAL PROSECUTOR BILL, 2017

### MEMORANDUM

The purpose of the Bill is to establish the Office of the Special Prosecutor as a specialised agency to investigate specific cases of corruption involving public officers, and politically exposed persons in the performance of their functions as well as individuals in the private sector implicated in the commission of corruption and prosecute these offences on the authority of the Attorney-General.

The establishment of the Office of the Special Prosecutor has become necessary in view of the institutional bottlenecks that impede the fight against corruption. The monopoly of prosecutorial authority by an Attorney-General, who is hired and fired by the President, has been singled out by governance experts as one of the key factors that stand in the way of using law enforcement and prosecution as a credible tool in the fight against corruption.

To this end, Government intends to establish, by an Act of Parliament, an Office of the Special Prosecutor to investigate and prosecute certain categories of cases and allegations of corruption and other criminal wrongdoing, including those involving alleged violations of the Public Procurement Act, 2003 (Act 663) and cases implicating public officers and politically exposed persons.

The establishment of the Office for the purpose of prosecuting corruption cases involving public officers and politically exposed persons in the performance of their functions will undoubtedly yield positive results in the number of corruption cases prosecuted than a multi-purpose or mixed mandate agency such as the Economic and Organised Crime Office. The Bill therefore seeks to vest the Special Prosecutor with the authority and control required to effectively investigate and prosecute cases of corruption and restore public confidence in the justice delivery system and by extension Government.

*Clause 1* of the Bill establishes the Office of the Special Prosecutor as a body corporate with perpetual succession. The object of the Office of the Special Prosecutor, as stated under *clause 2*, is to investigate and prosecute cases of corruption and corruption related offences to prevent corruption in the public sector and to recover the proceeds of corruption and corruption related offences.

The functions of the Office are provided for under *clause 3*. These include investigation and prosecution of cases of alleged corruption and corruption related offences under the Public Procurement Act, 2003 (Act 663) and investigate allegations of corruption and corruption related offences under the Criminal and Other Offences Act, 1960 (Act 29) implicating public officers and politically exposed persons, prosecution of corruption and

corruption related offences involving public officers and politically exposed persons on the authority of the Attorney-General, recovery of the proceeds of corruption and corruption related offences and co-operation and coordination with competent authorities and other relevant local and international agencies in the performance of its functions.

*Clause 4* provides for the independence of the Office by insulating the Office from the direction or control of a person or an authority in the performance of the functions of the Office.

*Clause 5* deals with the governing body of the Office. The membership of the Board, duties and liabilities of members of the Board and the tenure of office of the members of the Board are provided for under *clauses 5, 6 and 7* respectively. The Board is required to formulate policies necessary for the achievement of the objects of the Office and to ensure the proper and effective performance of the functions of the Office. The Board is also required to meet on a quarterly basis. The chairperson is, however, obliged to convene extraordinary meetings at the request of not less than five members of the Board. Matters before the Board are to be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding at the meeting of the Board is to have a casting vote.

*Clause 9* is on disclosure of interest. A member of the Board who has an interest in a matter for consideration by the Board is required to disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter. The penalty for failure to disclose interest in a matter before the Board is revocation of the appointment of the member concerned in addition to recovery of the benefit derived by the member.

The standard provisions on establishment of committees of the Board and allowances for members of the Board and members of a Committee of the Board are provided for under *clauses 10 and 11*.

Administrative and financial matters are provided for under *clauses 12 to 25* of the Bill. The appointment of the Special Prosecutor is required to be done by the President on the nomination by the Attorney-General, subject to the approval of Parliament by an absolute majority, *clause 12*. *Clause 12*, further provides for the Special Prosecutor to hold office on the same terms and conditions as a Justice of the Court of Appeal, subject to the limitation set out in subclause (4).

*Clause 13* provides that the Special Prosecutor is accountable to the Board in the performance of the functions under this Bill. The *clause* further confers power on the Special Prosecutor to delegate a function to an authorised officer. The Special Prosecutor is, however, not relieved of the ultimate responsibility for the performance of the delegated

function. The removal of the Special Prosecutor from office is spelt out in *clause 14* of the Bill.

The appointment of the Special Prosecutor is required to be done by the President on the nomination by the Attorney-General, subject to the approval of Parliament by an absolute majority, *clause 15*. *Clause 15*, further provides for the Deputy Special Prosecutor to hold office on the same terms and conditions as a Justice of the High Court subject to the limitation set out in subclause (4). Under *clause 16*, the Deputy Special Prosecutor is to perform functions assigned by the Special Prosecutor and act as the Special Prosecutor in the absence of the Special Prosecutor. The removal of the Deputy Special Prosecutor is dealt with in *clause 17* of the Bill.

The Office is required to have four Divisions namely, the Administrative Division, the Investigations Division, the Prosecutions Division and the Asset Recovery and Management Division for the effective performance of its functions. The Board may however establish additional Divisions that it considers necessary to enable the Office perform its functions, *clause 18*.

*Clause 19* provides for the establishment of the Secretariat of the Office to manage the day to day administration of the Office and arrange meetings of the Board.

The appointment of other staff necessary for the effective performance of the functions of the Office of the Special Prosecutor is required to be done by the President in accordance with article 195 of the Constitution. The Office is also permitted to engage the services of advisers and investigators on the recommendation of the Board, *clause 20*.

*Clause 21* outlines the sources of funds for the Office. The sources of funds for the Office include moneys approved by Parliament and donations and grants approved by the Minister responsible for Finance. *Clause 22* provides for the moneys for the Office to be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General. *Clause 22* further provides for the opening of a separate account for the lodging of moneys derived from the execution of confiscation and forfeiture orders. *Clause 23* provides for the expenses of the Office to be paid from the funds of the Office. The standard provisions on accounts and audit and annual report and other reports are provided for in *clauses 24* and *25*.

*Clause 26* deals with the procedure for the lodging of a complaint with the Office of the Special Prosecutor and referrals from a public agency. A person who has knowledge of the commission of corruption or a corruption related offence by a public officer or a politically exposed person may lodge a written or oral complaint to the Office of the Special Prosecutor for the necessary action to be taken.

Powers of the Office of the Special Prosecutor are provided for under *clauses 27 to 29*. *Clause 27* vests the Special Prosecutor and authorised officers with powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) or any other law. *Clause 28* deals with request for information by the Special Prosecutor or any other authorised officer. The Special Prosecutor is empowered to request the presence of a person or representative of an entity whose affairs are to be investigated or any other person the Special Prosecutor considers necessary to assist the Office with information relevant to a matter being investigated by the Office. A person who appears before the Special Prosecutor is permitted to be represented by the counsel of the person at any stage of the process.

*Clause 29* confers power on the Special Prosecutor, on the authority of the Court, to issue a warrant authorising a police officer to enter the premises of a person or entity under investigation for purposes of searching and taking possession of documents relevant to investigations being conducted by the Office. The Office is permitted to take possession of documents for a period necessary for the investigation or trial and any proceedings subsequent to the trial. Furthermore, a person or entity from whom a document has been retrieved is entitled to apply to the Court within twenty-one days after the date of retrieval, for an order to set aside the search, removal or retrieval and for the restoration of the document.

*Clauses 30 to 38* specify how the Office of the Special Prosecutor is required to deal with proceeds of corruption and corruption related offences. An authorised officer of the Office or a police officer is empowered to seize property reasonably suspected to be tainted with corruption or a corruption related offence. The Special Prosecutor is obliged to prefer charges against the person from whom the property was seized within fourteen working days after the seizure. Furthermore, the Special Prosecutor is to apply to the Court for an order for the continued seizure of the property for a period of not more than three months at a time from the date of seizure and for a total period of not more than two years. In the absence of any charges, the Special Prosecutor is to direct the authorised officer to release the seized property to the person from whom it was seized, *clauses 30*.

*Clause 31* empowers the Special Prosecutor to search for tainted property.

*Clause 32* enumerates the circumstances under which an authorised officer is to exercise the powers of search and seizure under an emergency situation. The provisions on search by a police officer under Part Two of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) apply under the Bill where an authorised officer has reasonable grounds to suspect that there is tainted property on land or in any premises, *clause 33*.

*Clause 34*, on the other hand, provides for offences in respect of search and seizure of property as well as obstruction of an authorised officer. *Clause 35* provides for property tracing. An authorised officer is mandated to apply to the Court for an order for the production of a document or information obtained from the document where the authorised officer has reasonable grounds to suspect that the document is required to identify, locate or quantify property or identify or locate a record in the possession or control of a person that is necessary for the transfer of the property in question to another person or entity.

Record keeping of seized property and return of seized property is provided for under *clauses 36 and 37*. An authorised officer who seizes property is required under *clause 36* to make a written record of the property and hand over the record and the property to the Special Prosecutor within seven days from the date of seizure. *Clause 37*, on the other hand, grants a person who claims an interest in property seized under the Bill, the right to apply to the Court within ninety days after the date of seizure for an order that the property be returned to that person.

The provisions of the Mutual Legal Assistance Act, 2010 (Act 807) apply to cases where the Special Prosecutor suspects that property obtained from the commission of corruption or a corruption related offence is situated in a foreign country or a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of corruption or a corruption related offence within the jurisdiction of the foreign country, *clause 38*.

