

(Act No. 1 of 1997)



I ASSENT

MSWATI III
KING OF SWAZILAND

13th May 1997

AN ACT
entitled

An Act to amend the Prevention of Corruption Order, 1993 and to provide for matters incidental thereto.

ENACTED by the King and the Parliament of Swaziland.

Short title.

1. This Act may be cited as the Prevention of Corruption (Amendment) Act, 1997 and shall be read as one with Prevention of Corruption Order, 1993 (hereafter referred to as "the principal Order").

Amendment of section 2.

2. Section 2 of the principal Order is amended by defining the following terms

"Minister" means the Minister responsible for Justice;

"Spouse" includes concubine, cohabitant, fiancée, or lover

Amendment of section 3.

3. Section 3 of the principal Order is amended by deleting subsection (2).

Amendment of section 4.

(b) by replacing subsection (2) with the following new subsection -

"(2) The King in consultation with the Minister, may appoint the Deputy Commissioner for a period of five (5) years and on such terms and conditions as the King may determine";

(c) in subsection (4), by replacing the words "Prime Minister" with the word "King";

(d) by replacing subsection (5) with the following new subsection -

"(5) In the performance of their functions and the carrying out of their duties, the Commissioner and Deputy Commissioner shall do so independently, professionally and judiciously;"

Amendment of section 5.

5. Section 5 of the principal Order is replaced with the following new section -

"5. (1) A person shall not qualify for appointment as Commissioner unless he is a person of integrity and proven administrative competence and is qualified to be appointed as a judge. Of the High Court of Swaziland.

(2) A person shall not qualify for appointment as Deputy Commissioner unless he is a person of integrity and proven administrative competence and has qualifications either in law, economics, accounting, police and criminal investigation or any other related profession relevant to the functions of the Commission."

Amendment of section 6.

6. Section 6 of the principal Order is replaced with the following new section -

"6. The King may, after consultation with the Minister, remove the Commissioner and the Deputy Commissioner from office for misbehaviour or inability to perform the functions of their office whether such inability arises from infirmity of body or mind or from any other cause.

Provided that before removing the Commissioner or Deputy Commissioner from office for the reasons stated in this section, the King shall appoint a tribunal consisting of a Chairman who shall be a judge and two other persons to enquire into the matter and report their findings and conclusions thereon to the King."

Amendment of section 7.

7. Section 7 of the principal Order is amended -

(a) in subsection (1), by replacing the words "Prime Minister" with the word "King";

(b) in subsection (2), by replacing the words "Prime Minister, shall subject to section 5" with the words "King, may subject to section 4 and 5."

Amendment of section 8.

8. Section 8 of the principal Order is amended by replacing it with the following new section -

(2) Without prejudice to subsection (1), the Civil Service Board, the Judicial Service Commission, the Teaching Service Commission or their successors may, at the request of the Commissioner, cause to be seconded or transferred from the public service or such other Commission to the Commission, such officer as it may deem necessary for the efficient discharge of the functions of the Commission.

(3) Officers of the Commission appointed by the Commissioner, shall be employed on such terms and conditions as the King, in consultation with the Commissioner, may determine.

(4) The Commissioner may, subject to the relevant applicable law, terminate the appointment of an officer of the Commission if the Commissioner is satisfied that it is in the interest of the Commission to terminate such appointment and the Commissioner shall assign reasons for such termination:

Provided that if the Officer was seconded, such officer shall be dealt with in terms of the laws applicable to officers in the Civil Service or the relevant Commission from where such officer was seconded."

Amendment of section 9.

9. Section 9 of the principal Order is amended by inserting the words "or Regulations" between the word "order" and "the" occurring in line 1.

Amendment of section 10.

10. Section 10 of the principal Order is amended -

- (a) in subsection (1) (c), by putting a full stop after the word "practices" and deleting the words "and to submit a report of such investigation to the Prime Minister";
- (b) deleting subsection (2) and numbering subsection (3) as subsection (2) and subsection (4) as subsection (3).

Amendment of section 12.

11. Section 12 of the principal Order is amended -

- (a) in subsection (1), by -
 - (i) deleting the words "apply to Court for an order" occurring in line 3;
 - (ii) adding the following new paragraph after paragraph (e) -

"(f) require any person who is being investigated to furnish the investigating officer, with a sworn affidavit containing any information referred to in paragraphs (a) and (b);"
- (b) replacing the word "authorising" occurring in line 3 with the word "authorise";
- (c) inserting the following new subsection immediately after subsection (3) -

"(4) The information referred to in subsection (1) (f) shall be admissible in evidence during the trial of that person and if he tenders himself as a witness, such information may be used in cross examination and for purposes of impeaching his credibility."

Amendment of principal Order.

12. The principal Order is amended immediately after section 12 by inserting the following new section -

"Power of arrest

12 *bis.* (1) An investigating officer or an officer authorised by the Commissioner may, without warrant, arrest a person if he or she reasonably suspects that such person has committed an offence under this Act.

(2) If, during an investigation by the Commission of a suspected offence under this Act, another offence is disclosed, any such officer may, without warrant, arrest a person if he reasonably suspects that such person has committed that other offence.

(3) The officer may -

(a) use force as is reasonable in the circumstances in effecting the arrest under subsections (1) and (2);

(b) for the purpose of effecting such arrest, enter and search any premises or place, if he has reason to believe that there is in the premises or place a person who is to be so arrested.

(4) Premises or places shall not be entered under subsection (3), unless the officer has first stated that he is an officer of the Commission and the purpose for which he seeks entry and produces his identity card to any person therein, requesting its production.

(5) A person arrested under this section shall be brought before court within a reasonable time which time shall not exceed forty eight (48) hours."

Amendment of Section 19.

13. Section 19 of the principal Order is amended -

- (a) in subsection (1), by replacing the words "Prime Minister" with the word "Minister" and by adding the following proviso -

"Provided that the report of the Commissioner shall not contain the facts and findings of any pending investigation that may have been carried out by the Commission during that year."

- (b) in subsection (2), by replacing the words "Prime Minister" with the word "Minister";

Replacement of section 38.

14. The principal Order is amended by replacing section 38 with the following section -

"Consent of the Attorney-General required for prosecuting offence under Part III

38. No prosecution for an offence under Part III of this Order shall be instituted by the Director of Public Prosecutions except with the prior consent and advice of the Attorney-General having been given."

Amendment of section 39.

15. Section 39 of the principal Order is amended by replacing the words "Prime Minister" with the word "Minister".



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