

MALAYSIAN ANTI-CORRUPTION COMMISSION  
BILL 2008

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A BILL

*i n t i t u l e d*

An Act to provide for the establishment of the Malaysian Anti-Corruption Commission, to make further and better provisions for the prevention of corruption and for matters necessary thereto and connected therewith.

[ ]

**ENACTED** by the Parliament of Malaysia as follows:

PART I

PRELIMINARY

**Short title and commencement**

**1.** (1) This Act may be cited as the Malaysian Anti-Corruption Commission Act 2008.

(2) This Act comes into operation on 1 January 2009.

**Principal objects of Act**

**2.** The principal objects of this Act are—

(a) to promote the integrity and accountability of public and private sector administration by constituting an independent and accountable anti-corruption body; and

(b) to educate public authorities, public officials and members of the public about corruption and its detrimental effects on public and private sector administration and on the community.

## Interpretation

3. In this Act, unless the context otherwise requires—

“member of a State Legislative Assembly” includes an officer of a public body who is a member of a State Executive Council by virtue of his office;

“member of the administration” has the meaning assigned to it in Clause (2) of Article 160 of the Federal Constitution;

“public body” includes—

- (a) the Government of Malaysia;
- (b) the Government of a State;
- (c) any local authority and any other statutory authority;
- (d) any department, service or undertaking of the Government of Malaysia, the Government of a State, or a local authority;
- (e) any society registered under subsection 7(1) of the Societies Act 1966 [*Act 335*];
- (f) any branch of a registered society established under section 12 of the Societies Act 1966;
- (g) any sports body registered under section 17 of the Sports Development Act 1997 [*Act 576*];
- (h) any co-operative society registered under section 7 of the Co-operative Societies Act 1993 [*Act 502*];
- (i) any trade union registered under section 12 of the Trade Unions Act 1959 [*Act 262*];
- (j) any youth society registered under section 9 of the Youth Societies and Youth Development Act 2007 [*Act 668*];
- (k) any company or subsidiary company over which or in which any public body as is referred to in paragraph (a), (b), (c), (d), (e), (f), (g), (h), (i) or (j) has controlling power or interest; or
- (l) any society, union, organization or body as the Minister may prescribe from time to time by order published in the *Gazette*;

“bank” means a bank, a finance company, a merchant bank, or a discount house, licensed under the Banking and Financial Institutions Act 1989 [*Act 372*], or any other financial institution established or licensed under any other written law or any co-operative society registered or deemed to have been registered under the Co-operative Societies Act 1993;

“banker’s book” includes ledgers, day books, cash books, account books and all other books and documents used in the ordinary course of business of a bank;

“agent” means any person employed by or acting for another, and includes an officer of a public body or an officer serving in or under any public body, a trustee, an administrator or executor of the estate of a deceased person, a subcontractor, and any person employed by or acting for such trustee, administrator or executor, or subcontractor;

“property” means real or personal property of every description, including money, whether situated in Malaysia or elsewhere, whether tangible or intangible, and includes an interest in any such real or personal property;

“financial institution” means any person, which, in fact, lawfully or unlawfully, carries on any banking business or finance company business as defined in the Banking and Financial Institutions Act 1989;

“monetary instrument” means coin or currency of Malaysia or of any other country, travellers’ cheque, personal cheque, bank cheque, money order, investment security or negotiable instrument in bearer form or otherwise in such form that title thereto passes upon delivery or upon delivery and endorsement;

“offence under this Act” includes a prescribed offence;

“prescribed offence” means—

- (a) any offence under any written law as specified in the Schedule;
- (b) an offence punishable under section 137 of the Customs Act 1967 [*Act 235*];
- (c) an offence under Part III of the Election Offences Act 1954 [*Act 5*];

- (d) an attempt to commit any of the offences referred to in paragraphs (a) to (c); or
- (e) an abetment of or a criminal conspiracy to commit (as those terms are defined in the Penal Code) any of the offences referred to in paragraphs (a) to (c), whether or not the offence is committed in consequence thereof;

“Chief Commissioner” means the Chief Commissioner of the Malaysian Anti-Corruption Commission appointed under section 5;

“court” means—

- (a) a High Court or a Judge of a High Court; or
- (b) a Sessions Court or a Magistrate’s Court or a Sessions Court Judge or a Magistrate,

as the case may be;

“Minister” means the Minister responsible for the Malaysian Anti-Corruption Commission;

“officer” or “junior officer” means any officer or junior officer appointed under subsection 6(1) or (2);

“foreign public official” includes—

- (a) any person who holds a legislative, executive, administrative or judicial office of a foreign country whether appointed or elected;
- (b) any person who exercises a public function for a foreign country, including a person employed by a board, commission, corporation, or other body or authority that is established to perform a duty or function on behalf of the foreign country; and
- (c) any person who is authorized by a public international organization to act on behalf of that organization;

“officer of a public body” means any person who is a member, an officer, an employee or a servant of a public body, and includes a member of the administration, a member of Parliament, a member of a State Legislative Assembly, a judge of the High Court, Court of Appeal or Federal Court, and any person receiving any remuneration from public funds, and, where the public body is a corporation sole, includes the person who is incorporated as such;

“senior officer of the Commission” means the Chief Commissioner, the Deputy Chief Commissioner, a Commissioner, a Deputy Commissioner, a Chief Senior Assistant Commissioner, a Senior Assistant Commissioner, an Assistant Commissioner, a Senior Superintendent, and a Superintendent;

“officer of the Commission” means the Chief Commissioner and any officer appointed under subsection 6(1);

“purchaser in good faith for valuable consideration” means any transferee, assignee, chargee, mortgagee, pledgee, holder of a lien, or lessee, of any property where the transfer, assignment, charge, mortgage, pledge, lien, or lease was obtained by him for adequate consideration in money or money’s worth, without notice that the property was obtained in consequence of the commission of any offence under this Act;

“business” means any activity carried on for the purpose of gain or profit and includes all property derived from or used in or for the purpose of carrying on such activity, and all the rights and liabilities arising from such activity;

“statutory authority” means an authority, whether consisting of a single person or a body of persons, established by Federal or State law and exercising powers, discharging duties or performing functions conferred upon the authority by any Federal or State law;

“local authority” has the meaning assigned to it in section 2 of the Local Government Act 1976 [*Act 171*];

“principal” includes any employer, any beneficiary under a trust, any trust estate, any person beneficially interested in the estate of a deceased person, the estate of a deceased person, and, in the case of any person serving in or under a public body, the public body;

“relative”, in relation to a person, means—

- (a) a spouse of the person;
- (b) a brother or sister of the person;
- (c) a brother or sister of the spouse of the person;

- (d) a lineal ascendant or descendant of the person;
- (e) a lineal ascendant or descendant of a spouse of the person;
- (f) a lineal descendant of a person referred to in paragraph (b);
- (g) the uncle, aunt or cousin of the person; or
- (h) the son-in-law or daughter-in-law of the person;

“associate”, in relation to a person, means—

- (a) any person who is a nominee or an employee of such person;
- (b) any person who manages the affairs of such person;
- (c) any organisation of which such person, or any nominee of his, is a partner, or a person in charge or in control of, or has a controlling interest in, its business or affairs;
- (d) any corporation within the meaning of the Companies Act 1965 [*Act 125*], of which such person, or any nominee of his, is a director or is in charge or in control of its business or affairs, or in which such person, alone or together with any nominee of his, has or have a controlling interest, or shares to the total value of not less than thirty per centum of the total issued capital of the corporation; or
- (e) the trustee of any trust, where—
  - (i) the trust has been created by such person; or
  - (ii) the total value of the assets contributed by such person to the trust at any time, whether before or after the creation of the trust, amounts, at any time, to not less than twenty per centum of the total value of the assets of the trust;

“gratification” means—

- (a) money, donation, gift, loan, fee, reward, valuable security, property or interest in property being property of any description whether movable or immovable, financial benefit, or any other similar advantage;

- (b) any office, dignity, employment, contract of employment or services, and agreement to give employment or render services in any capacity;
- (c) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (d) any valuable consideration of any kind, any discount, commission, rebate, bonus, deduction or percentage;
- (e) any forbearance to demand any money or money's worth or valuable thing;
- (f) any other service or favour of any description, including protection from any penalty or disability incurred or apprehended or from any action or proceedings of a disciplinary, civil or criminal nature, whether or not already instituted, and including the exercise or the forbearance from the exercise of any right or any official power or duty; and
- (g) any offer, undertaking or promise, whether conditional or unconditional, of any gratification within the meaning of any of the preceding paragraphs (a) to (f);

“Commission” means the Malaysian Anti-Corruption Commission;

“appointed date” means the date on which this Act comes into operation;

“dealing” includes—

- (a) any purchase, sale, loan, charge, mortgage, lien, pledge, caveat, transfer, delivery, assignment, subrogation, transmission, gift, donation, trust, settlement, deposit, withdrawal, transfer between accounts, or extension of credit;
- (b) any agency or grant of power of attorney; and
- (c) any act which results in any right, interest, title or privilege, whether present or future or whether vested or contingent, in the whole of or in part of any property being conferred on any person.

## PART II

## THE MALAYSIAN ANTI-CORRUPTION COMMISSION

**Establishment of the Malaysian Anti-Corruption Commission**

4. The Malaysian Anti-Corruption Commission is established.

**Chief Commissioner**

5. (1) The Yang di-Pertuan Agong shall, on the advice of the Prime Minister, appoint a Chief Commissioner of the Malaysian Anti-Corruption Commission for such period and on such terms and conditions as may be specified in the instrument of appointment.

(2) Where the Chief Commissioner is appointed from among members of the public services, the period of appointment of the Chief Commissioner shall not extend beyond the date of his compulsory retirement from the public service, but where he so attains the age of compulsory retirement he may be reappointed as Chief Commissioner by the Yang di-Pertuan Agong, on the advice of the Prime Minister, on contract for such period and on such terms and conditions as may be specified in the instrument of appointment.

(3) The Chief Commissioner shall, during the period of his appointment as set out in the instrument of appointment, hold office at the pleasure of the Yang di-Pertuan Agong, subject to the advice of the Prime Minister.

(4) The Chief Commissioner shall, during his term of office as such, be deemed to be a member of the general public service of the Federation for purposes of discipline.

(5) The Chief Commissioner shall be responsible for the direction, control and supervision of all matters relating to the Commission.

(6) The Chief Commissioner shall have all the powers of an officer of the Commission and shall have such powers of a Deputy Public Prosecutor as authorized by the Public Prosecutor for the purposes of this Act.

(7) The Chief Commissioner shall, before assuming the duties and responsibilities of his office, make in such manner as he may declare to be most binding on his conscience before the Yang di-Pertuan Agong such declaration as may be prescribed by the Minister by rules made under section 71.

(8) There shall be issued to the Chief Commissioner a certificate of appointment in the form of an authority card as evidence of his appointment.

(9) The person holding office as the Director General of the Anti-Corruption Agency appointed under subsection 3(2) of the Anti-Corruption Act 1997 [*Act 575*] immediately before the commencement of this Act shall, upon the commencement of this Act, be deemed to have been appointed Chief Commissioner under subsection (1) for the remainder of the period of his appointment under the 1997 Act, and the requirements of subsection (7) shall be deemed to have been satisfied.

