

**SPECIAL ISSUE**

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REPUBLIC OF KENYA

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**KENYA GAZETTE SUPPLEMENT**

**SENATE BILLS, 2021**

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**NAIROBI, 12th August, 2021**

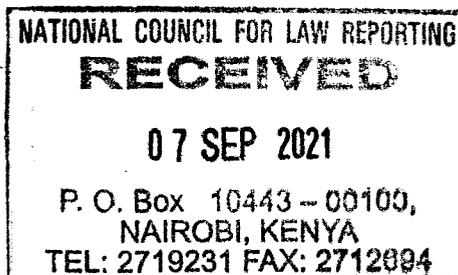
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CONTENT

Bill for Introduction into the Senate—

PAGE

The Anti-Corruption and Economic Crimes (Amendment) Bill, 2021 ..... 1181



**THE ANTI-CORRUPTION AND ECONOMIC  
CRIMES (AMENDMENT) BILL, 2021**

**A Bill for**

**AN ACT of Parliament to amend the Anti-Corruption and Economic Crimes Act to provide for the procedure for entering into deferred prosecution agreements; and for connected purposes**

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—GENERAL PROVISIONS**

**1.** This Act may be cited as the Anti-Corruption and Economic Crimes (Amendment) Act, 2021.

Short title.

**2.** Section 2 of the Anti-Corruption and Economic Crimes Act, in this Act referred to as the principal Act, is amended by inserting the following new definitions in their proper alphabetical sequence—

Amendment of section 2 of No. 3 of 2003.

“Agency” means the Assets Recovery Agency established under section 55(1) of the Proceeds of Crime and Anti-Money Laundering Act;

No. 9 of 2009.

“alleged offence” means a corrupt or economic offence under—

(a) this Act;

(b) the Public Officer Ethics Act;

No. 4 of 2003.

(c) the Leadership and Integrity Act;

No. 19 of 2012.

(d) the Public Service (Values and Principles) Act;

No. 1A of 2015.

(e) the Bribery Act;

No. 47 of 2016.

(f) the Proceeds of Crime and Anti-Money Laundering Act;

No. 9 of 2009.

(g) the Public Finance Management Act; and

No. 18 of 2012.

(h) the Public Procurement and Asset Disposal Act;

No. 33 of 2015.

“deferred prosecution agreement” means an agreement entered into between the Director of Public Prosecutions and a person who has been charged with, or whom the Director of Public Prosecutions is considering prosecuting for an alleged offence, under which —

- (a) the person agrees to comply with the requirements imposed on the person by the agreement; and
- (b) upon the approval of the agreement by the High Court; and

“Fund” means the Criminal Asset Recovery Fund established under section 109 of the Proceeds of Crime and Anti-Money Laundering Act.

No. 9 of 2009.

3. The principal Act is amended by inserting the following new Part immediately after section 50—

Insertion of new Part VA in No. 3 of 2003.

#### **PART VA— DEFERRED PROSECUTION AGREEMENTS**

Entering into a deferred prosecution agreement.

**50A. (1)** A person who is suspected to have committed an alleged offence may enter into a deferred prosecution agreement with the Director of Public Prosecutions in accordance with this Part.

(2) The Director of Public Prosecution may, before instituting criminal proceedings against a person who is suspected to have committed an alleged offence, invite that person into negotiations for the purpose of entering into a deferred prosecution agreement where—

- (a) there are reasonable grounds to believe that the person has committed an alleged offence;
- (b) public interest would be served if the parties enter into a deferred prosecution agreement in accordance with this Act; and
- (c) charges with respect to the alleged offence

have been drawn against that person.

(2) A deferred prosecution agreement may be entered into –

(a) with respect to an alleged offence, whether alleged to have been committed before or after the commencement of this Act; and

(b) at any time before commencement of the trial.

(3) A deferred prosecution agreement may be entered into in respect of two or more alleged offences.

(4) A party to negotiations for the entry into a deferred prosecution agreement may withdraw from the negotiations without giving any reason for the withdrawal.

Factors to take into account in entering into a deferred prosecution agreement.

**50B.** The Director of Public Prosecution shall, before entering into negotiations for a deferred prosecution agreement under section 50A, take into account the following factors in determining whether to enter into the agreement—

(a) prior criminal conduct of the person;

(b) the extent to which the person has cooperated with the respective investigative agency and adhered to the relevant processes;

(c) whether the person has

taken positive steps to address the issues raised by the respective investigative agency;

- (d) if public interest would best be served by entering into the deferred prosecution agreement; and
- (e) such other factors as the Director of Public Prosecution shall consider relevant.

