Introduction

1. What is this booklet about?

This booklet explains the Prevention and Combating of Corrupt Activities Act of 2004 (which we usually call ‘the Act’). It forms part of the government’s strategy to stop corruption and has been written for:

❉ Members of the public sector.
❉ Members of the private sector (businesses).
❉ Members of the public.
❉ Anyone doing training on the Act.

2. What is the Prevention & Combating of Corrupt Activities Act?

An ‘Act’ is a law that has been passed by Parliament. As its name suggests, the Prevention and Combating of Corrupt Activities Act aims to prevent and fight corruption in government and in the private sector. The Act was written to:

❉ Strengthen measures to prevent and combat corruption and corrupt activities.
❉ Create the crime of corruption and related crimes.
❉ Deal with investigations into corruption.
❉ Create a register to prevent people who use corruption from getting government contracts or tenders.
❉ Require people in positions of authority to report corruption over R100 000.
❉ Prevent people in South Africa from using corruption to influence members of the public sector of other countries.
Introduction

The President, Deputy President, Cabinet Ministers, Provincial Premiers and Members of Executive Councils (MECs)

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Members and staff of Parliament and provincial legislatures

Members and staff of municipalities

Staff of all government departments

The police, prosecutors, judges and magistrates

The national institutions (like the Human Rights Commission and Office of the Public Protector)

Public sector (anyone paid by public money)

Individuals working for themselves or for businesses or companies

Civil society organisations (CSOs). These include non-governmental organisations (NGOs) and community based organisations (CBOs)

Private sector (everyone working outside of the public sector)

The companies or businesses themselves
The Act was also written to bring our laws in line with the United Nations (UN) Convention Against Corruption and the African Union (AU) Convention on Preventing and Combating Corruption. South Africa has agreed to follow both of these Conventions. Amongst other things, these Conventions require countries that sign them to:

- Take steps to prevent corruption.
- Create crimes to cover a wide range of corrupt activities.
- Co-operate with other countries to stop corruption.
- Impose strict penalties for corruption.

**THE UN/AU CONVENTIONS AGAINST CORRUPTION**

One of the tasks of the United Nations is to draw up ‘international laws’ (usually called ‘conventions’). Countries are asked to show that they will follow these laws by ‘ratifying’ them. The UN adopted the Convention Against Corruption in October 2003. It was ratified by South Africa in November 2004 and came into force in December 2005. The AU Convention on Preventing and Combating Corruption was adopted in July 2003. It was signed by South Africa in March 2004 and ratified in November 2005. This convention has not yet come into force.

**3. What is corruption?**

**The legal definition in the Act**

One of the main things that the Act does is to make certain actions crimes (some of which might not have been regarded as crimes in the past). To do this, it has to ‘define’ or explain what the crime of corruption is. This is known as the ‘legal definition’ of corruption, which might be different to what you understand the word ‘corruption’ to mean.
Although many people might call the above examples ‘corruption’, these do not fit the legal definition of corruption in the Act. Instead, they are examples of theft and fraud.

- **Theft** is the crime of stealing.
- **Fraud** is the crime of deliberately misleading or deceiving someone to cause that person financial loss or other harm.
Instead, the Act sets out a range of activities that are regarded as corruption – all of which have the following in common: Someone (A) gives (or offers to give) someone in a position of power (B) something to use their power, illegally and unfairly, to the advantage of A (or anyone else).

The person offering to give or do something in return for something is always guilty of corruption. And both parties (A and B) will be guilty of corruption if the offer is accepted.

Mr van der Merwe sells computers. He hears that a company wants to buy 20 computers. He finds out that Ms Mkhize is the person at the company who will decide which computers to buy. Mr van der Merwe calls Ms Mkhize and tells her that, if she buys the computers from him, he will ‘donate’ R500 to her for each computer she buys.

By making such an offer, Mr van der Merwe is guilty of corruption. If Ms Mkhize agrees, both she and Mr van der Merwe will be guilty of corruption.
The money or favour that is offered does not have to be for one of the parties involved.

**EXAMPLE**

Ms Meyer works for Acme Car Company. Her employer asks her to find six, cheap second hand cars. She goes to Mr. Ngonyama, whose cars are more expensive than average. They agree that Ms Meyer will influence her boss to buy his expensive cars if Mr Ngonyama makes a donation to her daughter's school. They don’t tell Ms Meyer's boss what they have agreed.

Even though Ms Meyer doesn’t get a direct benefit, both she and Mr Ngonyama are guilty of corruption.

It is also a crime for a person to ‘offer to accept’ something to use their position for someone else’s advantage.

