

Understanding the Prevention & Combating of

CORRUPT ACTIVITIES ACT



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Foreword

The National Anti-Corruption Forum (NACF) is proud to publish this guide to the Prevention and Combating of Corrupt Activities Act, Act no. 12 of 2004.

Legislation all over the world is written in traditional legal language which the ordinary person in the street finds difficult to understand. The Anti-Corruption Act is no exception. It is for this reason that the NACF decided to “popularize” the Act by simplifying it both in terms of language and through the use of illustrations.

Corruption is an enemy of development as it limits our ability to fight poverty, negatively affects our economic development, damages social values and undermines democracy and good governance. Hence, every effort to strengthen measures to prevent and combat corruption is of paramount importance. It is therefore hoped that through the promotion of the understanding of this Act, all South Africans will know what their rights and obligations are in respect of the reporting of corruption, thereby helping to protect the scarce resources of our country. This is especially significant if we realize the extent of poverty which exists in our country, as well as the development which still needs to take place.

It is vital to understand that our Bill of Rights is the cornerstone of our democracy. It enshrines the rights of all people and affirms the democratic values of human dignity, equality and freedom. Section 9(1) of the Bill of Rights provides that: “Everyone is equal before the law and has the right to equal protection and benefit of the law”.

We sincerely hope that this guide will achieve exactly that: equal benefits for all through reporting of corruption to the appropriate authorities, thereby promoting honesty and integrity in a young democracy, which in turn will lead to better and more effective service delivery for all.

MINISTER G.J. FRASER-MOLEKETI

CHAIRPERSON OF THE NATIONAL ANTI-CORRUPTION FORUM

Introduction

1. What is this booklet about?

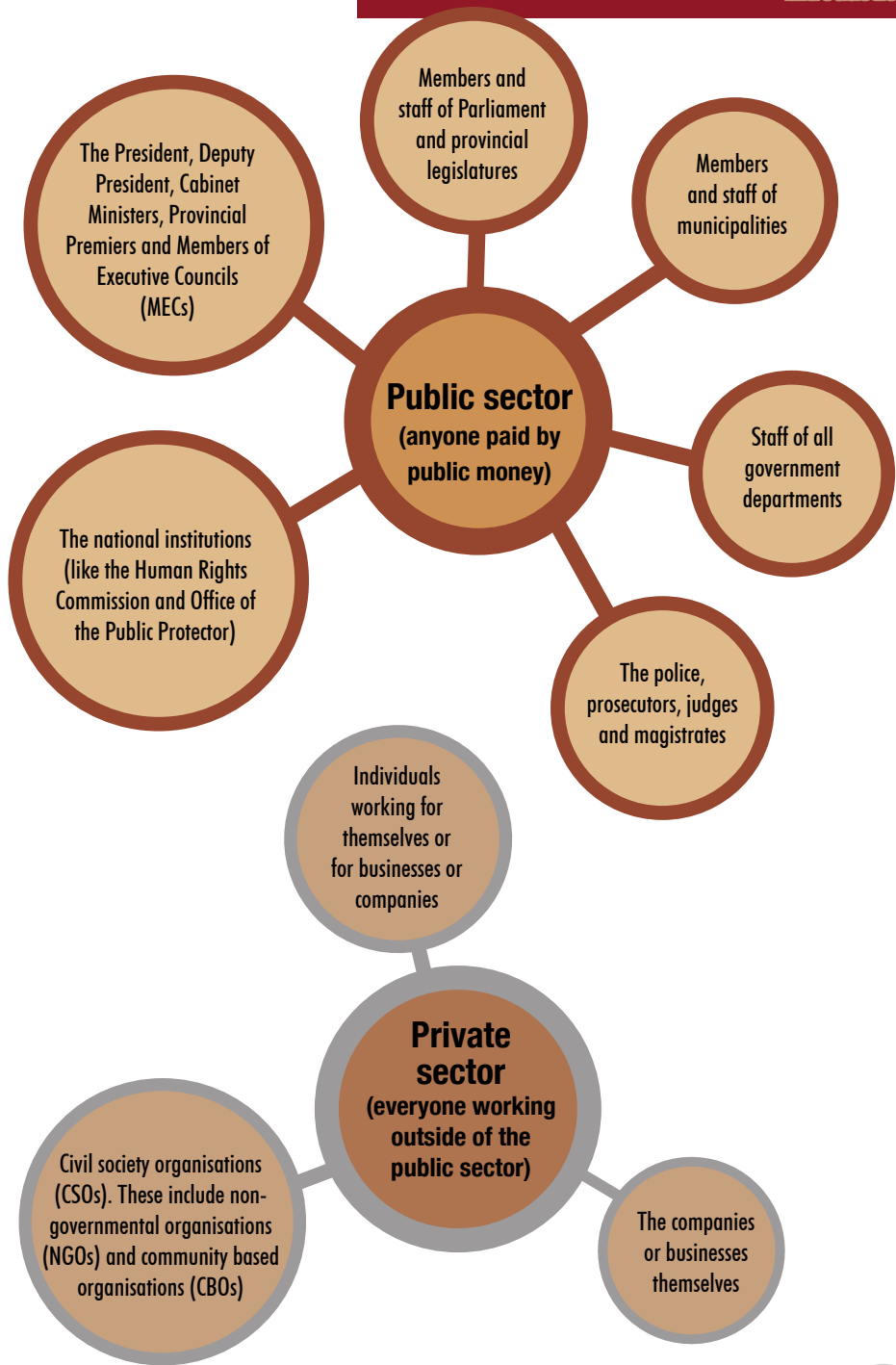
This booklet explains the Prevention and Combating of Corrupt Activities Act of 2004 (which we usually call ‘the Act’). It forms part of the government’s strategy to stop corruption and has been written for:

- * Members of the public sector.
- * Members of the private sector (businesses).
- * Members of the public.
- * Anyone doing training on the Act.

2. What is the Prevention & Combating of Corrupt Activities Act?

An ‘Act’ is a law that has been passed by Parliament. As its name suggests, the Prevention and Combating of Corrupt Activities Act aims to prevent and fight corruption in government and in the private sector. The Act was written to:

- * Strengthen measures to prevent and combat corruption and corrupt activities.
- * Create the crime of corruption and related crimes.
- * Deal with investigations into corruption.
- * Create a register to prevent people who use corruption from getting government contracts or tenders.
- * Require people in positions of authority to report corruption over R100 000.
- * Prevent people in South Africa from using corruption to influence members of the public sector of other countries.



The Act was also written to bring our laws in line with the United Nations (UN) Convention Against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption. South Africa has agreed to follow both of these Conventions. Amongst other things, these Conventions require countries that sign it to:

- * Take steps to prevent corruption.
- * Create crimes to cover a wide range of corrupt activities.
- * Co-operate with other countries to stop corruption.
- * Impose strict penalties for corruption.