Entry into negotiations.

**50C.** The Director of Public Prosecutions shall, in inviting a person into negotiations under this Part, and in writing, —

- (a) identify the factors for consideration in determining whether to offer an agreement at the conclusion of negotiations;
- (b) explain to that person the manner in which the negotiations shall be conducted and the responsibilities of the parties during the negotiations;
- (c) inform the person of the rights and obligations of the parties to the negotiations;
- (d) outline the manner in which the agreement shall come into force and cease to be in force.
- (e) identify the date by

which that person shall submit a notice in writing of acceptance of the invitation to enter into the negotiations and any conditions attached thereto;

- (f) outline the process for withdrawing from the negotiations and the agreement;
- (g) explain to that person the effect of a deferred prosecution agreement;
- (h) advise on the confidentiality requirements and the manner in which information obtained during negotiations may be disclosed and used; and
- (i) inform the person of the right to institute criminal proceedings in relation to the matters contained in the agreement where the person materially contravenes that agreement.

Representation.

**50D.** A person who intends to enter into a deferred prosecution agreement shall be entitled to be represented by an advocate or such other person as he or she determines.

Effect of deferred prosecution agreement on court proceedings.

**50E.** Where a deferred prosecution agreement is entered into between the Director of Public Prosecutions and a person in respect

of an alleged offence, the following provisions shall apply—

- (a) where the person has been charged with the alleged offence, the person shall be deemed to have been granted a discharge not amounting to an acquittal in relation to the alleged offence, when the deferred prosecution agreement comes into force;
- (b) while the deferred prosecution agreement is in force, the person shall not be prosecuted for the alleged offence or for any other offence on the same facts in any criminal proceedings;
- (c) while the deferred prosecution agreement is in force, any limitation period or time limit prescribed under any law for the commencement of the following matters shall be suspended—
  - (i) the prosecution of the alleged offence;
  - (ii) any civil penalty action in respect of the alleged offence;
  - (iii) any proceedings for an order for repayment of a benefit derived from the alleged offence;
  - (iv) any proceedings for the confiscation of any property that —
    - (A) is used, or intended to be used, for the

commission of  
the alleged  
offence; or

(B) constitutes a  
benefit derived  
from the alleged  
offence; or

(v) any disciplinary  
proceedings, or other  
proceedings relating to  
the imposition of any  
regulatory measure,  
under any written law,  
that arise from the facts  
of the alleged offence.

Content of a  
deferred  
prosecution  
agreement.

**50F.** (1) A deferred prosecution  
agreement shall contain—

(a) a charge or draft charge  
prepared by the Director  
of Public Prosecutions  
relating to the alleged  
offence;

(b) a statement of facts  
relating to the alleged  
offence, which may  
include admissions made  
by the person that enters  
into the deferred  
prosecution agreement;  
and

(c) the rights and obligations  
of the parties to the  
agreement.

(2) A deferred prosecution  
agreement shall specify an expiry date  
on which the deferred prosecution  
agreement ceases to have effect if the  
deferred prosecution agreement is not  
already terminated under section  
50I(1)(b) or 50J(1)(b).

(3) The Director of Public Prosecution may impose on a person the following conditions for the entry into a deferred prosecution agreement—

- (a) payment to the Director of Public Prosecutions of a financial penalty;
- (b) compensation of victims of the alleged offence;
- (c) compensation for loss of public funds;
- (d) payment of interest on lost public funds;
- (e) surrender of all private assets acquired using public funds;
- (f) donation of money to a charity or any other third party;
- (g) surrender of any profits made by the person from the alleged offence;
- (h) implementation of a compliance programme or making of changes to an existing compliance programme, relating to the person's policies or to the training of the person's employees, or both;
- (i) the conduct of assessments to monitor the person's internal controls, any misconduct on the part of that person and determine improvements required to be put in place or reduce the risk of a recurrence of

any conduct related to the alleged offence; and

(j) cooperation in —

(i) investigations relating to the alleged offence; or

(ii) any investigation relating to any possible offence, committed by any officer, employee or agent of that person, that arises from the same or substantially the same facts as the alleged offence; and

(k) payment of any reasonable costs of the Director of Public Prosecutions in relation to the alleged offence or the deferred prosecution agreement.

