

SERIOUS FRAUD OFFICE ACT, 1993 (ACT 466)

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THE FOUR HUNDRED AND SIXTY-SIXTH
ACT

OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED

THE SERIOUS FRAUD OFFICE ACT, 1993

AN ACT to establish a Serious Fraud Office as a specialised agency of Government to monitor, investigate and, on the authority of the Attorney-General, prosecute any offence involving serious financial or economic loss to the state and to make provision for connected and incidental purposes.

DATE OF ASSENT: 30TH DECEMBER, 1993.

BE IT ENACTED BY PARLIAMENT as follows—

PART I—ESTABLISHMENT OF SERIOUS FRAUD OFFICE, ITS FUNCTIONS AND DIRECTIONS

Section 1—Establishment of Serious Fraud Office.

1. (1) There is established by this Act a Serious Fraud Office referred to in this Act as "the Office" which shall form part of the Public Services.

(2) The Office shall consist of—

(a) an Executive Director;

- (b) Deputy Executive Directors; and
- (c) such officers and staff as the President may appoint for the Office under this Act.

Section 2—Divisions of the Office.

The Office shall have such Divisions as the governing board established under section 5 of this Act may, on the advice of the Director, determine.

Section 3—Functions of the Office.

(1) The functions of the office are—

- (a) to investigate any suspected offence provided for by law which appears to the Director on reasonable grounds to involve serious financial or economic loss to the State or to any state organisation or other institution in which the State has financial interest;
- (b) to monitor such economic activities as the Director considers necessary with a view to detecting crimes likely to cause financial or economic loss to the State;
- (c) to take such other reasonable measures as the Director considers necessary to prevent the commission of crimes which may cause financial or economic loss to the State; and
- (d) to co-operate with such international agencies as the Director considers appropriate for any of the purposes under this section.

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

Section 4—Ministerial Responsibility for the Office.

The Minister of Justice and Attorney-General shall be responsible for the Office.

Section 5—Governing Body.

(1) There is hereby established a Serious Fraud Office Board referred to in this Act as "the Board" which shall be the governing body of the Office.

(2) The Board shall consist of the following members appointed by the President in consultation with the Council of State—

- (a) a Chairman nominated by the President;
- (b) the Attorney-General or his representative not below the rank of a Chief State Attorney;
- (c) the Minister for the Interior or his representative;
- (d) the Inspector-General of Police or his representative not below the rank of a Commissioner of Police;
- (e) the Executive Secretary, Narcotic Control Board;
- (f) one other person, nominated by the President; and
- (g) the Director of the Office.

Section 6—Functions of the Board.

The Board shall have general control of the Office on matters of policy.

Section 7—Tenure of Office of Members of the Board.

A member of the Board shall hold office for a period of four years and is eligible on the expiration of his term of office for reappointment.

Section 8—Meetings of the Board.

- (1) The Board shall meet at such times and places as the Chairman shall determine.
- (2) The Board may co-opt any person to attend any of its meetings except that a person co-opted does not have a right to vote on any matter before the Board.
- (3) The quorum for a meeting of the Board shall be four.

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

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

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

Section 9—Executive Director and the Deputy Executive Directors.

(1) The President shall in accordance with the advice of the Board given in consultation with the Public Services Commission appoint for the Office an Executive Director and Deputy Executive Directors.

(2) The Director and his deputies shall hold Office on such terms and conditions as the President shall in accordance with advice of the Board given in consultation with the Public Services Commission determine.

(3) The Executive Director shall be the head of the Office and shall subject to the general directions of the Board on matters of policy, be responsible for the overall operation and administration of the Office.

(4) The Deputy Executive Directors shall head the Divisions of the Office.

Section 10—Other Staff of the Office.

(1) There may be engaged for the Office by the President in accordance with the advice of the Board given in consultation with the Public Services Commission such officers, professionals, experts and consultants as may be required for the efficient discharge of the functions of the Office.

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

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

(4) The President may in accordance with article 195(2) of the Constitution delegate any of his powers of appointment under this Part.

Section 11—Authorised Officers to have Powers of Police.

The Executive Director, Deputy Executive Directors and other officers of the Office authorised by the Director shall exercise all the powers and have the immunities conferred on a police officer under the provisions of the Criminal Procedure Code, 1960 (Act 30), the Police Service Act, 1970 (Act 350) and any other enactment for the time being in force relating to a police officer.

PART II—INVESTIGATIONS AND PROSECUTION

Section 12—Exercise of Power of Investigation.

(1) The power to investigate any matter under section 3 of this Act shall be exercised by the Director or an officer of the Office authorised by the Director.

(2) The Director may if he thinks fit, conduct an investigation under section 3 in conjunction either with the police or any other person who in the opinion of the Director is a proper person to be concerned in the investigation.

Section 13—Request for Information and Production of Documents.

(1) The Director or an officer acting under his direction may by notice in writing require any person or a representative of any organisation whose affairs are to be investigated or any other person and whom he has reason to believe has information relevant to the

investigation to appear before the Director or the officer at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation.

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

(3) If the documents are produced, the Director may take copies or extracts from them or require the person producing them to provide an explanation of any of them or both.

(4) If the documents are not produced, the Director may require the person who was required to produce them, to state to the best of his knowledge and belief, where they are.