*Clauses 39 to 46* provide for freezing orders. *Clause 39* empowers the Special Prosecutor to issue a written directive in respect of the freezing of property in instances where the freezing is necessary to facilitate investigation or prosecution. It further provides for the Special Prosecutor to apply to the Court for a confirmation of the freezing of property within sixty days after the issuance of the freezing order. An application for confirmation of the freezing order is to be made without notice to the respondent, *clause 40*.

*Clause 41* enumerates the conditions for the grant of a freezing order and the content of a freezing order. The contents of a freezing order include a prohibition from disposing of or dealing with the property in question or a part of the property or interest in the property that is specified in the order or a directive to a person who has possession of the property to give possession of the property to the Special Prosecutor to take custody and control of the property.

*Clause 42* provides that a contract or other arrangement made by a person in respect of tainted property after the issue of the freezing order is of no effect whilst *clause 43* provides for the penalty for breaching a freezing order.

The duration for a freezing order is twelve months after the date the order is made or a later date determined by the Court and a freezing order remains in force until discharged, revoked, reviewed or varied or a confiscation order or a pecuniary penalty order is made in respect of the property which is the subject of the order, *clause 44*. Under *clause 45*, a freezing order may be reviewed within fourteen days after its issuance subsequent to an application by the Special Prosecutor or a person who claims an interest in property which is the subject of a freezing order. However, an application for review is to be made on notice to the Special Prosecutor. *Clause 46* relates to the extension of the duration of a freezing order. A freezing order may where necessary be extended upon application by the Special Prosecutor to the Court.

*Clauses 47 to 49* deal with disclosure. *Clause 47* empowers the Special Prosecutor to serve notice on a person charged with corruption or a corruption related offence directing that person to make a disclosure of his or her funds and other assets. The disclosure is to include assets received or expected to be received by the person charged, the funds as well as the source of the funds of the person charged regardless of whether or not the person charged has actually received the funds. The penalty in respect of failure to make the declaration within the period specified in the notice is a fine of not less than one thousand penalty units and not more than two thousand penalty units or to imprisonment for a term of not less than two years and not more than four years or to both in addition to confiscation of the property or income to the State.

*Clause 48* is on use of information contained in the disclosure of funds and other assets. The Special Prosecutor is permitted to use information contained in a disclosure of funds and other assets for an application for confiscation and pecuniary penalty orders.

*Clause 49* provides for the action to be taken by the Special Prosecutor during proceedings under the Bill where the Special Prosecutor is of the opinion that a disclosure of funds and other assets provided by the person charged is inaccurate.

*Clauses 50 to 61* deal with confiscation orders. *Clause 50* provides for the Special Prosecutor to apply for a confiscation or pecuniary penalty order where a person is on trial for corruption or a corruption related offence whilst *clause 51* provides for notice of the application and requires the Special Prosecutor to give the respondent not less than eight days written notice of an application for a confiscation order or pecuniary penalty order.

The Court upon hearing an application for a confiscation or a pecuniary penalty order, is required to, on an application by the Special Prosecutor, amend the application to include other property or benefit that the Court is satisfied was not reasonably capable of identification when the application was made and the necessary evidence became available only after the application was made, *clause 52*.

Under *clause 53*, the Court is to have regard to the record of proceedings against a person convicted of corruption or a corruption related offence where an application is made to the Court for a confiscation order or a pecuniary penalty order in respect of the convicted person. *Clause 54* provides the procedure for an application for a confiscation order in respect of a tainted property where a person from whom the property was seized dies or absconds. A person is considered to have absconded if reasonable attempts to arrest that person pursuant to a warrant are unsuccessful during the period of three months after the date of issue of the warrant.

*Clause 55* provides for a confiscation order against property .It specifies the conditions under which the Court, before which an application for a confiscation order has been made, is required to infer that the property was realised as a result of corruption or a corruption related offence. By virtue of *clause 56*, the effect of a confiscation order is that the confiscated property vests absolutely in the State free from any right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration.

The Court is required under *clause 57* to set aside a transaction related to property which is the subject of a confiscation order where the transaction was made after the seizure of the property or issuance of a freezing order. *Clause 58* is on protection of third parties. A person who claims an interest in confiscated property is required to apply to the Court for a declaration of interest in the confiscated property.

Where the Court makes a confiscation order against the property of a person convicted of corruption or a corruption related offence and the conviction is subsequently quashed, the quashing of the conviction shall result in the discharge of the order, *clause 59*. *Clause 60* enumerates the circumstances under which the Court is to make an order for payment of property rather than a confiscation order. These include instances in which the property in question is substantially diminished in value, rendered worthless or has been commingled with other property in a manner that poses a challenge to the division of the property.

*Clause 61* provides for the payment of property instead of confiscation, the amount to be paid is to be treated as a fine imposed on the person in respect of a conviction for corruption or a corruption related offence. A default in payment of the amount attracts a term of imprisonment of not less than twelve months and not more than five years to be served consecutively to any other term of imprisonment imposed on that person or being served by the person.

*Clauses 62 to 68* deal with pecuniary penalty orders. *Clause 62* provides that where the Special Prosecutor applies to the Court for a pecuniary penalty order against a person convicted of corruption or a corruption related offence, the Court is to make an assessment

based on evidence to determine the benefit derived by the convicted person from the commission of the offence. The Court is further required to order the person to pay to the Republic an amount equal to the value of the benefit obtained or a higher amount if the Court is satisfied that the person benefited from corruption and a corruption related offence.

The Court is required to treat as property of a person, property that is, in the opinion of the Court, subject to the effective control of the person to assess the value of benefits derived by a person from the commission of a corruption or corruption related offence, *clause 63*.

The Court is empowered under *clause 64* to impose a term of imprisonment on a person who defaults in complying with a pecuniary penalty order. *Clause 65* deals with discharge of a pecuniary penalty order. A pecuniary penalty order is discharged if the conviction for corruption or a corruption related offence on the basis of which the order was made is quashed and another conviction for corruption or a corruption related offence is not substituted or by payment of the amount due to satisfy the order.

*Clauses 66 and 67* relate to a production order. *Clause 66* requires the Court to make a production order upon an application by the Special Prosecutor. Under *clause 67*, a production order is to be made in instances where the Court is satisfied that there is reasonable ground to suspect that the person specified in the application for the order and who is under investigation has benefited from the commission of corruption or is suspected of the commission of the offence.

*Clauses 68 to 71* deal with realisation of property. These provisions ensure that the Special Prosecutor has full authority and control over the case in the event that the convict concerned has benefited from a corrupt act or a corruption related offence. Thus the Court is required under *clause 68* to, among other things, order a person who has possession of the realisable property to give possession of the property to the Special Prosecutor and the Special Prosecutor is required to take possession and manage the property where a pecuniary penalty order is made and the pecuniary penalty is neither discharged nor subjected to an appeal.

Utilisation of the proceeds of realisable property is provided for under *clause 69*. The Court is to provide directions for forty percent of the amount realised to be paid to the Office to be applied to defray the expenses of the Office of the Special Prosecutor. Furthermore, thirty percent of the remaining amount is to be used for the benefit of the institution of relevance to the action and the rest of the amount is to be paid into the Consolidated Fund.

*Clause 70* excludes the application of the Insolvency Act, 2006 (Act 708) to property which is the subject of the Bill. *Clause 71* provides for the winding up of a company holding realisable property. A liquidator is prohibited from the performance of functions in relation to

realisable property which is subject to a freezing order made before the winding up or realisation of the proceeds of property by the receiver.

Miscellaneous provisions are dealt with in *clauses 72 to 79*. *Clause 72* makes provision for plea bargaining. The *clause* provides the person charged with a corruption or corruption related offence under the Bill to inform the Special Prosecutor whether the person charged admits to the offence and is willing to make restitution of the proceeds realised from the commission of the offence. *Clause 73* provides for the protection of a witness. The Special Prosecutor is to take the necessary and reasonable steps to protect the safety and welfare of a witness.

*Clause 74* deals with collaboration with public agencies. The Office of the Special Prosecutor is to collaborate with security agencies and other persons in its conduct of investigations. An officer of a public agency is thus required to co-operate with authorised officers of the Office of the Special Prosecutor in the performance of its functions under the Bill. *Clause 75* mandates an authorised officer to keep information received in the performance of functions under the Bill confidential unless otherwise authorised.

The Minister responsible for Justice is empowered under *clause 76* to make Regulations for the effective implementation of the Bill in consultation with the Board. The matters to be provided for in the Regulations include the manner of tracing tainted property and procedure for its seizure as well as procedure for confiscation and pecuniary penalty orders.

*Clauses 77 and 78* provide for the interpretation of words used in the Bill and consequential amendments respectively whilst *clause 79* deals with transitional matters. The passage of the Bill will to a large extent curb corruption involving public officers and politically exposed persons within the public sector.

**GLORIA AFUA AKUFFO (MISS)**  
*Attorney-General and Minister for Justice*

Date:

## OFFICE OF THE SPECIAL PROSECUTOR BILL, 2017

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SCHEDULE  
Oath of Secrecy

A

BILL

ENTITLED

## **OFFICE OF THE SPECIAL PROSECUTOR ACT, 2017**

AN ACT to establish the Office of the Special Prosecutor as a specialised agency to investigate specific cases of corruption involving public officers and politically exposed persons in the performance of their functions as well as persons in the private sector implicated in the commission of corruption, prosecute these offences on the authority of the Attorney-General and provide for related matters.

PASSED by Parliament and assented to by the President:

*Office of the Special Prosecutor*

### **Establishment of the Office of the Special Prosecutor**

1. (1) There is established by this Act a body corporate with perpetual succession to be known as the Office of the Special Prosecutor.