### **Appointment of other officers of the Commission**

**6.** (1) There shall be appointed such number of Deputy Chief Commissioners, Commissioners, Deputy Commissioners, Chief Senior Assistant Commissioners, Senior Assistant Commissioners, Assistant Commissioners, Senior Superintendents, Superintendents, Chief Senior Assistant Superintendents, Senior Assistant Superintendents and Assistant Superintendents of the Commission as may be necessary for the purpose of carrying into effect the provisions of this Act.

(2) There shall be appointed such number of junior officers of the Commission as may be necessary to assist the Commission in carrying into effect the provisions of this Act.

(3) All officers and junior officers of the Commission shall be members of the general public service of the Federation.

(4) Every officer and junior officer of the Commission shall have such powers as may be provided for him under this Act and shall be subject to the direction, control and supervision of the Chief Commissioner or any other officer of the Commission superior to him in rank, and shall exercise his powers, perform his functions, and discharge his duties in compliance with such

directions or instructions as may be specified orally or in writing by the Chief Commissioner or any other officer of the Commission superior to him in rank.

(5) Every officer of the Commission appointed under subsection (1) shall on first joining the Commission and before assuming the duties and responsibilities of his office make in such manner as he may declare to be most binding on his conscience before an officer of the Commission of the rank of Senior Superintendent or above such declaration as may be prescribed by the Minister by rules made under section 71.

(6) A certificate of appointment in the form of an authority card shall be issued to every officer and junior officer of the Commission, and such card shall be signed by the Chief Commissioner and shall be *prima facie* evidence of the appointment under this Act.

(7) Upon the commencement of this Act, every person holding an appointment under the Anti-Corruption Act 1997 shall be deemed to be an officer of the Commission appointed under this section and the requirements of subsection (5) shall be deemed to have been satisfied, and every such officer shall hold such title of office as may be determined by the Minister by notification in the *Gazette*.

### **Functions of officers of the Commission**

7. The officers of the Commission shall have the following functions:

- (a) to receive and consider any report of the commission of an offence under this Act and investigate such of the reports as the Chief Commissioner or the officers consider practicable;
- (b) to detect and investigate—
  - (i) any suspected offence under this Act;
  - (ii) any suspected attempt to commit any offence under this Act; and
  - (iii) any suspected conspiracy to commit any offence under this Act;

- (c) to examine the practices, systems and procedures of public bodies in order to facilitate the discovery of offences under this Act and to secure the revision of such practices, systems or procedures as in the opinion of the Chief Commissioner may be conducive to corruption;
- (d) to instruct, advise and assist any person, on the latter's request, on ways in which corruption may be eliminated by such person;
- (e) to advise heads of public bodies of any changes in practices, systems or procedures compatible with the effective discharge of the duties of the public bodies as the Chief Commissioner thinks necessary to reduce the likelihood of the occurrence of corruption;
- (f) to educate the public against corruption; and
- (g) to enlist and foster public support against corruption.

### **Production of authority card**

**8.** Every officer and junior officer of the Commission when acting under this Act shall, on demand, declare his office and produce to the person against whom he is acting or from whom he seeks any information the authority card issued to him under this Act.

### **Officer deemed to be always on duty**

**9.** Every officer of the Commission shall, for the purposes of this Act, be deemed to be always on duty when required to perform his duties or functions and may perform the duties or functions and exercise the powers conferred on him under this Act or under any other written law at any place within or outside Malaysia.

### **Powers of officers of the Commission**

**10.** (1) In addition, and without prejudice, to the powers, duties and functions conferred under this Act—

- (a) an officer of the Commission shall have, for the purposes of this Act, all the powers and immunities of a police officer appointed under the Police Act 1967 [Act 344]; and

(b) a junior officer of the Commission shall have, for the purposes of this Act, all the powers and immunities of a prison officer of the rank of sergeant and below under the Prison Act 1995 [Act 537] when escorting and guarding persons in custody of the Commission and those of a police officer of the rank of sergeant and below appointed under the Police Act 1967.

(2) Without prejudice to the generality of subsection (1)—

(a) an officer of the Commission of the rank of Superintendent and above shall have all the powers of a police officer of the rank of Assistant Superintendent of Police and above; and

(b) a Chief Senior Assistant Superintendent, a Senior Assistant Superintendent and an Assistant Superintendent of the Commission shall have all the powers of a police officer of the rank of Inspector and above.

(3) Where in the course of any investigation or proceedings in court in respect of the commission of an offence under this Act by any person, there is disclosed an offence under any other written law, not being an offence under this Act, regardless whether the offence is committed by the same person or any other person, the officer of the Commission responsible for the investigation or proceedings, as the case may be, shall notify the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above who may issue such directions as he thinks fit.

(4) For the purpose of this Act—

(a) where an order, a certificate or any other act is required to be given, issued or done by an officer in charge of a Police District under any written law, such order, certificate or act may be given, issued or done by a senior officer of the Commission, and for such purpose, the place where the order, certificate or act was given, issued or done shall be deemed to be a Police District under his charge;

(b) an officer of the Commission shall have all the powers conferred on an officer in charge of a police station under any written law, and for such purpose the office of such officer shall be deemed to be a police station.

(5) For the avoidance of doubt, it is declared that for the purposes of this Act an officer of the Commission shall have all the powers of a police officer of whatever rank as provided for under the Criminal Procedure Code [Act 593] and the Registration of Criminals and Undesirable Persons Act 1969 [Act 7], and such powers shall be in addition to the powers provided for under this Act and not in derogation thereof, but in the event of any inconsistency or conflict between the provisions of this Act and those of the Criminal Procedure Code, the provisions of this Act shall prevail.

### **Duties of officers of the Commission**

**11.** (1) It shall be the duty of the Chief Commissioner and the officers of the Commission to carry out their functions as specified in section 7.

(2) The Chief Commissioner shall make an annual report on the activities of the Commission to the Special Committee on Corruption.

### **Standing orders**

**12.** The Chief Commissioner may issue administrative orders to be called “Standing Orders”, not inconsistent with the provisions of this Act, on the general control, training, duties and responsibilities of officers and junior officers of the Commission, and for such other matters as may be necessary or expedient for the good administration of the Commission or for the prevention of the abuse of power or neglect of duty, and generally for ensuring the efficient and effective functioning of the Commission.

## **PART III**

### **PROVISIONS ON ADVISORY BOARD, SPECIAL COMMITTEE AND COMPLAINTS COMMITTEE**

#### **Anti-Corruption Advisory Board**

**13.** (1) The Commission shall be advised by an advisory board to be known as the Anti-Corruption Advisory Board.

- (2) The Advisory Board shall consist of—
- (a) at least seven members who shall be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister; and
  - (b) the Chief Commissioner as *ex-officio* member.
- (3) The members appointed by the Yang di-Pertuan Agong shall be persons of integrity who have rendered distinguished public service or have achieved distinction in the professions.
- (4) The term of office of members appointed by the Yang di-Pertuan Agong shall be three years and such member shall not hold office for more than two terms either continuously or otherwise.
- (5) The Advisory Board shall have the following functions:
- (a) to advise the Commission on any aspect of the corruption problem in Malaysia;
  - (b) to advise the Commission on policies and strategies of the Commission in its efforts to eradicate corruption;
  - (c) to receive, scrutinise and endorse proposals from the Commission towards the efficient and effective running of the Commission;
  - (d) to scrutinise and endorse resource needs of the Commission to ensure its effectiveness;
  - (e) to scrutinise the annual report of the Commission before its submission to the Special Committee on Corruption; and
  - (f) to submit its comments to the Special Committee on Corruption as to the exercise by the Commission of its functions under this Act.

### **Special Committee on Corruption**

**14.** (1) There shall be a committee to be known as the Special Committee on Corruption which shall have the following functions:

- (a) to advise the Prime Minister on any aspect of the corruption problem in Malaysia;

- (b) to examine the annual report of the Commission;
- (c) to examine the comments of the Anti-Corruption Advisory Board as to the exercise by the Commission of its functions under this Act; and
- (d) to seek clarifications and explanations on the annual report of the Commission and the comments of the Anti-Corruption Advisory Board.

(2) The Special Committee shall consist of seven members, to be appointed by the Yang di-Pertuan Agong, who shall be drawn both from the members of the Senate and the House of Representatives, none of whom shall be a member of the administration.

(3) The members to be appointed under subsection (2) shall be the members of the Senate and the House of Representatives nominated by the Leader of the House of Representatives.

(4) The term of office of members of the Special Committee shall be three years but a member shall not hold office for more than two terms either continuously or otherwise.

(5) The Special Committee shall make an annual report on the discharge of their functions to the Prime Minister who shall lay a copy of that annual report before each House of Parliament.

### **Complaints Committee**

**15.** (1) There shall be a complaints committee which shall have the following functions:

- (a) to monitor the handling by the Commission of complaints of misconduct which is non-criminal in nature against officers of the Commission; and
- (b) to identify any weaknesses in the work procedures of the Commission which might lead to complaints and where it considers appropriate to make such recommendations as to the work procedures of the Commission as it deems fit.

(2) The Minister shall appoint not more than five persons, whom he deems fit and proper, to be members of the Complaints Committee.

## PART IV

## OFFENCES AND PENALTIES

**Offence of accepting gratification**

**16.** Any person who by himself, or by or in conjunction with any other person—

- (a) corruptly solicits or receives or agrees to receive for himself or for any other person; or
- (b) corruptly gives, promises or offers to any person whether for the benefit of that person or of another person,

any gratification as an inducement to or a reward for, or otherwise on account of—

- (A) any person doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place; or
- (B) any officer of a public body doing or forbearing to do anything in respect of any matter or transaction, actual or proposed or likely to take place, in which the public body is concerned,

commits an offence.

**Offence of giving or accepting gratification by agent**

**17.** A person commits an offence if—

- (a) being an agent, he corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (b) he corruptly gives or agrees to give or offers any gratification to any agent as an inducement or a reward for doing or forbearing to do, or for having done or forborne to do

any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business.

**Offence of intending to deceive principal by agent**

**18.** A person commits an offence if he gives to an agent, or being an agent he uses with intent to deceive his principal, any receipt, account or other document in respect of which the principal is interested, and which he has reason to believe contains any statement which is false or erroneous or defective in any material particular, and is intended to mislead the principal.

**Acceptor or giver of gratification to be guilty notwithstanding that purpose was not carried out or matter not in relation to principal's affairs or business**

**19.** (1) Where in any proceedings against any agent for any offence under paragraph 17(a) it is proved that he corruptly solicited, accepted, obtained or agreed to accept or attempted to obtain any gratification having reason to believe or suspect that the gratification was solicited or offered as an inducement or a reward for his doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour to any person in relation to his principal's affairs or business, he commits an offence under that paragraph notwithstanding that—

- (a) he did not have the power, right or opportunity so to do, show or forbear;
- (b) he accepted the gratification without intending so to do, show or forbear;
- (c) he did not in fact so do, show or forbear; or
- (d) the act, favour or disfavour was not in relation to his principal's affairs or business.