THE UN/AU CONVENTIONS AGAINST CORRUPTION

One of the tasks of the United Nations is to draw up 'international laws' (usually called 'conventions'). Countries are asked to show that they will follow these laws by 'ratifying' them. The UN adopted the Convention Against Corruption in October 2003. It was ratified by South Africa in November 2004 and came into force in December 2005. The AU Convention on Preventing and Combating Corruption was adopted in July 2003. It was signed by South Africa in March 2004 and ratified in November 2005. This convention has not yet come into force.

3. What is corruption? The legal definition in the Act

One of the main things that the Act does is to make certain actions crimes (some of which might not have been regarded as crimes in the past). To do this, it has to 'define' or explain what the crime of corruption is. This is known as the 'legal definition' of corruption, which might be different to what you understand the word 'corruption' to mean.



QUICK QUIZ

Is either of the following 'corruption'?



- An employee who steals money from their department or the company they work for?



- Someone who changes their identity document to make it look as if they are old enough to get a state pension?

Although many people might call the above examples 'corruption', these do not fit the **legal definition** of corruption in the Act. Instead, they are examples of **theft** and **fraud**.

- **Theft** is the crime of stealing.
- **Fraud** is the crime of deliberately misleading or deceiving someone to cause that person financial loss or other harm.

Instead, the Act sets out a range of activities that are regarded as corruption – all of which have the following in common: Someone (A) gives (or offers to give) someone in a position of power (B) something to use their power, illegally and unfairly, to the advantage of A (or anyone else).

The person offering to give or do something in return for something is always guilty of corruption. And *both* parties (A and B) will be guilty of corruption if the offer is accepted.



Mr van der Merwe sells computers. He hears that a company wants to buy 20 computers. He finds out that Ms Mkhize is the person at the company who will decide which computers to buy. Mr van der Merwe calls Ms Mkhize and tells her that, if she buys the computers from him, he will 'donate' R500 to her for each computer she buys.

By making such an offer, Mr van der Merwe is guilty of corruption. If Ms Mkhize agrees, both she and Mr van der Merwe will be guilty of corruption.

The money or favour that is offered does not have to be for one of the parties involved.



EXAMPLE

Ms Meyer works for Acme Car Company. Her employer asks her to find six, cheap second hand cars. She goes to Mr. Ngonyama, whose cars are more expensive than average. They agree that Ms Meyer will influence her boss to buy his expensive cars if Mr Ngonyama makes a donation to her daughter's school. They don't tell Ms Meyer's boss what they have agreed.

Even though Ms Meyer doesn't get a direct benefit, both she and Mr Ngonyama are guilty of corruption.

It is also a crime for a person to 'offer to accept' something to use their position for someone else's advantage.



EXAMPLE

Constable Dube, a police officer, sees Ms Jacobs driving without a seat belt. He pulls her over and tells her that he could give her a large fine – but if she is prepared to pay him R50, he will let her go. Constable Dube is offering to accept a bribe – and he is therefore guilty of corruption.

If Ms Jacobs accepts the offer, then she too will be guilty of corruption.

In other words, merely *offering* to do something or to accept something is corruption – even if the offer is not accepted.

Lastly, it is important to note that there is no need for money to be involved for the crime of corruption to be committed. In fact, the Act lists many kinds of payment and favours that can give rise to the crime of corruption - such as giving someone a job, giving a donation (that need not be money) and releasing someone from a debt that they may owe if they do what the other person wants.



4. Why is corruption a problem?

Corruption causes problems for individuals, for groups of people, for communities and for the country as a whole.

- | | |
|--|--|
| <ul style="list-style-type: none"> • Corruption undermines human rights like the right to equality and to freedom of trade and occupation. • When people pay bribes to get things that they are not entitled to (like old age pensions), there is less money available for people who really need it. • Corruption increases the cost of public service. As a result there is less money for housing, health care, education or other services. • Business costs, and costs to consumers, increase • Corruption can lead to people getting promoted who do not deserve to be. | <ul style="list-style-type: none"> • Criminals get away with their crimes and more people commit crimes because they know they will get away with it. It also creates a breeding ground for organised crime. • Corruption stops economic development in the country because people from outside will not put their money into such countries. • Because corruption is a crime, corrupt officials have to be prosecuted and perhaps kept in prison, which is expensive and puts an additional burden on the criminal justice system. |
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5. What is the government doing about corruption?

Since the first democratic election in 1994, the government has done many things to prevent corruption and to make sure that those who are guilty of it are punished, including:

The Code of Conduct for Public Servants (1997)

This Code *must* be followed by all public servants - anybody who violates it will be guilty of misconduct.

Amongst other things, the Code says:

Public servants ...	
Must ALWAYS:	Must NEVER:
<ul style="list-style-type: none"> • Act in the best interests of the public. 	<ul style="list-style-type: none"> • Favour friends or relatives or abuse their authority.
<ul style="list-style-type: none"> • Be honest when dealing with public money. 	<ul style="list-style-type: none"> • Use their official position to obtain gifts or benefits.
<ul style="list-style-type: none"> • Report all cases of fraud and corruption to the appropriate authorities. 	<ul style="list-style-type: none"> • Accept any gifts or benefits when offered them as these may be seen as a bribe.

The Promotion of Access to Information Act (2000)

This Act assists people to get information from government and businesses and can be used to check whether corruption has taken place.

The Promotion of Administrative Justice Act (2000)

This Act requires government to follow fair procedures when taking decisions that affect the public or an individual. It gives people the right to request written reasons for decisions they disagree with, which allows them to see whether corruption influenced the decision.

The Protected Disclosures Act (2000)

This Act (often called the ‘Whistleblowers Act’) was passed to encourage employees in both the public and private sector to disclose information about unlawful and irregular behaviour in the workplace. We will look at this Act later in this booklet.

The National Anti-Corruption Forum (2001)

This forum brings government, business and civil society organisations (like NGOs) together to fight corruption in all parts of society. The Forum is also responsible for the *National Anti-Corruption Programme (2005)*, which aims (amongst other things):

- ❖ To encourage everyone to follow the laws dealing with corruption.
- ❖ To help all levels of government discuss how to fight corruption.

- ❖ To conduct anti-corruption programmes in the public and private sectors.

You can visit the forum website on www.nacf.org.za.

The Public Service Anti-Corruption Strategy (2002)

Amongst other things, this strategy aims to:

- ❖ Make sure all types of corruption are covered by the law
- ❖ Make it easier for people to report corruption.
- ❖ Prevent corrupt people and businesses from getting work from government.

The Prevention and Combating of Corrupt Activities Act (2004)

This Act deals with the crime of corruption (in both the public and private sectors) and is what this booklet is about.

National Anti-Corruption Hotline

As part of its efforts to make it easier for people to report corruption in the public service, the government has set up a free 'hotline'. Because the identity of the caller is protected, people can call this number to report corruption without fear.



**You can call the
Anti-Corruption Hotline
on 0800 701 701**

Regional and international co-operation

The government co-operates with countries in the region and internationally to combat corruption. This includes:

- ❖ Co-hosting the 9th International Anti-corruption Conference in 1999.
- ❖ Signing a project agreement with the UN Office on Drugs and Crime to support the national anti-corruption programme (2001).
- ❖ Ratifying various regional and international laws, like the SADC Protocol against Corruption (2003) and the UN Convention Against Corruption (2004).
- ❖ Serving on the project team of the UN Office on Drugs and Crime that is developing guidelines for countries to comply with the UN Convention against Corruption.