(2) For the performance of its functions, the Office may acquire and hold movable and immovable property, dispose of property and enter into a contract or any other transaction.

(3) Where there is hindrance to the acquisition of property, the property may be acquired for the Office under the State Lands Act, 1962 (Act 125) and the cost shall be borne by the Office.

### **Object of the Office**

2. The object of the Office is to

- (a) investigate and prosecute cases of corruption and corruption related offences to prevent corruption in the public sector; and

- (b) recover the proceeds of corruption and corruption related offences.

### **Functions of the Office**

- 3. (1) To achieve the object, the Office shall
  - (a) investigate and prosecute cases of alleged corruption and corruption related offences under the Public Procurement Act, 2003 (Act 663);
  - (b) investigate allegations of corruption and corruption related offences under the Criminal Offences Act, 1960 (Act 29) implicating public officers, politically exposed persons and persons in the private sector implicated in the commission of the offence;
  - (c) prosecute corruption and corruption related offences involving public officers, politically exposed persons and persons in the private sector implicated in the commission of the offence;
  - (d) recover the proceeds of corruption;
  - (e) disseminate information gathered in the course of investigation to competent authorities and other persons the Office considers appropriate in connection with the offences specified in paragraphs (a) and (b);
  - (f) co-operate and coordinate with competent authorities and other relevant local and international agencies in furtherance of this Act;
  - (g) receive complaints from a person on a matter that involves or may involve corruption and corruption related offences; and
  - (h) perform any other functions connected with the object of the Office.
- (2) The Office shall within one month of the
  - (a) conclusion of the prosecution of each case; and
  - (b) confiscation or realisation of property under this Act

submit a written report on the outcome of the case to the Attorney-General.

(3) The Office shall, on a quarterly basis, publish the following information in at least two daily newspapers of national circulation and on the website of the Office:

- (a) the list of corruption cases investigated and prosecuted by the Office; and
- (b) the number of convictions secured in respect of the cases prosecuted under paragraph (a) of this subsection.

(4) Despite paragraphs (a), (b) and (c) of subsection (1), the Office shall not investigate and prosecute the offences specified under paragraphs (a), (b) and (c) of subsection (1) unless the commission of the offence is in respect of a vast quantity of assets that

- (a) constitute a substantial proportion of the resources of the country;
- (b) threaten the political stability of the country; or
- (c) threaten the sustainable development of the country.

### **Independence of the Office**

4. (1) Except as otherwise provided in the Constitution or by any other law not inconsistent with the Constitution, the Office is not subject to the direction or control of a person or an authority in the performance of the functions of the Office.

(2) Subject to clause (4) of article 88 of the Constitution, the Office is for the purposes of this Act authorised by the Attorney-General to initiate and conduct the prosecution of corruption and corruption related offences specified in this Act.

### **Governing body of the Office**

5. (1) The governing body of the Office is a Board consisting of
- (a) the Special Prosecutor;
  - (b) the Deputy Special Prosecutor;

- (c) the Auditor-General;
- (d) one representative of the Ghana Police Service not below the rank of Assistant Commissioner of Police;
- (e) one lawyer in private practice with at least ten years' experience nominated by the Ghana Bar Association;
- (f) the Chief Executive Officer of the Financial Intelligence Centre ;
- (g) one representative of the Commission for Human Rights and Administrative Justice not below the rank of a Director;
- (h) one person with background in intelligence and not below the rank of a Director nominated by the Minister responsible for National Security; and
- (i) one other person who is a female.

(2) The members of the Board shall nominate one person from among their number as chairperson of the Board.

(3) The President shall appoint the members of the Board in accordance with article 70 of the Constitution.

(4) The President, in making the appointments under paragraphs (d), (e), (g) (h) and (i) of subsection (1), shall have regard to

- (a) expertise in corruption matters;
- (b) high moral character and proven integrity; and
- (c) non-partisanship.

(5) The Board shall

- (a) formulate policies necessary for the achievement of the objects of the Office; and

- (b) ensure the proper and effective performance of the functions of the Office.

### **Duties and liabilities of a member of the Board**

6. (1) A member of the Board has the same fiduciary relationship with the Office and the same duty to act with loyalty and in good faith as a director of a company incorporated under the Companies Act, 1963 (Act 179).

(2) Without limiting subsection (1), a member of the Board shall not

- (a) engage in a conduct or an activity that may undermine the integrity, independence and impartiality of the Office;
- (b) be a party to an investigation or prosecution concerning a matter in respect of which the member has an interest; or
- (c) make improper use of any information obtained as a result of the performance of the duties of the Office or by virtue of the position of the member as a member of the Board.

(3) Articles 284 to 288 of the Constitution apply to a member of the Board other than a member nominated under paragraph (e) of subsection (1) of section 5.

(4) A member of the Board who contravenes this section ceases to be a member of the Board.

### **Tenure of office of members of the Board**

7. (1) A member of the Board shall hold office for a period of three years and is eligible for re-appointment, but a member shall not be appointed for more than two terms.

(2) Subsection (1) does not apply to the Special Prosecutor and the Deputy Special Prosecutor.

(3) A member of the Board may at any time resign from office in writing addressed to the President through the Minister.

(4) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member.

(5) Where a member of the Board is, for a sufficient reason, unable to act as a member, the Minister shall determine whether the inability would result in the declaration of a vacancy.

(6) Where there is a vacancy

(a) under subsection (3) or (4), subsection (4) of section 6, subsection (5) of section 8 or subsection (2) of section 9;

(b) as a result of a declaration under subsection (5); or

(c) by reason of the death of a member,

the Minister shall notify the President of the vacancy and the President shall appoint a person to fill the vacancy.

### **Meetings of the Board**

8. (1) The Board shall meet at least once every three months.

(2) The chairperson shall at the request in writing of not less than five of the members of the Board, convene an extraordinary meeting of the Board at the place and time determined by the chairperson.

(3) The quorum at a meeting of the Board is four members of the Board or a greater number determined by the Board in respect of a particular matter.

(4) The chairperson shall preside at meetings of the Board.

(5) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member of the Board.

(6) A member of the Board elected by the members from among their number shall preside at a meeting of the Board in the absence of the chairperson.

(7) Matters before the Board shall be decided by a majority of the members present and voting and in the event of equality of votes, the person presiding shall have a casting vote.

(8) The Board may co-opt a person to attend a Board meeting but that person shall not vote on a matter for decision at the meeting.

(9) The proceedings of the Board are not invalidated by reason of a vacancy among the members or a defect in the appointment or qualification of a member.

(10) Subject to this section, the Board may determine the procedure for its meetings.

### **Disclosure of interest**

9. (1) A member of the Board who has an interest in a matter for consideration by the Board shall disclose in writing the nature of that interest and is disqualified from participating in the deliberations of the Board in respect of that matter.

(2) Where a member contravenes subsection (1), the chairperson shall notify the Minister who shall inform the President in writing to revoke the appointment of that member.

(3) Without limiting any further cause of action that may be instituted against the member, the Board shall recover the benefit derived by a member who contravenes subsection (1) in addition to the revocation of the appointment of the member.

### **Establishment of committees**

10. (1) The Board may establish committees consisting of members of the Board or non-members or both, to perform a function of the Board.

(2) A committee of the Board may be chaired by a member of the Board.

(3) Section 9 applies to members of a committee of the Board.

### **Allowances**

11. Members of the Board and members of a committee of the Board shall be paid allowances approved by the Minister in consultation with the Minister responsible for Finance.

## *Administrative and Financial Provisions*

### **Nomination and appointment of Special Prosecutor**

12. (1) A person shall not be qualified for appointment as the Special Prosecutor unless that person

- (a) possesses the relevant expertise on corruption matters;
- (b) is of high moral character and proven integrity; and
- (c) is a lawyer of at least twelve years standing at the Bar.

(2) The Attorney-General shall nominate a person qualified for appointment as Special Prosecutor by the President, subject to the approval of the majority of all the members of Parliament.

(3) The President may delegate the power of appointment of the Special Prosecutor in writing to the Attorney-General and Minister for Justice.

(4) The Special Prosecutor shall hold office on the same terms and conditions of service as a Justice of the Court of Appeal except that the tenure of Office shall be a non-renewable tenure of seven years.

(5) The Special Prosecutor shall in accordance with clause (4) of article 286 of the Constitution and section 1 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) or a statutory modification or re-enactment of that Act, submit to the Auditor-General a written declaration of

- (a) the properties or assets owned directly or indirectly by the Special Prosecutor; or
- (b) the liabilities owned directly or indirectly by the Special Prosecutor.

(6) The salary of the Special Prosecutor shall not be varied to the disadvantage of the Special Prosecutor during the tenure of office.

(7) The Special Prosecutor shall not while holding office, hold any other public office or engage in any commercial venture.

(8) Where the Office of the Special Prosecutor becomes vacant, the President shall appoint a person qualified for appointment as Special Prosecutor to act in that position for a period of not more than six months.

(9) Before assuming office, the Special Prosecutor shall take and subscribe to the Oath of Secrecy specified in the Schedule.

### **Functions of Special Prosecutor**

13. (1) The Special Prosecutor is accountable to the Board in the performance of the functions under this Act.

(2) The Special Prosecutor shall have full authority and control over the investigation, initiation and conduct of proceedings under paragraph (a), (b) and (c) of section 3.