(2) Where in any proceedings against any person for any offence under paragraph 17(b) it is proved that he corruptly gave, agreed to give or offered any gratification to any agent as an inducement or a reward for doing or forbearing to do any act or for showing or forbearing to show any favour or disfavour

to any person having reason to believe or suspect that the agent had the power, right or opportunity so to do, show or forbear and that the act, favour or disfavour was in relation to his principal's affairs or business, he commits an offence under that paragraph notwithstanding that the agent had no power, right or opportunity or that the act, favour or disfavour was not in relation to his principal's affairs or business.

### **Corruptly procuring withdrawal of tender**

**20.** A person—

- (a) who, with intent to obtain from any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance, offers any gratification to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing the tender; or
- (b) who solicits or accepts any gratification as an inducement or a reward for his withdrawing a tender made by him for such contract,

commits an offence.

### **Bribery of officer of public body**

**21.** Any person who offers to an officer of any public body, or being an officer of any public body solicits or accepts, any gratification as an inducement or a reward for—

- (a) the officer voting or abstaining from voting at any meeting of the public body in favour of or against any measure, resolution or question submitted to the public body;
- (b) the officer performing or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any official act;
- (c) the officer aiding in procuring or preventing the passing of any vote or the granting of any contract or advantage in favour of any person; or
- (d) the officer showing or forbearing to show any favour or disfavour in his capacity as such officer,

commits an offence, notwithstanding that the officer did not have the power, right or opportunity so to do, show or forbear, or accepted the gratification without intending so to do, show or forbear, or did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the affairs of the public body.

### **Bribery of foreign public officials**

**22.** Any person who by himself, or by or in conjunction with any other person gives, promises or offers, or agrees to give or offer, to any foreign public official, or being a foreign public official, solicits, accepts or obtains, or agrees to accept or attempts to obtain, whether for the benefit of that foreign public official or of another person, any gratification as an inducement or reward for, or otherwise on account of—

- (a) the foreign public official using his position to influence any act or decision of the foreign state or public international organization for which the official performs any official duties;
- (b) the foreign public official performing, having done or forborne to do, or abstaining from performing or aiding in procuring, expediting, delaying, hindering or preventing the performance of, any of his official duties; or
- (c) the foreign public official aiding in procuring or preventing the granting of any contract for the benefit of any person,

commits an offence, notwithstanding that the foreign public official did not have the power, right or opportunity so to do, show or forbear, or accepted the gratification without intending so to do, show or forbear, or did not in fact so do, show or forbear, or that the inducement or reward was not in relation to the scope of his official duties.

### **Offence of using office or position for gratification**

**23.** (1) Any officer of a public body who uses his office or position for any gratification, whether for himself, his relative or associate, commits an offence.

(2) For the purposes of subsection (1), an officer of a public body shall be presumed, until the contrary is proved, to use his office or position for any gratification, whether for himself, his relative or associate, when he makes any decision, or takes any action, in relation to any matter in which such officer, or any relative or associate of his, has an interest, whether directly or indirectly.

(3) For the avoidance of doubt, it is declared that, for the purposes of subsection (1), any member of the administration of a State shall be deemed to use his office or position for gratification when he acts contrary to subsection 2(8) of the Eighth Schedule to the Federal Constitution or the equivalent provision in the Constitution or Laws of the Constitution of that State.

(4) This section shall not apply to an officer who holds office in a public body as a representative of another public body which has the control or partial control over the first-mentioned public body in respect of any matter or thing done in his capacity as such representative for the interest or advantage of that other public body.

### **Penalty for offences under sections 16, 17, 18, 20, 21, 22 and 23**

**24.** (1) Any person who commits an offence under sections 16, 17, 20, 21, 22 and 23 shall on conviction be liable to—

- (a) imprisonment for a term not exceeding twenty years; and
- (b) a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence, where such gratification is capable of being valued or is of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

(2) Any person who commits an offence under section 18 shall on conviction be liable to—

- (a) imprisonment for a term not exceeding twenty years; and

- (b) a fine of not less than five times the sum or value of the false or erroneous or defective material particular, where such false or erroneous or defective material particular is capable of being valued, or of a pecuniary nature, or ten thousand ringgit, whichever is the higher.

### **Duty to report bribery transactions**

**25.** (1) Any person to whom any gratification is given, promised, or offered, in contravention of any provision of this Act shall report such gift, promise or offer together with the name, if known, of the person who gave, promised or offered such gratification to him to the nearest officer of the Commission or police officer.

(2) Any person who fails to comply with subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) Any person from whom any gratification has been solicited or obtained, or an attempt has been made to obtain such gratification, in contravention of any provision of this Act shall at the earliest opportunity thereafter report such soliciting or obtaining of, or attempt to obtain, the gratification together with the full and true description and if known, the name of the person who solicited, or obtained, or attempted to obtain, the gratification from him to the nearest officer of the Commission or police officer.

(4) Any person who fails, without reasonable excuse, to comply with subsection (3) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Dealing with, using, holding, receiving or concealing gratification or advantage in relation to any offence**

**26.** Any person who, whether within or outside Malaysia, whether directly or indirectly, whether on behalf of himself or on behalf of any other person, enters into, or causes to be entered into, any dealing in relation to any property, or otherwise uses or causes to be used, or holds, receives, or conceals any property or any part thereof which was the subject matter of an offence under

section 16, 17, 18, 20, 21, 22 or 23 commits an offence and shall on conviction be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding seven years or to both.

**Making of statement which is false or intended to mislead, etc., to an officer of the Commission or the Public Prosecutor**

27. (1) Where any person makes or causes any other person to make to an officer of the Commission or to the Public Prosecutor, in the course of such officer or Public Prosecutor exercising any power conferred by this Act, any statement which to the knowledge of the person making the statement, or causing the statement to be made—

- (a) is false, or intended to mislead; or
- (b) is not consistent with any other statement previously made by such person to any other person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement regardless whether or not the person making the statement is under any legal or other obligation to tell the truth,

he commits an offence and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(2) Where any person, who has made a statement to an officer of the Commission or to the Public Prosecutor, in the course of such officer or Public Prosecutor exercising any power conferred by this Act, subsequently thereto makes any other statement to any person having authority or power under any law, or otherwise, to receive, or require to be made, such other statement, regardless whether or not the person making the statement is under a legal or other obligation to tell the truth, he commits an offence, if such other statement is inconsistent with any statement previously made to an officer of the Commission or the Public Prosecutor and shall on conviction be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding ten years or to both.

(3) For the avoidance of doubt, it is declared that for the purposes of paragraph (1)(b) and subsection (2), any statement made in the course of any legal proceedings before any court, whether civil or criminal, or any statement made by any person

in the course of any disciplinary proceedings, whether such legal proceedings or disciplinary proceedings are against the person making the statement or against any other person, shall be deemed to be a statement made to a person having authority or power under law to receive the statement so made.

**Attempts, preparations, abetments and criminal conspiracies punishable as offence**

**28.** (1) Any person who—

- (a) attempts to commit any offence under this Act;
- (b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or
- (c) abets or is engaged in a criminal conspiracy to commit any offence under this Act,

commits such offence and shall on conviction be liable to the punishment provided for such offence.

(2) Any provision of this Act which contains a reference to an offence under any specific provision of this Act shall be read as including a reference to an offence under subsection (1) in relation to the offence under that specific provision.

(3) Paragraph (1)(a) shall not apply where an attempt to do any act is expressly made an offence under this Act, and paragraph (1)(c) shall not apply to the case of an abetment of an offence as provided for under section 164 of the Penal Code.

PART V

INVESTIGATION, SEARCH, SEIZURE AND ARREST

**Power to investigate reports and enquire into information**

**29.** (1) Every report relating to the commission of an offence under this Act may be made orally or in writing to an officer of the Commission, and if made orally it shall be reduced into writing and read over to the person making the report; and every report, whether in writing or reduced into writing, shall be signed by the person making the report.

(2) Every report, whether in writing or reduced into writing, shall be entered in a book kept at the office of the Commission and there shall be appended to such entry the date and hour on which such report was made.

(3) Where an officer of the Commission has reason to suspect the commission of an offence under this Act following a report made under subsection (1) or information otherwise received by him, he shall cause an investigation to be carried out and for such purpose may exercise all the powers of investigation provided for under this Act and the Criminal Procedure Code.

(4) A report made under subsection (1) shall be kept secret and shall not be disclosed by any person to any person other than officers of the Commission and the Public Prosecutor until an accused person has been charged in court for an offence under this Act or any other written law in consequence of such report, unless the disclosure is made with the consent of the Public Prosecutor or an officer of the Commission of the rank of Commissioner and above.

(5) A copy, which is certified by an officer of the Commission of the rank of Superintendent and above, of an entry under subsection (2) of a report under subsection (1) shall be admissible as evidence of the content of the original and of the time, place and manner in which the report was recorded.

### **Power to examine persons**

**30.** (1) An officer of the Commission investigating an offence under this Act may—

- (a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;
- (b) order any person, to produce before him, within the time specified by such officer, any book, document, records, accounts or computerized data, or any certified copy thereof, or any other article which may, in his opinion, assist in the investigation into the offence;

- (c) by written notice order any person to furnish a statement in writing made on oath or affirmation setting out therein all such information which may be required under the notice, being information which, in such officer's opinion, would be of assistance in the investigation into the offence, within the time specified by such officer; and
- (d) order any person to attend before him for the purpose of having his handwriting or voice sample taken.

(2) Paragraph (1)(b) shall not apply to banker's books.

(3) A person to whom an order has been given under paragraph (1)(a) shall—

- (a) attend in accordance with the terms of the order to be examined, and shall continue to attend from day to day where so directed until the examination is completed; and
- (b) during such examination, disclose all information which is within his knowledge, or which is available to him, in respect of the matter in relation to which he is being examined, and answer any question put to him truthfully and to the best of his knowledge and belief, and shall not refuse to answer any question on the ground that it tends to incriminate him or his spouse.

(4) A person to whom an order has been given under paragraph (1)(b) shall not conceal, destroy, alter, remove from Malaysia, or deal with, expend, or dispose of, any book, document, record, account or computerized data, or article specified in the order, or alter or deface any entry in any such book, document, record, account or computerized data or cause such act to be done, or assist or conspire to do such act.

(5) A person to whom a written notice has been given under paragraph (1)(c) shall, in his statement, furnish and disclose truthfully all information required under the notice which is within his knowledge, or which is available to him, and shall not refuse to furnish or disclose the information on the ground that it tends to incriminate him or his spouse.

(6) A person to whom an order or a notice is given under subsection (1) shall comply with such order or notice and with subsections (3), (4) and (5), notwithstanding any written law or rule of law to the contrary.

(7) Where any person discloses any information or produces any book, document, record, account or computerized data or article pursuant to subsections (1), (3) and (5), neither the first-mentioned person, nor any other person on whose behalf or direction or as whose agent or employee the first-mentioned person may be acting, shall, on account of such disclosure or production, be liable to any prosecution, except a prosecution for an offence under section 27, for any offence under or by virtue of any written law, or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement or arrangement, or otherwise.

