

Act No. 12, 2004 PREVENTION AND COMBATING OF CORRUPT
ACTIVITIES ACT, 2004

- (2) The Registrar must—
- (a) maintain the Register;
 - (b) manage the Office of the Registrar; and
 - (c) carry out the duties and perform the functions assigned to him or her by section 28, this Chapter or the National Treasury or any other law. 5

Access to Register

32. The Register is open to the public as prescribed.

Regulations pertaining to Register

33. (1) The Minister of Finance may, in consultation with the Minister responsible for the administration of justice, make regulations relating to— 10
- (a) the maintenance and management of the Register, the particulars to be entered in such Register, the manner in which such particulars must be recorded and the period for which the information in the Register must be retained;
 - (b) access to information contained in the Register;
 - (c) the safe-keeping and disposal of records; or 15
 - (d) any other matter which the Minister may consider necessary to prescribe in order to achieve the objects of section 28 and this Chapter.
- (2) Regulations made in terms of subsection (1) may, in respect of any contravention thereof or failure to comply therewith, prescribe as a penalty a fine or imprisonment for a period not exceeding 12 months. 20

CHAPTER 7

MISCELLANEOUS MATTERS

Duty to report corrupt transactions

34. (1) Any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed— 25
- (a) an offence under Part 1, 2, 3 or 4, or section 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2; or
 - (b) the offence of theft, fraud, extortion, forgery or uttering a forged document, involving an amount of R100 000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to any police official. 30
- (2) Subject to the provisions of section 37(2), any person who fails to comply with subsection (1), is guilty of an offence.
- (3) (a) Upon receipt of a report referred to in subsection (1), the police official concerned must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgment of receipt of such report. 35
- (b) The National Commissioner must within three months of the commencement of this Act publish the directions contemplated in paragraph (a) in the *Gazette*.
- (c) Any direction issued under paragraph (b), must be tabled in Parliament before publication thereof in the *Gazette*. 40
- (4) For purposes of subsection (1) the following persons hold a position of authority, namely—
- (a) the Director-General or head, or equivalent officer, of a national or provincial department;
 - (b) in the case of a municipality, the municipal manager appointed in terms of section 82 of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998); 45
 - (c) any public officer in the Senior Management Service of a public body;
 - (d) any head, rector or principal of a tertiary institution;
 - (e) the manager, secretary or a director of a company as defined in the Companies 50

Act, 1973 (Act No. 61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984):

- (f) the executive manager of any bank or other financial institution;
- (g) any partner in a partnership;
- (h) any person who has been appointed as chief executive officer or an equivalent officer of any agency, authority, board, commission, committee, corporation, council, department, entity, financial institution, foundation, fund, institute, service, or any other institution or organisation, whether established by legislation, contract or any other legal means; 5
- (i) any other person who is responsible for the overall management and control of the business of an employer; or 10
- (j) any person contemplated in paragraphs (a) to (i), who has been appointed in an acting or temporary capacity.

Extraterritorial jurisdiction

35. (1) Even if the act alleged to constitute an offence under this Act occurred outside the Republic, a court of the Republic shall, regardless of whether or not the act constitutes an offence at the place of its commission, have jurisdiction in respect of that offence if the person to be charged— 15

- (a) is a citizen of the Republic;
- (b) is ordinarily resident in the Republic; 20
- (c) was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic at the time the offence was committed;
- (d) is a company, incorporated or registered as such under any law, in the Republic; or 25
- (e) any body of persons, corporate or unincorporated, in the Republic.

(2) Any act alleged to constitute an offence under this Act and which is committed outside the Republic by a person, other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in the Republic if that— 30

- (a) act affects or is intended to affect a public body, a business or any other person in the Republic;
- (b) person is found to be in South Africa; and
- (c) person is for one or other reason not extradited by South Africa or if there is no application to extradite that person. 35

(3) Any offence committed in a country outside the Republic as contemplated in subsection (1) or (2), is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed—

- (a) at the place where the accused is ordinarily resident; or
- (b) at the accused person's principal place of business. 40

(4) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after the offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or, in case of an omission, should have acted.

