

THE CORRUPTION PREVENTION (SPECIAL PROSECUTOR) ACT, 2008

(Act of 2008)

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A BILL

ENTITLED

AN ACT to Promote and Strengthen Measures to Prevent and Combat Corrupt Conduct More Efficiently and Effectively; to provide for the offence of corrupt conduct and offences relating to corrupt conduct; to provide for the establishment of a commission of Parliament to be known as the Office of the Special Prosecutor for Corruption with special responsibility for the investigation and prosecution of corrupt conduct; to repeal the Corruption (Prevention) Act and the Parliament (Integrity of Members) Act; and for connected matters.

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PART I. *Preliminary*

1.—(1) This Act may be cited as the Corruption Prevention (Special Prosecutor) Act, 2008, and subject to subsection (2), shall come into operation on a day to be appointed by the Minister by notice published in the *Gazette*.

Short title
and com-
mencement.

(2) Different days may be appointed for the coming into operation of this Act or, as the case may be, of different sections of this Act.

Interpreta-
tion.

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

“advantage” includes—

- (a) any benefit, whether direct or indirect;
- (b) any act or omission at the request of another person, whether or not the nature or timing of the act or omission is then known or the making of the request is express or implied, direct or indirect;
- (c) any gift, loan, sponsorship, fee, reward or commission consisting of money, any valuable security, or any other property;
- (d) any office, employment or contract;
- (e) any payment, release, discharge or liquidation of any loan, obligation or other liability, whether in whole or in part;
- (f) any service, or favour, 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;
- (g) the exercise or failure to exercise of any right, power or duty; and
- (h) any offer, undertaking or promise, whether conditional or unconditional, within the meaning of paragraph (a), (b), (c), (d), (e), (f) or (g);

“agent” means any person employed by or acting for another and includes a parliamentarian, public official, public body or any political party or institution or officer thereof, a trustee, an administrator or executor of the estate of a deceased person, a sub-contractor, and any person employed by or acting for such trustee, administrator, executor, or sub-contractor;

“appointed day” means the day on which this Act, or as the case may be a section of this Act, comes into operation;

“assets and liabilities” includes, in relation to assets any property whether in or outside of Jamaica and in relation to liabilities, any obligation to pay money whether in or outside of Jamaica;

“associate”, in relation to a person, includes an agent known to act subject to the directives or influence of the person;

“authorized officer” means a person so designated under section 34(3);

“child” means a person under the age of eighteen years;

“complaint” includes any complaint referred to in section 33 (1)
 (a) relating to corrupt conduct by a parliamentarian, public official, or person in the private sector and information or notification under section 48 or any referral under section 50;

“consideration” means valuable consideration of any kind;

“Corruption Tribunal” or **“Tribunal”** means the tribunal established under section 64;

“corrupt conduct” has the meaning assigned to it in section 3;

“document” includes, in addition to a document in writing—

- (a) any map, plan, graph or drawing;
- (b) any photograph;
- (c) any disc, tape, soundtrack or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (d) any film (including microfilm), negative; tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced therefrom;
- (e) a document in electronic form;

“financial institution” has the meaning assigned to it in the Financial Institutions Act;

“foreign public official” means any person—

- (a) holding a legislative, executive, administrative or judicial office of a country or territory other than Jamaica, whether appointed or elected;
- (b) performing a public function for a country or territory other than Jamaica, including for an enterprise or agency of that country or territory that is similar to a public body under this Act;

“functions” includes powers and duties;

“investigation” means any inquiry or investigation conducted under this Act;

“judicial office” means any of the following offices—

- (a) Chief Justice;
- (b) Member of a tribunal appointed under the Constitution of Jamaica;
- (c) Judge of the Court of Appeal;
- (d) Registrar of the Court of Appeal;
- (e) Judge of the Supreme Court;
- (f) Registrar of the Supreme Court;
- (g) Member of a tribunal appointed under the Commissions of Enquiry Act;
- (h) Resident Magistrate; or
- (i) Justice of the Peace exercising summary jurisdiction;

“official of a public international organization” means an international civil servant or any person who is authorized by a public international organization to act on behalf of the organization;

“Office” means the Office of the Special Prosecutor for Corruption constituted under section 32;

“parliamentarian” means a member of the House of Representatives or a member of the Senate;

“performing a function” includes exercising or failing to exercise the function irrespective of whether the function—

- (a) is or is not within the competence of the person exercising it; or
- (b) is exercised in Jamaica, or any part of Jamaica, or elsewhere;

“principal” includes—

- (a) an employer;
- (b) a beneficiary under a trust;
- (c) a trust estate as though it were a person;
- (d) any person beneficially interested in the estate of a deceased person;
- (e) the estate of a deceased person as though it were a person; and
- (f) in the case of an employee of a public body, the public body;

“private sector” includes any—

- (a) natural person or group of two or more natural persons who carries on a business;
- (b) syndicate, agency, trust, partnership, fund, association, organization or institution;
- (c) company registered under the Companies Act;
- (d) body of persons corporate or unincorporated; or
- (e) other legal person,

but does not include a public officer or a public body;

“property” means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;

“public body” means—

- (a) a Ministry, Department or Agency of Government;
- (b) a Parish Council, the Kingston and St. Andrew Corporation, a Municipal Council or Municipality established under the Municipalities Act, a statutory body or authority; and
- (c) a company registered under the Companies Act, being a company in which the Government or an agency of Government, whether by the holding of shares or by financial input, is in a position to influence the policy of the company;

“public function” means any public service or function in the discharge of which Jamaica, or the public has an interest, whether or not payment is received therefor, which is carried out by—

- (a) a person for, or on behalf of, or under the direction of, a public body;
- (b) a body, ~~whether public or private~~, certain of whose functions are functions of a public nature or in whose decision making the Government has or potentially has an interest;
- (c) a parliamentarian, acting in such capacity;

“public international organization” means—

- (a) an organization—
 - (i) of which two or more countries are members; or
 - (ii) that is constituted by persons representing two or more countries;
- (b) an organization established by, or a group of organizations constituted by—
 - (i) organizations of which two or more countries are members; or

- (ii) organizations that are constituted by the representatives of two or more countries;
or