The Prevention and Combating of Corrupt Activities Act – Overview

Afrikaans

Die Wet op die Voorkoming en Bestryding van Korrupte Aktiwiteite maak van korrupsie 'n misdad. Dit is van toepassing op enigiemand wat vir die regering werk (soos Ministers, departementele personeel en die polisie), asook mense buite die regering (soos iemand wat vir 'n sakeonderneming werk). Dit is selfs van toepassing op dobbelary en sportgebeure (soos om 'n skeidsregter te betaal om seker te maak dat een span wen).

English

The Prevention and Combating of Corrupt Activities Act makes corruption a crime. It covers anyone working for government (such as Ministers, department staff, and the police) and people outside of government (like someone working for a business). It even covers gambling and sporting events (like paying a referee to make sure one side wins).

TshiVenda

Mulayo wa u Thivhela na u Langa Mishumo ya Vhumbulu u ita uri vhumbulu vhuvhe mulandu. U katela muñwe na muñwe ane a khou shuma muvhusoni (sa Dziminisiṭa, vhashumi vha kha muhasho, na mapholisa) na vathu vhane vha vha nḡḡa ha muvhuso (sa muthu ane a shuma binduni). U katela u gembuḷa na zwa mitambo (sa u badela u tshi khou khwaṭhisedza lurumbu luthihi lu a kunda).

IsiXhosa

UMthetho woThintelo nokuLwa iZenzo zobuQhetseba nobuQhophololo uthetha ukuba ubuqhetseba sisenzo solwaphulo-mthetho. Ubandakanya nabani osebenzela urhulumente (njengabaPhathiswa, abasebenzi besebe, kunye namapolisa) kunye nabantu abangaphandle kurhulumente (njengabantu abasebenza kumashishini abucala). Ukwabandakanya ungcakazo nezemidlalo (njengokuhlawula usompempe ukuze aqinisekise ukuba kuwina icala lakho).

Xitsonga

Nawu wo Sivela no Lwisana na Migingiriko ya Vukungundzwana wu endla leswaku vukungundzwana ku va xidyoho. Wu katsa un'wana na un'wana la tirhaka eka mfumo (ku fana na Vaholobye, vatirhi va ndzawulo, na maphorisa) na vanhu lava nga le handle ka mfumo (ku fana na loyi a tirhaka eka bindzu). Wu tlhela wu angarhela ku gembula na mintlangu (ku fana no hakela n'watipempe ku vona leswaku xipanu xin'we xa hlula).



IsiNdebele

UmThetho wokuKhandelwa kanye nokulwa nemiSebenzi yobuKholakali wenza ubukholakali kube ligadango lobulelesi. LomThetho ufaka woke umuntu osebenzela urhulumende (njengaboNgqongqotjhe, abasebenzi bomNyango, kanye namapholisa) kanye nalowo ongasebenzeli urhulumende (njengomuntu osebenzela ibhizinisi). LomThetho ufaka ngitjhi nokugembula kanye nezemidlalo (njengokufumbathisa usofengwana ukuqinisekisa bona isiqhema sakho sizakuthumba).



Sepedi

Molao wa Thibelo le Phedišo ya Ditiro tša Bomenetša o dira gore bomenetša e be bosenyi. O akaretša motho yo mongwe le yo mongwe yoo a šomelago mmušo (bjalo ka Ditona, badiredi ba kgoro, le maphodisa) le batho bao ba sa šomelego mmušo (bjalo ka motho yoo a šomelago kgwebo). E akaretša gape le go kempola le ditiro tša dipapadi (go swana le go lefela malokwana go kgonthišiša gore lehlakore le tee le a fenyā).

Siswati

Umtsetfo wekuVimbela kanye nekuLwa neNkhohlakalo wenta inkohlakalo kutsi ibe licala. Ufaka nobe ngubani loseebentela hulumende (njengeriNdvuna, sitafu seliTiko, kanye nemaphoyisa) kanye nebantfu labangaphandle kwahulumende (njengemuntfu loseebentela ibhizinisi). Futsi ufaka ekhatsi kugembula kanye nemidlalo (njengekukhokhela nomphemphe kucinisekisa kutsi lelinye licembu liyawina).

IsiZulu

Umthetho Wokuvimbela Nokulwa Nemisebenzi Yenkhohlakalo wenza ukuthi inkohlakalo ibe ubugebengu. Ubhekela noma ubani osebenza kuhulumeni (njengoNgqongqoshe, abasebenzi bomnyango, kanye namaphoyisa) kanye nabantu abangaphandle kukahulumeni (njengomuntu osebenzela ibhizinisi). Ubhekela ngisho izehlakalo zokugembula nezemidlalo (njengokukhokhela unompempe ukuze aqinisekise ukuthi olunye uhlangothi luyanqoba).

Sesotho

Molao wa Thibelo le Twants'ho ya Diketso tsa Bobodu o etsa bobodu hore e be tlolo ya molao. O kenyelletsa motho ofe kapa ofe ya sebeletsang mmuso (jwalo ka Matona, basebetsi ba lefapha le mapolesa) le batho ba ka ntle ho mmuso (jwalo ka motho ya sebeletsang kgwebo). O kenyelletsa hape le ho kempola le diketsahalo tsa dipapadi (tse jwalo ka ho lefa moletsaphala hore a etse bonnete ba hore sehlopha se seng se a fenyā).

Setswana

Molao wa Thibelo le Twants'ho ya Ditiro tsa Bosenyi o dira gore bosenyi e nne molato wa tlolomolao. O akaretsa mongwe le mongwe yo o direlang puso (jaaka Matona, badiri ba lefapha, le mapodisi) le batho ba ba kwa ntle ga puso (jaaka mongwe yo o direlang kgwebo). E bile o akaretsa go leka lesego kana go kembola le diiragalo tsa metshameko (jaaka go duela motsereganyamotshameko go netefatsa gore lehlakore lengwe le tle le fenyā).

Afrikaans

English

The Act sets out different types of corruption, all very similar - someone gives (or offers to give) someone something to use their power, illegally and unfairly, to get an advantage for themselves – or for anybody else.

The person making the offer is always guilty of corruption. And both parties will be guilty of corruption if the offer is accepted.

Die Wet sit verskillende soorte korrupsie uiteen – almal baie eenders. Iemand gee vir iemand anders iets (of bied iemand iets aan) om hulle mag onregmatig en op onregverdigde wyse te gebruik om vir hulself of iemand anders 'n voordeel te bekom.

Die persoon wat die aanbod maak, is altyd skuldig aan korrupsie. En indien die aanbod aanvaar word, sal albei partye aan korrupsie skuldig wees.