(8) An officer of the Commission examining a person under paragraph (1)(a) shall record in writing any statement made by the person and the statement so recorded shall be read to and signed by the person, and where such person refuses to sign the record, the officer shall endorse thereon under his hand the fact of such refusal and the reasons therefor, if any, stated by the person examined.

(9) The record of an examination under paragraph (1)(a), or a written statement on oath or affirmation made pursuant to paragraph 1(c), or any book, document, record, account or computerized data, or article produced under paragraph (1)(b) or otherwise in the course of an examination under paragraph (1)(a), or under a written statement on oath or affirmation made pursuant to paragraph (1)(c), or record of examination of sample taken under paragraph (1)(d) shall, notwithstanding any written law or rule of law to the contrary, be admissible in evidence in any proceedings in any court—

(a) for an offence under this Act; or

(b) for the forfeiture of property pursuant to section 40 or 41,

regardless whether such proceedings are against the person who was examined, or who produced the book, document, record, account or computerized data, or article, or who made the written statement on oath or affirmation, or against any other person.

(10) Any person who contravenes this section commits an offence.

**Power of search and seizure**

**31.** (1) Whenever it appears to the Public Prosecutor or an officer of the Commission of the rank of Chief Senior Assistant Commissioner or above as authorized by the Public Prosecutor upon information, and after such inquiry as he thinks necessary, that there is reasonable cause to suspect that in any place there is any evidence of the commission of an offence under this Act, he may by written order direct an officer of the Commission to—

- (a) enter any premises and there search for, seize and take possession of, any book, document, record, account or data, or other article;
- (b) inspect, make copies of, or take extracts from, any book, document, record, account or data;
- (c) search any person who is in or on such premises, and for the purpose of such search detain such person and remove him to such place as may be necessary to facilitate such search, and seize and detain any article found on such person;
- (d) break open, examine, and search any article, container or receptacle; or
- (e) stop, search, and seize any conveyance.

(2) Whenever it is necessary so to do, an officer of the Commission exercising any power under subsection (1) may—

- (a) break open any outer or inner door or window of any premises and enter thereinto, or otherwise forcibly enter the premises and every part thereof;
- (b) remove by force any obstruction to such entry, search, seizure or removal as he is empowered to effect; or
- (c) detain any person found in or on any premises, or in any conveyance, searched under subsection (1), until such premises or conveyance has been searched.

(3) Whenever it appears to an officer of the Commission that there is reasonable cause to suspect that there is concealed or deposited in any place any evidence of the commission of any offence under this Act and such officer has reasonable grounds for believing that, by reason of delay in obtaining a written order

of the Public Prosecutor or an officer of the Commission of the rank of Chief Senior Assistant Commissioner or above under subsection (1), the object of the search is likely to be frustrated, he may exercise in and in respect of such place, all the powers mentioned in subsections (1) and (2) as if he were directed to do so by an order issued under subsection (1).

(4) No person shall be searched under this section except by a person who is of the same gender as the person to be searched.

### **Translation**

**32.** (1) Where an officer of the Commission finds, seizes, detains or takes possession of any book, document or record in the exercise of any power under this Act, and such book, document or record or any part thereof is in a language other than the national language or the English language, or in any sign or code, the officer may require the person who had possession, custody or control of such book, document or record to furnish to the officer a translation in the national language of such book, document or record within such period as, in the opinion of the officer, would be reasonable having regard to the length of the book, document or record, or other circumstances relating to it.

(2) No person shall knowingly furnish a translation under subsection (1) which is not an accurate, faithful and true translation, or knowingly make a translation under that subsection which is not accurate, faithful and true.

(3) Where the person required to furnish a translation under subsection (1) is not the person who is suspected to have committed the offence under investigation, the Commission may reimburse him for such reasonable expenses as he may have incurred in furnishing the translation.

### **Seizure of movable property**

**33.** (1) In the course of an investigation into an offence under this Act any movable property which any officer of the Commission of the rank of Assistant Superintendent or above has reasonable grounds to suspect to be the subject matter of an offence or evidence relating to the offence shall be liable to seizure.

(2) A list of all movable property seized pursuant to subsection (1) and of the places in which they are respectively found shall be prepared by the officer of the Commission effecting the seizure and signed by him.

(3) A copy of the list referred to in subsection (2) shall be served on the owner of such property or on the person from whom the property was seized as soon as possible.

(4) Where any movable property liable to seizure under subsection (2) is in the possession, custody or control of a bank, subsections (1), (2) and (3) shall not apply and the provisions of section 37 shall apply thereto.

### **Further provisions relating to seizure of movable property**

**34.** (1) Where any movable property is seized under this Act, the seizure shall be effected by removing the movable property from the possession, custody or control of the person from whom it is seized and placing it under the custody of such person or authority and at such place as an officer of the Commission of the rank of Assistant Superintendent or above may determine.

(2) Where it is not practicable, or it is otherwise not desirable, to effect removal of any property under subsection (1), the officer referred to in that subsection may leave it at the premises in which it is seized under the custody of such person as he may detail for the purpose.

(3) Notwithstanding subsection (1), when any movable property, including any movable property referred to in subsection (6), has been seized under this Act, an officer of the Commission of the rank of Superintendent or above, other than the officer who effected the seizure, may at his discretion—

- (a) temporarily return the movable property to the owner thereof, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, subject to such terms and conditions as may be imposed, and, subject, in any case, to sufficient security being furnished to ensure that the movable property shall be surrendered on the demand being made by the officer who authorized the release and that such terms and conditions, if any, shall be complied with;
- or

(b) return the movable property to the owner thereof, or to the person from whose possession, custody or control it was seized, or to such person as may be entitled thereto, with liberty for the person to whom the movable property is so returned to dispose of the property, such return being subject to security being furnished in an amount not less than an amount which represents the open market value of such property on the date on which it is so returned.

(4) Where any person to whom movable property is temporarily returned under paragraph (3)(a) fails to surrender such property on demand or comply with any term or condition imposed under that paragraph—

- (a) the security furnished in respect of such property shall be forfeited; and
- (b) that person commits an offence and shall on conviction be liable to a fine of not less than two times the amount of the security furnished by him, and to imprisonment for a term not exceeding two years.

(5) Where an order of forfeiture is made by the court in respect of property returned under paragraph (3)(b), such forfeiture shall be effected by forfeiting the security furnished by the person to whom the property was returned.

(6) When any movable property seized under this Act consists of money, shares, securities, stocks, debentures or any chose-in-action, in the possession or under the custody or control of any person other than the person against whom the prosecution is intended to be taken, the seizure shall be effected by an officer of the Commission of the rank of Assistant Superintendent or above serving an order on such person—

- (a) prohibiting him from using, transferring, or dealing with such property; or
- (b) requiring him to surrender the property to an officer of the Commission of the rank of Assistant Superintendent or above in the manner and within the time specified in the order.

(7) Where any movable property seized is liable to speedy decay or deterioration, or is property which cannot be maintained without difficulty, or which is not practicable to be maintained, and which cannot be dealt with under subsection (3), an officer

of the Commission of the rank of Superintendent or above may sell or cause to be sold the property and shall hold the proceeds of the sale, after deducting therefrom the costs and expenses of the maintenance and sale of the property, to abide the result of any proceedings under this Act.

**Investigation of share, purchase account, etc.**

**35.** (1) Notwithstanding the provisions of any other written law or any rule of law, the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor, if he is satisfied that it is necessary for the purpose of any investigation into an offence under this Act, may authorize in writing an officer of the Commission to exercise in relation to any bank specified in the authorization all the powers of investigation set out in subsection (2).

(2) An officer of the Commission authorized under subsection (1) may, in relation to the bank in respect of which he is so authorized—

- (a) inspect and take copies of any banker's book, bank account or any document belonging to or in the possession, custody or control of the bank;
- (b) inspect and take copies of any share account, purchase account, expense account or any other account of any person kept in the bank;
- (c) inspect the contents of any safe deposit box in the bank;  
or
- (d) request for any other information related to any document, account or article referred to in paragraphs (a), (b) and (c).

(3) Notwithstanding anything in subsection (2), an officer of the Commission authorized under subsection (1) may take possession of any book, document, account, title, securities or cash to which he has access under that subsection where in his opinion—

- (a) the inspection of them, the copying of them, or the taking of extracts from them, cannot reasonably be undertaken without taking possession of them;

- (b) they may be interfered with or destroyed unless he takes possession of them; or
- (c) they may be needed as evidence in any prosecution for an offence under this Act or any other written law.

(4) Any person who wilfully fails or refuses to disclose any information or to produce any account, document or article as are referred to in subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

(5) Where any person discloses any information or produces any account or document or article to an authorized officer of the Commission, neither the first-mentioned person nor any other person on whose behalf or direction or as whose agent or employee, the first-mentioned person may be acting shall, on account of such disclosure or production, be liable to any prosecution, except a prosecution for an offence under section 27, for any offence under or by virtue of any law, or to any proceeding or claim by any person under or by virtue of any law, or under or by virtue of any contract, agreement or arrangement, or otherwise.

### **Powers to obtain information**

**36.** (1) Notwithstanding any written law or rule of law to the contrary, an officer of the Commission of the rank of Commissioner and above, if he has reasonable ground to believe, based on the investigation carried out by an officer of the Commission, that any property is held or acquired by any person as a result of or in connection with an offence under this Act, may by written notice—

- (a) require that person to furnish a statement in writing on oath or affirmation—
  - (i) identifying every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, or in which he has any interest, whether legal or equitable, and specifying the date on which each of the properties so identified was acquired and the manner in which it was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;

- (ii) identifying every property sent out of Malaysia by him during such period as may be specified in the notice;
  - (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;
  - (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by him or by any other person on his behalf, whether it has been transferred, sold to, or kept with any person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which cannot be separated or divided without difficulty;
  - (v) setting out all other information relating to his properties, business, travel, or other activities as may be specified in the notice; and
  - (vi) setting out all his sources of income, earnings or assets;
- (b) require any relative or associate of the person referred to in paragraph (1)(a), or any other person whom the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe is able to assist in the investigation, to furnish a statement in writing on oath or affirmation—
- (i) identifying every property, whether movable or immovable, whether within or outside Malaysia, belonging to him or in his possession, or in which such person has any interest, whether legal or equitable, and specifying the date on which each of the properties identified was acquired, whether by way of any dealing, bequest, devise, inheritance, or any other manner;
  - (ii) identifying every property sent out of Malaysia by him during such period as may be specified in the notice;

- (iii) setting out the estimated value and location of each of the properties identified under subparagraphs (i) and (ii), and if any of such properties cannot be located, the reason therefor;
  - (iv) stating in respect of each of the properties identified under subparagraphs (i) and (ii) whether the property is held by him or by any other person on his behalf, whether it has been transferred, sold to, or kept with any person, whether it has been diminished in value since its acquisition by him, and whether it has been commingled with other property which cannot be separated or divided without difficulty;
  - (v) setting out all other information relating to each of the properties identified under subparagraphs (i) and (ii), and the business, travel, or other activities of such person; and
  - (vi) setting out all the sources of income, earnings or assets of such person; and
- (c) require any officer of any bank or financial institution, or any person who is in any manner or to any extent responsible for the management and control of the affairs of any bank or any financial institution, to furnish copies of any or all accounts, documents and records relating to any person to whom a notice may be issued under paragraph (a) or (b).