(3) The Special Prosecutor may delegate a function to an authorised officer but shall not be relieved of the ultimate responsibility for the performance of the delegated function.

### **Removal of the Special Prosecutor**

14. (1) The Special Prosecutor shall not be removed from office except

(a) for stated misbehaviour or incompetence; or

(b) inability to perform the functions of the office arising from infirmity of body or mind.

(2) A person who seeks to remove the Special Prosecutor from Office shall submit a petition to the President.

(3) Where the President receives a petition for the removal of the Special Prosecutor, the President shall refer the petition to the Chief Justice who shall determine whether there is a prima facie case,

(4) Where the Chief Justice determines that there is a prima facie case, the Chief Justice shall inform the President who shall set up a Committee consisting of

- (a) a chairperson, who is a Justice of the Supreme Court;
- (b) a lawyer of at least fifteen years standing at the Bar, and
- (c) one other person with expertise in investigations.

(5) The Committee shall investigate the matter and make its recommendation to the President through the Chief Justice.

(6) The President shall act in accordance with the recommendations of the Committee.

### **Nomination and appointment of Deputy Special Prosecutor**

**15.** (1) A person shall not be qualified for appointment as the Deputy Special Prosecutor unless that person

- (a) has the relevant expertise on corruption matters;
- (b) is of high moral character and proven integrity; and
- (c) is a lawyer of at least ten years standing at the Bar.

(2) The Attorney-General shall nominate a person qualified for appointment as Deputy Special Prosecutor by the President, subject to the approval of Parliament by the majority of all the members of Parliament.

(3) The President may delegate the power of appointment in writing to the Attorney-General and Minister for Justice.

(4) The Deputy Special Prosecutor shall hold office on the same terms and conditions of service as a Justice of the High Court except that the tenure of office shall be for a non-renewable tenure of seven years.

(5) The Deputy Special Prosecutor shall in accordance with clause (4) of article 286 of the Constitution and section 1 of the Public Office Holders (Declaration of Assets and Disqualification) Act, 1998 (Act 550) or a statutory modification or re-enactment of that Act submit to the Auditor-General a written declaration of

- (a) the properties or assets owned directly or indirectly by the Deputy Special Prosecutor; or
- (b) the liabilities owned directly or indirectly by the Deputy Special Prosecutor.

(6) The salary of the Deputy Special Prosecutor shall not be varied to the disadvantage of the Deputy Special Prosecutor during the tenure of office.

(7) The Deputy Special Prosecutor shall not while holding office, hold any other public office or engage in any commercial venture.

(8) Before assuming office, the Deputy Special Prosecutor shall take and subscribe to the Oath of Secrecy specified in the Schedule.

### **Functions of Deputy Special Prosecutor**

**16.** (1) The Deputy Special Prosecutor shall perform functions that may be assigned by the Special Prosecutor.

(2) The Deputy Special Prosecutor shall act in the absence of the Special Prosecutor.

### **Removal of the Deputy Special Prosecutor**

**17.** (1) The Deputy Special Prosecutor shall not be removed from office except

- (a) for stated misbehaviour or incompetence; or
- (b) inability to perform the functions of the office arising from infirmity of body or mind.

(2) A person who seeks to remove the Deputy Special Prosecutor from Office shall submit a petition to the President.

(3) Where the President receives a petition for the removal of the Deputy Special Prosecutor, the President shall refer the petition to the Chief Justice who shall determine whether there is a prima facie case,

(4) Where the Chief Justice determines that there is a prima facie case, the Chief Justice shall inform the President who shall set up a Committee consisting of

- (a) a chairperson, who is a Justice of the Supreme Court;
- (b) a lawyer of at least fifteen years standing at the Bar, and
- (c) one other person with expertise in investigations.

(5) The Committee shall investigate the matter and make its recommendation to the President through the Chief Justice.

(6) The President shall act in accordance with the recommendation of the panel.

### **Divisions of the Office**

18. (1) The Office shall have the following Divisions:

- (a) Administrative Division;
- (b) Investigations Division;
- (c) Prosecutions Division; and
- (d) Asset Recovery and Management Division.

(2) The Board may establish any other division necessary for the effective performance of the functions of the Office.

### **Secretariat of the Office**

19. (1) The Office shall have a Secretariat headed by the Secretary.

(2) The Board shall designate a person from among the staff of the Office to head the Secretariat.

(3) The Secretary is responsible for

- (a) the day to day administration of the Office and is answerable to the Special Prosecutor in the performance of functions under this Act; and

- (b) arranging the meetings of the Board.

### **Appointment of other staff**

**20.** (1) The President shall in accordance with article 195 of the Constitution, appoint other staff of the Office that are necessary for the proper and effective performance of the functions of the Office.

(2) The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment in writing to the Board.

(3) Other public officers may be transferred or seconded to the Office.

(4) The Office may engage the services of advisers and investigators on the recommendation of the Board.

### **Funds of the Office**

**21.** The funds of the Office include

- (a) moneys approved by Parliament; and
- (b) donations and grants approved by the Minister responsible for Finance.

### **Bank account**

**22.** (1) The moneys for the Office shall be paid into a bank account opened for that purpose with the approval of the Controller and Accountant-General.

(2) Without limiting subsection (1), the Office shall with the approval of the Controller and Accountant-General open a separate account known as the Criminal Assets Recovery Account into which shall be paid moneys derived from the execution of confiscation and forfeiture orders made under this Act.

(3) The bank accounts opened under this section shall be managed in accordance with the Public Financial Management Act, 2016 (Act 921).

## **Expenses of the Office**

**23.** The expenses of the Office shall be paid from moneys provided for the Office under section 21 and subsection (1) of section 69.

## **Accounts and audit**

**24.** (1) The Board shall keep books of account and proper records in the form approved by the Auditor-General.

(2) The Board shall submit the accounts of the Office to the Auditor-General for audit within three months after the end of the financial year.

(3) The Auditor-General shall, not later than three months, after the receipt of the accounts, audit the accounts and forward a copy of the audit report to the Minister.

(4) The financial year of the Office is the same as the financial year of the Government.

## **Annual report and other reports**

**25.** (1) The Board shall within one month after the receipt of the audit report, submit an annual report to the Minister covering the activities and operations of the Office for the year to which the report relates.

(2) The annual report shall include the report of the Auditor-General.

(3) The Minister shall, within one month after the receipt of the annual report, submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall submit to the Minister any other report which the Minister may require in writing.

## *Complaints and Referrals*

### **Complaint procedure and referrals**

**26.** (1) A person may lodge a complaint under this Act if that person has knowledge of the commission of corruption or a corruption related offence.

(2) The complaint referred to in subsection (1) shall be made in writing or orally.

(3) Where the complaint is made in writing, the complaint shall be signed by the complainant or the representative of the complainant.

(4) Where a complaint is made orally, the officer to whom the complaint is made, shall reduce the complaint into writing and the complainant shall sign or make a thumbprint on the complaint.

(5) A public agency may refer a matter in relation to corruption or a corruption related offence to the Office.

### *Powers of the Office*

#### **Officers to exercise powers of police**

27. The Special Prosecutor and authorised officers shall exercise the powers of a police officer specified in the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) or any other enactment.

#### **Request for information**

28. (1) The Special Prosecutor or an authorised officer may by notice in writing, require

- (a) a person or a representative of an entity whose affairs are to be investigated; or
- (b) a person who in the opinion of the Special Prosecutor is a proper person to assist with an investigation being conducted by the Office

to appear before the Special Prosecutor or an authorised officer at a specified date and place to answer questions or furnish the Office with information related to a matter relevant to the investigation.

(2) Where a person required to furnish the Office with a document is unable to produce the document, the Special Prosecutor shall request the person to state where the document is or the reason for the inability to produce the document.

(3) Where a person required to furnish the Office with a document is under an obligation not to disclose, the Special Prosecutor shall apply to Court for an order for the production of the document.

(4) Where a document is furnished to the Office, the Special Prosecutor or an authorised officer shall make copies or extracts from the document and request the person producing the document to provide an explanation on the contents of the document where necessary.

(5) A person who appears before the Special Prosecutor or an authorised officer may be represented by counsel of the choice of that person at any stage of the process.

(6) Where a person refuses, conceals or otherwise fails to produce a document required by the Special Prosecutor or an authorised officer, that person commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both.

### **Power to search and take possession of documents**

**29.** (1) The Special Prosecutor shall apply to the Court, without notice to the person or entity under investigation, to issue a warrant authorising a police officer to enter premises in the possession of or under the control of the specified person or entity to search and remove a document specified in the application if

- (a) the person or entity required to produce the document to the Office fails or refuses to produce the document;
- (b) the Special Prosecutor is of the opinion that the service of the notice to produce a document shall prejudice the investigation; or
- (c) it is not practicable to give a disclosure notice requiring the production of the document.

(2) An authorised officer shall

- (a) accompany the police officer authorised to execute the warrant; and

- (b) take an inventory of the documents retrieved in duplicate and hand over a copy of the inventory to the person or entity from whom the document was retrieved.

(3) The Office may take possession of the document for the period necessary for the investigation or trial and any proceedings subsequent to trial.

### *Proceeds of Corruption and Corruption Related Offences*

#### **Seizure of tainted property**

**30.** (1) An authorised officer or police officer, shall seize property if that authorised officer or police officer has reasonable grounds to suspect that the property is tainted with corruption or a corruption related offence.

(2) The Special Prosecutor shall direct the authorised officer or police officer, to release the seized property to the person from whom it was seized if no charges are preferred against the person within sixty days after the seizure.