(c) an organization that is—

- (i) an organ of or office within an organization described in paragraph (a) or (b)—
- (ii) a commission, council or other body established by an organization or organ referred to in sub-paragraph (i); or
- (iii) a committee or a subcommittee of a committee of an organization referred to in paragraph (a) or (b) or of an organ, council or body referred to in sub-paragraph (i) or (ii);

“public official” means—

- (a) any person holding an executive or administrative office, whether appointed or elected, whether permanent or temporary, or whether paid or unpaid;
- (b) any other person who performs a public function;
- (c) any member of the Security Forces;

but does not include a parliamentarian or a person who holds a judicial office;

“relevant public body” means the public body to which a matter that concerns or may concern corrupt conduct relates;

“Security Forces” means—

- (a) the Jamaica Constabulary Force;
- (b) the Jamaica Defence Force;
- (c) the Island Special Constabulary Force; and
- (d) the Rural Police;

“single man” or “single woman”, used with reference to the definition of “spouse”, includes a widow or widower, as the case may be, and a divorcee;

“Special Prosecutor” means the person appointed as the Special Prosecutor under section 37;

“spouse” includes—

- (a) a single woman who, for a period of not less than five years, has cohabited with the single man as if she were in law his wife; and**
- (b) a single man who, for a period of not less than five years, has cohabited with a single woman as if he were in law her husband;**

“statutory declaration” means a statutory declaration made under section 59;

“valuable security” means any document—

- (a) creating, transferring, surrendering or releasing any right to, in or over property;**
- (b) authorizing the payment of money or delivery of any property; or**
- (c) evidencing the creation, transfer, surrender or release of any such right, the payment of money or delivery of any property or the satisfaction of any obligation.**

(2) For the purpose of the definition of “public function”, the term “public service” includes the provision of electricity, water and communication.

(3) For the purposes of this Act—

- (a) a person offers an advantage if he, or any other person acting on his behalf, directly or indirectly gives, affords or holds out, or agrees, undertakes or promises to give, afford or hold out, any advantage to or for the benefit of or in trust for any other person;**
- (b) a person solicits an advantage if he, or any other person acting on his behalf, directly or indirectly demands, invites, asks for or indicates willingness to receive, any advantage, whether for himself or for any other person; and**

- (c) a person accepts an advantage if he, or any other person acting on his behalf, directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain any advantage, whether for himself or for any other person.

(4) The Minister may, by order, subject to affirmative resolution, exclude from the definition of "public official" any member of any council, board, committee or other body, who would, by virtue of his membership thereof, fall within that definition.

3.—(1) For the purpose of this Act, "corrupt conduct" includes the conduct specified in the First Schedule.

Meaning of corrupt conduct. First Schedule.

(2) The mention of a particular kind of conduct in the First Schedule shall not be regarded as limiting the scope of any other provision of this Act.

4. The principal objects of this Act are to—

Principal objects of Act.

- (a) promote and strengthen measures for the prevention and combat of corrupt conduct in the public and private sectors more efficiently and effectively;
- (b) promote integrity, accountability and proper management of public affairs and public property; and
- (c) provide for the establishment of a commission of Parliament to be known as the Office of the Special Prosecutor for Corruption with special responsibility for the investigation and prosecution of corrupt conduct.

5.—(1) Conduct may amount to corrupt conduct under this Act even though it occurred outside Jamaica, and such conduct refers to matters arising outside Jamaica, matters arising under the laws of Jamaica, or under any other law.

Application of Act.

(2) Where a citizen of Jamaica engages in corrupt conduct or commits an offence under section 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 29 or 30 in another State, he shall be liable to be prosecuted and tried for the offence as if he had committed the offence in Jamaica.

DPP's
functions not
affected by
this Act.

6. For the avoidance of doubt it is hereby declared that nothing in this Act affects the functions of the Director of Public Prosecutions under section 94 of the Constitution of Jamaica.

Remedy
under
other pro-
vision
of law
unaffected.

7. Nothing in this Act shall be construed as limiting or affecting any remedy or right of appeal, objection or procedure given to any person by any other provision of law.

PART II. *Corrupt Conduct and Related Offences*

General
offence of
corrupt
conduct.

8. A person who engages in corrupt conduct commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offences
relating to
undue
advantage
sought by
public
official.

9.—(1) A public official commits an offence if he—

- (a) corruptly solicits or accepts, whether directly or indirectly, for himself or another person or body any undue advantage for doing any act or omitting to do any act in the performance of his public function; or
- (b) in the performance of his public function does any act or omits to do any act for the purpose of obtaining any undue advantage for himself or any other person.

(2) A public official who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

10.—(1) A person shall not intentionally promise, offer or give, to a public official, directly or indirectly, an undue advantage, for the official himself or another person or body, in order that the official act or refrain from acting in the performance of his public function.

Offences relating to undue advantage promised, etc. to public officials.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a)** on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b)** on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

11.—(1) A person shall not intentionally promise, offer or give to a foreign public official or an official of a public international organization, directly or indirectly, any undue advantage, for the official himself or another person or body, in order that the official act or refrain from acting in the exercise of his official duties.

Offences relating to undue advantage by foreign public officials and officials of public international organizations.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a)** on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b)** on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(3) A foreign public official or an official of a public international organization who intentionally solicits or accepts, whether directly or indirectly, any undue advantage, for the official himself or another person or body, for doing any act or refraining from doing any act in the performance of his public functions commits an offence.

(4) A foreign public official or an official of a public international organization who contravenes subsection (3) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offences
relating to
undue
advantage in
private
sector.

12.—(1) A person shall not, intentionally in the course of economic, financial or commercial activities—

- (a) promise, offer or give, whether directly or indirectly, any undue advantage to any person who directs or works, in any capacity, for a private sector body, for the person himself or for another person; or
- (b) solicit or accept, whether directly or indirectly, any undue advantage from any person who directs or works, in any capacity, for a private sector body, for the person himself or for another person,

in order that he, in breach of his public function, act or refrain from acting.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

13.—(1) A public official shall not embezzle or intentionally misappropriate or otherwise divert, for his benefit or for the benefit of another person or body, any property entrusted to the public official by virtue of his position.

Embezzlement, misappropriation or other diversion of property by a public official.