IsiXhosa

Umthetho ubeka elubala iindidi ezahlukeneyo zobuqhetseba, zonke zibufana kakhulu – umntu unika (okanye uvuma ukunika) omnye umntu into ukusebenzisa amagunya akhe ngokungekho mthethweni nangendlela edlelelayo, ukufuna ukudlelela omnye umntu ukuze kuxhamle yena – okanye nabani na omnye. Umntu onikezela ngesinyobo unetyala lobuqhetseba. Omabini amaqela abandakanyekayo anetyala lobuqhetseba nobuqhophololo xa ngaba isinyobo eso samkelwe ngomnye wabo.

TshiVenda

Mulayo u topola tshaka dzo fhambanana dza vhumbulu, dzotho dzi a fana vhukuma – muṅwe muthu u nea (kana a ṭoda u nea) muṅwe tshithu u itela uri a shumise maanda awe, zwi si ho mulayoni kana nga ṅdila i si yone, u itela uri a vhe kha sia [avhudi] ene mune – kana u itela munwe muthu.



Xitsonga

Nawu wu hlamusela ku hambana ka tinxaka ta vukungdzwana, leti laveke ku fana – un'wana u nyika (kumbe a tiyimisela ku nyika) munhu un'wana swin'wana ku tirhisa matimba ya vona; hi ndlela yo ka yi nga ri enawini no ka yi nga ri kahle, ku va va pfuniwa hi ku olova – kumbe ku pfuna un'wana. Munhu la nyikaka un'wana swin'wana u na nandzu wa vukungdzwana nkarhi hinkwawo. Naswona mathhelo hi mambirhi ya ta va na nandzu wa vukungdzwana loko va swi amukela.

Siswati

Lomtsefho ubeka tihhlobo letehlukene tetinkhohlakalo, kantsi tonkhe tiyafana – umuntfu uniketa (nobe wetsembisa kuniketa) lomunye intfo letsite kute basebentise emandla abo, ngalokungekho emtsetfweni, futsi lokungenabulungiswa, kute kutsi batfole labakufunako – nobe batfolele lomunye umuntfu. Lomuntfu lowenta sitsembiso utawufolakala anelicala lenkhohlakalo. Kantsi lamacembu omabili atawufolakala anelicala lenkhohlakalo uma ngabe lesetsembiso semukeliwe.

IsiNdebele

LomThetho uhlathulula iinhlalo ezahlukeneko zobukhohlakali, ezipheze zikhambisane – umuntu ufumbathisa (namkha uthembisa ukufumbathisa) omunye okuthileko khona lowo onamandla azakusebenzisa amandlakhe, ngokungekho emthethweni begodu ngokungakalungi, ukuzuzisa umfumbathisi nanyana umuntu amkhetheleko.

Umuntu ofumbathisako uhlala anomlandu wobukhohlakali. Begodu-ke bobabili (zombili iinqhemezi) bazakuba mlandu nakwenzeka bona kuba khona ukwemkelwa kokufunjathiswa okwenzekako.

IsiZulu

Umntetho ubeka izinhlalo ezahlukeno zenkohlakalo, zonke ziyafana – umuntu onikeza (noma onikela ngokunikeza) omunye okuthile ukuze basebenzise amandla abo, ngokungekho emthethweni nangendlela engenaqiniso, ukuze basizakale bona uqobo – noma benzela noma ubani omunye. Umuntu ohlala enza isithembiso sokunikezela okuthile uhlala njalo enecala lenkohlakalo. Kanti bobabili laba bantu bazoba necala uma ngabe umnikelo wamukeliwe.

Sepedi

Molao o bolela ka ga mehuta ye e fapanego ya bomenetša, yeo ka moka e swanago kudu – motho o a fa (goba o ithaopa go fa) motho yo mongwe se itšego go šomiša maatla a gagwe, e sego ka molao le ka moo go sa lokago, go ikhola goba go holela motho yo mongwe

Motho yo a fanago ka mpho o tla bonwa molato wa bomenetša. Gomme batho bao ba amegago ka bobedi ba tla latofatšwa ka bomenetša ge e le gore mpho e a amogelwa.

Setswana

Molao kana Act o supa mefuta e e farologaneng ya bosenyi, e yotlhe e tshwanang thata – mongwe o naya (kgotsa o solofetsa go naya) mongwe sengwe gore a dirise diithata tsa gagwe e se ka fa molaong le gone e se ka tekano gore monei yoo kgotsa mongwe o sele a tle a bone molemo kana mosola.

Motho yo o solofetsang go naya o na le molato wa bosenyi. E bile batho boo babedi ba na le molato wa bosenyi fa kabo eo e ka amogelwa.

Sesotho

Molao o bua ka mefuta e fapaneng ya bobodu, eo yohle e tshwanang haholo – motho e mong a fanang (kapa o ithaopa ho fana) ka ntho e itseng mothong e mong bakeng sa ho sebedisa matla a hae, ka ho tlola molao le ka tselo e sa lokang, ho iphumanela monyetla o itseng – kapa nakeng sa motho e mong.

Motho ya ithaopang ho fana ka ntho ka mehla o fumanwa a le molato wa bobodu. Mme ka bobedi batho bana ba tla ba le molato wa bobodu haebe motho eo o amohela seo ho fanwang ka sona ke motho e mong.

English

The crime of corruption often involves money. But other types of 'payment' are also not allowed - like donations, gifts and giving someone a job.

TshiVenda

Mulandu wa vhumbulu kanzhi u katela tshelede. Fhedzi dziñwe tshaka dza 'mbadelo' na dzone a dzi ngo tendelwa – sa zwifhiwa, dzimpho na u fha muñwe muthu mushumo.

IsiXhosa

Ulwaphulo-mithetho lobuqhetseba ludla ngokubandakanya imali. Kodwa nezinye iindidi 'zentlawulo' azivumelekanga – njengamalizo, izipho kunye nokunika umntu umsebenzi.

Xitsonga

Xidyoho xa vukungundzwana xi tala ku va na mali exikarhi. Kambe tinxaka tin'wana ta 'tihakelo' a ti pfumeleriwi – ku fana na minyikelo, tinyiko no nyika un'wana ntirho.

Afrikaans

Geld is dikwels by die misdaad van korrupsie betrokke. Maar ander soorte 'betaling' is ook verbode – soos donasies, geskenke en om iemand 'n pos te gee.



Siswati

Licala lenkhohlakalo livame kufaka imali. Kodwa letinye tihlobo 'tenkhokhelo' nato atikavunyelwa – njengeminikelo, tiphwiwo kanye nekuniketa lomunye umuntu umsebenzi.

IsiNdebele

Ubulelesi bobukhohlakali kanengi bufaka phakathi imali. Kodwana zikhona nezinye iindlela “zokubhadela”, nazo ezingakavumeleki- ezifana neminikelo, izipho kanye nokufakana emsebenzini.



Setswana

Molato wa bosenyi gantsi o amana le tšhelete. Mme mefuta e mengwe ya 'tuelo' le yona e a ilelwa — jaaka dikatso, dimpho le go fa mongwe tiro.

IsiZulu

Ubugebengu benkohlakalo kaningi bubandakanya imali. Kodwa ezinye izinhlobo 'zenkokhelo' nazo azemukelekile- njengeminikelo, izipho kanye nokunikeza umuntu umsebenzi.