(3) Where the authorised officer or police officer returns the seized property to the person from whom the property was seized in accordance with subsection (2), the authorised officer or police officer is immune from prosecution if the authorised officer or police officer acted in good faith and seized the property on reasonable grounds that the property was tainted with corruption or a corruption related offence

(4) Where the Special Prosecutor prefers charges, the Special Prosecutor shall request the Court to make an order for the continued seizure and retention of the property for a period of not more than three months at a time from the date of seizure and for a total period of not more than two years.

#### **Power to search for tainted property**

**31.** (1) An authorised officer shall conduct a search or make a seizure

- (a) under a search warrant; or
- (b) as an emergency search or seizure.

- (2) An authorised officer shall
  - (a) search a person in respect of tainted property; or
  - (b) enter any land or premises and conduct a search in respect of tainted property and seize in the course of the search, the property which the authorised officer believes on reasonable grounds to be tainted property.
- (3) A search in respect of tainted property includes search of the
  - (a) body and clothing worn by the person being searched;
  - (b) property in or apparently under the control of the person being searched; and
  - (c) property of the owner or occupier of the land or premises.
- (4) For purposes of paragraph (a) of subsection (3), a female authorised officer shall search a female and a male authorised officer shall search a male.
- (5) An authorised officer may gather forensic evidence in the course of a search.
- (6) The Court shall consider an application without notice which claims that communication in any medium including an article sent by post or through a courier service is likely to contain information that may be relevant to an investigation or prosecution under paragraph (b) of section 3 and the Court shall, where appropriate, order an authorised officer to
  - (a) intercept, detain and open the article in the course of transmission by postal or courier service;
  - (b) intercept a message transmitted or received by any means of communication;
  - (c) intercept or listen to any conversation by any means of communication; or

- (d) enter premises and install on the premises a device for the interception and retention of communications of specified description and remove and retain the device.

### **Searches in emergencies**

- 32.** (1) Where an authorised officer suspects on reasonable grounds that,
- (a) a particular property
    - (i) is tainted property; or
    - (ii) will provide evidence as to the commission of an offence under paragraph (b) of section 3,
  - (b) it is necessary to exercise the power of search and seizure in order to prevent the concealment, loss or destruction of property; and
  - (c) the circumstances are so urgent that immediate exercise of the power without the authority of a warrant or the order of a Court is required,

the authorised officer shall search a person, enter premises and search for the property and if the property is found, seize the property.

- (2) If during the course of the search, the authorised officer finds
- (a) property that the authorised officer believes on reasonable grounds to be tainted property; or
  - (b) anything the authorised officer believes on reasonable grounds will afford evidence as to the commission of another offence, the authorised officer shall seize that property.

### **Application of Part Two of Act 30**

**33.** (1) The provisions on search by a police officer under Part Two of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30) apply for the purpose of this Act where an authorised officer has reasonable grounds to suspect that there may be tainted property on land or in any premises.

- (2) If during the course of the search the authorised officer finds
  - (a) property that the authorised officer believes on reasonable grounds to be tainted property of a type not specified in the warrant, or tainted property related to another offence; or
  - (b) any article the authorised officer believes on reasonable grounds will afford evidence as to the commission of the offence or commission of an offence,

the authorised officer shall seize that property and the warrant shall be considered to authorise that seizure.

### **Offences relating to search, seizure and obstruction of authorised officer**

- 34.** (1) A person who
- (a) refuses an authorised officer access to premises or refuses to submit to a search;
  - (b) assaults an authorised officer in the performance of a function under this Act;
  - (c) fails to comply with a lawful demand of an authorised officer in the performance of functions under this Act;
  - (d) fails to produce property declared to be seized under this Act;
  - (e) conceals or attempts to conceal property liable to seizure under this Act; or
  - (f) furnishes information to an authorised officer which the person knows to be false

commits an offence and is liable on summary conviction to a fine of not less than five hundred penalty units and not more than one thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

(2) A person who obstructs an authorised officer from performing a function under this Act commits an offence and is liable on summary conviction,

- (a) in the case of an individual, to a fine of not less than one thousand penalty units and not more than two thousand penalty units or to a term of imprisonment of not less than one year and not more than two years or to both; or
- (b) in the case of an entity, to a fine of not less than one thousand five hundred penalty units and not more than three thousand penalty units.

### **Property tracing**

35. Where an authorised officer has reasonable grounds to suspect that a document which is required to identify, locate or quantify property, or identify or locate a record is in the possession or under the control of a person or an entity and is necessary for the transfer of the property, to another person or entity, the authorised officer shall apply to the Court for an order for

- (a) the document to be delivered by the person or entity to the authorised officer; or
- (b) the production to the authorised officer by the person or entity of information obtained from the document.

### **Record of seized property**

36. (1) An authorised officer who seizes property with or without a search warrant or in an emergency shall make a written record of the property and hand over the record and the property to the Special Prosecutor within seven days from the date of seizure.

- (2) The Special Prosecutor shall apply to Court for an order
  - (a) for the sale of perishable items where the property seized is perishable; and
  - (b) for payment of the proceeds into an interest-bearing account until the final determination of the trial.

(3) The procedure for the management of assets seized under this section shall be prescribed by Regulations made under this Act.

### **Return of seized property**

**37.** (1) A person who claims an interest in property seized under this Act shall apply to the Court within ninety days after the date of seizure for an order that the property be returned to that person.

(2) If the Court is satisfied that,

- (a) the person is entitled to possession of the property;
- (b) the property is not tainted property; and
- (c) the person in respect of whose charge, proposed charge or conviction the seizure of the property was made has no interest in the property,

the Court shall order the return of the property to the applicant.

### **Mutual legal assistance**

**38.** The provisions of the Mutual Legal Assistance Act, 2010 (Act 807) shall apply where

- (a) the Special Prosecutor suspects that property obtained from the commission of corruption or a corruption related offence is situated in a foreign country; or
- (b) a foreign country requests assistance from this country to locate or seize property situated in this country suspected to be property obtained from the commission of corruption or a corruption related offence within the jurisdiction of the foreign country.

### *Freezing Orders*

#### **Freezing of property**

**39.** (1) Where the Special Prosecutor considers that freezing of property is necessary to facilitate an investigation or prosecution, the Special Prosecutor may in writing direct the freezing of

- (a) the property of a person or entity being investigated; or
- (b) specified property held by a person or entity other than the person or entity being investigated or prosecuted.

(2) The Special Prosecutor shall, within sixty days after the freezing of the property, apply to the Court for a confirmation of the freezing.

### **Application for freezing order**

40. An application for confirmation of a freezing order may be made without notice to the respondent and shall be accompanied with an affidavit.

### **Issue of freezing order**

41. (1) Where an application is made for a freezing order, the Court shall issue the order if it is satisfied that

- (a) the respondent is being investigated for corruption or a corruption related offence;
- (b) the respondent is charged with corruption or a corruption related offence;
- (c) there are reasonable grounds to believe that the property is tainted property;
- (d) the respondent derived benefit directly or indirectly from corruption or a corruption related offence;
- (e) the application seeks a freezing order against the property of a person other than the respondent because there are reasonable grounds to believe that the property is tainted property and that the property is subject to the effective control of the respondent; and
- (f) there are reasonable grounds to believe that a confiscation order shall be made under this Act in respect of the property.

(2) The Special Prosecutor shall inform a person against whom a freezing order has been made within seven days after the order has been made.

(3) The Court shall in the case of an incorporated entity, lift the veil of incorporation to determine if property is subject to the effective control of the respondent.

(4) A freezing order shall

- (a) prohibit the respondent or another person from disposing of or dealing with the property or a part of the property or interest in the property that is specified in the order, except in a manner specified in the order;
- (b) direct the Special Prosecutor to take custody and control of the property or a part of the property specified in the order and manage or deal with the property as directed by the Court; or
- (c) require a person who has possession of the property to give possession to the Special Prosecutor to take custody and control of the property.

(5) A freezing order under this section may be made, subject to the conditions that the Court considers appropriate and, without limiting the scope of the order, provide for

- (a) the reasonable living expenses of a person affected by the freezing order, including the reasonable living expenses of the dependants of the person, and reasonable business expenses of the person; and
- (b) a specified public debt incurred in good faith by the person affected by the freezing order.

(6) When the application is made for the protection of third parties affected by the freezing order on the basis that a person is about to be charged, the freezing order made by the Court shall lapse if the person is not charged within twelve months after the issue of the order.

(7) The procedure for the management of assets under this section shall be prescribed by Regulations made under this Act.

## **Effect of freezing order**

42. A contract or other arrangement made by a person in respect of the tainted property after the issue of the freezing order is of no effect.

## **Breach of freezing order**

43. A person who contravenes a freezing order commits an offence and is liable on summary conviction

- (a) in the case of an individual, to a fine equivalent to three times the value of the tainted property or to a term of imprisonment of not less than two years and not more than four years or to both; or
- (b) in the case of an entity, to a fine equivalent to four times the value of the tainted property.

## **Duration of freezing order**

44. (1) A freezing order remains in force until

- (a) the order is discharged, revoked, reviewed or varied;
- (b) twelve months after the date the order is made or a later date determined by the Court; or
- (c) a confiscation order or a pecuniary penalty order is made in respect of the property which is the subject of the order.