(4) The amount of any penalty agreed to between the Director of Public Prosecutions and the person shall be broadly comparable to the fine that a court would have imposed on the person on conviction for the alleged offence following a guilty plea.

(5) A deferred prosecution agreement shall set out—

(a) time limits within which the person who is the subject to the deferred prosecution agreement shall comply with the requirements

imposed on the person; and

- (b) the consequences of non-compliance by a person subject to the deferred prosecution agreement.

Preliminary hearing for court approval of a deferred prosecution agreement.

**50G.** (1) Upon the commencement of negotiations with respect to a deferred prosecution agreement but before the terms of the deferred prosecution agreement are agreed upon by the parties, the Director of Public Prosecutions shall apply to the High Court for a declaration that—

- (a) entering into the deferred prosecution agreement with the respective person is likely to be in the interests of justice; and
- (b) the proposed terms of the deferred prosecution agreement are fair, reasonable and proportionate.

(2) The Court shall consider and determine the application under subsection (1) and shall set out the reasons for its decision.

(3) The Director of Public Prosecutions may make a further application to the Court for a declaration under subsection (1) if, following a previous application, the Court declined to make a declaration.

(4) The hearing and determination of an application under this section shall be held in camera.

Final hearing for court approval of a deferred prosecution agreement.

**50H. (1)** Where the Director of Public Prosecutions and a person have agreed on the terms of a deferred prosecution agreement, the Director of Public Prosecutions shall apply to the High Court for a declaration that—

- (a) the deferred prosecution agreement is in the interest of justice; and
- (b) the terms of the deferred prosecution agreement are fair, reasonable and proportionate.

(2) The Director of Public Prosecutions shall not make an application under subsection (1) unless the Court has made a declaration under section 50G.

(3) The hearing and determination of an application under this section may be held in camera.

(4) The Court shall, in determining an application under subsection (1), set out the reasons for its decision and deliver its decision in open court.

(5) A deferred prosecution agreement shall not come into force unless the Court has made a declaration under subsection (1).

(6) Upon approval of the deferred prosecution agreement by the Court, the Director of Public Prosecutions shall publish—

- (a) the deferred prosecution agreement;
- (b) the declaration of the Court under section 50G; and

- (c) in a case where the Court initially declined to make a declaration under section 50G, the Court's reason for that decision.

Breach of a deferred prosecution agreement.

**50I.** (1) Where a deferred prosecution agreement is in force and the person fails to comply with the terms of the agreement, the Director of Public Prosecutions may make an application to the High Court for—

- (a) an order compelling the person to comply with the terms of the agreement on such conditions as the Court may consider necessary to impose, for the remedy of any outcome of such non-compliance; or
- (b) the termination of the agreement.

(2) The Court shall on an application under subsection (1) determine whether, on the balance of probabilities, a person has failed to comply with the terms of the deferred prosecution agreement.

Failure to comply with a deferred prosecution agreement.

**50J.** (1) Where the High Court finds that a person has failed to comply with the terms of a deferred prosecution agreement, it may—

- (a) direct the Director of Public Prosecutions and the person to agree to a proposal to remedy the person's failure to comply; or

(b) terminate the deferred prosecution agreement.

(2) The Court shall give reasons for its decisions under subsection (1).

(3) Where the Court determines that a person has not failed to comply with the terms of the deferred prosecution agreement, the Director of Public Prosecutions shall publish the Court's decision unless the Director of Public Prosecutions is prevented from doing so by law or by an order of the Court under section 50O.

(4) Where the Court makes an order compelling the parties to an agreement to remedy a person's failure to comply, the Director of Public Prosecutions shall publish the Court's decisions under subsection (1) unless the Director of Public Prosecutions is prevented from doing so by law or by an order of the Court under section 50O.

(5) Where the Court terminates a deferred prosecution agreement under subsection (1)(b), the Director of Public Prosecutions shall publish—

(a) the fact that the deferred prosecution agreement has been terminated by the Court following a failure by a person to comply with the terms of the deferred prosecution agreement; and

(b) the Court's reasons for its decisions under subsections (2) and (3).

Director of  
Public  
Prosecutions  
decision on a  
deferred  
prosecution  
agreement.

