

ACT 466

SERIOUS FRAUD OFFICE ACT, 1993

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ACT 466**SERIOUS FRAUD OFFICE ACT, 1993¹**

AN ACT to establish a Serious Fraud Office as a specialised agency of the Government to monitor, investigate and, on the authority of the Attorney-General, prosecute an offence involving serious financial or economic loss to the Republic and to provide for related matters.

*Establishment***1. Establishment of the Serious Fraud Office**

(1) There is hereby established a Serious Fraud Office which is part of the Public Services.

(2) The Office consists of

- (a) an executive director,
- (b) deputy executive directors, and
- (c) any other officers and staff appointed by the President for the Office.

2. Divisions of the Office

The Office shall have the divisions that the governing board established under section 5 may determine on the advice of the director.

3. Functions of the Office

(1) The functions of the Office are

- (a) to investigate a suspected offence provided for by law which appears to the director on reasonable grounds to involve serious financial or economic loss to the Republic or to a state organisation or any other institution in which the Republic has financial interest;
- (b) to monitor the economic activities which the director considers necessary with a view to detecting criminal offences likely to cause financial or economic loss to the Republic;
- (c) to take any other reasonable measures that the director considers necessary to prevent the commission of criminal offences which may cause financial or economic loss to the Republic; and
- (d) to co-operate with the international agencies which the director considers appropriate for the performance of a function under the Act.

(2) In the performance of its functions under subsection (1), the Office shall collect, collate and disseminate information from Government agencies and any other public bodies.

1. This Act was assented to on 30th December, 1993.

*Administration***4. Ministerial responsibility for the Office**

The Attorney-General is responsible for the Office.

5. Governing body

(1) The governing body of the Office is a Board consisting of

- (a) the chairman,
- (b) the Attorney-General or a Chief State Attorney as the Attorney-General's representative,
- (c) the Minister responsible for the Interior or the Minister's representative,
- (d) the Inspector-General of Police or a Commissioner of Police as the Inspector-General's representative,
- (e) the executive secretary of the Narcotic Control Board,
- (f) one other person, and
- (g) the director of the Office.

(2) The members of the Board shall be appointed by the President in accordance with article 70 of the Constitution.

6. Functions of the Board

The Board has the general control of the Office on matters of policy.

7. Tenure of office

A member of the Board shall hold office for a period of four years and is eligible for re-appointment.

8. Meetings of the Board

(1) The Board shall meet at the times and places determined by the chairman.

(2) The Board may co-opt a person to attend a meeting but a person co-opted shall not vote on a matter before the Board.

(3) The quorum for a meeting of the Board is four.

(4) Decisions of the Board at its meetings shall be that of the majority of the members present and voting and where there is an equality of votes the chairman shall have a casting vote.

(5) The validity of the proceedings of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(6) Except as otherwise provided in this Act, the Board shall regulate the procedure for its meetings.

9. Executive director and the deputy executive directors

(1) The President shall, in accordance with article 195 of the Constitution, appoint for the Office a director and deputy directors.

(2) The director and the deputies shall hold office on the terms and conditions determined by the President in accordance with the advice of the Board given in consultation with the Public Services Commission.

(3) The director is the head of the Office and is responsible, subject to the general directions of the Board on matters of policy, for the overall operation and administration of the affairs of the Office.

(4) The deputy directors shall head the divisions of the Office.

10. Other staff of the Office

(1) The President may engage for the Office in accordance with article 195 of the Constitution the officers, professionals, experts and consultants that are required for the efficient performance of the functions of the Office.

(2) The conditions of service of persons employed for the Office shall be determined by the President in accordance with the advice of the Board given in consultation with the Public Services Commission.

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

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

*Exercise of Powers***11. Authorised officers to have powers of police**

The director, deputy directors and an officer of the Office authorised by the director may exercise the powers and have the immunities conferred on a police officer under the Criminal and Other Offences (Procedure) Act, 1960 (Act 30), the Police Service Act, 1970 (Act 350) and any other enactment relating to a police officer.