(2) A public official who contravenes subsection (1) commits an offence and is liable—

- (a)** on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b)** on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

14.—(1) A person who directs or works, in any capacity, in the private sector shall not intentionally in the course of economic, financial or commercial activities, embezzle any property entrusted to him by virtue of his position.

Embezzlement of property in the private sector.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a)** on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b)** on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

15.—(1) A person shall not promise, offer or give to a public official or any other person, whether directly or indirectly, any undue advantage in order that the public official or the person abuse his real or supposed influence with a view to obtaining from another public official or public body any advantage for the original instigator of the act or for any other person.

Offence of trading in influence.

(2) A public official or other person shall not solicit or accept, whether directly or indirectly, any undue advantage for himself or for another person in order that the public official or the person abuse his real or supposed influence with a view to obtaining from another public official or public body, any undue advantage.

(3) A public official or any other person who contravenes subsection (1) or (2) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Abuse of
function.

16.—(1) A public official shall not in the discharge of his function, intentionally, abuse his function or position, that is to say, perform or fail to perform an act, for the purpose of obtaining an undue advantage for himself or for another person or body.

(2) A public official who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence of
instigating
and aiding,
etc., corrupt
conduct.

17.—(1) A person who instigates, aids, abets or is an accessory after the fact or participates in whatsoever manner in the commission or attempted commission of or conspires to commit an offence under this Act commits an offence.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

18.—(1) Where a public official—

Offence of
illicit
enrichment.

- (a) owns assets disproportionate to his lawful earnings; and
- (b) upon being requested by the Office or any person duly authorized to investigate an allegation of corrupt conduct against him, to provide an explanation as to how he came by the assets he—
 - (i) fails to do so; or
 - (ii) gives an explanation which is not considered to be satisfactory,

he shall be liable to prosecution for the offence of illicit enrichment.

(2) A person who commits the offence of illicit enrichment shall be liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

19.—(1) It shall be a defence to a person charged with an offence of illicit enrichment to show the court that he came by the assets by lawful means.

Defence to
charge of
illicit
enrichment.

(3) A person commits an offence if he—

- (a) corruptly gives, or agrees to give or offers, any gift or consideration to any agent as an inducement or reward for doing or omitting to do, or for having done or omitted to do, any act in relation to his principal's affairs or business or for showing or omitting to show favour or disfavour to any person in relation to his principal's affairs or business; or
- (b) knowingly gives to any agent, any receipt, account, or other document—
 - (i) in respect of which the principal is interested;
 - (ii) which contains any statement which is false or erroneous or defective in a material particular; and
 - (iii) which, to the knowledge of the agent, is intended to mislead the principal.

(4) A person who contravenes subsection (3) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence of
concealing
property.

23.—(1) A person shall not, whether within or outside Jamaica, whether directly or indirectly, whether on behalf of himself or on behalf of any other person—

- (a) enter into, or cause to be entered into, any dealing in relation to; or
- (b) otherwise use or cause to be used, or hold, receive, or conceal,

any property or any part thereof which was the subject matter of an offence under this Part.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

24.—(1) A person shall not—

Offence of
obstruction
of justice.

- (a) use physical force, threats or intimidation against, or promise, offer or give any advantage to, any person to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of an offence under this Act; or
- (b) use physical force, threats or intimidation against any person to interfere with the performance of function of a person holding a judicial office, a member of a jury, the prosecution, a member of the Security Forces or any other justice or law enforcement official involved in an investigation, prosecution or other proceeding in relation to the commission of an offence under this Act.

(2) A person who contravenes subsection (1) commits an offence and is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Corruptly
procuring or
obtaining
withdrawal
of tenders.

25.—(1) A person commits an offence if he—

- (a) with intent to obtain from the Government or any public body a contract for performing any work, providing any service, doing anything, or supplying any article, material or substance (hereinafter referred to as a “public sector contract”) offers any undue advantage to any person who has made a tender for the contract, as an inducement or a reward for his withdrawing that tender; or
- (b) solicits or accepts any undue advantage as an inducement or a reward for his withdrawing a tender made by him for a public sector contract.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence of
making
false or
misleading
statement or
return in
relation to
Government
property.

26.—(1) Any person charged with the receipt, custody, use or management of Government property, who knowingly furnishes, in his capacity as such, any false statement or return in respect of any money or other property received by him or entrusted to his care, or of any balance of money or other property in his possession or under his control commits an offence.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate’s Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

27.—(1) A public official who is offered or receives an undue advantage in circumstances which may constitute an offence under this Act, or the common law offence of bribery, shall disclose to the Office as soon as reasonably practicable and in the prescribed manner—

Duty to
report
corrupt
conduct.

- (a) the existence and nature of the advantage, or the offer of it; and
- (b) the name, if known, of the person by whom the advantage was given or procured or offered or who agreed to give or procure or offer the advantage.

(2) A person performing any public function who knows or reasonably suspects, or ought reasonably to have known or reasonably to have suspected, that any person has committed, is committing or is about to commit an offence under this Act, or the common law offence of bribery, shall disclose to the Office, as soon as is reasonably practicable and in the prescribed manner, that knowledge or suspicion, and the information on which it is based, or cause such knowledge or suspicion to be so disclosed.

28.—(1) A person who fails to comply with section 27 commits an offence and is liable—

Offence of
failure to
report
corrupt
conduct.

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding one million dollars or to imprisonment for a term not exceeding one year or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) It is a defence for a person charged with an offence under subsection (1) to prove that he reasonably believed that if he made the disclosure required to be made by him under that section, physical harm would be done to him or to another person, having regarded to the closeness of the person to the first mentioned person or to his property or the property of the other person.

Interfering
with duty to
report
corrupt
conduct.

29.—(1) A person who intentionally takes any action harmful to any other person, including interference with the other person's lawful employment or occupation, on the ground that the other person has made or may make a disclosure in accordance with section 27 commits an offence.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; and
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

Offence *re*
off-the-book
dealings.