(2) Where an investigation has commenced against a person for corruption or a corruption related offence and the property related to that offence is frozen or restrained, the Court shall order the release of the frozen or restrained property if

- (a) the person is not charged with corruption or a corruption related offence within twelve months after the issue of the freezing order; or
- (b) the person is acquitted of corruption or a corruption related offence.

## **Review of freezing order**

**45.** (1) The Special Prosecutor may apply to the Court for a review of the order on notice, within fourteen days after the issue of the freezing order.

(2) A person who claims an interest in property which is the subject of a freezing order may apply to the Court for a review of the order on notice to the Special Prosecutor, within fourteen days after the issue of the freezing order.

(3) The Court may revoke, review or vary the order or subject the order to conditions directed by the Court on hearing the interested party.

## **Extension of freezing order**

**46.** The Special Prosecutor may apply to the Court which made a freezing order for an extension of the period of the operation of the order.

### *Disclosure*

## **Disclosure of funds and other assets**

**47.** (1) Where a person has been charged with corruption or a corruption related offence, the Special Prosecutor may serve on that person a notice to make a disclosure of the funds and other assets of that person in the prescribed form.

(2) On receipt of a notice under subsection (1), the person shall lodge two signed copies of the disclosure with the Special Prosecutor within twenty-eight days after receipt of the notice.

(3) The Special Prosecutor shall not reveal the content of the disclosure except in accordance with this Act or on the order of a Court.

(4) The disclosure of funds and other assets shall contain the following information:

- (a) assets received or expected to be received by the person charged;
- (b) assets held or disposed of by the person charged including assets held by any other person or in the name of any other person on behalf of the person charged; and

- (c) the funds and the source of the funds whether the person charged has actually received it or not.

(5) Where a person charged and given notice to make a disclosure fails to make the disclosure of the funds and other assets within the period specified

- (a) that person commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand penalty units or to imprisonment for a term of not less than two years and not more than four years or to both; and
- (b) the funds or other assets which have not been disclosed are liable to confiscation to the Republic.

(6) A person who intentionally or negligently fails to disclose any information required to be disclosed, commits an offence and is liable on summary conviction to a fine of not less than one thousand penalty units and not more than two thousand penalty units or to a term of imprisonment of not less than two years and not more than four years or to both.

### **Use of information contained in disclosure**

**48.** (1) The Special Prosecutor may use information contained in a disclosure of funds and other assets for an application for confiscation and pecuniary penalty orders.

(2) The Court shall take into account information contained in a disclosure of funds and other assets of the convicted person when making a confiscation or pecuniary order.

### **Inaccurate disclosure of funds and other assets**

**49.** (1) Where the Special Prosecutor at any time during proceedings under this Act is of the opinion that a disclosure of funds and other assets is inaccurate, the Special Prosecutor shall

- (a) serve notice on the person charged; and
- (b) notify the Court of the circumstances

and indicate in the notice, the funds or assets in question and evidence in support of the opinion.

(2) The Court shall decide whether the funds or assets should have been included in the disclosure and if necessary direct that it be added within a given period after

- (a) receipt of the notice; and
- (b) hearing the declarant.

### *Confiscation Orders*

#### **Application for confiscation or pecuniary penalty order**

**50.** (1) Where a person is on trial for corruption or a corruption related offence, the Special Prosecutor may apply to the Court for the following orders:

- (a) a confiscation order against property that is deemed to be tainted property; or
- (b) a pecuniary penalty order against the person in respect of benefit derived by that person from corruption or the corruption related offence.

(2) The application may be made in respect of more than one offence.

(3) Where the application is determined, a further application for a confiscation order or a pecuniary penalty order shall not be made unless the Court is satisfied that,

- (a) the property or benefit to which the new application relates was identified after the previous application was determined;
- (b) the necessary evidence became available after the previous application was determined, or
- (c) it is in the interest of justice that a new application be made.

## **Notice of application**

- 51.** (1) Where the Special Prosecutor applies for a confiscation order
- (a) the Court shall direct the Special Prosecutor to publish in the *Gazette* or a daily newspaper of national circulation, a notice of the application before the determination of the application;
  - (b) the Special Prosecutor shall give not less than eight days written notice of the application to the respondent; and
  - (c) the respondent and any other person who claims an interest in the property shall appear and adduce evidence at the hearing of the application.
- (2) Where the Special Prosecutor applies for a pecuniary penalty order
- (a) the Special Prosecutor shall give the respondent not less than eight days' written notice of the application; and
  - (b) the respondent shall appear and adduce evidence at the hearing of the application.

## **Amendment of application**

- 52.** (1) The Court hearing an application for a confiscation or a pecuniary penalty order may, before the determination of the application and on the application of the Special Prosecutor, amend the application to include other property or benefit if the Court is satisfied that
- (a) that other property or benefit was not reasonably capable of identification when the application was made; and
  - (b) the necessary evidence became available only after the application was made.
- (2) The provisions on notice of application apply to this section with the necessary modification or as directed by the Court.

## Procedure on application

**53.** (1) Where an application is made to the Court for a confiscation order or a pecuniary penalty order in respect of a person convicted of corruption or a corruption related offence, the Court shall have regard to the record of proceedings against the person.

(2) Where an application is made for a confiscation order or a pecuniary penalty order to the Court before which the person was convicted, and the Court has not passed sentence on the person for corruption or a corruption related offence, the Court shall defer the determination of the application for the order until the Court passes sentence if, the Court is satisfied that it is reasonable to do so.

## Procedure against property where a person dies or absconds

**54.** (1) The Special Prosecutor shall apply to the Court for a confiscation order in respect of tainted property if the person from whom the property was seized

- (a) dies and there is information alleging commission of corruption or a corruption related offence by that person and a warrant for the arrest of that person has been issued before the death of that person; or
- (b) absconds and there is information alleging commission of corruption or a corruption related offence by that person and a warrant for the arrest of that person is issued in furtherance of that information.

(2) For purposes of paragraph (b) of subsection (1), a person is considered to have absconded if reasonable attempts to arrest that person pursuant to the warrant are unsuccessful during the period of three months after the date of issue of the warrant.

(3) Where the Special Prosecutor applies for a confiscation order against tainted property under this section, the Court shall, before hearing the application for the confiscation order,

- (a) require notice of the application to be given to the person who appears in the opinion of the Court to have an interest in the property; or
- (b) direct notice of the application to be published in the *Gazette* or a daily newspaper of national circulation containing the particulars in three publications within three months.

(4) The provision on protection of third party interest provided under section 58 applies in relation to confiscation of tainted property of an accused person who dies.

### **Confiscation order against property**

**55.** (1) The Court hearing an application for confiscation of tainted property may infer from the record of proceedings of the trial that the property was derived, obtained or realised as a result of corruption or a corruption related offence if

- (a) the property was acquired by the person before, during or within a reasonable time after the period of the commission of the corruption or corruption related offence of which the person is on trial or convicted; or
- (b) the Court is satisfied that the income of that person cannot reasonably account for the acquisition of that property.

(2) Where the Court orders that property, other than funds be confiscated, the Court shall specify in the order the amount that is considered to be the value of the property at the time the order is made.

(3) The Court shall have regard to the gravity of the offence in considering whether a confiscation order should be made.

(4) Where the Court makes a confiscation order, the Court shall give directions to give effect to the order.

### **Effect of confiscation order**

**56.** (1) Where the Court makes a confiscation order against property, the property vests absolutely in the Republic by virtue of the order and the property is free from a right, interest or encumbrance of any person except a right, interest or encumbrance which is held by a purchaser in good faith for valuable consideration.

(2) Where the Court makes a confiscation order against property and a notice of appeal has been filed,

- (a) the property shall not, except with the leave of the Court and in accordance with the directions of the Court, be disposed of or otherwise dealt with, before the determination of the appeal; and
- (b) if the confiscation order is not discharged on determination of the appeal, the property shall be disposed of and the proceeds applied or otherwise dealt with in accordance with the direction of the Special Prosecutor.

(3) Where a person who holds an encumbrance to which property is subject claims that the encumbrance is held by a purchaser in good faith for valuable consideration and that the encumbrance is not contrary to a provision in this Act, which claim is disputed by the Republic, the Special Prosecutor shall apply to the Court to determine the matter.

(4) The Court shall determine the matter after hearing the person holding the encumbrance and the reply of the Special Prosecutor.

(5) Where the movable property is vested in the Republic, the vesting shall take effect without a transfer, conveyance, deed or other instrument.

(6) Where registration of the vesting of the property is required by law, the authority responsible for registration shall register the property in the name of the Republic.

(7) Where the property which has vested in the Republic is immovable property, the vesting shall be registered in the name of the Republic on production of the order of the Court forfeiting the immovable property to the Registrar of Lands and on the production of a certificate of the Special Prosecutor certifying that the property is confiscated.

### **Void transaction**

**57.** The Court shall set aside a transaction related to property which is the subject of a confiscation order where the transaction was made after the seizure of the property or issue of a freezing order.

### **Protection of third parties**

**58.** (1) Where an application is made to the Court for a confiscation order against property, a person who claims an interest in the property shall apply to the Court for an order declaring the interest of the person.

- (2) If the Court is satisfied on a balance of probabilities that the person
  - (a) was not involved in the commission of the corruption or the corruption related offence; and
  - (b) acquired the interest before or after the commission of the corruption or the corruption related offence
    - (i) for sufficient consideration, and
    - (ii) without knowing and in circumstances which did not arouse a reasonable suspicion that the property was tainted property at the time the person acquired the property,

the Court shall make an order declaring the nature, extent and value of the interest of that person.