12. Powers of investigation

(1) The power to investigate a matter under section 3 shall be exercised by the director or an officer of the Office authorised by the director.

(2) The director may conduct an investigation under section 3 in conjunction with the police or any other person who in the opinion of the director is a proper person to be concerned in the investigation.

13. Requests for information

(1) The director or an officer acting under the director's direction may by notice in writing require a person or a representative of an organisation whose affairs are to be investigated or any other person whom the director has reason to believe has information relevant to the investigation, to appear before the director or the officer at a specified time and place to answer questions or otherwise furnish information with respect to a matter relevant to the investigation.

(2) The director may by notice in writing require a person or an organisation under investigation or any other person to produce at a specified time and place a specified document which appears to the director to relate to a matter relevant to the investigation or a document of a specified class which appear to the director to relate to the investigation.

(3) The director may take copies of or extracts from a document or require the person producing it to provide an explanation of the document.

(4) Where a document is not produced, the director may require the person who was required to produce the document to give the best possible knowledge as to the location of the document.

(5) Where an officer of the Office has reasonable grounds for believing that

- (a) a person has failed to comply with a request under this section to produce a document, or
- (b) it is not practicable to serve a notice under subsection (2) in relation to the production of a document, or
- (c) the service of a notice for the production of a document might seriously prejudice the investigation,

the officer may apply to a Justice of the High Court by motion *ex parte* for the issue of a warrant authorising a police officer to enter and search the premises on which a document appearing to be a document of the description specified in the affidavit is suspected to be held.

(6) The application shall be supported by an affidavit verifying the facts on which the application is based.

(7) For the purpose of entry and search, the police officer may use reasonable force to effect the entry and search and may take possession of the document or take in relation to those documents any other steps which appear necessary for preserving them and preventing interference with the documents.

(8) Unless it is not practicable in the circumstances, a police officer executing a warrant issued under subsection (5) shall be accompanied by an officer of the Office.

(9) Before taking possession of documents as provided for under this section, the officer shall prepare an inventory in duplicate listing the number and type of documents being taken possession of and a copy of the list shall be given to the person or representative of the organisation from whose custody the documents are taken.

(10) The officer shall retain possession of the documents taken under this section for so long only as may be necessary for the purposes of the investigation or trial.

(11) Where the director is of the opinion that to facilitate investigations it is necessary to freeze the assets and bank account of a person or organisation being or about to be investigated, the director may in writing direct the freezing of the assets and bank account of that person or organisation.

(12) The director shall, within seven days of the freezing of the assets and bank account under this section, apply to the High Court for a confirmation of the freezing of the assets and bank account.

(13) Where the assets and bank account are frozen under this section, the person or organisation affected shall be notified of the facts in writing within forty-eight hours of the freezing of the assets and bank account.

(14) The High Court to which the application is made under subsection (12) may confirm the freezing of the assets and bank account for a period that the Court considers fit or direct the unfreezing of the assets and bank account.

(15) A person or an organisation being investigated under this Act has a right to the services of a lawyer or any other person.

14. Withdrawal from frozen bank account

(1) A person or an organisation whose assets and bank account are frozen under section 13 may, with the consent of the director

- (a) draw from the bank account the moneys approved by the director, or
- (b) operate a business or an enterprise the subject matter of the freezing on the terms and conditions determined by the director.

(2) A person or an organisation whose assets are frozen under this Act may seek redress from the High Court.

Miscellaneous

15. Application of existing enactment

(1) A person or an organisation shall not be required to disclose information or produce a document which that person or organisation is entitled to refuse to disclose or produce under the Evidence Act, 1975² or under any other enactment.

(2) A person or an organisation shall not be required to disclose information or produce a document in respect of which that person or organisation owes an obligation of confidence by virtue of carrying on a banking business unless

- (a) the person to whom the organisation to which the obligation of confidence is owed, consents to the disclosure or production, or
- (b) a Justice of the High Court has on an application by the director, ordered the disclosure or production.