30.—(1) A person commits an offence who, for the purpose of facilitating engagement in corrupt conduct or the commission of any other offence under this Act—

- (a) establishes off-the-book accounts;
- (b) makes an off-the-book or inadequately identified transaction;
- (c) records any non-existent expenditure;
- (d) enters any liability with an incorrect identification of its object;
- (e) uses any false document; or
- (f) intentionally destroys any bookkeeping documents.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

- (c) review cases involving corrupt conduct;
- (d) direct, supervise or coordinate, as the case may require, investigations relating to corrupt conduct;
- (e) communicate to appropriate authorities the results of its investigations;
- (f) subject to section 6 and this section, institute and undertake criminal proceedings for corrupt conduct in any case which, in its opinion, warrant the direct involvement of the Office by virtue of the size or significance of the case.

(2) The Office may, if it considers it appropriate in any particular case—

- (a) request another public body or private sector body to carry out an investigation on its behalf or to assist in the investigative process; or
- (b) hold consultations with the Director of Public Prosecutions regarding any matter with a view to determining the appropriate action to be taken.

(3) Where the Office decides not to institute criminal proceedings in respect of any matter, it may refer that matter to—

- (a) the Director of Public Prosecutions for such further action as the Director of Public Prosecutions considers appropriate; or
- (b) the relevant body for appropriate action by that body.

(4) In subsection (3) “relevant body” means the public body or private sector body in relation to which, or a member of staff of which, an investigation is conducted or proceedings are instituted regarding an allegation or complaint regarding corrupt conduct.

(5) The Office may cause an investigation to be conducted even though no particular parliamentarian or public official is implicated.

(6) In considering whether or not to cause an investigation to be conducted, continued or discontinued, the Office shall have regard to such matters as it thinks fit, including whether or not, in its opinion—

- (a) the subject matter of the investigation is trivial;

31. Where an offence under this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person who was purporting to act in any such capacity, he, as well as the body corporate, commits that offence and is liable to be proceeded against and punished accordingly.

Offence by
body
corporate.

PART III. *The Office of the Special Prosecutor for Corruption*
Constitution of Office

32.—(1) For the purposes of this Act, there is hereby constituted a commission of Parliament to be known as the Office of the Special Prosecutor for Corruption.

Constitution
of Office.

(2) The Office—

- (a) shall consist of departments with respective responsibility for general administration, investigation and prosecution; and
- (b) may consist of such other departments and divisions as the Office considers necessary for the performance of its functions.

Functions of Office

- 33.—(1) Subject to the provisions of this Act, the Office shall—
- (a) cause to be investigated, on its own initiative, or as a result of any complaint, information or notification under section 48 or a referral under section 50, any complaint or any circumstances which, in the opinion of the Special Prosecutor, imply that—
 - (i) corrupt conduct;
 - (ii) conduct likely to allow, encourage or cause corrupt conduct;
 - (iii) any other matter connected with corrupt conduct, has occurred or may be about to occur;
 - (b) review any matter referred to the Office by either House of Parliament;

Power to
investigate
and
prosecute
corruption.

- (b) the conduct concerned occurred at too remote a time to justify investigation; or
- (c) the complaint was frivolous, vexatious or not made in good faith.

(7) If the Office decides to discontinue or not to commence an investigation of a complaint or report made to it, the Special Prosecutor shall, in writing, inform the complainant or person who made the report of its decision and the reasons for such decision.

34.—(1) The Office shall—

Functions of
Office
generally.

- (a) receive and keep on record statutory declarations furnished by parliamentarians and public officials pursuant to section 59;
- (b) examine such statutory declarations and request from a parliamentarian or public official any information relevant to a statutory declaration made by him, which in its opinion would assist it in its examination;
- (c) make such independent, enquiries and investigations relating to a statutory declaration as it thinks necessary; and
- (d) perform such other functions in relation to declarations as may be assigned to it by the Minister or by or under this Act or any other enactment.

(2) The Office—

- (a) may provide advice or assistance, or both, to the Security Forces, any public body or other person on—
 - (i) ways in which corrupt conduct may be eliminated; and
 - (ii) changes in practice or procedures compatible with the effective performance of their functions which the Special Prosecutor thinks necessary to reduce the likelihood of the occurrence of corrupt conduct;

- (b) shall establish procedures and develop, implement and monitor a national plan and other plans and programmes relating to the prevention and combat of corrupt conduct;
- (c) shall advise and assist Parliament on ways and means in which corrupt conduct may be eliminated; and
- (d) shall perform such other functions as may be assigned to it by the Minister or by or under this Act or any other enactment.

(3) The Office may, from time to time, designate any person (whether employed by the Office or not) possessing the prescribed qualification to be an authorized officer.

Office to cooperate with other bodies.

35. In performing its functions under this Act, the Office shall, as far as is practicable, work in cooperation with the Contractor-General and the Auditor-General and such other persons or bodies as the Special Prosecutor thinks appropriate.

Office to act independently, etc.

36.—(1) The Office shall, at all times, act independently, impartially and fairly having regard to the purposes of the Act and the importance of protecting the public interest.

(2) Subject to section 6 and subsection (3), in the exercise of the powers conferred upon the Office by this Act, the Office and the Special Prosecutor shall not be subject to the direction or control of any person or authority.

(3) Nothing in this section shall be construed as preventing the assignment to a Minister of responsibility for such aspects of the administration of this Act as are necessary or desirable to facilitate liaison between Parliament and the Office.

Special Prosecutor

Appointment of Special Prosecutor.

37. For the due administration of the Office, there shall be appointed a Special Prosecutor who shall be the chief prosecutor in the Office and be in charge of the day-to-day administration of the Office.

38.—(1) A person shall not be appointed as or act as the Special Prosecutor unless the person—

Eligibility and
procedure for
appointment
of Special
Prosecutor.

- (a) possesses the competence and qualifications for appointment at the level of Senior Deputy Director of Public Prosecutions;
- (b) is a person of high integrity and is able to exercise competence, diligence and sound judgment in fulfilling his responsibilities under this Act.

(2) The Governor-General shall, after consultation with the Prime Minister and the Leader of the Opposition by instrument under the Broad Seal, appoint a person who is eligible under this section, and is not disqualified under section 39, to be the Special Prosecutor.

39.—(1) A person shall not be qualified to be appointed as or act as the Special Prosecutor, if that person—

Disqualification
for
appointment.