Sepedi

Bosenyi bja bomenetša gantši bo akaretša tšhelete. Eupša mehuta ye mengwe ya 'ditefelo' le yona ga e a dumelwa — bjalo ka dineo, dimpho le go fa motho yo mongwe mošomo.

Sesotho

Tlolo ya molao ya bobodu hangata e kenyelletsa tšhelete. Empa mefuta e meng ya 'tefello' le yona ha ya dumelwa — jwalo ka dineo, dimpho le ho fa motho e mong mosebetsi.

English

People found guilty of corruption face heavy fines or long jail sentences. They may also be refused future work from government. And people in authority (like a municipal manager or a bank manager) must report corruption and other crimes listed in the Act involving R100 000 or more to the police. If they don't, they will be guilty of a crime.

IsiXhosa

Abantu ababandakanyeka kulwaphulo-mthetho olungobuqhophololo nobuqhetseba bajamelene nezohlwayo eziqatha okanye ukugwetyelwa ukudilikelwa yijele. Banokungaqheshwa kwakhona kwarhulumente kwixa elizayo. Kunye nabantu abasemagunyeni (njengabaphathi bakamasipala okanye umlawuli webhanki) kufuneka babuxele ubuqhetseba nolunye ulwaphulo-mthetho ezibandakanya R100 000 okanye ngaphezulu emapoliseni. Xa besilela ukwenza oko, basemngciphekweni wokufunyaniswa benetyala lolwaphulo-mthetho.

Afrikaans

Mense wat skuldig bevind word aan korrupsie staar swaar boetes of lang tronkstraf in die gesig. Die regering mag ook in die toekoms weier om hulle in diens te neem. En mense in magsposisies (soos 'n munisipale bestuurder of bankbestuurder) moet korrupsie en ander misdade in die Wet uiteengesit waarby R100 000 of meer betrokke is, by die polisie aanmeld. Indien hulle versuim om dit te doen, sal hulle skuldig wees aan 'n misdad.

TshiVenda

Vhathu vhane vha wanala vhe na mulandu va vhumbulu vha livhana na mulifho muhulwane vhukuma kana zwigwevho zwilapfu zwa dzhele. Vha nga kha di hanelwa u shuma hafhu tshifhingani tshidaho muvhusoni. Nahone vhathu vhane vha vha mulayoni (sa mulanguli wa ha masipala kana mulanguli wa bannga) vha tea u vhiga vhumbulu na minwe milandu yo bulwaho kha Mulayo ine ya katela R100 000 kana u fhira mapholisani. Arali vha sa ita nga uralo vha do vhonwa mulandu wa vhugevhenga.



Kitsonga

Vanhu lava kumiwaka va ri na nandzu va langutane na ndziho lowukulu kumbe xigwevo xo tshama exitokisini nkarhi wo leha. Va nga aleriwa ku tirha eka mfumo eka nkarhi lowu taka. Naswona vanhu lava nga le ka vulawuri (ku fana na mininjhere wa mhasipala kumbe mininjhere wa bangi) va fanele ku vika vukungundzwana na vugevenga byin'wana lebyi longoloxiweke eka Nawu lebyi khumbhaka R100 000 kumbe ku tlula eka maphorisa. Loko va nga swi endli va ta voniwa nandzu.

IsiNdebele

Abantu abatholakale bamlandu ngobukhohlakali baqalana nokuhlululwa budisi nanyana badose isikhathi eside ejele. Bangabuye balelwe bona basebenze kurhulumente esikhathini esizako. Begodu abantu abaphetheko (njengomphathi kamasipala nanyana umphathi webhanka) bafanele bona babike emapholiseni ubukhohlakali kanye nobunye ubulelesi oburheliswe kilomThetho, obubandakanya imali engaba yi- R100 000 nanyana ngaphezulu. Nangabe abenzi njalo, bazakubekwa umlandu nabo.

**Sepedi**

Batho bao ba bonwago molato wa bomenetša ba lebane ke tefišo ye boima goba kahlolo ye telele kgolegong. Ba ka ganetšwa gape le mešomo ya išago go tšwa go mmušo. Gomme batho bao lego bolaoding (bjalo ka molaodi wa pank) ba swanetše go bega bomenetša bjoo le melato ye mengwe yeo e ngwadilwego ka Molaong ya go akaretša tšhelete ya go lekana R100 000 goba go feta maphodiseng. Ge ba sa dire bjalo, ba tla ba le molato wa bosenyi.

Siswati

Bantfu labatfolwe banelicala lenkhohlakalo bawuhlawuliswa kamatima nobe baniketwe tigwebo letidze. Futsi kungenteka bangavunyelwa kusebenta kuhulumende esikhatsini lesitako. Futsi bantfu labasemtsetfweni (njengemenenja yamasipala kumbe imenenja yelibhang) kumele babike inkhohlakalo kanye nalobunye bugebengu lobubalwe kuMtsetfo lobufaka imali lengu-R100 000 nobe ngetulu emaphoyiseni. Uma bangakweni loku bawutfolakala banelicala.

IsiZulu

Abantu abatholwe benecala lenkhohlakalo babhekana nenhlawulo enzima noma isigwebo sokuhlala ejele isikhathi eside. Kungenzeka benqatshelwe ukusebenza kuhulumeni esikhathini esizayo. Kanti abantu abasemagunyeni (njengomphathi kamasipala noma umphathi webhange) kufanele babike inkhohlakalo nobunye ubugebengu obubalwe eMthethweni obubandakanya imali eyi-R100 000 noma ngaphezulu emaphoyiseni. Uma bengabiki, bayoba necala lobugebengu.

Sesotho

Batho ba fumanwang ba le molato wa bobodu ba tobana le ditefiso tse hodimo haholo kapa ho ahlolelwa ho phela tshankaneng nako e telele. Hape ba ka hanelwa le ho sebeletsa mmuso le nakong e tlang. Mme batho ba leng bolaoding (jwalo ka motsamaisi wa masepala kapa motsamaisi wa banka) ba lokela ho tlaheha bobodu le ditlolo tse ding tsa molao tse boletsweng Molaong tse kenyelletsang R100 000 kapa ka hodimo mapoleseng. Ha ba sa etse jwalo, ba tla ba molato wa tlolo ya molao.

Setswana

Batho ba ba bonwang molato wa bosenyi ba lebanwe ke dituediso tse di boima le katlholelo kgolegelo ya lobaka lo loleele. Puso gape e ka nna ya gana go ba fa tiro mo isagong. Gape batho ba ba rweleng maemo a bothati (jaaka motsamaisi wa masepala kgotsa motsamaisi wa banka) ba tshwanetse go begela mapodisi ka bosenyi jo bo kana ka R100 000 kgotsa go feta le ka ditlolomolao tse dingwe tse di kwadilweng mo Molaong . Fa ba sa dire jalo ba tla nna molato wa tlolomolao.

The Crimes Created by the Act

1. Introduction

The Prevention and Combating of Corrupt Activities Act creates various crimes of corruption in both the public and private sectors. Some of these crimes:

- ❖ Apply to members of both the public and private sector.
- ❖ Deal with the relationship between the public sector and members of the private sector.
- ❖ Deal with the relationship between members of the private sector.
- ❖ Cover things related to corrupt activities – like destroying evidence of corruption.