**EXAMPLE**

Constable Dube, a police officer, sees Ms Jacobs driving without a seat belt. He pulls her over and tells her that he could give her a large fine – but if she is prepared to pay him R50, he will let her go. Constable Dube is offering to accept a bribe – and he is therefore guilty of corruption.

If Ms Jacobs accepts the offer, then she too will be guilty of corruption.
In other words, merely offering to do something or to accept something is corruption – even if the offer is not accepted.

Lastly, it is important to note that there is no need for money to be involved for the crime of corruption to be committed. In fact, the Act lists many kinds of payment and favours that can give rise to the crime of corruption - such as giving someone a job, giving a donation (that need not be money) and releasing someone from a debt that they may owe if they do what the other person wants.
4. Why is corruption a problem?

Corruption causes problems for individuals, for groups of people, for communities and for the country as a whole.

- Corruption undermines human rights like the right to equality and to freedom of trade and occupation.
- When people pay bribes to get things that they are not entitled to (like old age pensions), there is less money available for people who really need it.
- Corruption increases the cost of public service. As a result there is less money for housing, health care, education or other services.
- Business costs, and costs to consumers, increase.
- Corruption can lead to people getting promoted who do not deserve to be.
- Criminals get away with their crimes and more people commit crimes because they know they will get away with it. It also creates a breeding ground for organised crime.
- Corruption stops economic development in the country because people from outside will not put their money into such countries.
- Because corruption is a crime, corrupt officials have to be prosecuted and perhaps kept in prison, which is expensive and puts an additional burden on the criminal justice system.

5. What is the government doing about corruption?

Since the first democratic election in 1994, the government has done many things to prevent corruption and to make sure that those who are guilty of it are punished, including:

**The Code of Conduct for Public Servants (1997)**

This Code *must* be followed by all public servants - anybody who violates it will be guilty of misconduct.
Introduction

The Promotion of Access to Information Act (2000)
This Act assists people to get information from government and businesses and can be used to check whether corruption has taken place.

This Act requires government to follow fair procedures when taking decisions that affect the public or an individual. It gives people the right to request written reasons for decisions they disagree with, which allows them to see whether corruption influenced the decision.

The Protected Disclosures Act (2000)
This Act (often called the ‘Whistleblowers Act’) was passed to encourage employees in both the public and private sector to disclose information about unlawful and irregular behaviour in the workplace. We will look at this Act later in this booklet.

The National Anti-Corruption Forum (2001)
This forum brings government, business and civil society organisations (like NGOs) together to fight corruption in all parts of society. The Forum is also responsible for the National Anti-Corruption Programme (2005), which aims (amongst other things):

- To encourage everyone to follow the laws dealing with corruption.
- To help all levels of government discuss how to fight corruption.

Amongst other things, the Code says:

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<th>Public servants ...</th>
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<td><strong>Must ALWAYS:</strong></td>
<td><strong>Must NEVER:</strong></td>
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<tr>
<td>• Act in the best interests of the public.</td>
<td>• Favour friends or relatives or abuse their authority.</td>
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<td>• Be honest when dealing with public money.</td>
<td>• Use their official position to obtain gifts or benefits.</td>
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<tr>
<td>• Report all cases of fraud and corruption to the appropriate authorities.</td>
<td>• Accept any gifts or benefits when offered them as these may be seen as a bribe.</td>
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The NACF Manual
21/8/06, 19:59
To conduct anti-corruption programmes in the public and private sectors.

You can visit the forum website on www.nacf.org.za.

**The Public Service Anti-Corruption Strategy (2002)**
Amongst other things, this strategy aims to:

- Make sure all types of corruption are covered by the law
- Make it easier for people to report corruption.
- Prevent corrupt people and businesses from getting work from government.

**The Prevention and Combating of Corrupt Activities Act (2004)**
This Act deals with the crime of corruption (in both the public and private sectors) and is what this booklet is about.

**National Anti-Corruption Hotline**
As part of its efforts to make it easier for people to report corruption in the public service, the government has set up a free ‘hotline’. Because the identity of the caller is protected, people can call this number to report corruption without fear.

**Regional and international co-operation**
The government co-operates with countries in the region and internationally to combat corruption. This includes:

- Co-hosting the 9th International Anti-corruption Conference in 1999.
- Signing a project agreement with the UN Office on Drugs and Crime to support the national anti-corruption programme (2001).
- Ratifying various regional and international laws, like the SADC Protocol against Corruption (2003) and the UN Convention Against Corruption (2004).
- Serving on the project team of the UN Office on Drugs and Crime that is developing guidelines for countries to comply with the UN Convention against Corruption.