(3) An application for a declaration of interest in confiscated property shall be made within six months after the confiscation order.

- (4) A person who
  - (a) had knowledge of the application for the confiscation order before the order was made; or
  - (b) appeared at the hearing of that application,

shall not make an application without leave of the Court.

(5) The Special Prosecutor shall be a party to the proceedings.

### **Effect of quashing of conviction**

**59.** (1) Where the Court makes a confiscation order against property of a person convicted of corruption or a corruption related offence and the conviction is subsequently quashed, the quashing of the conviction shall result in the discharge of the order.

(2) Where a confiscation order against property is not discharged, a person who had an interest in the property immediately before the confiscation order was made, may apply to the Court for an order for the transfer of the interest to that person.

- (3) The Court may
  - (a) give directions that the property or part of the property to which the interest of the applicant relates, be transferred to the applicant if the interest is vested in the Republic; or
  - (b) in any other case, direct that the applicant be paid an amount equal to the value of the interest at the time the confiscation order was made.

### **Payment instead of a confiscation order**

**60.** Where the Court is satisfied that a confiscation order should be made in respect of the property of a person convicted of corruption or a corruption related offence but the property or a part of the property or interest in the property cannot be made subject to that order and, in particular, the property

- (a) is transferred to a third party in circumstances that do not give rise to a reasonable inference that the title or interest was transferred to avoid the confiscation of the property;
- (b) is substantially diminished in value or rendered worthless; or
- (c) has been co-mingled with other property that cannot be divided without difficulty,

the Court shall order the person to pay to the Republic an amount determined by the Court to be equal to the value of the property instead of the confiscation.

### **Procedure for enforcement of order for payment**

**61.** (1) Where the Court orders a person to pay an amount instead of confiscation of property as provided in section 60 that amount shall be treated as a fine imposed on the person in respect of a conviction for corruption or a corruption related offence, and the Court shall,

- (a) impose in default of the payment of that amount, a term of imprisonment of not less than twelve months and not more than five years despite any provision contained in any other enactment;

- (b) direct that the term of imprisonment imposed be served consecutively to any other term of imprisonment imposed on that person, or being served by the person; and
- (c) direct that the provision in the Prisons Service Act, 1972 (NRCD 46) and regulation 61 of the Prisons Regulations 1958 (LN. 412) relating to the remission of sentence of a prisoner serving a term of imprisonment shall not apply to a term of imprisonment imposed under paragraph (a) on the person.

(2) Section 54 applies with the necessary modification to give effect to this section where a person accused of corruption or a corruption related offence dies or absconds.

### *Pecuniary Penalty Order*

#### **Application for pecuniary penalty order**

**62.** (1) Where the Special Prosecutor applies to the Court for a pecuniary penalty order against a person convicted of corruption or a corruption related offence, the Court shall make an assessment based on evidence to determine the benefit derived by the convicted person from corruption or a corruption related offence.

(2) The Court shall order the person to pay to the Republic an amount equal to the value of the benefit obtained from the commission of corruption and a corruption related offence or a higher amount if the Court is satisfied that the person benefited from the corruption and the corruption related offence.

(3) The Court shall consider

- (a) property that appears to the Court to be held by the convicted person on the day on which the application is made; and
- (b) property that appears to the Court to be held by the convicted person at any time, to be property derived, obtained or realised as a result of the corruption and corruption related offence if it was acquired by the convicted person before, during or within a reasonable time after the period of corruption and corruption related offence of which the person was convicted.

(4) Where the Court determines and assesses the benefit to a convicted person from corruption or a corruption related offence and the Court is satisfied that the income of that person from sources unrelated to that corruption or corruption related offence cannot reasonably account for the acquisition of that property, the Court shall presume that the property came into the possession or under the control of the person as a result of the corruption or corruption related offence unless the contrary is proved.

### **Lifting the veil**

**63.** (1) The Court shall treat as property of a person, property that in the opinion of the Court, is subject to the effective control of the person, to

- (a) assess the value of benefits derived by a person from corruption or a corruption related offence; and
- (b) make a confiscation order.

(2) Without limiting subsection (1), the Court shall have regard to

- (a) shareholdings in, debentures over or directorships in a company that has an interest, whether direct or indirect, in the property, and for this purpose, the Court shall order an investigation and inspection of the books of a named company;
- (b) a trust that has a relationship to the property; or
- (c) a relationship between the persons who have an interest in the property or in companies of the kind referred to in paragraph(a), or trust of the kind referred to in paragraph(b), and with any other persons.

(3) Where the Court treats a particular property as the person's property for the purposes of making a pecuniary penalty order against that person, the Court shall make an order declaring that the property is subject to the effective control of that person and is available to satisfy the order.

(4) The Special Prosecutor shall give notice of the application to

- (a) the person and to any other person who the Special Prosecutor has reason to believe has an interest in the property; and
- (b) the person and any other person who claims an interest in the property and the person shall appear and adduce evidence at the hearing of the application.

### **Enforcement of pecuniary penalty orders**

**64.** Where the Court orders a person to pay an amount under a pecuniary penalty order, the provisions of section 61 apply to empower the Court to impose a term of imprisonment on that person in default of compliance with the order.

### **Discharge of pecuniary penalty orders**

**65.** A pecuniary penalty order is discharged

- (a) if the conviction for corruption or corruption related offence on the basis of which the order was made is quashed and another conviction for corruption or corruption related offence is not substituted; or
- (b) by payment of the amount due to satisfy the order.

### *Production Order*

### **Production order on application**

**66.** (1) A Court shall make a production order on an application made by the Special Prosecutor.

(2) The period stated in a production order is a period of seven days after the day on which the order is made, unless it appears to the Court by which the order is made that a longer or shorter period would be appropriate in the particular circumstances.

### **Requirements for making a production order**

**67.** A production order is made, where there is reasonable ground to suspect that the person specified in the application for the order as being subject to the investigation

- (a) has benefited from the commission of corruption or corruption related offence, in the case of an investigation pending confiscation; or
- (b) is suspected of having committed or committing corruption or a corruption related offence.

### *Realisation of Property*

#### **Realisation of property**

**68.** (1) Where a pecuniary penalty order is made, not discharged and not subject to an appeal, the Court shall, on an application by the Special Prosecutor,

- (a) direct the Special Prosecutor to manage the property;
- (b) empower the Special Prosecutor to take possession of the realisable property subject to the conditions specified by the Court;
- (c) order a person who has possession of the realisable property to give possession of the property to the Special Prosecutor;
- (d) empower the Special Prosecutor to dispose of the realisable property in a manner as directed by the Court; or
- (e) order a person who holds an interest in the property to make payment to the Special Prosecutor in respect of a beneficial interest held by the respondent or the recipient of a gift specified in this Act as the Court shall direct.

(2) The Court shall transfer, grant or extinguish the interest in the property on payment being made under paragraph (e) of subsection (1).

(3) The Court shall give a person who holds interest in the property reasonable opportunity to make representations to the Court before making an order under paragraphs (b), (c), (d) or (e) of subsection (1) and also under subsection (2).

## **Utilisation of proceeds of realisable property**

**69.** (1) The Court shall direct that forty percent of the amount realised be paid to the Office to be applied to defray the expenses of the Office.

(2) The Court shall direct the Special Prosecutor to pay thirty percent of the remaining amount for the benefit of an institution of relevance to the action after full satisfaction of payment required under subsection (1).

(3) The Special Prosecutor shall, after payment is made under subsection (2), and pay the rest into the Consolidated Fund.

## **Insolvency**

**70.** The Insolvency Act, 2006 (Act 708) does not apply to property which is subject to this Act.

## **Winding up of company holding realisable property**

**71.** (1) Where realisable property is held by a company and an order for the winding up of the company is made or a resolution is passed by the company for its voluntary winding up, the functions of the liquidator shall not be performed in relation to

- (a) the property if the property is subject to a freezing order made before the order or resolution for winding up was made or passed; or
- (b) the proceeds of the property realised and in the hands of a receiver.

(2) Where, in the case of a company, an order is made or a resolution is passed, the powers conferred on the Court to grant a freezing order shall not be exercised in relation to realisable property held by the company in relation to which the functions of the liquidator may be performed to

- (a) inhibit the liquidator from performing those functions to distribute the property held by the company to the company's creditors; or
- (b) prevent the payment out of the property of expenses, including the remuneration of the liquidator properly incurred in the winding up in respect of the property.

- (3) Subsection (2) does not affect the enforcement of a charging order
- (a) made before the order or resolution for winding up was made or passed; or
  - (b) on property which was subject to a freezing order at the relevant time.

(4) Nothing in the Companies Act, 1963 (Act 179) shall restrict or enable the restriction of the exercise of the powers conferred on the Court by this Act in relation to companies.

(5) In this section, “liquidator” includes a provisional liquidator under the Companies Act, 1963 (Act 179).

#### *Miscellaneous Provisions*

### **Plea bargaining**

**72.** (1) Where a person is charged with a corruption or corruption related offence under this Act, the accused person may inform the Special Prosecutor whether the accused person admits the offence and is willing to make restitution of the proceeds realised from the commission of the offence.

(2) Where an accused person makes an offer of restitution, the Special Prosecutor shall consider if the offer is acceptable to the prosecution.

(3) If the offer is not acceptable to the prosecution, the case before the Court shall proceed.