Remember, relationships between people and between businesses in the private sector also create possibilities for corruption.

2. Crimes that apply to everyone

a. The general crime of corruption

The general crime of corruption applies to *everyone in the private and public sector*. It covers both of the following situations:

1. An employee in the private or public sector offers to use their position to help someone else get what they want in return for money or a favour. In this case:
 - ❖ The employee is guilty of corruption.
 - ❖ If the other person accepts the offer, they will also be guilty of corruption.
2. Someone offers an employee in the private or public sector money or a favour to help them to get something that they want. In this case:
 - ❖ The person making the offer is guilty of corruption.
 - ❖ If the employee accepts the offer, they will also be guilty of corruption.

b. Crimes involving contracts

A contract is an agreement between two parties (such as an agreement between a department and private supplier or between two businesses). The Act makes it a crime *for anyone* to offer or accept money or favours:

- ❖ To influence who gets a contract.
- ❖ To dishonestly fix the price or other money dealt with in the contract.



EXAMPLE

A company needs to contract someone to service its vehicles. Tshepo's Car Works hears about this. They tell Ms Naidoo (who works for the company) that they will pay her R5 000 if she can convince her boss to give them the contract. They promise her another R5 000 if she can convince her boss to make sure that the contract is for at least R150 000.

Both of these offers amount to corruption. If Ms Naidoo agrees to either of them, she will also be guilty.

c. Receiving or offering an unauthorised gratification

This is where employees in either the public or private sectors offer or agree to use their position to illegally give someone a benefit that they are not entitled to.

3. Crimes that deal with the relationship between the private and public sector

a. Crimes involving any public official

- ❖ If *anyone* in the private sector offers a public official money or a favour to give them a benefit (including information or material that they have), they will be guilty of corruption.
- ❖ If the public official agrees, they will both be guilty of corruption.
- ❖ If *any public official* offers to do, or does, something for anyone else in the private sector in return for money or a favour, the public official will be guilty of corruption.
- ❖ If the person or business accepts the offer, they will both be guilty of corruption.



EXAMPLE



Mr Sibiya has applied for a job with ABC International. He wants to know who the other applicants are so that he can find out information to use against them. He offers Ms Bernadie, who works for ABC International, R500 if she will give him the names of the people who have applied for the job. He is guilty of the crime of 'offering an unauthorised benefit'.

If Ms Bernadie agrees, she will be guilty of the crime of 'receiving an unauthorised benefit'.

b. Crimes involving members of legislative bodies

A legislative body is a body set up to pass laws. They are:

- * Parliament
- * Provincial legislatures
- * Municipal Councils

Because their decisions can affect certain businesses, some businesses illegally try to get members of these bodies to decide in their favour. While there is nothing wrong with honestly lobbying for a legislative body to decide in your favour, it is a crime to offer or accept money or favours to do so.



EXAMPLE



Hole-in-One Golf Company wants to build a golf course next to the sea. However, the land is home to a rare type of bird that will be endangered if the golf course is built. In fact, a conservation group has been lobbying the provincial government for some time to have the land declared a nature reserve. They have held demonstrations and have prepared a list

of signatures of people who want the land declared a nature reserve. These actions are all legal.

The provincial legislature is to vote on the issue in the next six weeks. The Hole-in-One Golf Company secretly meets with members of the legislature and offers them free membership if they vote against the nature reserve. The Hole-in-One Golf Company is guilty of corruption – and any members who agree will also be guilty.

c. Crimes involving judges, magistrates and witnesses

- ❖ It is a crime for anyone to offer a magistrate or judge money or favours to decide a case in a particular way.
- ❖ It is a crime for a magistrate or judge to ask for or accept money or favours to decide a case in one side's favour.
- ❖ It is a crime to offer a witness in a case a benefit to get them to testify in your favour.



Sally's Car Hire pays Valley View Cars for five cars. Valley View Cars never deliver the cars. Sally's Car Hire sues Valley View Cars for its money back. The owner of Valley View Cars offers the magistrate hearing the case a case of whisky to decide in their favour. Valley View Cars are guilty of corruption – and if the magistrate accepts the offer, both parties will be guilty.

d. Contracts between the public and private sectors

As we have already seen, the Act makes it a crime to use corruption to get a contract or to influence the price of the contract. The Act also makes it a crime for someone in the private sector who has a contract with government (or who is trying to get one):

- ❖ To do anything dishonest to promote the election of anyone to Parliament, a Provincial Legislature or a Municipal Council; or
- ❖ To influence the result of such an election.



EXAMPLE

Ms Viljoen’s company has a contract with a Municipal Council to collect rubbish on their behalf. The contract is near its end and municipal elections are just around the corner. Ms Viljoen tells a Councillor that she will make sure that he is elected if he agrees to help her get a new contract with her company after the election.

e. Crimes related to tenders

Whenever government spends a large amount of money for goods and services, it must go through a ‘tender’ process. During a tender, people and companies tell government in advance what they will do and what it will cost by submitting documents called ‘tenders’. The government then chooses from amongst these tenders..



NOTE

The tender process has many rules that have to be followed. Anyone responsible for working with tenders must make sure they have a proper and complete understanding of all of these rules.

Because a lot of money is involved, there is obviously a risk of corruption during tenders. For example:

- ❖ Businesses might pay to find out what other companies have quoted.
- ❖ A person on the panel that decides who gets the tender may offer to vote for a certain business if that business pays them a fee.
- ❖ Some businesses make mistakes in their tender documents. When they realise this, they might want to withdraw the tender. However, this is illegal – once a tender is submitted, it may not be withdrawn.

To deal with these problems, the Act makes it a crime to offer or accept money or favours:

- ❖ To award the tender to anyone.
- ❖ For anyone to try to influence the award of the tender to another company or person – for example, by submitting a tender that makes the other company or person's tender look better or cheaper.
- ❖ To withdraw a tender once it has been made.

4. Crimes that apply only to the private sector

Doing business in foreign countries

The Act recognises that South African businesses may try to corrupt officials of foreign governments – for example, to get them to grant the business a licence or contract that it is not entitled to. To prevent this, the Act makes any attempt to unduly influence a foreign official a crime. Even though the official is in a foreign country, the South African person or business that corrupts (or tries to corrupt) them will be prosecuted and sentenced in South Africa.



Vuka Wena Coffee Company imports coffee from the Republic of Lubomba. It has to pay duties and taxes to the Lubomban government. To save money, it offers to pay an official in the Lubomban government R2000 a month if they allow the coffee to leave the country without the duties and taxes having to be paid. The Vuka Wena Coffee Company is guilty of corruption.

5. Crimes that apply only to the public sector

The Act creates at least one crime that only a government employee can commit:

Being a member of a public body and getting or holding a private interest in a contract with that body

Some members of public bodies own, are closely linked to or are members of businesses that provide goods or services that government needs. They then use their positions to assist these businesses to get work from the public body that employs them. In other cases, they might buy shares in or join companies that already have work with government. The Act makes both of these situations crimes.