(2) Every person to whom a notice is sent by the officer of the Commission of the rank of Commissioner and above under subsection (1) shall, notwithstanding any written law or rule of law to the contrary, comply with the terms of the notice within such time as may be specified therein, and any person who wilfully neglects or fails to comply with the terms of the notice commits an offence and shall on conviction be liable to imprisonment for a term not exceeding five years and to a fine not exceeding one hundred thousand ringgit.

(3) Where the officer of the Commission of the rank of Commissioner and above has reasonable grounds to believe that any officer of a public body who has been served with the written

notice referred to in subsection (1) owns, possesses, controls or holds any interest in any property which is excessive, having regard to his present or past emoluments and all other relevant circumstances, such officer of the Commission may by written direction require him to furnish a statement on oath or affirmation explaining how he was able to own, possess, control or hold such excess and if he fails to explain satisfactorily such excess, he commits an offence and shall on conviction be liable to—

- (a) imprisonment for a term not exceeding twenty years; and
- (b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgit, whichever is the higher.

(4) Every person to whom a direction is sent by such officer of the Commission under subsection (3) shall, notwithstanding any written law or rule of law to the contrary, comply with the terms of the direction within such time as may be specified in the direction, and if such person willfully neglects or fails to comply with such direction, he commits an offence and shall on conviction be liable to—

- (a) imprisonment for a term not exceeding twenty years; and
- (b) a fine which is not less than five times the value of the excess, if the excess is capable of being valued, or ten thousand ringgit, whichever is the higher.

(5) Every person to whom a notice or direction is sent by an officer of the Commission of the rank of Commissioner and above under this section shall be legally bound to state the truth and shall disclose all information which is within his knowledge, or which is available to him, or which is capable of being obtained by him.

(6) Where any person discloses an information or produces any accounts, documents or records, in response to a notice under subsection (1), such person, his agent or employee, or any other person acting on his behalf or under his direction, shall not, by reason only of such disclosure or production, be liable to prosecution for any offence under or by virtue of any law, or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement or arrangement, or otherwise.

(7) Subsection (6) shall not bar, prevent or prohibit the institution of any prosecution for any offence—

- (a) as provided by this section;
- (b) of giving false evidence in relation to any statement on oath or affirmation furnished to an officer of the Commission of the rank of Commissioner and above pursuant to this section; or
- (c) provided for in section 27.

**Order not to part with, deal in, movable property in bank, etc.**

37. (1) Where the Public Prosecutor is satisfied on information given to him by an officer of the Commission that any movable property, including any monetary instrument or any accretion thereto, which is the subject matter of an offence under this Act or evidence in relation to the commission of such offence, is in the possession, custody or control of a bank, he may, notwithstanding any other written law or rule of law, by order direct the bank not to part with, deal in, or otherwise dispose of such property or any part thereof until the order is revoked or varied.

(2) A bank or any agent or employee of a bank shall not, on account of such compliance, be liable to any prosecution under or by virtue of any law or to any proceeding or claim by any person under or by virtue of any law or under or by virtue of any contract, agreement, or arrangement, or otherwise.

(3) A person who fails to comply with an order of the Public Prosecutor under subsection (1) commits an offence and shall on conviction be liable to a fine not exceeding two times the amount which was paid out in contravention of the Public Prosecutor's order or fifty thousand ringgit, whichever is the higher, and to imprisonment for a term not exceeding two years.

**Seizure of immovable property**

38. (1) Where the Public Prosecutor is satisfied on information given to him by an officer of the Commission that any immovable

property is the subject matter of an offence under this Act or evidence of the commission of such offence, such property shall be liable to seizure and the seizure shall be effected—

- (a) by the issue of a Notice of Seizure by the Public Prosecutor setting out therein the particulars of the immovable property which is seized in so far as such particulars are within his knowledge, and prohibiting all dealings in such immovable property;
- (b) by publishing a copy of such Notice in two newspapers circulating in Malaysia one of which shall be in the national language and the other in the English language; and
- (c) by serving a copy of such Notice on the Land Administrator or the Registrar of Titles, as the case may be, in Peninsular Malaysia, or on the Registrar of Titles or Collector of Land Revenue, as the case may be, in Sabah, or on the Director of Lands and Surveys or the Registrar responsible for land title, as the case may be, in Sarawak, of the area in which the immovable property is situated.

(2) The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, the Registrar of Titles or the Registrar responsible for land title, as the case may be, referred to in subsection (1) shall immediately upon being served with a Notice of Seizure under subsection (1) endorse the terms of the Notice of Seizure on the document of title in respect of the immovable property in the Register at his office.

(3) Where an endorsement of a Notice of Seizure has been made under subsection (2), the Notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was effected before or after the issue of such Notice or the making of such endorsement.

(4) Subsection (3) shall not apply to a dealing effected by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia or the Government of a State, or a local authority or other statutory authority.

(5) Any person who contravenes subsection (2) or (3) or does any act which results in, or causes, a contravention of subsection (2) or (3) commits an offence and shall on conviction be liable to a fine not exceeding twice the value of the property in respect of which the Public Prosecutor's order had been contravened, or fifty thousand ringgit, whichever is the higher, and to imprisonment for a term not exceeding two years.

(6) Where a Notice of Seizure has been issued under subsection (1) it shall be an offence for the registered proprietor of the immovable property which is seized under such Notice, or for any other person having any interest in such immovable property, who has knowledge of such Notice, to knowingly enter into any agreement with any person to sell, transfer, or otherwise dispose of or deal with, the whole or any part of such immovable property.

### **Prohibition of dealing with property outside Malaysia**

**39.** Where the Public Prosecutor is satisfied that any property is the subject matter of an offence under this Act or was used in the commission of the offence, and such property is held or deposited outside Malaysia, he may make an application by way of an affidavit to a Judge of the High Court for an order prohibiting the person by whom the property is held or with whom it is deposited from dealing with the property.

### **Forfeiture of property upon prosecution for an offence**

**40.** (1) In any prosecution for an offence under this Act, the court shall make an order for the forfeiture of any property which is proved to be the subject matter of the offence or to have been used in the commission of the offence where—

(a) the offence is proved against the accused; or

(b) the offence is not proved against the accused but the court is satisfied—

(i) that the accused is not the true and lawful owner of such property; and

- (ii) that no other person is entitled to the property as a purchaser in good faith for valuable consideration.

(2) Where the offence is proved against the accused but the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.

### **Forfeiture of property where there is no prosecution for an offence**

**41.** (1) Where in respect of any property seized under this Act there is no prosecution or conviction for an offence under this Act, the Public Prosecutor may, before the expiration of eighteen months from the date of the seizure, apply to a Sessions Court Judge for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under this Act.

(2) The Judge to whom an application is made under subsection (1) shall cause to be published a notice in the *Gazette* calling upon any person who claims to have an interest in the property to attend before the Court on a date specified in the notice, to show cause as to why the property should not be forfeited.

(3) Where the Judge to whom an application is made under subsection (1) is satisfied—

- (a) that the property is the subject matter of or was used in the commission of an offence under this Act; and
- (b) there is no purchase in good faith for valuable consideration in respect of the property,

he shall make an order for the forfeiture of the property.

(4) Property in respect of which no application is made under subsection (1) shall, at the expiration of eighteen months from the date of its seizure, be released to the person from whom it was seized.

**Dealing with property after seizure to be void**

**42.** (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act or by virtue of this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Government of Malaysia, or the Government of a State, or a local authority or other statutory authority, shall be void, and shall not be registered or otherwise given effect to by any person or authority.

(2) Subsection (1) shall be in addition to and not in derogation of subsections 38(3) and (4).

(3) For so long as a seizure of any property under this Act remains in force, no action, suit or other proceeding of a civil nature shall be instituted, or if it is pending immediately before such seizure, be maintained or continued in any court or before any other authority in respect of the property which has been so seized, and no attachment, execution or other similar process shall be commenced, or if any such process is pending immediately before such seizure, be maintained or continued, in respect of such property on account of any claim, judgement or decree, regardless whether such claim was made, or such judgment or decree was given, before or after such seizure was effected, except at the instance of the Government of Malaysia or the Government of a State, or at the instance of a local authority or other statutory authority, or except with the prior consent in writing of the Public Prosecutor.

**Power to intercept communications**

**43.** (1) Notwithstanding the provisions of any other written law, the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor, if he considers that it is likely to contain any information which is relevant for the purpose of any investigation into an offence under this Act, may, on the application of an officer of the Commission of the rank of Superintendent or above, authorize any officer of the Commission—

(a) to intercept, detain and open any postal article in the course of transmission by post;

- (b) to intercept any message transmitted or received by any telecommunication; or
- (c) to intercept, listen to and record any conversation by any telecommunication, and listen to the recording of the intercepted conversation.

(2) When any person is charged with an offence under this Act, any information obtained by an officer of the Commission in pursuance of subsection (1), whether before or after such person is charged, shall be admissible at his trial in evidence.

(3) An authorization by the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor under subsection (1) may be given either orally or in writing; but if an oral authorization is given, the Public Prosecutor or the officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor shall, as soon as practicable, reduce the authorization into writing.

(4) A certificate by the Public Prosecutor or the officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor stating that the action taken by an officer of the Commission in pursuance of subsection (1) had been authorized by him under that subsection shall be conclusive evidence that it had been so authorized, and such certificate shall be admissible in evidence without proof of signature thereof.

(5) No person shall be under any duty, obligation or liability, or be in any manner compelled, to disclose in any proceedings the procedure, method, manner or means, or any matter related thereto, of anything done under paragraph (1)(a), (b) or (c).

(6) For the purpose of this section, “postal article” has the same meaning as in the Postal Services Act 1991 [Act 465].

### **Surrender of travel documents**

**44.** (1) Notwithstanding any written law to the contrary, the Public Prosecutor or an officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor

may, where he has grounds to believe that any person who is the subject of an investigation in respect of an offence under this Act suspected to have been committed by him is likely to leave Malaysia, by written notice require such person to surrender his certificate of identity, passport or exit permit, or any other travel document in his possession.

(2) A notice under subsection (1) shall be served personally on the person to whom it is addressed.

(3) A person on whom a notice under subsection (1) is served shall comply with such notice forthwith, failing which he may be arrested and taken before a Magistrate.

(4) Where a person is taken before a Magistrate under subsection (3), the Magistrate shall, unless such person complies with the notice under subsection (1) or satisfies the Magistrate that he does not possess a travel document, by warrant commit him to prison—

(a) until the expiry of the period of fourteen days from the date of his committal; or

(b) until he complies with the notice under subsection (1),

whichever occurs earlier.

(5) For the purpose of subsection (4), a certificate signed by the Public Prosecutor or the officer of the Commission of the rank of Commissioner or above as authorized by the Public Prosecutor to the effect that the person has complied with the notice under subsection (1) shall be sufficient warrant for the Superintendent of Prison to discharge such person.

(6) No legal proceedings shall be instituted or maintained against the Government, an officer of the Commission, a public officer or any other person, in respect of anything lawfully done under this section.