**50K.** Where the Director of Public Prosecutions believes that a person has failed to comply with the terms of a deferred prosecution agreement but determines not to make an application to the High Court under section 50I, the Director of Public Prosecutions shall publish details relating to that decision, including—

- (a) the reasons for the Director of Public Prosecutions' belief that a person has failed to comply; and
- (b) the reasons for the Director of Public Prosecutions' decision not to make the application under section 50I.

Effect of  
termination of a  
deferred  
prosecution  
agreement.

**50L.** Where the High Court makes an order for termination of a deferred prosecution agreement under section 50I(1)(b) or 50J(1)(b), a person shall not be entitled to—

- (a) recover any money paid before the termination, pursuant to a requirement imposed by the deferred prosecution agreement; or
- (b) a relief for a detriment caused to the person by the person's compliance with the terms of the deferred prosecution agreement before the termination.

Variation of a  
deferred  
prosecution  
agreement.

**50M.** (1) At any time when a deferred prosecution agreement is in force, the Director of Public Prosecutions and the person party to

the agreement may agree to vary its terms if—

- (a) the High Court has allowed the parties to vary the deferred prosecution agreement upon the application of the Director of Public Prosecutions; or
- (b) the variation of the deferred prosecution agreement is necessary to avoid a failure by a person to comply with its terms in circumstances that were not, and could not have been, foreseen by the Director of Public Prosecutions or the person at the time that the deferred prosecution agreement was entered into.

(2) Where the parties to a deferred prosecution agreement agree to vary the terms of a deferred prosecution agreement, the Director of Public Prosecutions shall apply to the High Court for a declaration that—

- (a) the variation is in the interest of justice; and
- (b) the terms of the deferred prosecution agreement as varied are fair, reasonable and proportionate.

(3) The variation of a deferred prosecution agreement shall not take effect unless it is approved by the High Court making a declaration under subsection (2).

(4) The Court shall give reasons for its decision under

subsection (2).

(5) A hearing at which an application under this section is determined may be held in camera provided that where the Court approves an application for the variation and makes a declaration under subsection (2) it shall do so, and give its reasons, in open court.

(6) Where the Court determines not to approve an application for the variation of an agreement, the Director of Public Prosecutions shall publish the Court's decision and the reasons for it.

(7) Where the Court approves an application for the variation of an agreement, the Director of Public Prosecutions shall publish—

- (a) the deferred prosecution agreement as varied; and
- (b) the Court's declaration under this section and the reasons for its decision to make the declaration.

Discontinuance  
of proceedings  
on expiry of  
deferred  
prosecution  
agreement.

**50N:** (1) Where a deferred prosecution agreement remains in force until its expiry date, then upon the expiry of the deferred prosecution agreement the proceedings instituted prior to the entry of the agreement shall be discontinued by the Director of Public Prosecutions by giving notice to the High Court.

(2) Where proceedings are discontinued under subsection (1), criminal proceedings may not be instituted against the person for the same alleged offence or on account of the same offence.

(3) Subsection (2) shall not be a bar to the institution of proceedings against a person where, after a deferred prosecution agreement has expired, the Director of Public Prosecutions finds that during the course of the negotiations for the deferred prosecution agreement, the person—

- (a) provided inaccurate, misleading or incomplete information to the Director of Public Prosecutions; and
- (b) knew or ought to have known that the information was inaccurate, misleading or incomplete.

(4) A deferred prosecution agreement shall not to be treated as having expired for the purposes of subsection (1) if, on the expiry date specified in the deferred prosecution agreement, —

- (a) an application made by the Director of Public Prosecutions under section 50I is pending in Court;
- (b) following an application under section 50I, the Court has directed the parties to remedy the person's failure to comply, but the parties have not yet reached an agreement; or
- (c) the parties have agreed to proposals to remedy the person's failure to comply following the direction of the Court under section 50I but the person has not

yet complied with the agreement.

(5) In the case specified under subsection (4)(a), —

- (a) if the Court decides that a person has not failed to comply with the terms of the deferred prosecution agreement, the deferred prosecution agreement shall expire when the application is decided;
- (b) if the Court terminates the deferred prosecution agreement, the deferred prosecution agreement is to be treated as not having remained in force until its expiry date; and
- (c) if the Court orders the parties to agree to proposals to remedy a person's failure to comply, the deferred prosecution agreement shall be treated as expiring when the parties have reached such an agreement and the person has complied with it.