- (a) is a member or former member of the Senate or the House of Representatives or a political party;
- (b) is an undischarged bankrupt; or
- (c) has at any time been convicted of any offence involving dishonesty or moral turpitude.

(2) The Special Prosecutor shall be deemed to have vacated office if any circumstances arise that, if he were not holding the office, would have caused him to be disqualified for appointment by virtue of subsection (1).

40.—(1) Subject to the provisions of this Act, a person appointed as the Special Prosecutor shall hold office for a period of five years and may be re-appointed for two terms not exceeding five years at a time.

Tenure of
Special
Prosecutor.

(2) A person appointed as the Special Prosecutor may, at his own request, be relieved of office by the Governor-General and shall in any case, subject to subsections (3) and (4), vacate office on attaining the age of seventy years.

(3) The Governor-General may, on the recommendation of the Prime Minister, after consultation with the Leader of the Opposition, permit the Special Prosecutor to continue in office until he has attained

such age not exceeding seventy-five years, as may (before he has attained the age of seventy years) have been agreed between the Governor-General and the Special Prosecutor.

(4) Notwithstanding that he has attained the age at which he is required by or under the provisions of this section to vacate his office, the Special Prosecutor may continue in office for such period after attaining that age as the Prime Minister, after consultation with the Leader of the Opposition, may specify, in order to enable the Special Prosecutor to give his decision or to do any other thing in relation to any investigation he was conducting before he attained that age.

(5) Nothing done by the Special Prosecutor shall be invalid by reason only that he has attained the age at which he is required by this section to vacate his office.

Removal of
Special
Prosecutor
from office.

41.—(1) The Special Prosecutor may be removed from office on the following grounds—

- (a) inability to discharge the functions of his office (whether arising from infirmity of body or mind or any other cause);
- (b) failure to discharge the functions of his office in a competent manner;
- (c) misbehaviour, or
- (d) trading with the Government of Jamaica contrary to subsection (2),

and shall not be so removed except in accordance with the provisions of this section.

(2) The Special Prosecutor shall not, while holding office as Special Prosecutor become a party to, or a partner in a firm or a director or manager of a company which to his knowledge, is or becomes a party to any contract with the Government of Jamaica.

(3) If each House of Parliament, by resolution, decides that the question of removing the Special Prosecutor from office ought to be investigated, then—

- (a) the Governor-General, after consultation with the Prime Minister and the Leader of the Opposition, shall appoint a

tribunal consisting of a chairman and not less than two other members from among persons who hold or have held office as a judge of a court having unlimited jurisdiction in civil and criminal matters in some part of the Commonwealth or a court having jurisdiction in appeals from any such court; and

- (b) the tribunal shall enquire into the matter and report on the facts thereof to the Governor-General and advise the Governor-General whether the Special Prosecutor ought to be removed from office for inability or failure as aforesaid or for misbehaviour or trading contrary to subsection (2).

(4) The provisions of sections 8 to 16 of the Commissions of Enquiry Act shall apply with necessary modifications in relation to a tribunal appointed under subsection (3) or, as the case may require, to the members thereof, as they apply in relation to offices or officers appointed under that Act.

(5) Where the question of removing the Special Prosecutor from office has been referred to a tribunal appointed under subsection (3)(a) and the tribunal has advised the Governor-General that the Special Prosecutor ought to be removed from office, the Governor-General shall by instrument under the Broad Seal, remove the Special Prosecutor from Office.

(6) Where the question of removing the Special Prosecutor from office has been referred to a tribunal under subsection (3), the Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, suspend the Special Prosecutor from performing the functions of his office and any such suspension—

- (a) may, at any time, be revoked by the Governor-General acting as aforesaid; and
- (b) shall, in any case, cease to have effect if the tribunal advises the Governor-General that the Special Prosecutor ought not to be removed from office.

Restriction
on
employment.

42. A person appointed as the Special Prosecutor shall be a full-time officer and, except with the approval of the Governor-General acting in his discretion—

- (a) shall not be employed in any other capacity during any period in which he holds office as Special Prosecutor; and
- (b) for a period of two years after he has ceased to hold office as the Special Prosecutor, shall not be eligible for appointment in the public service.

Filling of
vacancy.

43.—(1) Where a vacancy arises in the office of Special Prosecutor, the Governor-General may, acting on the recommendation of the Prime Minister after consultation with the Leader of the Opposition, designate a person to act in that office during the vacancy until an appointment is made.

(2) Where, by reason of illness, absence from Jamaica or other sufficient cause, a person appointed as the Special Prosecutor is unable to perform his functions as such, the Governor-General may, after consultation with the Prime Minister and the Leader of the Opposition, appoint such person as he thinks fit, being a person qualified under this Act, to perform those functions.

Remuneration
of Special
Prosecutor.

44.—(1) Subject to subsection (2), the Special Prosecutor shall receive the emoluments and be subject to such other terms and conditions of service as may, from time to time, be prescribed by or under any law or by a resolution of the House of Representatives, such emoluments being not less than the emoluments which may, from time to time, be payable to a Judge of the Supreme Court.

(2) The emoluments and terms and conditions of service of the Special Prosecutor, shall not be altered to his disadvantage during the period of his appointment or reappointment, as the case may be.

(3) The emoluments for the time being payable to the Special Prosecutor under this Act shall be charged on and paid out of the Consolidated Fund.

Pensions and
gratuities of
Special
Prosecutor.
Second
Schedule.

45. The provisions of the Second Schedule shall have effect with respect to the pension and other benefits to be paid to or in respect of a person who has held office as the Special Prosecutor.

Appointment of Staff

46.—(1) Subject to subsection (2), the Commission constituted under subsection (3) may— Appointment of staff.

- (a) appoint and employ for the purposes of this Act, at such remuneration and on such terms and conditions as may be approved by the Commission constituted under subsection (3), such officers and agents as may be considered necessary for the proper performance of the functions of the Office; and
- (b) establish the salaries, wages, allowances and conditions of employment of officers and employees of the Office.

(2) The Special Prosecutor may appoint such number of prosecutors as are necessary to enable the Office to exercise its prosecutorial functions from among persons who—

- (a) by virtue of their training, qualifications and experience are qualified for appointment at the level at which they are to be appointed; and
- (b) are persons of high integrity and are able to exercise competence, diligence and sound judgment in fulfilling their responsibilities under this Act.