### **Power to amend or revoke any order or notice under this Act**

**45.** (1) The Public Prosecutor or an officer of the Commission as authorized by the Public Prosecutor may at any time amend or revoke any order or notice which has been made or given by

him in exercise of any power conferred on the Public Prosecutor or the officer under this Act, but any such revocation shall not be a bar to any fresh order being made or notice being given in the exercise of such power or any other powers conferred on the Public Prosecutor or the officer under this Act, at any time thereafter, against any person to whom the earlier order or notice applied or in respect of any matter affected by the earlier order or notice.

(2) A revocation or an amendment of an order or notice under subsection (1) may contain provision in respect of any matter which is consequential, ancillary or incidental to such revocation or amendment.

### **Advocates and solicitors may be required to disclose information**

**46.** (1) Notwithstanding any other written law, a Judge of the High court may, on application being made to him in relation to an investigation into any offence under this Act, order an advocate and solicitor to disclose information available to him in respect of any transaction or dealing relating to any property which is liable to seizure under this Act.

(2) Nothing in subsection (1) shall require an advocate and solicitor to comply with any order under that subsection to the extent that such compliance would disclose any privileged information or communication which came to his knowledge for the purpose of any pending proceedings.

### **Legal obligation to give information**

**47.** Subject to such limitation as is provided under this Act, every person required by an officer of the Commission or a police officer to give any information on any subject which it is such officer's duty to inquire into under this Act and which is in that person's power to give, shall be legally bound to give the information.

**Obstruction of investigation and search**

**48.** Any person who—

- (a) refuses any officer of the Commission access to any premises, or fails to submit to a search by a person authorized to search him under this Act;
- (b) assaults, obstructs, hinders or delays any officer of the Commission in the execution of his duty under this Act;
- (c) fails to comply with any lawful demand, notice, order or requirement of an officer of the Commission in the execution of his duty under this Act;
- (d) omits, refuses or neglects to give to an officer of the Commission any information which may reasonably be required of him and which he is empowered to give;
- (e) fails to produce to, or conceals or attempts to conceal from, an officer of the Commission any book, document, or article, in relation to which such officer has reasonable grounds for suspecting that an offence under this Act has been or is being committed, or which is liable to seizure under this Act;
- (f) rescues or endeavours to rescue or causes to be rescued any thing which has been duly seized;
- (g) destroys any thing to prevent the seizure thereof, or the securing of the thing; or
- (h) interferes with, puts fear into, threatens or abducts or attempts to interfere with, put fear into, threaten or abduct any person involved in an investigation under this Act,

commits an offence.

**Offences under Act to be seizable offences and powers of officers of the Commission relating to investigations**

**49.** (1) Every offence under this Act shall be a seizable offence for the purposes of the Criminal Procedure Code.

(2) Every person arrested under subsection (1) may be released from custody—

- (a) on his depositing such reasonable sum of money as an officer of the Commission may require;
- (b) on his executing a bond, with or without sureties, as an officer of the Commission may require; or
- (c) on his depositing such reasonable sum of money as an officer of the Commission may require and his executing a bond, with or without sureties, as an officer of the Commission may require.

(3) Any person who has been released from custody under subsection (2) may be arrested without warrant by any officer of the Commission—

- (a) if such officer has reasonable grounds for believing that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken; or
- (b) on being notified in writing by the surety of such person that such person is likely to break any condition on or subject to which such person was released and that surety wishes to be relieved of his obligation as surety.

(4) Any person arrested under subsection (3) and is not released shall, without unreasonable delay, and in any case within twenty-four hours (excluding the time of any necessary journey) be produced before a Magistrate's Court and if it appears to the Court that any condition on or subject to which such person was released or otherwise admitted to bail has been or is likely to be broken, the Court may—

- (a) remand such person in custody; or
- (b) admit such person to bail on the same conditions or on such other conditions as it thinks fit.

(5) Where a person who is arrested for an offence under this Act is serving a sentence of imprisonment or is under detention under any law relating to preventive detention, or is otherwise in lawful custody, he shall, upon an order in writing by an officer of the Commission of the rank of Superintendent or above, be produced before such officer or before any other officer of the

Commission for the purpose of investigation, and for such purpose he may be kept in lawful custody for a period not exceeding fourteen days.

(6) A person who is detained in lawful custody under subsection (5) or otherwise under any other written law may, at any time, be made available to an officer of the Commission for the purpose of investigation, or may be taken to any other place for the purpose of searching the place, or seizing any property, or identifying any person or for any other purpose related to the investigation.

(7) The period during which a person is under lawful custody under subsection (6) shall count towards the period of his imprisonment, detention or other custody.

(8) Where a person has been arrested and admitted to bail and the bailor fails to produce him or where the conditions of the bond on which or subject to which a person is released have not been complied with, the Public Prosecutor may apply to a Magistrate's Court for an order of forfeiture of the sum of money deposited and the Court shall deal with the application in accordance with section 404 of the Criminal Procedure Code.

## PART VI

### EVIDENCE

#### **Presumption in certain offences**

**50.** (1) Where in any proceedings against any person for an offence under section 16, 17, 18, 20, 21, 22 or 23 it is proved that any gratification has been received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered, by or to the accused, the gratification shall be presumed to have been corruptly received or agreed to be received, accepted or agreed to be accepted, obtained or attempted to be obtained, solicited, given or agreed to be given, promised, or offered as an inducement or a reward for or on account of the matters set out in the particulars of the offence, unless the contrary is proved.

(2) Where in any proceedings against any person for an offence under section 161, 162, 163 or 164 of the Penal Code,

it is proved that such person has accepted or agreed to accept, or obtained or attempted to obtain any gratification, such person shall be presumed to have done so as a motive or reward for the matters set out in the particulars of the offence, unless the contrary is proved.

(3) Where in any proceedings against any person for an offence under section 165 of the Penal Code it is proved that such person has accepted or attempted to obtain any valuable thing without consideration or for a consideration which such person knows to be inadequate, such person shall be presumed to have done so with such knowledge as to the circumstances as set out in the particulars of the offence, unless the contrary is proved.

(4) Where in any proceedings against any person for an offence under paragraph 137(1)(b) of the Customs Act 1967, it is proved that any officer of customs or other person duly employed for the prevention of smuggling has accepted, agreed to accept or attempted to obtain any bribe, gratuity, recompense, or reward, such officer or person shall be presumed to have done so for the neglect or non-performance of his duty as set out in the particulars of the offence, unless the contrary is proved.

### **Evidence of corroboration**

**51.** In any proceedings against any person for an offence under this Act, it may be proved that at or about the time of the alleged offence, or at any time thereafter, the accused, or any relative or associate of his—

- (a) held any property for which he, or his relative or associate, as the case may be, is unable to give a satisfactory account as to how he came into its ownership, possession, custody or control; or
- (b) had entered into any dealing for the acquisition of any property and he is unable to satisfactorily account for the consideration for which it is to be acquired,

and the evidence in relation thereto shall be presumed to corroborate any evidence relating to the commission of the offence.

**Evidence of accomplice and *agent provocateur***

**52.** (1) Notwithstanding any written law or rule of law to the contrary, in any proceedings against any person for an offence under this Act—

(a) no witness shall be regarded as an accomplice by reason only of such witness having—

- (i) accepted, received, obtained, solicited, agreed to accept or receive, or attempted to obtain any gratification from any person;
- (ii) given, promised, offered or agreed to give any gratification; or
- (iii) been in any manner concerned in the commission of such offence or having knowledge of the commission of the offence;

(b) no *agent provocateur*, whether he is an officer of the Commission or not, shall be presumed to be unworthy of credit by reason only of his having attempted to commit, or to abet, having abetted or having been engaged in a criminal conspiracy to commit, such offence if the main purpose of such attempt, abetment or engagement was to secure evidence against such person; and

(c) any statement, whether oral or written, made to an *agent provocateur* by such person shall be admissible as evidence at his trial.

(2) Notwithstanding any written law or rule of law to the contrary, a conviction for any offence under this Act solely on the uncorroborated evidence of any accomplice or *agent provocateur* shall not be illegal and no such conviction shall be set aside merely because the court which tried the case has failed to refer in the grounds of its judgment to the need to warn itself against the danger of convicting on such evidence.

**Admissibility of statements by accused persons**

**53.** (1) In any trial or inquiry by a court into an offence under this Act, any statement, whether the statement amounts to a confession or not or is oral or in writing, made at any time, whether before or after the person is charged and whether in

the course of an investigation or not and whether or not wholly or partly in answer to question, by an accused person to or in the hearing of any officer of the Commission, whether or not interpreted to him by any other officer of the Commission or any other person, whether concerned or not in the arrest of that person, shall, notwithstanding any written law or rule of law to the contrary, be admissible at his trial in evidence and, if that person tenders himself as a witness, any such statement may be used in cross-examination and for the purpose of impeaching his credit.

(2) No statement made under subsection (1) shall be admissible or used as provided for in that subsection if the making of the statement appears to the court to have been caused by any inducement, threat or promise having reference to the charge against the person, proceeding from a person in authority and sufficient in the opinion of the court to give that person grounds which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

(3) Where any person is arrested or is informed that he may be prosecuted for any offence under this Act, he shall be served with a notice in writing, which shall be explained to him, to the following effect:

“You have been arrested/informed that you may be prosecuted for ... (the possible offence under this Act). Do you wish to say anything? If there is any fact on which you intend to rely in your defence in court, you are advised to mention it now. If you hold it back till you go to court, your evidence may be less likely to be believed and this may have a bad effect on your case in general. If you wish to mention any fact now, and you would like it written down, this will be done.”.

(4) Notwithstanding subsection (3), a statement by any person accused of any offence under this Act made before there is time to serve a notice under that subsection shall not be rendered inadmissible in evidence merely by reason of no such notice having been served on him if such notice has been served on him as soon as is reasonably possible thereafter.

(5) No statement made by an accused person in answer to a written notice served on him pursuant to subsection (3) shall be construed as a statement caused by any inducement, threat or promise as is described in subsection (2), if it is otherwise voluntary.

(6) Where in any criminal proceedings against a person for an offence under this Act, evidence is given that the accused, on being informed that he might be prosecuted for it, failed to mention any such fact, being a fact which in the circumstances existing at the time he could reasonably have been expected to mention when so informed, the court, in determining whether the prosecution has made out a *prima facie* case against the accused and in determining whether the accused is guilty of the offence charged, may draw such inferences from the failure as appear proper; and the failure may, on the basis of those inferences, be treated as, or as capable of amounting to, corroboration of any evidence given against the accused in relation to which the failure is material.

(7) Nothing in subsection (6) shall in any criminal proceedings—

- (a) prejudice the admissibility in evidence of the silence or other reaction of the accused in the face of anything said in his presence relating to the conduct in respect of which he is charged, in so far as evidence thereof would be admissible apart from that subsection; or
- (b) be taken to preclude the drawing of any inference from any such silence or other reaction of the accused which could be drawn apart from that subsection.