(4) If the offer is acceptable to the prosecution, the Special Prosecutor shall in the presence of the accused person, inform the Court which shall consider if the offer of restitution is satisfactory.

(5) Where the Court considers the offer to be satisfactory, the Court shall accept a plea of guilty from the accused person and convict the accused person on that plea, and instead of passing sentence on the accused person make an order for the accused person to make restitution.

(6) An order of the Court under subsection (5) is subject to the conditions directed by the Court.

(7) Where a person convicted under this section defaults in the payment of the money required of that person under this section or fails to fulfil a condition imposed by the Court under subsection (6), the Court shall pass a custodial sentence on the accused person.

### **Protection of witness**

**73.** (1) The Special Prosecutor shall take necessary and reasonable steps to protect the safety and welfare of a witness.

(2) A person is a protected person for the purpose of this Act if that person qualifies for protection

- (a) by virtue of being related to a witness;
- (b) on account of a testimony given by a witness; or
- (c) for any other reason which the Special Prosecutor may consider sufficient.

### **Collaboration with public agencies**

**74.** (1) The Office may conduct investigations in collaboration with public agencies.

(2) An officer of a public agency shall co-operate with officers of the Office in the performance of functions under this Act.

(3) A public officer who refuses or fails without reasonable cause to co-operate with an authorised officer commits an offence and is liable on summary conviction to a fine of not less than fifty penalty units and not more than one hundred penalty units or to a term of imprisonment of not less than three months and not more than six months or to both.

### **Confidentiality**

**75.** (1) An authorised officer who receives information in the performance of functions under this Act shall not

- (a) communicate the information to an unauthorised person; or

- (b) disclose the personal details of a person who has given information to a third person without authority.

(2) An authorised officer who contravenes subsection (1), commits an offence and is liable on summary conviction to a fine of not less two hundred and fifty penalty units and not more than five hundred penalty units or to a term of imprisonment of not less one year and not more than two years or to both.

## **Regulations**

**76.** The Minister may, in consultation with the Board, by legislative instrument, make Regulations to

- (a) prescribe the manner for tracing tainted property;
- (b) prescribe the procedure for declaration of property and income;
- (c) prescribe the procedure for the seizure of tainted property;
- (d) prescribe the procedure for the management of assets seized under this Act;
- (e) prescribe the procedure for the management of assets in respect of which a freezing order has been issued under this Act;
- (f) prescribe the procedure for confiscation and pecuniary penalty orders;
- (g) prescribe the procedure for the submission of complaints;
- (h) regulate the management of seized, restrained or confiscated assets;
- (i) regulate the disposal of assets under this Act;
- (j) prescribe the procedure for filing complaints with the Office;
- (k) prescribe the procedure for public reporting in respect of corruption cases handled and convictions secured; and
- (l) generally for the effective implementation of this Act.

## Interpretation

77. In this Act, unless the context otherwise requires,

“authorised officer” means an officer of the Office or any public officer authorised by law to exercise police powers;

“communication” means any transmission, emission or reception of signs, signals, writing, images, sounds or intelligence of any nature through any communication or computer system;

“competent authorities” include law enforcement agencies, the Financial Intelligence Centre, Economic and Organised Crime Office, Prosecutions Divisions of the Attorney-General’s Office and other relevant public agencies that the Office may determine;

“confiscation” means the permanent deprivation of funds or other assets by order of a competent authority or Court;

“corruption and corruption related offences” means offences under

(a) sections 146, 151, 179C, 239, 252, 253, 254, 256, 258 and 260 of the Criminal Offences Act, 1960 (Act 29);

(b) section 92 (2) of the Public Procurement Act, 2003 (Act 663); and

(c) existent offences under enactments arising out of or consequent to offences referred to in paragraphs (a) and (b);

“Court” means High Court or Circuit Court;

“courier service” means a service for the receipt and delivery of correspondence, items of value or both, such as parcels and packets, for which a postage stamp is not required;

“deriving benefit” means benefit derived or obtained by a person or otherwise accruing to another person at the request or direction of the first person;

“gift” includes a transfer of property by a person to another person directly or indirectly before or after the commission of corruption or corruption related

offence by the first person for a consideration the value of which is significantly less than the value of the consideration provided by the first person, and to the extent of the difference between the market value of the property transferred and the consideration provided by the transferee;

“institution of relevance” means the institutions that provide intelligence or support in the investigation or prosecution of cases or forfeiture of assets;

“interest” in relation to property, means

- (a) a legal or equitable estate or interest in the property, or
- (b) a right, power or privilege in connection with the property;

“living expenses” include provision for food, clothing, utilities, school fees and medical expenses;

“majority of all the members of Parliament” means more than one-half of all the members of Parliament.

“Minister” means the Attorney-General and Minister responsible for Justice;

“Office” means the Office of the Special Prosecutor established under section 1;

“pecuniary penalty” means monetary fine imposed and collected by a court of competent jurisdiction;

“police officer” means a policeman who is not below the rank of Assistant Superintendent of Police;

“politically exposed person” includes

- (a) a person who is or has been entrusted with a prominent public function in this country, a foreign country or an international organisation including
  - (i) senior political party official, government, judicial or military official;
  - (ii) a person who is or has been an executive in a foreign country of a state owned company;

(iii) senior political party official in a foreign country; and

(b) an immediate family member or close associate of a person referred to in paragraph (a);

“post” means a system for the collection, despatch or conveyance of postal articles;

“postal articles” include letters, postcards, reply postcards, lettercards, newspapers, books, packets, printed paper, pattern or sample packet, small packet or parcel and every other packet article when in course of conveyance by post and includes a telegram when conveyed by post;

“postal service” means any service licensed to be rendered under the Postal and Courier Services Regulatory Commission Act, 2003 (Act 649);

“premises” includes any house, building, structure, tent, caravan, ship, boat, aircraft and mechanically propelled vehicle;

“property” means assets of any kind situated in the country or elsewhere whether movable or immovable, tangible or intangible, legal documents and instruments evidencing title of interest in the assets;

“property of or in the possession or control of a person” includes a gift made by that person;

“public agency” means a body set up by the Government in the public interest with or without an Act of Parliament;

“public debt” means expenditure incurred from the Consolidated Fund, Contingency Fund and other funds established by or under an Act of Parliament;

“public office” includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament;

“public officer” means a person who holds a public office;

“realisable property” includes

- (a) property held by a defendant who has directly or indirectly made a gift caught by this Act,
- (b) property held by a person to whom a defendant has directly or indirectly made a gift caught by this Act, and
- (c) currency;

“record” means recorded information regardless of form or medium created, received and maintained by any institution or individual in the pursuance of the legal obligations or transactions of the institution or individual;

“Republic” means the Republic of Ghana;

“respondent” means the person who is the subject of an application for a confiscation order or pecuniary penalty order;

“security agency” includes the police, Customs Division of the Ghana Revenue Authority, the Immigration Service and the Bureau of National Investigations;

“seizure” means the temporary prohibition of the transfer, conversion, disposition or movement of property or the temporary assumption of the custody or control of property on the basis of a Court order;

“Special Prosecutor” means the person appointed as the Special Prosecutor under section 12;

“tainted property” means property ,

- (a) used in connection with the commission of a serious offence; or
- (b) derived, obtained or realised as a result of the commission of a corruption or corruption related offence;

“trust” includes an executorship, administratorship, guardianship, of children or the office, committee or receiver of the estate of a person with mental disorder or a person incapable of managing that person’s own affairs, a charitable trust, family trust and an organisation; and

“witness” means a person who needs protection from a threat or risk which exists on account of being a person who

- (a) has given or agreed to give, evidence on behalf of the State in proceedings for corruption or corruption related offence under this Act; or
- (b) has made a statement to
  - (i) an authorised officer or a police officer; or
  - (ii) a competent authority, in relation to a corruption or corruption related offence under this Act.

### **Consequential amendments**

**78.** (1) The Economic and Organised Crime Office Act, 2010 (Act 804) is amended in section 74 by the deletion of the words “corruption and bribery” in paragraph (a) of the definition of serious offence.

- (2) The Criminal and Other Offences (Procedure) Act, 1960 (Act 30) is amended in
  - (a) sections 54 and 55 by the insertion after “Attorney-General” of “or Special Prosecutor” wherever it appears; and
  - (b) section 54 by the insertion of a new subsection (2A) as follows:

“(2A) Where the Special Prosecutor enters a nolle prosequi under subsection (1), the Special Prosecutor shall state reasons for doing so.”.

### **Transitional provisions**

**79.** (1) The Attorney-General may, on the coming into force of this Act, authorise the Office of the Special Prosecutor to handle any investigation or prosecution in relation to corruption or a corruption related offence being handled by the

- (a) the Economic and Organised Crime Office established by the Economic and Organised Crime Office Act, 2010 (Act 804);

(b) the Prosecutions Division of the Attorney-General's Office; or

(c) public prosecutors appointed under section 56 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30).

(2) Any seed money that may accrue to the Office on the coming into force of this Act, shall be transferred into the account of the Office.

**SCHEDULE**

*(sections 12 (9) and 15 (8))*

**THE OATH OF SECRECY**

I,.....holding the office of.....do (in the name of the Almighty God swear) (solemnly affirm) that I will not directly or indirectly communicate or reveal to any person any matter which shall be brought under my consideration or shall come to my knowledge in the discharge of my official duties except as may be required for the discharge of my official duties or as may be specially permitted by law. (So help me God).

To be sworn before the President, or such other person as the President may designate.