(6) In the case specified under subsection (4)(b), the deferred prosecution agreement shall expire when the parties have reached an agreement and the person has complied with it.

(7) In the case specified under subsection (4)(c), the deferred prosecution agreement shall expire when the person complies with the agreement.

(8) Where proceedings are discontinued under subsection (1), the Director of Public Prosecutions shall publish—

- (a) the fact that the proceedings have been discontinued; and
- (b) details of a person's compliance with the deferred prosecution agreement, unless the Director of Public Prosecutions is prevented from doing so by law or by an order of the Court under section 500.

Publication of information.

**500.** (1) The High Court may defer the publication of information under this Part for such a time as it considers necessary, if it appears to the Court that the postponement is necessary to avoid substantial risk of prejudice to the administration of justice in—

- (a) legal proceedings;
- (b) an investigation under this Act; or
- (c) a criminal investigation under any other written law.

(2) In proceedings under this Part, the High Court may, in the interest of justice, public safety, public security or propriety or for any other sufficient reason, make an order requiring—

- (a) any information which is contained in a Court document intended to be produced before the

Court, be removed or  
be sufficiently  
redacted; or

- (b) a person not to publish such information, or do an act that is likely to lead to the publication of such information.

(3) A person who contravenes subsection (2) commits an offence and is liable, on conviction, to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding three years or to both.

Use of material  
in criminal  
proceedings.

**50P.** (1) The statement of facts contained in a deferred prosecution agreement under section 50F(1)(b) shall be treated as proof of admission by the person who entered into the agreement.

(2) Subject to subsection (3), material may be used as evidence against a person where the Director of Public Prosecutions and the person have entered into negotiations for a deferred prosecution agreement but the deferred prosecution agreement has not been approved by the High Court under section 50G.

(3) Material may only be used in evidence against a person with respect to a prosecution for —

- (a) an offence consisting of the provision of inaccurate, misleading or incomplete information; or
- (b) some other offence where in giving evidence a person makes a statement inconsistent with the material.

(4) Material may not be used against a person by virtue of subsection (5)(b) unless evidence relating to it is adduced, or a question relating to it is asked, by or on behalf of a person in the proceedings arising out of the prosecution.

(5) In this section, “material” means—

(a) material that shows that a person entered into negotiations for a deferred prosecution agreement, including in particular—

(i) a draft of the deferred prosecution agreement;

(ii) a draft of a statement of facts intended to be included within the deferred prosecution agreement; or

(iii) a statement indicating that a person entered into such negotiations; or

(b) material that was created solely for the purpose of preparing the deferred prosecution agreement or statement of facts.

Regulations.

**50Q.** (1). The Attorney General may, in consultation with the Director of Public Prosecutions, make

Regulations generally for the better carrying out into effect of this Part.

(2) Without prejudice to the generality of subsection (1), the Attorney General may, in consultation with the Director of Public Prosecutions make regulations providing for—

- (a) classification and prosecution of specified offences or class of offences under this Part; and
- (b) conditions to be complied with in prosecutions under this Part.

(3) The Director of Public Prosecutions may, in consultation with the Commission, issue guidelines on cooperation and collaboration in the investigation of crimes under this Act

4. The principal Act is amended by deleting section 56C and substitution therefore the following new section—

Recovery of funds and other assets.

**56C.** (1) The Commission shall pay into the Fund all monies recovered by it under this Act.

(2) The Director of Public Prosecutions shall pay into the Fund all monies received pursuant to a deferred prosecution agreement requiring a person to—

- (a) pay a financial penalty to the Director of Public Prosecutions; or
- (b) disgorge any profits made by the person from the alleged offence

Amendment of section 56C of No. 3 of 2003.

(3) Notwithstanding any provision in this Act or any other written law, any asset or property, whether movable or immovable, recovered either in the course of, or upon conclusion of investigations, or upon commencement of court action or proceedings, whether such proceedings are of a civil or criminal nature or upon conclusion of such proceedings, shall be surrendered to the Agency.

## **MEMORANDUM OF OBJECTS AND REASONS**

The principal purpose of the Bill is to create a framework for amnesty for corruption cases under deferred prosecution agreements. It allows a person suspected to have committed a corrupt or economic offence to enter into a deferred prosecution agreement with the Director of Public Prosecutions. The deferred prosecution agreements framework is in response to perceived deficiencies in the existing prosecution framework involving economic crimes which include—

- (a) long, expensive and complicated investigations and trials for offences of economic crime; and
- (b) non compensation of victims of economic crimes.