(3) The Commission referred to in subsection (1) shall consist of—

- (a) the Speaker, as chairman;
- (b) the President of the Senate;
- (c) the person designated by the Prime Minister as Leader of Government Business in the House of Representatives;
- (d) the person designated by the Leader of the Opposition as Leader of Opposition Business in the Senate; and
- (e) the Minister responsible for finance.

(3) The Governor-General may, subject to such conditions as he may impose, approve of the appointment to the staff of the Office,

of any officer in the public service, provided that in relation to pension, gratuity, allowance and other rights as a public official, such officer shall be deemed to be in the public service while so employed.

Oath of
secrecy.

47. The Special Prosecutor and every person appointed to the staff of the Office shall, before he performs any function assigned to him under or by virtue of this Act, take and subscribe an oath in the form set out in the Third Schedule to be administered—

Third
Schedule.

- (a) in the case of the Special Prosecutor, by the Governor-General; and
- (b) in the case of every other person, by the Special Prosecutor.

Proceedings of the Office

Notification
about possible
corrupt
conduct.

48.—(1) Any person or body may, without disclosing his or its identity, orally or in writing, complain about, give information on, or notify the Office about a matter that involves, or may involve, corrupt conduct.

(2) Subsection (1) does not limit to whom a person can complain about corrupt conduct.

Complaint,
etc., to be
recorded and
investigated.

49. On receipt of a complaint, information or notification under section 48, the Office shall—

- (a) cause it to be recorded in the prescribed form and furnish to the person or body a copy of that record signed by the person receiving the complaint; and
- (b) cause an investigation into the matter to be made forthwith.

Duty to
notify Office
of possible
corrupt
conduct.

50.—(1) Where in the performance of his function—

- (a) the Auditor-General;
- (b) the Public Defender;
- (c) the Contractor-General;
- (d) a Permanent Secretary; or
- (e) the managing director or chief executive officer of a public body, as the case may be,

suspects on reasonable grounds that any matter involves or may involve corrupt conduct, he shall refer the matter to the Office.

(2) Where in the course of an investigation—

- (a) it is suspected that corrupt conduct has been committed; and
- (b) the Commissioner of Police is of the opinion that the matter ought to be investigated by the Office,

the Commissioner of Police shall refer the matter to the Office.

51.—(1) Subject to the provisions of subsection (4) and section 19(1), the Office may, by notice in writing served on a parliamentarian, public official or any other person who, in his opinion, is able to give assistance in relation to an investigation of any matter pursuant to this Act, to furnish such information and produce any document or thing in connection with such matter as may be in the possession or under the control of that parliamentarian, public official or other person. Evidence.

(2) For the purpose of an investigation under this Act, the Special Prosecutor shall have the same powers as a Judge of the Supreme Court in respect of the attendance and examination of witnesses and the production of documents.

(3) Any obligation to maintain secrecy or any restriction on the disclosure of information or the production of any document, paper or thing imposed on any person—

- (a) by or under the Official Secrets Act, 1911 to 1939 of the United Kingdom (or any Act of the Parliament of Jamaica replacing the same in its application to Jamaica); or
- (b) subject to the provisions of this Act, by any other law (including a rule of law),

shall not apply in relation to the disclosure of information or the production of any document or thing by that person to the Special Prosecutor for the purpose of an investigation; and accordingly, no person shall be liable to prosecution for an offence under the Official Secrets Act, 1911 to 1939 or such Act of Parliament of Jamaica or any other law, by

reason only of his compliance with a requirement of the Special Prosecutor under this Act.

(4) No person shall, for the purpose of an investigation, be compelled to give any evidence or produce documents which he could not be compelled to give or produce in proceedings in any court of law.

Restriction
on disclosure
of certain
matters.

52.—(1) Where the Secretary to the Cabinet, at the direction of Cabinet—

- (a) gives notice that the disclosure by the Office of any document or information specified in the notice, or any class of document or information so specified would—
 - (i) involve the disclosure of the deliberations or proceedings of the Cabinet or any committee thereof, relating to matters of a secret or confidential nature and is likely to be injurious to the public interest;
 - (ii) prejudice the relations of Jamaica with the government of any other country or with any international organization; or
 - (iii) prejudice the detection of offences, the Special Prosecutor or any employee of the Office shall not communicate to any person for any purpose any document or information specified in the notice, or document or information of a class so specified; or
- (b) certifies that the giving of any information or the answering of any question or production of any document or thing would prejudice the security or defence of Jamaica,

the Office shall not further require such information or answer to be given or such document or thing to be produced.

(2) Except as provided under subsection (1), no law which authorizes or requires the refusal to answer any question or the withholding of any information or document or thing on the ground that the answering of the question or the disclosure of the information,

document or thing would be injurious to the public interest, shall apply in respect of any investigation by or proceedings before the Special Prosecutor.

Powers of Entry, etc., Privilege and Confidentiality

53.—(1) The Special Prosecutor or an authorized officer may, at any time, for the purpose of an investigation—

Power to enter premises and retain documents.

- (a) enter and inspect any premises occupied or used by a public body, parliamentary or public official in that capacity;
- (b) inspect any document or other thing in or on the premises; and
- (c) take copies of any document in or on the premises.

(2) The public body, parliamentary or public official shall make available to the Special Prosecutor or authorized officer such facilities as are necessary to enable the powers conferred by this section to be exercised.

54.—(1) Except in the manner specified under this Act, no proceedings whatsoever shall lie against the Office or any person authorized for anything done, reported or said by him in the performance of his functions under this Act.

Privilege.

(2) Anything said or information supplied or any document or thing produced by any person for enquiry by the Office under this Act, shall be absolutely privileged.

(3) For the purposes of the Defamation Act, any report made by the Office under this Act and any fair and accurate report thereon shall be deemed to be privileged.

55.—(1) The Office and every person concerned with the administration of this Act shall, subject to subsection (2), regard as secret and confidential all documents, information and things disclosed to them in the execution of any of the provisions of this Act, except that no disclosure—

Secrecy of information.