Repeal and amendment of laws and transitional provisions 45

36. (1) The laws specified in the Schedule are repealed or amended to the extent indicated in that Schedule.

(2) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Corruption Act, 1992 (Act No. 94 of 1992), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects, as if this Act had not been passed. 50

(3) An investigation or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Corruption Act, 1992, and which occurred after the commencement of that Act but before the commencement of this Act, may be concluded, instituted and continued as if this Act had not been passed. 55

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(4) Notwithstanding the repeal or amendment of any provision of any law by this Act, such provision shall, for the purpose of the disposal of any investigation, prosecution or any criminal or legal proceedings contemplated in subsection (2) or (3), remain in force as if such provision had not been repealed or amended.

Short title and commencement

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37. (1) This Act is called the Prevention and Combating of Corrupt Activities Act, 2004, and shall, subject to subsection (2), come into operation on 27 April 2004 or on such earlier date as the President may determine by proclamation in the *Gazette*.

(2) Section 34(2) shall come into operation on 31 July 2004.

SCHEDULE

LAWS REPEALED OR AMENDED BY SECTION 36

No. and Year of Law	Short title	Extent of Repeal or Amendment	5
Act 38 of 1927	Black Administration Act	The Third Schedule to the Act is hereby amended by the substitution of the offence "bribery" for the following offence: "any offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004."	10
Act 59 of 1959	Supreme Court Act	Section 24 is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: "(b) interest in the cause, bias, malice or [corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the presiding judicial officer."	15
Act 58 of 1962	Income Tax Act	Section 37H is hereby amended by the substitution for paragraph (a) of subsection (23) of the following paragraph: "(a) interest in the application, bias, malice or [corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of any member of the board."	30
Act 42 of 1965	Arbitration Act	Section 33 is hereby amended by the substitution for subsection (2) of the following subsection: "(2) An application pursuant to this section shall be made within six weeks after the publication of the award to the parties; Provided that when the setting aside of the award is requested on the grounds of [or corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, such application shall be made within six weeks after the discovery of the [corruption] that offence and in any case not later than three years after the date on which the award was so published."	45
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No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 61 of 1973	Companies Act	<p>Section 218 is hereby amended by the substitution for subparagraph (iii) of paragraph (d) of subsection (1) of the following subparagraph:</p> <p>“(iii) any person who has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty or in connection with the promotion, formation or management of a company, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding one hundred rand.”.</p>	5 10 15 20
Act 51 of 1977	Criminal Procedure Act	<p>1. Insert the following section after section 269:</p> <p>“269A. If evidence on a charge of an offence under Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, does not prove the offence so charged but proves the offence of—</p> <p>(a) theft;</p> <p>(b) fraud; or</p> <p>(c) extortion,</p> <p>the accused may be found guilty of the crime or offence so proved.”.</p> <p>2. Schedule 5 to the Act is hereby amended by the substitution for the words in the 20th line of the following words:</p> <p>“Any offence relating to exchange control, [corruption,] extortion, fraud, forgery, uttering, [or] theft, or any offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004—”.</p>	25 30 35 40 45 50

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No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 91 of 1981	Co-operatives Act	<p>Section 108 is hereby amended by the substitution for subparagraph (iii) of paragraph (f) of subsection (1) of the following subparagraph: 5</p> <p>“(iii) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, an offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, any offence involving dishonesty or in connection with the formation or management of a co-operative or company and sentenced therefor to imprisonment without the option of a fine or to a fine exceeding two hundred rand:”.</p>
Act 19 of 1982	Veterinary and Para-Veterinary Professions Act	<p>Section 24 is hereby amended by the substitution for paragraph (b) of subsection (3) of the following paragraph: 30</p> <p>“(b)he or she has at any time been convicted of extortion, bribery, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, theft, fraud, forgery or uttering of a forged document or perjury, and was sentenced in respect thereof to imprisonment without the option of a fine:”.</p>