The deferred prosecution agreements shall be concluded under the supervision of a High Court judge, who must be convinced that the deferred prosecution agreement—

- (a) is in the interests of justice; and
- (b) that the terms of the deferred prosecution agreement are fair, reasonable and proportionate.

### **Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms**

The Bill delegates limited legislative powers to the Attorney General to make regulations for the better carrying into effect of the provisions of the Bill once enacted. This Bill does not limit fundamental rights and freedoms.

### **Statement on how the Bill concerns county governments**

The Bill concerns county governments in terms of Articles 110(1) (a) of the Constitution in that it contains provisions that affect the functions and powers of the county governments as set out in the Fourth Schedule to the Constitution. The obligations proposed to be imposed by the Bill will have a direct impact on the means through which State and public officers serving in county governments discharge their functions under Part 2 of the Fourth Schedule to the Constitution.

### **Statement that the Bill is not a money Bill within the meaning of Article 114 of the Constitution**

This Bill is not a money Bill within the meaning of Article 114 of the Constitution.

Dated the 21st April, 2021.

FARHIYA ALI HAJI,  
*Senator.*

Section 2 of No. 3 of 2003, which it is proposed to amend—

## 2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**Advisory Board**” means the Kenya Anti-Corruption Advisory Board established under Part III;

“**Assistant Director**” means an Assistant Director of the Commission;

“**benefit**” means any gift, loan, fee, reward, appointment, service, favour, forbearance, promise or other consideration or advantage;

“**Commission**” means the Ethics and Anti-Corruption Commission established under section 3 of the Ethics and Anti-Corruption Commission Act, 2011 (No. 22 of 2011), pursuant to Article 79 of the Constitution;

“**corruption**” means—

- (a) an offence under any of the provisions of sections 39 to 44, 46 and 47;
- (b) bribery;
- (c) fraud;
- (d) embezzlement or misappropriation of public funds;
- (e) abuse of office;
- (f) breach of trust; or
- (g) an offence involving dishonesty—
  - (i) in connection with any tax, rate or impost levied under any Act; or
  - (ii) under any written law relating to the elections of persons to public office;

“**Director**” *deleted by Act No. 18 of 2014, Sch.;*

“**economic crime**” means—

- (a) an offence under section 45; or
- (b) an offence involving dishonesty under any written law providing for the maintenance or protection of the public revenue;

“**investigator**” means a person authorized by the Director under section 23 to conduct an investigation on behalf of the Commission;

**“Minister”** means the Minister responsible for integrity issues;

**“private body”** means any person or organisation not being a public body and includes a voluntary organisation, charitable organisation, company, partnership, club and any other body or organisation howsoever constituted;

**“public body”** means—

- (a) the Government, including Cabinet, or any department, service or undertaking of the Government;
- (b) the National Assembly or the Parliamentary Service;
- (c) a local authority;
- (d) any corporation, council, board, committee or other body which has power to act under and for the purposes of any written law relating to local government, public health or undertakings of public utility or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law; or
- (e) a corporation, the whole or a controlling majority of the shares of which are owned by a person or entity that is a public body by virtue of any of the preceding paragraphs of this definition;

**“public officer”** means an officer, employee or member of a public body, including one that is unpaid, part-time or temporary;

**“Secretary”** means the Secretary of the Commission appointed under section 16 of the Ethics and Anti-Corruption Act, 2011;

**“unexplained assets”** means assets of a person—

- (a) acquired at or around the time the person was reasonably suspected of corruption or economic crime; and
- (b) whose value is disproportionate to his known sources of income at or around that time and for which there is no satisfactory explanation.

(2) For the purposes of this Act, a person shall be deemed to be in possession of any record, property, information or other thing if the possession of it is under his control.

*Section 56C of No. 3 of 2003, which it is proposed to amend—*

**56C. Recovery of funds and other assets**

(1) Any funds recovered by the Commission shall be paid into the Consolidated Fund.

(2) Notwithstanding any provision in this Act or any other written law, any asset or property, whether movable or immovable, recovered either in the course of, or upon conclusion of investigations, or upon commencement of court action or proceedings, whether such proceedings are of a civil or criminal nature or upon conclusion of such proceedings, shall be surrendered to the Permanent Secretary to the Treasury.