- (a) made by the Special Prosecutor or any person aforesaid in proceedings for an offence under section 26 of this Act or under the Perjury Act, by virtue of section 17(2) of that Act;

- (b) which the Special Prosecutor thinks it necessary to make in the discharge of his functions,

shall be deemed inconsistent with any duty imposed by this subsection.

(2) Neither the Special Prosecutor nor any such person as aforesaid shall be called upon to give evidence in respect of, or produce, any document, information or thing referred to in subsection (1) in any proceedings other than proceedings mentioned in that subsection.

Accounts, Reports and Register

Accounts,
etc.

56.—(1) The accounts and financial transactions of the Office shall be audited annually by the Auditor-General and a statement of accounts so audited shall form part of the annual report mentioned in section 57(2)(a).

(2) The Special Prosecutor shall—

- (a) submit to the Minister in a form satisfactory to the Minister, being a form which conforms to the best commercial standards, a statement of the accounts of the Office mentioned in subsection (1);
- (b) submit to the Minister for approval the estimates of revenue and expenditure for the financial year commencing on the 1st day of April next following.

(3) In this section, “Minister” means the Minister responsible for finance.

Reports to
Parliament.

57.—(1) The Office may, at any time, be required by Parliament to submit thereto a report in respect of any matter under investigation by the Office.

(2) The Office—

- (a) shall submit to Parliament an annual report relating generally to the execution of the functions of the Office; and
- (b) may, at any time, submit a report relating to any particular case or cases investigated by the Office which, in its opinion, require the special attention of Parliament.

(3) Reports under this section shall be submitted to the Speaker of the House of Representatives and the President of the Senate, respectively, who shall, as soon as possible, have the reports laid on the Tables of the respective Houses.

(4) The Office shall not, in any report furnished under this section, disclose or act upon any communication between—

- (a) a medical practitioner and his patient in their professional relationship;
- (b) a minister of religion and any person consulting him in his capacity as such; or
- (c) an attorney-at-law and his client in their professional relationship,

where such communication came to the knowledge of the Office during the course of an investigation under this Act.

58. Where the Office decides to investigate a complaint, it shall cause to be recorded in a register for the purpose—

- (a) the name of the complainant or the fact that the identity of the person making the notification was not disclosed;
- (b) the subject matter of the complaint and the date thereof; and
- (c) on the conclusion of the investigation, the Office's decision respecting the complaint,

and any person may, on payment of such fees as may be prescribed, inspect any register kept pursuant to this section during the hours and on the days of business of the Office.

PART IV. *Provisions relating to Statutory Declarations*

59.—(1) Every person who, on or after the appointed day, is a parliamentarian or public official shall, subject to the provisions of this section, furnish to the Office a statutory declaration of his assets and liabilities and his income in the form set out as Forms A and B, respectively, in the Fourth Schedule.

(2) The Special Prosecutor and every person employed to the Office shall furnish a statutory declaration to the Committee established for that purpose under subsection (15).

Duty of parliamentarians and public officials to furnish statutory declaration. Fourth Schedule. Forms A and B.

(3) Subsection (1) shall not apply to a public official who is in receipt of total emoluments less than the prescribed amount.

(4) Notwithstanding subsection (3), regulations made under section 88 may contain provisions requiring public officials who occupy such posts as are prescribed to furnish a statutory declaration pursuant to subsection (1).

(5) A declaration pursuant to subsection (1) shall include such particulars as are known to the declarant of the assets, liabilities and income of the spouse and children, where applicable, of the declarant.

(6) The particulars required to be furnished under subsection (5) shall be limited to assets held by the spouse or child (as the case may be) in trust for, or as agent of, the declarant—

- (a) if the spouse was not living with the declarant at any time during the period in relation to which the declaration is made; or
- (b) if the child of the declarant—
 - (i) has attained the age of eighteen years; or
 - (ii) is married and under the age of eighteen years, and was not living with the declarant at any time during the period in relation to which the declaration is made.

(7) Nothing in subsection (6) shall be construed as precluding the Office from requiring from a declarant any additional particulars the Office may think fit.

(8) Subject to subsection (9), a statutory declaration pursuant to subsection (1) shall be furnished—

- (a) subject to paragraph (b), in the case of a person elected or appointed, as the case may be, as a parliamentary, within three months from the date of such election or appointment, as the case may be; and thereafter—
 - (i) on the 31st day of December in each year during any part of which he remains a parliamentary; and

- (ii) at the end of twelve months from the date on which he ceases to be a parliamentarian,

so, however, that a declaration required to be made on the 31st day of December in any year shall be deemed to comply with the requirements of this subsection if it is made on the 31st day of March next following that date;

- (b) in the case of a person elected or appointed as a parliamentarian, as the case may be, after the dissolution of Parliament who was a parliamentarian immediately prior to such dissolution and had furnished all such declarations required up to that time shall furnish the next such declaration on the 31st day of December of the year in which the dissolution occurred and thereafter on the 31st day of December in each year during any part of which he remains a parliamentarian;
- (c) in the case of a person who is a public official on that date, including public officials referred to in subsection (4)—
 - (i) within three months after the date of appointment of a person as a public official; or
 - (ii) within three months after the date on which the emoluments of a public official become equivalent to or in excess of the prescribed amount,

and thereafter on the 31st day of December in each year during any part of which he remains a parliamentarian or a public official, or at such other intervals as the Office may direct by notice published in the Gazette.

(9) The Office may—

- (a) at any time in writing, require any public official or parliamentarian to furnish a statutory declaration;
- (b) by notice published in the Gazette, require such categories of public officials as are specified in the notice, to furnish a statutory declaration within the period so specified,

and the powers conferred by this paragraph may be exercised subject to such exceptions or conditions as the Office may specify in the notice.

(10) Where a person ceases to be a public official, including a public official referred to in subsection (4), he shall furnish a statutory declaration at the end of twelve months from the date on which he so ceases.

(11) A statutory declaration required to be made on the 31st day of December in any year shall be deemed to comply with the requirements of this section if it is made on or before the 31st day of March next following that date.

(12) A statutory declaration furnished pursuant to subsection (1) may, if the declarant so desires, be accompanied by a statement of affairs certified by a registered public accountant.

(13) A first declaration furnished by a parliamentarian under this subsection (1) shall include particulars of all the assets, liabilities and income of the parliamentarian as at the date of his election or appointment, as the case may be.