Mr Pityana is the Mayor of a big Municipal Council. He also owns a local restaurant. Mr Pityana uses his power to make sure that the restaurant gets a contract with his Municipal Council to make food for their canteen.



WHAT IS A PUBLIC BODY?

The Act defines public bodies as:

- Every government department - at national, provincial and local levels.
- Any other institution when it is performing a duty or function in terms of the Constitution or other written laws – like the Human Rights Commission and Office of the Public Protector).

However, this crime does not apply to:

- ❖ People who own shares in companies that have been listed on the Johannesburg Securities Exchange when these companies do business with government.
- ❖ Government employees whose contracts of employment do not say that they may not hold an interest in a private company that does business with government.

- ❖ A government employee who gets the contract through a fair tender process – as long as their contract does not say that they may not hold an interest in a private company that does business with government.



NOTE

It is possible that someone has an interest in a business and simply does not know that it is doing business with the public body that they work for. Although this might be a defence if they are charged, the Act does say that people who should know a fact and who do nothing to find out whether it is true will be regarded as having known about the fact.

6. Other crimes

We have looked at the most common crimes in the relationship between the private sector and the public sector, and in the way private companies do business with each other. The Act creates many other crimes though. For example, it is a crime:

- ❖ For people charged with a crime to offer money or favours to the police or prosecutor to drop the case.
- ❖ To interfere with an investigation into corruption.
- ❖ To assist someone involved in corruption – either during the act itself, or afterwards.



Mr Mhlongo is being investigated for corruption. He wipes out all of the information on his computer so that no trace of the corrupt activity remains. Although it might be difficult to prove the corruption, Mr Mhlongo can still be found guilty of the crime of 'interfering with an investigation'.

The Register for Tender Defaulters

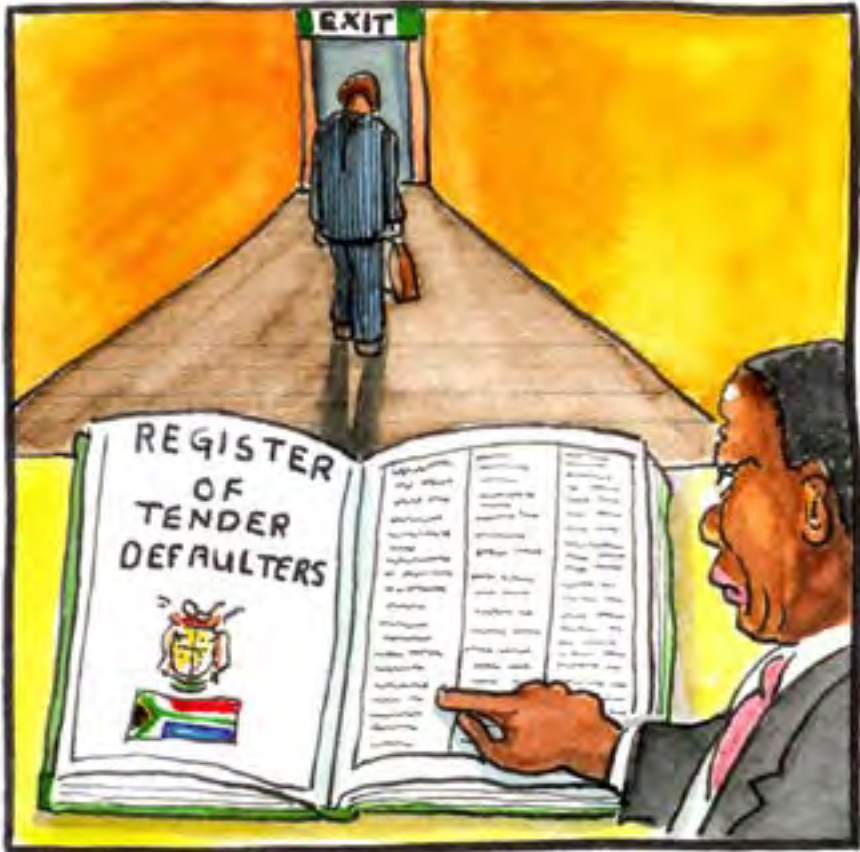
We have already seen that there is a lot of room for corruption when government tenders for goods or services. To address this, the Act requires the Minister of Finance to create a Register of Tender Defaulters. This Register is kept by the National Treasury. Whenever a person or business is convicted by a court of law of crimes involving contracts or tenders, their names and details, including the names of Directors, are recorded in this Register (together with details of the crime).

This creates an additional ‘penalty’ for these people or businesses:

- ❖ *Existing* government contracts or tenders that they have can be cancelled immediately *and* they might have to pay any costs that result from this.
- ❖ Their names remain on the Register for between 5 and 10 years. While their names are on the Register, they are not entitled to any *new contracts or tenders*.

It won’t help anyone convicted of these crimes to simply change the name of their business or to start a new business to try and get around this. Instead, the details of any new businesses that these people start must *also* be entered on the Register.

Lastly, the Act requires a person or business convicted of these crimes to say this in any future applications for contracts or tenders. If they don’t, they will be guilty of another crime and can be fined or imprisoned.



Reporting Corruption

1. Introduction

Because corruption affects us all, it is our common enemy. We therefore all have a duty to report corruption whenever we come across it.

In some cases, this is *more* than just a duty. As we will soon see:

- * The Act requires people in positions of authority in the public *and* private sectors to report corruption, and other crimes listed in the Act involving more than R100 000, to the police. If they don't, they will be guilty of a crime.
- * The Code of Conduct for the Public Service requires *all* employees of the public service to report corruption to an appropriate authority.

But who should you report corruption to? The answer to this will be slightly different if you are:

- * A member of the public or employed in the private sector.
- * Employed by the public sector.
- * A person in a 'position of authority'.

2. Members of the public and employees in the private sector



The police

Because corruption is a crime, the obvious place to report it is to the police.

Contact the police
on 08600 10 111



The Scorpions

In extremely serious cases, especially where organised crime might be involved, the corruption could be reported to the Scorpions.

Contact the Scorpions
on 0800 672 672



The Public Protector

This Office investigates improper conduct in the public administration. Only cases involving at least one member of the public sector can be reported to them.

Contact the
Public Protector
on 012 366 7000

3. Members of the public sector

The *Code of Conduct for the Public Service* requires every employee (no matter how junior or senior) to report corruption to ‘the appropriate authorities’. This could mean reporting it to the police or Scorpions, or it could mean reporting it to a more senior staff member. Often, this will be dealt with in the department’s policy on reporting corruption – which all departments should have in terms of the Minimum Anti-Corruption Capacity Requirements of the Public Service Anti-Corruption Strategy.



MINIMUM ANTI-CORRUPTION CAPACITY REQUIREMENTS IN THE PUBLIC SERVICE

Government has developed guidelines for departments to help them to meet these minimum requirements. You will find the guidelines on the following website:

<http://www.dpsa.gov.za/macc>

Government has also set up the *National Anti-Corruption Hotline* for the reporting of corruption in the Public Service. This is a telephone number that people can call to report any cases of corruption. Because their identity is protected, people can call this number to report corruption without fear of what might happen to them as a result.