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No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 61 of 1984	Small Claims Court Act	<p>Section 46 is hereby amended by the substitution for paragraph (b) of the following paragraph:</p> <p>“(b) interest in the cause, bias, malice, or [corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the commissioner; and”.</p>	5 10
Act 69 of 1984	Close Corporations Act	<p>Section 47 is hereby amended by the substitution for subparagraph (iii) of paragraph (b) of the following subparagraph:</p> <p>“(iii) any person who has at any time been convicted of theft, fraud, forgery or uttering a forged document, perjury, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty or in connection with the formation or management of a company or a corporation, and has been sentenced therefor to imprisonment for at least six months without the option of a fine; and”.</p>	15 20 25 30 35
Act 97 of 1990	Financial Services Board Act	<p>Section 5 is hereby amended by the substitution for paragraph (d) of the following paragraph:</p> <p>“(d) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R100; or”.</p>	40 45 50 55 60

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No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 80 of 1991	Public Accountants' and Auditors' Act	<p>1. Section 4 is hereby amended by the substitution for paragraph (b) of subsection (2) of the following paragraph: 5</p> <p>“(b) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] 10</p> <p><u>any offence under the Prevention of Corruption Act, 1958 (Act No. 6 No. of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004,</u> or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R300:”. 15</p> <p>2. Section 15 is hereby amended by the substitution for paragraph (b) of subsection (4) of the following paragraph: 20</p> <p>“(b) if he or she has at any time been convicted (whether in the Republic or elsewhere) of theft, fraud, forgery or uttering a forged document, perjury, [an] 25</p> <p><u>any offence under the Prevention of Corruption Act, 1958 (Act 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004,</u> or any offence involving dishonesty, and has been sentenced therefor to imprisonment without the option of a fine or to a fine exceeding R300: or”. 30</p> <p>35</p> <p>40</p> <p>45</p>

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No. and Year of Law	Short title	Extent of Repeal or Amendment	
Act 103 of 1991	Short Process Courts and Mediation in Certain Civil Cases Act	Section 12 is hereby amended by the substitution for paragraph (b) of subsection (1) of the following paragraph: “(b) interest in the cause, bias, malice or [corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, on the part of the mediator or the presiding adjudicator, as the case may be; and”.	5 10 15
Act 94 of 1992	Corruption Act	The whole	
Act 106 of 1993	Natural Scientific Professions Act	Section 11 is hereby amended by the substitution for paragraph (b) of subsection (9) of the following paragraph: “(b) has at any time been convicted of extortion, bribery, any offence under the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act No. 94 of 1992), Part 1 to 4, or sections 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, theft, fraud, forgery or uttering a forged document knowing it to be false or perjury and has in respect thereof been sentenced to imprisonment without the option of a fine or to a fine exceeding R1 000;”.	20 25 30 35 40
Act 148 of 1993	Independent Media Commission Act	Section 6 is hereby amended by the substitution for subparagraph (i) of paragraph (j) of subsection (1) of the following subparagraph: “(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury or an offence in terms of the Prevention of Corruption Act, 1958 (Act No. 6 of 1958), the Corruption Act, 1992 (Act 94 of 1992), Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or”.	45 50 55

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No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 209 of 1993	Local Government Transition Act, 1993	<p>1. Section 10G is hereby amended by the substitution for paragraph (g) of subsection (2) of the following paragraph: 5</p> <p>“(g) Any loss suffered by a municipality and which the chief executive officer, or if the chief executive officer is responsible, the council, suspects to be due to any fraudulent [or corrupt] act or an [act of bribery] offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, committed by any person, shall forthwith be reported by the chief executive officer or the council, as the case may be, to the South African Police Service.” 10 15 20 25</p> <p>2. Section 10H is hereby amended by the substitution for the words following paragraph (b) of subsection (1) of the following words: 30</p> <p>“is <i>prima facie</i> of the opinion that a council member, a chief executive officer or an employee has acted unlawfully or is responsible for any act or omission which has resulted or may result in fraud, [corruption] an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or maladministration, or is of the opinion that the allegation is of such a nature that it justifies further action, he or she shall, subject to subsection (5), appoint a commission of inquiry in terms of the respective provincial laws to inquire into the matter: Provided that in the absence of a provincial law relating to a commission of inquiry, the provisions of sections 2, 3, 4, 5 and 6 of the Commissions Act, 1947 (Act 8 of 1947), and the regulations made thereunder, shall with the necessary changes apply to the municipality concerned in so far as they are applicable to the functions of the municipality.” 35 40 45 50 55 60</p>