(14) The Office may, if it thinks necessary for the purpose of carrying out any investigation under this Act, request that information be supplied to it by—

- (a) any public body;
- (b) a Commissioner as defined in section 2 of the Revenue Administration Act;
- (c) a bank licensed under the Banking Act;
- (d) a financial institution licensed under the Financial Institutions Act;
- (e) a building society registered under the Building Societies Act;
- (f) a society registered under the Co-operative Societies Act or the Industrial and Provident Societies Act, as the case may be; or

(g) a person registered under the Public Accountancy Act.

(15) There shall be constituted for the purpose of this section, a committee consisting of—

- (a) the Auditor-General;
- (b) a member of the Privy Council; and
- (c) a retired judge of the Supreme Court or the Court of Appeal who shall be the chairman.

(16) The Committee constituted under subsection (15) shall—

- (a) receive and examine the declarations of the Special Prosecutor other prosecutors, officials and employees of the Office;
- (b) audit the operations of the Office for the purpose of monitoring compliance with law;
- (c) deal with (by reports and recommendations) complaints of abuse of power, impropriety and other forms of misconduct on the part of the Office, the Special Prosecutor, other prosecutors, officials and employees of the Office;
- (d) deal with (by reports and recommendations) delay in the conduct of investigations;
- (e) assess the effectiveness and appropriateness of the procedures of the Office relating to the legality or propriety of its activities; and
- (f) notify the Director of Public Prosecutions of the existence or possible existence of corrupt conduct,

and for the purpose of this subsection shall exercise similar powers as are conferred upon the Office under this Act.

(17) In this section, “assets” does not include such gifts as may be prescribed or received by a parliamentarian or public official from such relatives of that parliamentarian or public official as may be prescribed.

(18) The Committee constituted under subsection (15) shall regulate its own proceedings.

Expenses incurred in preparation of declaration, etc., tax deductible.

60. For the purposes of subsection (1) of section 13 of the Income Tax Act, any disbursement and expenses incurred in a year of assessment by a parliamentary or a public official in connection with the preparation of a statutory declaration or other document required to be furnished by him for the purposes of this Act shall be deemed to be made or incurred by him wholly and exclusively in acquiring his income for that year of assessment.

Office may require further information.

61. Where the Office, upon examination of a statutory declaration furnished pursuant to section 59, is of the opinion that further information is necessary, it may, in writing request the parliamentary or public official concerned to furnish such other documents, information, or otherwise as may be specified, within such time as may be specified.

Offences relating to declaration.

62.—(1) Any person who—

- (a) fails, without reasonable cause, to furnish to the Office a statutory declaration which he is required to furnish in accordance with section 59;
- (b) knowingly makes any false statement in the statutory declaration;
- (c) fails, without reasonable cause, to give any information as the Office may require under this Act;
- (d) fails, without reasonable cause, to attend an enquiry being conducted by the Office under section 65 or knowingly gives false information at such enquiry,

commits an offence, and is liable on summary conviction in a Resident Magistrate's Court to a fine not exceeding two hundred thousand dollars, or to imprisonment for a term not exceeding three months or to both such fine and imprisonment.

(2) Where the offence involves the deliberate non-disclosure of the property of a parliamentary or public official the Court may, subject to determining the beneficial interest of innocent third parties, in addition to the imposition of a fine or term of imprisonment, or both—

- (a) if the property involved is situated within Jamaica, declare that it be forfeited to the Crown; or

- (b) if the property involved is situated outside Jamaica, order that an amount equivalent to the value of the property (the value to be assessed as directed by the Court), be paid by the parliamentarian or public official to the Crown.

(3) Payment of all sums due to the Crown pursuant to subsection (2)(b) may be enforced in like manner as a debt due to the Crown and any proceedings thereof on behalf of the Crown may be taken summarily in a Resident Magistrate's Court, without limit of amount.

(4) In considering whether an order for the forfeiture of the property of a parliamentarian or public official should be made under subsection (2)(a), the Court shall have regard to the rights and interests, if any, of third parties in that property.

(5) A person who claims an interest in any property referred to in subsection (4) may apply to the Court for an order under subsection (6)—

- (a) during the proceedings for the offence referred to in subsection (2); or
- (b) within a period of six months after the day on which a forfeiture order is made in respect of that property or such longer period as the Court may, having regard to all the circumstances, allow.

(6) Where an application is made under subsection (5) the Court shall take account of the representations made by the applicant in relation to the property and shall make an order declaring the nature and extent of the applicant's interest, if any, in the property.

(7) The Court may—

- (a) where subsection (5)(a) applies, decide that the property, or the part thereof to which the applicant's interest relates, should not be forfeited to the Crown; or
- (b) where subsection (5)(b) applies, order that—
 - (i) the property, or the part thereof to which the applicant's interest relates, be returned to the applicant; or

- (ii) an amount equal to the value of the applicant's interest, as declared in the order under subsection (5), be paid to the applicant.

Offences
relating to
obstruction.

63.—(1) A person commits an offence if he—

- (a) refuses the Special Prosecutor or any authorized officer in the execution of his duty under this Act access to any place;
- (b) assaults, obstructs, hinders or delays the Special Prosecutor or any authorized officer in the execution of his duty under this Act in effecting any entrance which he is entitled to effect under this Act, or in the execution of any duty imposed or power conferred by this Act;
- (c) fails to comply with any lawful demands, of the Special Prosecutor or any authorized officer in the execution of his duty under this Act; or
- (d) refuses or neglects to give any information which may reasonably be required of the person and which he has in his power to give.

(2) A person who contravenes subsection (1) is liable—

- (a) on summary conviction in a Resident Magistrate's Court, to a fine not exceeding two million dollars or to imprisonment for a term not exceeding three years or to both such fine and imprisonment; or
- (b) on conviction in a Circuit Court, to a fine or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

PART V. Corruption Tribunal

Establishment
of Corruption
Tribunal.

64.—(1) There is hereby established for the purposes of this Act a tribunal to be known as the Corruption Tribunal.

Fifth
Schedule.

(2) ~~The provisions of the Fifth Schedule shall have effect as to~~ the constitution of the Corruption Tribunal and otherwise in relation thereto.