4. People in ‘positions of authority’ in the private and public sectors

The Act provides the following examples of ‘people in positions of authority’:

- ❖ The Director-General, Head or equivalent officer of a national or provincial department.
- ❖ The Municipal Manager of a municipality.
- ❖ A person in the Senior Management Service of a public body.
- ❖ The head, rector or principal of a tertiary education institution.
- ❖ The Manager, Secretary or Director of a company or closed corporation.
- ❖ The executive manager of a bank or financial institution.

- ❖ A partner in a partnership.
- ❖ The Chief Executive Officer (or person holding a similar position) of any structure, institution or body set up by law.
- ❖ A person employed by a business who is responsible for the overall management and control of the business.
- ❖ Anyone on the above list who has been appointed in an acting or temporary capacity.

The Act requires these people to report *all* cases of corruption, and other crimes listed in the Act, involving more than R100 000 to the police. If they fail to do so, they are guilty of a crime and can be fined or sent to jail for up to 10 years.

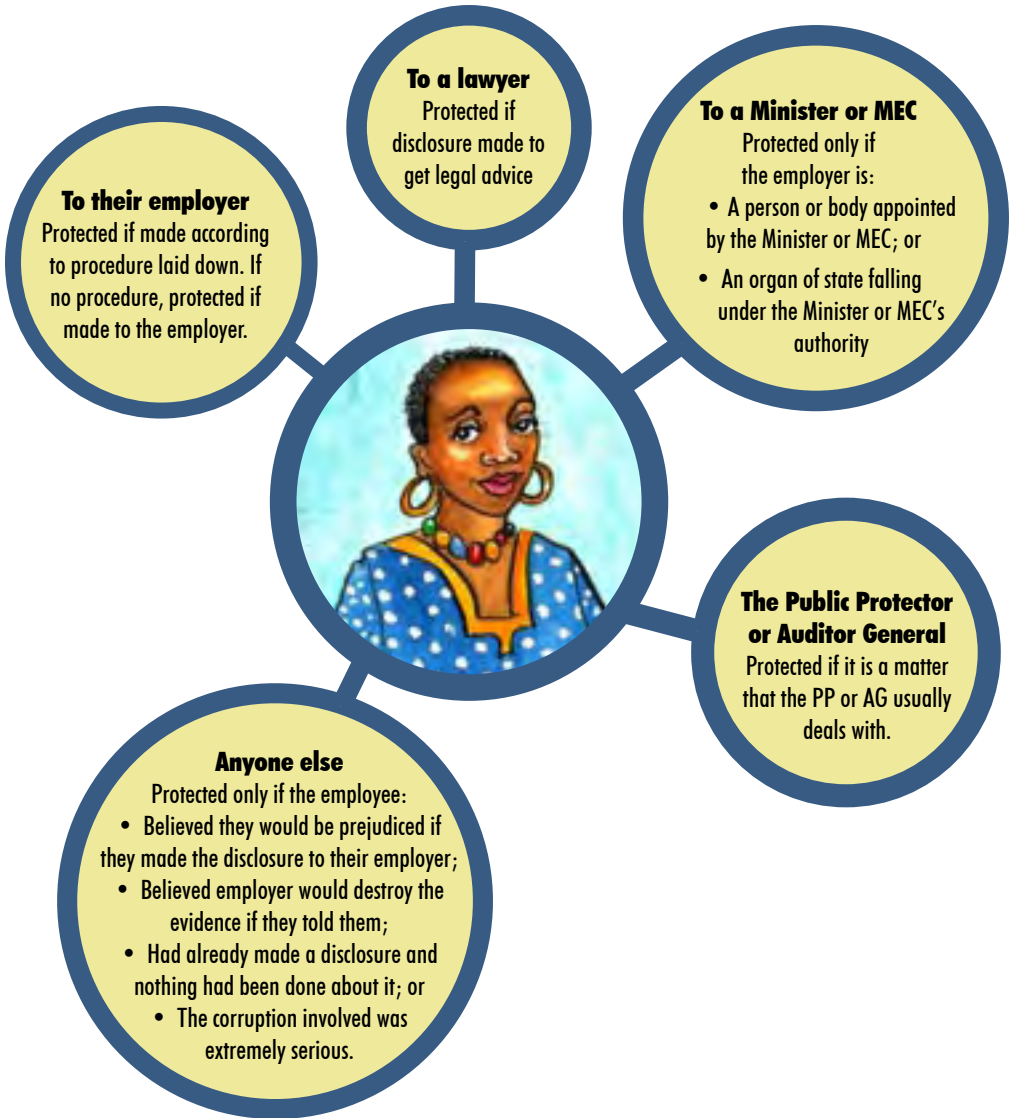
5. The Protected Disclosures Act of 2000

Many people do not report corruption out of fear of what will happen to them - for example, they may fear that they will be transferred, disciplined or even dismissed. To deal with this, government passed the Protected Disclosures Act to protect 'whistle blowers' in both the private and public sector from being victimised – as long as they follow the procedures in the Act.

To get the protection of the Act, anyone making a disclosure must:

1. Have reasonable grounds to believe it to be true.
2. Not be making the disclosure for their personal gain.

The disclosure can be made to one of the following (noting that the conditions for each type of disclosure vary depending on who it is made to):



Find out more

The Prevention and Combating of Corrupt Activities Act (12 of 2004)

Copies of the Act can be found on the following website:

<http://www.info.gov.za/acts/2004/a12-04/index.html>

Guidelines for Implementing the Minimum Anti-corruption Capacity Requirements in the Public Service

You will find these guidelines on the following website:

<http://www.dpsa.gov.za/macc/>

National Anti-Corruption Hotline

The Department of Water Affairs and Forestry have some interesting information about the National Anti-Corruption Hotline on their website. Visit it at:

<http://www.dwaf.gov.za/anticorruption.asp>

Code of Conduct for Public Servants

You can find a copy of the Code of Conduct on the following website:

<http://www.psc.gov.za/docs/guidelines/code.html>

Protected Disclosures Act (26 of 2000)

You will find a copy of this Act on the following website:

<http://www.opendemocracy.org.za/Protected%20Disclosures%20Act.pdf>

You can also read about it on this site:

<http://www.iss.co.za/Pubs/Papers/47/Paper47.html>

United Nations Convention Against Corruption

You can read about this convention, and get copies of it, on the following website:

http://www.unodc.org/unodc/crime_convention_corruption.html



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Corruption affects the lives of everyone in South Africa – it is our common enemy. The government has therefore developed many policies and laws to try to combat and prevent corruption – both in government and in the private sector. This booklet has been produced by the *National Anti-Corruption Forum* and is about one of these laws – the *Prevention and Combating of Corrupt Activities Act*.

This booklet has been written in plain language and includes a brief overview of the Act in all of South Africa's official languages.

It is aimed at:

- Members of the public sector
- Members of the private sector (businesses)
 - Members of the public
- Anyone doing training on the Act



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