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No. and Year of Law	Short title	Extent of Repeal or Amendment
		<p>3. Section 10H is hereby amended by the substitution for subsection (6) of the following subsection:</p> <p>“(6) If the MEC, after considering a report referred to in subsection (4) or a report of a commission contemplated in subsection (5), is of the opinion that a council, a member or a chief executive officer or employee either intentionally acted unlawfully or is responsible for any act or omission which has resulted or may result in fraud, [corruption] an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or maladministration, he or she may take such steps as he or she may deem necessary so as to deal with the matter.”.</p>
Act 23 of 1994	Public Protector Act	<p>Section 6 is hereby amended by the substitution for subparagraph (iii) of paragraph (a) of subsection (4) of the following subparagraph:</p> <p>“(iii) Improper or dishonest act, or omission or [corruption] offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, with respect to public money;”.</p>
Act 40 of 1994	Intelligence Services Control Act	<p>Section 7 is hereby amended by the substitution for paragraph (cA) of subsection (7) of the following paragraph:</p> <p>“(cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), [corruption] the commission of an offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;”.</p>

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No. and Year of Law	Short title	Extent of Repeal or Amendment
Act 66 of 1995	Labour Relations Act	<p>Section 145 is hereby amended by the substitution for paragraphs (a) and (b) of subsection (1) of the following paragraphs:</p> <p>“(a) within six weeks of the date that the award was served on the applicant, unless the alleged defect involves [corruption] the commission of an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004; or</p> <p>(b) if the alleged defect involves [corruption] an offence referred to in paragraph (a), within six weeks of the date that the applicant discovers [the corruption] such offence.”</p>
Act 67 of 1995	Development Facilitation Act	<p>1. Section 8 is hereby amended by the substitution for paragraph (d) of subsection (2) of the following paragraph:</p> <p>“(d) he or she is convicted of an offence involving dishonesty or [corruption] an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or sentenced to imprisonment without the option of a fine; or”.</p> <p>2. Section 15 is hereby amended by the substitution for subparagraph (iv) of paragraph (b) of subsection (6) of the following subparagraph:</p> <p>“(iv) he or she is convicted of an offence involving dishonesty, or [corruption] an offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, or sentenced to imprisonment without the option of a fine; or”.</p>

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Act 33 of 1996	National Gambling Act	Section 3 is hereby amended by the substitution for item <i>(dd)</i> of subparagraph (iii) of paragraph <i>(a)</i> of subsection (7) of the following item: “ <i>(dd)</i> has at any time been or is convicted, whether in the Republic or elsewhere, of theft, fraud, forgery or uttering a forged document, perjury, [an] any offence under the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u> , the <u>Corruption Act, 1992 (Act 94 of 1992)</u> , Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> , or any offence involving dishonesty.”.	5 10 15 20
Act 65 of 1996	Films and Publications Act	Section 7 is hereby amended by the substitution for subparagraph (i) of paragraph <i>(h)</i> of subsection (1) of the following subparagraph: “(i) in the Republic, of theft, fraud, forgery and uttering a forged document, perjury, or [an offence in terms of the Corruption Act, 1992 (Act 94 of 1992)] any offence under the <u>Prevention of Corruption Act, 1958 (Act No. 6 of 1958)</u> , the <u>Corruption Act, 1992 (Act No. 94 of 1992)</u> , or Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> .”.	25 30 35 40
Act 74 of 1996	Special Investigating Units and Special Tribunals Act	Section 2 is hereby amended by the substitution for paragraph <i>(f)</i> of subsection (2) of the following paragraph: “ <i>(f)</i> [corruption] offence referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the <u>Prevention and Combating of Corrupt Activities Act, 2004</u> , and which offences was committed in connection with the affairs of any State institution; or”.	45 50