2. N.R.C.D. 323.

16. Delegation of power

(1) Without prejudice to the power of the director to assign functions to members of the Office, the director may authorise a person employed in a public service as an investigator or a police officer who is not an officer of the Office to exercise on the director's behalf all or any of the powers relating to investigations conferred by this Act, but that authority shall not be granted except for the purpose of investigating the affairs, or an aspect of the affairs of a person or organisation specified in the authority.

(2) A person exercising a power under subsection (1) shall hold, and on request produce, evidence of that person's authority.

17. Offences and penalties

(1) A person who

- (a) makes a statement which that person knows is false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

commits an offence and is liable on conviction to a fine not exceeding five hundred penalty units or to a term of imprisonment not exceeding two years or to both the fine and the imprisonment.

(2) Where a person

- (a) knows or suspects that an investigation is being or is likely to be carried out, and
- (b) with intent to frustrate, prevent or obstruct the investigation falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which that person knows or suspects are or would be relevant to the investigation,

that person commits an offence, unless it is proved that there was no intention of falsifying, destroying or concealing the facts disclosed by the documents from persons carrying out the investigation.

(3) A person convicted of an offence under subsection (2) is liable to a fine not exceeding one thousand penalty units or to a term of imprisonment not exceeding five years or to both the fine and the imprisonment.

18. Prosecution

The director may where authorised by the Attorney-General in writing institute and conduct criminal proceedings arising out of an investigation conducted by the Office.

19. Relation with other state bodies

(1) An officer in a government department, an agency of the Government or any other public body shall co-operate fully with officers of the Office in the performance of functions under this Act.

(2) Where a public officer refuses or fails without reasonable cause to co-operate with an authorised officer of the Office, the relevant authority shall take the appropriate disciplinary action against that public officer.

20. Reward for information

Where an information to the Office has led to a financial or economic gain to the Republic or to the prevention or detection of an economic or financial loss to the Republic the person who supplied the information may be granted a reward determined by the Attorney-General in consultation with the director.

21. Annual report

(1) The director shall submit to the Attorney-General an annual report on the activities and operations of the Office during the preceding year within three months after the end of the year to which the report relates.

(2) The Attorney-General shall within two months after the receipt of the annual report, submit the report to the President and to Parliament.

22. Expenditure of Office

(1) The director shall in each year submit to the Minister responsible for Finance through the Attorney-General detailed estimates of the expenditure of the Office for the ensuing year.

(2) The emoluments and expenditure of the Office shall be met out of the funds approved by Parliament.

23. Regulations

The Attorney-General may, by legislative instrument make Regulations for giving full effect to this Act.

24. Dissolution of existing bodies and repeals

*Spent.*³

25. Interpretation

In this Act, unless the context otherwise requires,

“**Board**” means the governing body of the Office;

3. The section provided that,

“(1) The National Investigations Committee, the Office of Revenue Commissioners and the State Houses (Allocation Policy and Implementation) Commission existing at the commencement of this Act are hereby dissolved and accordingly the National Investigations Committee Law, 1982 (P.N.D.C.L. 2), the Revenue Commissioners Law, 1984 (P.N.D.C.L. 80) and the State Houses (Allocation Policy and Implementation) Commission Law, 1984 (P.N.D.C.L. 83) are hereby repealed.

(2) All assets of the dissolved bodies shall be transferred to such public offices and departments as the Minister may determine.

(3) Any person employed under any of the enactments repealed under subsection (1) of this section immediately before the coming into force of this Act who is qualified and suitable for appointment to any office or position in the Office, may be so appointed on the recommendation of the Minister.”

“director” means the executive director appointed under section 9;

“document” includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to the production include references to producing a copy of the information in a legible form;

“High Court” includes a Regional Tribunal;

“Justice of the High Court” includes a chairman of a Regional Tribunal;

“Office” means the Serious Fraud Office established under section 1.

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