**Admissibility of statements and documents of persons who are dead or cannot be traced, etc.**

**54.** Notwithstanding any written law to the contrary, in any proceedings against any person for an offence under this Act—

- (a) any statement made by any person to an officer of the Commission in the course of an investigation under this Act; and

- (b) any document, or copy of any document, seized from any person by an officer of the Commission in the exercise of his powers under this Act or by virtue of his powers under this Act or by virtue of this Act,

shall be admissible in evidence in any proceedings under this Act before any court, where the person who made the statement or the document or the copy of the document is dead, or cannot be traced or found, or has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which appears to the court unreasonable.

### **Certificate of position or office held**

**55.** (1) A certificate issued by a principal or an officer on behalf of his principal shall be admissible in evidence in any proceedings against any person for any offence under this Act as *prima facie* proof that the person named in such certificate—

- (a) held the position, office or capacity as specified in such certificate and for such period as so specified; and
- (b) received the emoluments as specified in such certificate.

(2) A certificate issued under subsection (1) shall be *prima facie* proof that it was issued by the person purporting to issue it as principal or on behalf of the principal without proof of the signature of the person who issued such certificate and without proof of the authority of such person to issue it.

### **Admissibility of translation of documents**

**56.** (1) Where any document which is to be used in any proceedings against any person for an offence under this Act is in a language other than the national language or the English language, a translation of such document into the national language or the English language shall be admissible where the translation is accompanied by a certificate of the person who translated the document setting out that it is a true and faithful translation and the translation had been done by such person at the instance of the Public Prosecutor or an officer of the Commission.

(2) Subsection (1) shall apply to a document which is translated, regardless whether the document was made within or outside Malaysia, or whether the translation was done within or outside Malaysia, or whether possession of such document was obtained by the prosecution within or outside Malaysia.

### **Evidence of custom inadmissible**

**57.** In any civil or criminal proceedings under this Act, evidence shall not be admissible to show that any such gratification as is mentioned in this Act is customary in any profession, trade, vocation or calling or on a social occasion.

## PART VII

### PROSECUTION AND TRIAL OF OFFENCES

#### **Prosecution of offences**

**58.** A prosecution for an offence under this Act shall not be instituted except by or with the consent of the Public Prosecutor.

#### **Jurisdiction of the Sessions Court**

**59.** Notwithstanding the provisions of the Subordinate Courts Act 1948 [*Act 92*], a prosecution for an offence under this Act shall be commenced in the Sessions Court.

#### **Trial by High Court on a certificate by the Public Prosecutor**

**60.** (1) Notwithstanding the provision of section 417 of the Criminal Procedure Code and subject to subsection (5), the Public Prosecutor may in any particular case triable in the Sessions Court for an offence under this Act, issue a certificate specifying the High Court in which the proceedings are to be instituted or transferred and requiring that the accused person be caused to appear or be produced before such High Court.

(2) The power of the Public Prosecutor under subsection (1) shall be exercised by him personally.

(3) The certificate of the Public Prosecutor issued under subsection (1) shall be tendered to the Sessions Court whereupon the Sessions Court shall transfer the case to the High Court specified in the certificate and cause the accused person to appear or be brought before such Court as soon as may be practicable.

(4) When the accused person appears or is brought before the High Court in accordance with subsection (3), the High Court shall fix a date for his trial which shall be held in accordance with the procedure under Chapter XX of the Criminal Procedure Code.

(5) This section shall apply to all cases before the Sessions Court to try offences under this Act, whether the proceedings are instituted before or after the coming into operation of this Act, provided that the accused person has not pleaded guilty and no evidence in respect of the case against him has begun to be adduced.

### **Joinder of offences**

**61.** Notwithstanding anything contained in section 164 of the Criminal Procedure Code, where a person is accused of more than one offence under this Act he may be charged with and tried at one trial for any number of such offences committed within the space of any length of time.

### **Defence statement**

**62.** Once delivery of documents by the prosecution pursuant to section 51A of the Criminal Procedure Code has taken place, the accused shall, before commencement of the trial, deliver the following documents to the prosecution:

- (a) a defence statement setting out in general terms the nature of the defence and the matters on which the accused takes issue with the prosecution, with reasons; and
- (b) a copy of any document which would be tendered as part of the evidence for the defence.

**Examination of offenders**

**63.** (1) Whenever two or more persons are charged with an offence under this Act the court may, on an application in writing by the Public Prosecutor, require one or more of them to give evidence as a witness or witnesses for the prosecution.

(2) Any person referred to in subsection (1) who refuses to be sworn or to be affirmed to answer any lawful question shall be dealt with in the same manner as witnesses so refusing may by law be dealt with by the court.

(3) Every person required to give evidence under subsection (1) who, in the opinion of the court, makes a true and full discovery of all things as to which he is lawfully examined, shall be entitled to receive a certificate of indemnity under the seal of the court stating that he has made a true and full discovery of all things as to which he was examined, and such certificate shall be a bar to all legal proceedings against him in respect of all such things.

(4) An application by the Public Prosecutor under subsection (1) may be presented to the court by the officer conducting the prosecution.

**PART VIII****GENERAL****Member of Special Committee not to be member of Advisory Board, etc.**

**64.** (1) A member of the Special Committee on Corruption shall not be appointed a member of the Anti-Corruption Advisory Board or a member of any other committee established for the purposes of this Act, whether established under this Act, any regulations made under this Act or otherwise.

(2) A member of the Advisory Board shall not be appointed a member of the Special Committee on Corruption or a member of any other committee established for the purposes of this Act, whether established under this Act, any regulations made under this Act or otherwise.

(3) A member of any committee established for the purposes of this Act, whether established under this Act, any regulations made under this Act or otherwise shall not be appointed a member of the Special Committee on Corruption, a member of the Advisory Board or a member of any other committee established for the purposes of this Act, whether established under this Act, any regulations made under this Act or otherwise.

### **Protection of informers and information**

**65.** (1) Subject to subsection (2), where any complaint made by an officer of the Commission states that the complaint is made in consequence of information received by the officer making the complaint, the information referred to in the complaint and the identity of the person from whom such information is received shall be secret between the officer who made the complaint and the person who gave the information, and everything contained in such information, identity of the person who gave the information and all other circumstances relating to the information, including the place where it was given, shall not be disclosed or be ordered or required to be disclosed in any civil, criminal or other proceedings in any court, tribunal or other authority.

(2) If any book, paper or other document, or any visual or sound recording, or other matter or material which is given in evidence or liable to inspection in any civil, criminal or other proceedings in any court, tribunal or other authority as are referred to in subsection (1) contains any entry or other matter in which any person who gave the information is named or described or shown, or which might lead to his discovery, the court before which the proceedings are held shall cause all such parts thereof or passages therein to be concealed from view or to be obliterated or otherwise removed so far as is necessary to protect such person from discovery.

(3) Any person who gives the information referred to in subsection (1) knowing that the information is false commits an offence and shall on conviction be liable to imprisonment for a term not exceeding ten years, and shall also be liable to a fine not exceeding one hundred thousand ringgit; and for the purposes of any investigation into, or prosecution of, any offence under this subsection, subsections (1) and (2) shall not apply.

**Liability for offences outside Malaysia**

**66.** (1) The provisions of this Act shall, in relation to citizens and permanent residents of Malaysia, have effect outside as well as within Malaysia, and when an offence under this Act is committed in any place outside Malaysia by any citizen or permanent resident, he may be dealt with in respect of such offence as if it was committed at any place within Malaysia.

(2) Any proceedings against any person under this section which would be a bar to subsequent proceedings against such person for the same offence if such offence was committed in Malaysia shall be a bar to further proceedings against him under any written law relating to the extradition of persons, in respect of the same offence, outside Malaysia.

**Application of provisions of this Act to a prescribed offence**

**67.** Notwithstanding any other written law to the contrary, the provisions of this Act shall apply to a prescribed offence regardless of whether the prosecution or any other proceedings in respect of such offence are instituted or taken by an officer of the Commission, or a police officer or customs officer, or any other officer having powers to investigate, prosecute or take any proceedings in respect of such offence.

**General offence**

**68.** Any person who fails to comply with any provision of this Act or any order, direction or notice given by or on behalf of a court, the Public Prosecutor, or an officer of the Commission in the exercise of his functions under this Act, commits an offence.

**General penalty**

**69.** Every person convicted of an offence under this Act for which no penalty is specifically provided shall be liable to a fine not exceeding ten thousand ringgit or to imprisonment for a term not exceeding two years or to both.

### **Powers of police officers under this Act**

**70.** Nothing contained in this Act shall derogate from the powers of a police officer to investigate into any offence under this Act and to prosecute any person in respect of any such offence, so long as the provisions of this Act are complied with.

### **Minister's power to make orders, regulations and rules and amend Schedule**

**71.** (1) The Minister may, from time to time, by order published in the *Gazette*, prescribe any society, union, organization or body to be a public body.

(2) The Minister may make regulations or rules for the further, better and more convenient carrying out of the provisions of this Act, and without prejudice to the generality of this provision, the Minister may make regulations or rules—

- (a) relating to any board or committee established under this Act;
- (b) providing for the form of any notice, order, declaration or other matter under this Act; and
- (c) providing for the service or delivery of any notice, order, direction, instruction, requirement or other thing lawfully done under this Act.

(3) The Minister may, from time to time, by order published in the *Gazette*, amend the Schedule.

### **Immunity**

**72.** No action, suit, prosecution or other proceedings whatsoever shall lie or be brought, instituted, or maintained in any court or before any other authority against—

- (a) the Government of Malaysia;
- (b) any officer or employee of the Government of Malaysia or of the Commission;
- (c) any member of the Advisory Board or the Special Committee or any other committee established under or for the purposes of this Act; or

- (d) any person lawfully acting on behalf of the Government of Malaysia, Commission, officer or employee of the Government of Malaysia or Commission,

for or on account of, or in respect of, any act done or statement made or omitted to be done or made, or purporting to be done or made or omitted to be done or made, in pursuance or in execution of, or intended pursuance or execution of this Act, or any order in writing, direction, instruction, notice or other thing whatsoever issued under this Act:

Provided that such act or such statement was done or made, or was omitted to be done or made, in good faith.

## PART IX

### REPEAL AND SAVING

#### **Repeal**

**73.** The Anti-Corruption Act 1997 is repealed.

#### **Saving**

**74.** (1) Any act done or action taken prior to the commencement of this Act by an officer of the Anti-Corruption Agency established under the Anti-Corruption Act 1997 shall be deemed to have been done or taken under this Act and may accordingly be continued by the officer.

(2) Any order made under section 60 of the Anti-Corruption Act 1997 and in force immediately before the commencement of this Act shall, upon the commencement of this Act, continue to remain in full force and may be revoked or amended in accordance with this Act.

(3) The provisions of this Act which relate solely to procedure or evidence shall apply to any offence against the law repealed under section 73 and such provisions may be used in the course of any pending investigations and in any court proceedings instituted before or after the commencement of this Act in respect of such offence.

## SCHEDULE

[Paragraph 3(a), definition of “prescribed offence”]

Offences punishable under sections 161, 162, 163, 164, 165, 213, 214, 215, 384, 385, 386, 387, 388, 389, 403, 404, 405, 406, 407, 408, 409, 417, 418, 419, 420, 465, 466, 467, 468, 469, 471, 472, 473, 474, 475, 476 and 477A of the Penal Code.