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

(a) a person has failed to comply with a request under this section to produce documents; or

(b) it is not practicable to serve a notice under subsection (2) of this section in relation to the production of the documents; or

(c) the service of a notice for the production of the documents might seriously prejudice the investigation,

the officer may apply to a Judge or a Chairman of a Tribunal by motion ex-parte supported by affidavit verifying the facts upon which the application is based for the issue of a warrant authorising any police officer to enter (using such force as is reasonably necessary for the purpose) and search the premises on which any documents appearing to be documents of the description specified in the affidavit are suspected to be held, and to take possession of them or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

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

(7) Before taking possession of documents as provided for under subsection (5) of this section, the officer shall prepare an inventory in duplicate listing the number and type of documents being taken possession of and a copy of the list shall be given to the person or representative of the organisation from whose custody the documents are taken.

(8) Possession of documents under this section shall be taken for so long only as may be necessary for the purposes of the investigation or trial.

(9) Where the Director is of the opinion that to facilitate investigations it is necessary to have the assets and bank account of a person or organisation being or about to be investigated frozen, he may in writing direct the freezing of such of the assets and bank account of the person or organisation as the Director may determine.

(10) The Director shall within seven days of the freezing of any assets and bank account under this section apply to the High Court or Regional Tribunal for a confirmation of the freezing of the assets and bank account.

(11) Where any assets have been frozen under this section, the person affected shall be notified of the facts in writing within forty-eight hours of the freezing of the assets.

(12) The Court or Tribunal to which the application is made under subsection (10) may confirm the freezing of the assets and bank account for such period as it deems fit or direct the unfreezing of the assets and bank account.

(13) A person being investigated under this Act shall have the right to the services of a lawyer or any other person.

Section 14—Withdrawal from Frozen Bank Account.

(1) A person whose assets and bank account have been frozen under section 13 may with the consent of the Director—

(a) draw from his bank account such monies as may be approved;

(b) operate any business or enterprise the subject matter of the freezing on such terms and conditions as the Director may determine.

(2) A person whose assets have been frozen under this Act may seek such redress from the court as he considers necessary.

Section 15—Application of Existing Enactments.

(1) A person shall not under this Part be required to disclose information or produce any document which he would be entitled to refuse to disclose or produce under the Evidence Decree, 1975 (N.R.C.D. 323) or under any other enactment.

(2) A person shall not under this Part be required to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on of any banking business unless—

(a) the person to whom the obligation of confidence is owed consents to the disclosure or production; or

(b) a High Court Judge or a Chairman of a Regional Tribunal has on an application by the Director, ordered the disclosure or production.

Section 16—Delegation of Power to Investigate.

(1) Without prejudice to the power of the Director to assign functions to members of the Office, the Director may authorise any person employed in any branch of the public services as an investigator or a police officer who is not an officer of the Office to exercise on his behalf all or any of the powers conferred by this Part, but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs of a person specified in the authority.

(2) A person exercising power under subsection (1) of this section shall hold and on request produce evidence of his authority.

Section 17—Offences and Penalties.

(1) A person who under this Part—

(a) makes a statement which he knows to be false or misleading in a material particular; or

(b) recklessly makes a statement which is false or misleading in a material particular, commits an offence and is on conviction liable to a fine not exceeding 5 million cedis or imprisonment for a term not exceeding two years or to both.

(2) Where any person—

(a) knows or suspects that an investigation is being or is likely to be carried out; and

(b) with intent to frustrate, prevent or obstruct the investigation falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to the investigation, he commits an offence, unless he proves that he had no intention of falsifying, destroying or concealing the facts disclosed by the documents from persons carrying out the investigation.

(3) A person guilty of an offence under subsection (2) of this section shall on conviction, be liable to a fine not exceeding 10 million cedis or imprisonment for a term not exceeding five years or to both.

(4) In this Part, "documents" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

Section 18—Prosecution.

The Director may where authorised by the Attorney-General in writing institute and conduct any criminal proceedings arising out of investigations conducted by the Office.

PART III—MISCELLANEOUS PROVISIONS

Section 19—Relation with other State Bodies.

(1) An officer in every government department, agency of the State or other public body shall co-operate fully with officers of the Office in the discharge of their functions under this Act.

(2) Where a public officer refuses or fails without reasonable cause to co-operate with an authorised officer of the Office, there may be taken against him such disciplinary action as is appropriate.

Section 20—Reward for Information.

Where an information to the Office has led to a financial or economic gain to the State or to the prevention or detection of an economic or financial loss to the State the person who supplied the information may be granted such reward as may be determined by the Minister in consultation with the Director.

Section 21—Annual Report.

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

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

Section 22—Expenditure of Office.

(1) The Director shall in each year submit to the Minister for Finance through the Minister detailed estimates of the expenditure of the Office for the ensuing year.

(2) The emoluments and expenditure of the Office shall be met out of such funds as Parliament shall approve.

Section 23—Regulations.

The Minister may by legislative instrument, make such regulations as may be necessary for giving full effect to the provisions of this Act.

Section 24—Dissolution of Existing Bodies and Repeals.

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

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

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

Section 25—Interpretation.

In this Act unless the context otherwise requires—

"Director" means the Executive Director appointed under section 9 of this Act;

"Minister" means the Minister of Justice and Attorney-General;

"Office" means the Serious Fraud Office established under section 1 of this Act.