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EXPLANATORY STATEMENT

This Bill seeks to provide for the establishment of the Malaysian Anti-Corruption Commission and to make new and better provisions for the prevention of corruption. This Bill repeals the Anti-Corruption Act 1997 [Act 575]. Most of the provisions of Act 575 are retained, but with drafting amendments and modifications made to them. New features are the proposed establishment of the Anti-Corruption Advisory Board and the Special Committee on Corruption. Provisions relating to powers of investigation and certain definitions have been amended to provide for more effective implementation of the Act proposed by this Bill.

2. Part I of the Bill deals with preliminary matters.

*Clause 1* provides for the short title and commencement of the proposed Act.

*Clause 2* seeks to state the objects of the proposed Act.

*Clause 3* contains the definitions of the words and expressions used in this Bill. The definitions which differ from what had been provided in Act 575 include “prescribed offence”, “public body” and “relative”.

3. Part II contains provisions relating to the establishment of the Malaysian Anti-Corruption Commission (“the Commission”) and its officers.

*Clause 4* provides for the establishment of the Commission.

*Clause 5* provides for the appointment of the Chief Commissioner while *clause 6* provides for the appointment of officers and junior officers of the Commission.

*Clause 7* seeks to provide for the functions of the officers of the Commission, which are no different from those in section 8 of Act 575.

*Clauses 8* and *9* provide for matters which need to be observed by such officers generally when carrying out their functions under the proposed Act.

Powers and duties of officers of the Commission are spelt out in *clauses 10* and *11* respectively.

4. Part III contains provisions on the establishment of the Anti-Corruption Advisory Board, the Special Committee on Corruption and the Complaints Committee.

*Clause 13* seeks to establish the Anti-Corruption Advisory Board whose members will be appointed by the Yang di-Pertuan Agong on the advice of the Prime Minister.

*Clause 14* seeks to provide for the establishment of the Special Committee on Corruption whose members shall be members of Parliament appointed by the Yang di-Pertuan Agong. The members of Parliament to be appointed shall be nominated by the Leader of the House of Representatives.

*Clause 15* seeks to establish a Complaints Committee to monitor the handling of non-criminal complaints.

5. Part IV contains the main offences and penalties in relation to corruption. Such offences are basically the offences now provided for in Part II of Act 575. *Clauses 16, 17, 19, 20, and 21* of the Bill correspond to section 10, paragraphs 11(a) and (b), sections 12, 13 and 14 of Act 575. *Clause 18* is similar to paragraph 11(c) of Act 575.

*Clause 22* is a new provision which seeks to provide for the offence of bribery of foreign public official to enable Malaysia to comply with the United Nations Convention Against Corruption.

Part IV also seeks to require a person to whom gratification is offered or any person from whom gratification is requested to report such offer or request. This is contained in *clause 25*.

Under *clause 26*, a person commits an offence if he deals with, uses, holds, receives or conceals any property which is the subject-matter of any of the offences proposed in *clauses 16, 17, 18, 20, 21, 22 or 23*.

*Clause 27* seeks to make it an offence for any person to make any statement which is false or which is intended to mislead to an officer of the Commission or the Public Prosecutor who is exercising powers under the proposed Act.

*Clause 28* seeks to make every attempt, preparation, abetment and criminal conspiracy to commit an offence under the proposed Act punishable with the same penalty as provided for such offence.

6. Part V contains provisions on investigation, search, seizure and arrest. This Part covers provisions which now are in Parts IV and V of Act 575. Since certain powers in relation to investigation in the existing Part V of Act 575 are now proposed to be given to officers of the Commission authorized by the Public Prosecutor and will no longer be within the sole purview of the Public Prosecutor, there is no longer a need to maintain a part on powers of the Public Prosecutor.

*Clause 29* seeks to give an officer of the Commission the power to investigate reports and to enquire into information.

*Clause 30* seeks to allow an officer of the Commission to examine persons and to require persons being examined to produce books, documents, records, accounts, computerized data or articles which may assist in any investigation being conducted by such officer.

*Clause 31* seeks to allow an officer of the Commission to enter and search any premises, to search any person found therein, to stop, examine and seize any conveyance, and to detain any person found in any premises or conveyance until the search of the premises or conveyance is completed.

*Clause 32* seeks to empower an officer of the Commission to require the person from whose possession any book, document or record has been seized to furnish a translation of the book, document or record in the national language, if the book, document or record is not in the national language or the English language.

*Clauses 33 and 34* contain provisions relating to the seizure of property which is reasonably suspected to be the subject-matter of an offence.

*Clause 35* seeks to empower an officer of the Commission of the rank of Commissioner and above to authorize an officer of the Commission to inspect and make copies of the accounts of any person kept in a bank, inspect the contents of a safe deposit box in a bank and to seize any document or other thing inspected.

*Clause 36* seeks to empower an officer of the Commission of the rank of Commissioner and above, if he has reasonable ground to believe based on investigation that any property is held or acquired by any person as a result of or in connection with an offence under the proposed Act, to require that person to furnish a sworn statement in writing identifying all property owned by him or in his possession and to give other information in respect of such property. An officer of the Commission of the rank of Commissioner and above is also to be given the power to require any relative or associate of such person to give similar information. Failure to furnish such information will be an offence.

Further under *clause 36*, if such officer has reason to believe that a person who has been required to furnish information about property he owns or in his possession owns or possesses property which is in excess of his emoluments, he may require such person to give satisfactory explanation about the excess. Failure to give such explanation will be an offence.

*Clauses 37 and 38* seek to empower the Public Prosecutor to order banks not to part with or deal in movable property in banks and to order seizure of immovable property in the manner set out in those clauses if such property is the subject-matter of an offence or is evidence of an offence under the proposed Act.

*Clause 39* seeks to empower the Public Prosecutor to apply for a court order prohibiting any person from dealing with any property held or deposited outside Malaysia if such property is the subject-matter of an offence or is used in the commission of an offence under the proposed Act.

*Clauses 40 and 41* seek to allow the forfeiture of property which has been seized under the proposed Act. The forfeiture must be in accordance with the procedure set out in those clauses.

*Clause 42* seeks to make any dealing in respect of any property which has been seized under the proposed Act void.

*Clause 43* seeks to empower the Public Prosecutor and an officer of the Commission of the rank of Commissioner or above authorized by the Public Prosecutor to authorize an officer of the Commission of the rank of Superintendent or above to intercept, detain and open postal articles, to intercept any messages sent or received by telecommunication and to intercept, listen to and record any conversation by telecommunication and listen to the recording of the intercepted conversation.

*Clause 44* seeks to empower the Public Prosecutor and an officer of the Commission of the rank of Commissioner or above authorized by the Public Prosecutor to require a person who is being investigated in respect of an offence under the proposed Act to surrender his travel documents.

*Clause 45* allows an order or notice under the proposed Act to be amended or revoked.

*Clause 46* seeks to empower a Judge of the High Court to order an advocate and solicitor to disclose information in respect of any transaction or dealing relating to any property which is liable to seizure under the proposed Act.

*Clause 47* seeks to place a duty on every person who is required to give information in the course of an investigation under the proposed Act to give such information.

*Clause 48* seeks to make it an offence for any person to obstruct any investigation or search by an officer of the Commission in the exercise of his powers under the proposed Act.

*Clause 49* seeks to make all offences under the proposed Act seizable offences and sets out the procedure to be followed when a person is arrested and the rights of such person.

#### 7. Part VI contains provisions on evidence.

Under *clause 50*, once a person is proved to have, *inter alia*, accepted, given, promised or offered any gratification, he is presumed to have done so as a reward or an inducement for all the matters set out in the particulars of the charge, unless the contrary is proved. Similar presumptions also apply in the case of an offence under sections 161, 162, 163, 164 and 165 of the Penal Code and paragraph 137(1)(b) of the Customs Act 1967.

Under *clause 51*, the inability of any person to give a satisfactory account as to how he came to be in possession of any property which is the subject-matter of an offence under the proposed Act or for the consideration for which it is to be acquired can be used to corroborate any evidence relating to the commission of the offence.

*Clause 52* seeks to enable the evidence of an *agent provocateur* to be received in evidence in any proceedings for an offence under the proposed Act.

*Clause 53* deals with the admissibility of statements made by an accused person. Under this clause, evidence of the silence of an accused in the face of anything said in his presence relating to the conduct in respect of which he is charged is admissible in evidence.

*Clause 54* deals with statements and documents made by a person who is dead or cannot be traced.

*Clause 55* seeks to make admissible in evidence a certificate issued by the principal of a person on the position held by the person and his emoluments.

*Clause 56* seeks to make translations of documents admissible in evidence.

*Clause 57* seeks to make inadmissible any evidence showing that in any profession, trade, vocation or calling, gratification as is mentioned in the proposed Act is customary.

8. Part VII contains provisions on the conduct of prosecution and trial of offences.

*Clause 58* provides that prosecution for an offence under the proposed Act may only be instituted by or on behalf of the Public Prosecutor.

*Clause 59* states that the Sessions Court shall have jurisdiction to try offences under this Act.

*Clause 60* empowers the Public Prosecutor to transfer particular cases to the High Court.

*Clause 61* seeks to allow an unlimited number of offences under the proposed Act to be tried at one trial.

*Clause 62* seeks to require an accused person to provide a defence statement once delivery of documents by the prosecution pursuant to section 51A of the Criminal Procedure Code has taken place.

Under *clause 63*, where two or more persons are charged with an offence under the proposed Act, the court, on the application of the Public Prosecutor, may require one or more of them to give evidence as a witness or witnesses for the prosecution.

9. Part VIII contains general provisions.

*Clause 64* seeks to prohibit a member of any board or committee established under the proposed Act or for the purposes of the proposed Act to be appointed a member of any other committee established under the proposed Act or for the purposes of the proposed Act.

*Clause 65* deals with the protection of informers and information received from such informers.

*Clause 66* seeks to make the provisions of the proposed Act applicable to offences committed by citizens and permanent residents of Malaysia outside Malaysia.

*Clause 67* seeks to make the proposed Act applicable to a prescribed offence even though prosecution or other proceedings are taken by an officer who is not an officer of the Commission.

*Clauses 68 and 69* contain general offence and general penalty.

*Clause 70* seeks to save the powers of a police officer to investigate and prosecute any offence under the proposed Act.

*Clause 71* seeks to empower the Minister to make orders, regulations and rules for the purposes of the proposed Act and to amend the Schedule to the proposed Act.

*Clause 72* seeks to protect the Government and officers of the Commission and any person lawfully acting on their behalf from civil and criminal proceedings.

10. Part IX contains repeal and saving provisions.

*Clause 73* seeks to repeal Act 575. Under *clause 74*, the provisions of the proposed Act on procedure and evidence will be applicable to any pending investigation and to any court proceedings instituted before or after the commencement of the proposed Act in respect of an offence under Act 575.

#### FINANCIAL IMPLICATIONS

This Bill will involve the Government in extra financial expenditure the amount of which at present cannot be ascertained.

[PN(U<sup>2</sup>)2635]