



THE REPUBLIC OF UGANDA

**THE ANTI CORRUPTION (AMENDMENT)
ACT, 2015.**

Act No. 21

ACTS SUPPLEMENT

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Act 21 *Anti Corruption (Amendment) Act* **2015**

THE ANTI CORRUPTION (AMENDMENT) ACT, 2015.

ARRANGEMENT OF SECTIONS

Section

1. Amendment of section 1 of the principal Act.
2. Amendment of section 20 of the principal Act.
3. Insertion of a new section 21A.
4. Amendment of section 34 of the principal Act.
5. Replacement of section 38 of the principal Act.
6. Replacement of section 63 of the principal Act.
7. Insertion of new sections 63A and 63B.
8. Replacement of section 64 of the principal Act.
9. Insertion of new sections 64A, 64B, and 64C.
10. Amendment of section 65 of the principal Act.
11. Amendment of section 67 of the principal Act.
12. Insertion of new sections 67A, 67B and 67C.

THE ANTI CORRUPTION (AMENDMENT) ACT, 2015

An Act to amend the Anti Corruption Act, 2009; to provide for mandatory confiscation of property of a person convicted of an offence under this Act; to provide for the procedure for issuing a confiscation order, and to provide for related matters.

DATE OF ASSENT: 15th October, 2015.

Date of Commencement: 11th November, 2015.

BE IT ENACTED by Parliament as follows:

1. Amendment of section 1 of the Anti Corruption Act, 2009.

The Anti Corruption Act, 2009, in this Act referred to as the principal Act is amended in section 1 by substituting for the definition of “property” the following—

“property” includes money, 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;

2. Amendment of section 20.

The principal Act is amended in section 20 by—

(a) substituting for subsection (1) the following—

“(1) A person who does or fails to do any act knowing or having reason to believe that the act or omission will cause financial loss to the government, bank, credit institution, insurance company or a public body commits an offence and is liable on conviction to a fine not exceeding three hundred and thirty six currency points or to a term of imprisonment not exceeding fourteen years or both.”

- (b) in subsection (2) by inserting immediately after paragraph (b) the following—

“(c) “a company” means a company incorporated under the Companies Act.”

3. Insertion of a new section 21A.

The principal Act is amended by inserting immediately after section 21 the following—

“21A. Dealing with suspect property.

(1) A person who deals with property that he or she believes or has reason to believe was acquired as a result of an offence under this Act commits an offence and is liable on conviction to a fine not exceeding one hundred and sixty currency points or to a term of imprisonment not exceeding seven years or both.

(2) For the purposes of sub section (1), a person deals with property if that person—

- (a) holds, receives or conceals the property;
- (b) enters into a transaction in relation to the property or causes such a transaction to be entered into; or
- (c) removes the property from the jurisdiction of court for the purpose of assisting any person to avoid confiscation of that property.”

4. Amendment of section 34.

The principal Act is amended in section 34 by substituting for subsection (5) the following—

“(5) The Director of Public Prosecutions or the Inspector General of Government shall ensure that an order issued by court under subsection (1) is served on the banker, an accused person or the suspected person and any other person to whom the order relates.”

5. Replacement of section 38.

The principal Act is amended by substituting for section 38 the following—

“38. Duty to give information.

(1) Notwithstanding any law, a person from whom a police officer or special investigator requires information under this Act shall be under a duty to give the police officer or special investigator the information which is in his or her possession or knowledge.

(2) A person who fails to give the information required under subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and forty currency points or to a term of imprisonment not exceeding three years or both.”

6. Replacement of section 63 of the principal Act.

The principal Act is amended by substituting for section 63 the following—

“63. Court to assess benefit derived from the act of corruption.

(1) Where a person is convicted of an offence of corruption under this Act, the Director of Public Prosecutions or the Inspector General of Government may, apply to court not later than six months after conviction to assess the value of the benefit derived by that person from the act of corruption.

(2) Subject to section 65, the benefit derived from corruption by the convict shall be—

- (a) any property or interest held by the convict before or after the commencement of this Act, being property or interest disproportionate to his or her known sources of income and the holding of which cannot be explained to the satisfaction of the court; or
- (b) the value of the benefit derived by him or her from the act of corruption for which he or she is convicted, which shall be the aggregate of the value of the property or interest referred to in paragraph (a) and any other corporeal or incorporeal benefit.”

7. Insertion of new sections 63A and 63B.

The principal Act is amended by inserting immediately after section 63 the following—

“63A. Presumption of property or interest.

(1) In assessing the benefit derived by a person from the offence of corruption, it shall be rebuttable presumption that—

- (a) any property or interest acquired by the convict within a period of ten years preceding his or her conviction represents a proceed or benefit derived from the offence of corruption; or
- (b) any expenditure incurred by the convicted person at any time before conviction was met from property obtained by him or her as a result of the offence of corruption.

(2) Where the Director of Public Prosecutions or the Inspector General of Government proves that the convicted person committed the offence of corruption prior to the period in subsection (1) (a), court shall take into account any property or interest acquired by the convicted person when accessing the value of the benefit enjoyed.

(3) The Court shall not make a presumption under subsection (1) in relation to property, interest or expenditure if the presumption is shown to be correct, there would be a serious risk of injustice if the presumption were made.

(4) A person convicted shall be given an opportunity to adduce evidence in rebuttal to the presumption that the property, interest or expenditure does not represent proceeds of an offence under this Act.

(5) The proof in rebuttal under subsection (3) shall be on the balance of probabilities.

63B Assessment order.

(1) Where the court is satisfied that the convicted person derived benefit from the offence for which he or she was convicted under this Act, it shall make an assessment order, directing the convicted person to pay the stated amount within a period of six months.

(2) Where an assessment order has been issued under this section, the convicted person may, on notifying the Director of Public Prosecutions or the Inspector General of Government, apply to court to have the restraining order lifted for purposes of satisfying the assessment order.

(3) Court may—

(a) grant the application to lift the restraining order on terms it deems fit;

- (b) reject the application and instead appoint a receiver to realise the restrained property for purposes of satisfying the assessment order.

(4) For the avoidance of doubt, the assessment order shall not have any mitigating effect on the sentence for the offence committed by the convicted person.”

8. Replacement of section 64.

The principal Act is amended by substituting for section 64 the following—

“64. Confiscation order.

(1) Where the convicted person has not satisfied the assessment order within a period of six months from the date on which the assessment order was issued, the Director of Public Prosecutions or the Inspector General of Government shall apply to Court for a confiscation order.

(2) Where the Director of Public Prosecutions or the Inspector General of Government makes an application for a confiscation order under subsection (1), the Director of Public Prosecutions or the Inspector General of Government shall serve a copy of the application on the convicted person and on such other person as the court may direct.

(3) A person to whom the application has been served under subsection (2) may appear and adduce evidence at the hearing of the application.

(4) The absence of the convicted person in court or any other person on whom service has been effected, shall not prevent the court from making a confiscation order in his or her absence.”

9. Insertion of new sections 64A, 64B and 64C.

The principal Act is amended by inserting immediately after section 64 the following new sections—

“64A. Court to appoint a manager, receiver or administer.

(1) Where court makes a confiscation order and is satisfied that the property is realisable or requires special attention, it shall appoint a person to take control or manage or otherwise deal with the property.

(2) A person appointed under subsection (1) shall within six months from the date of appointment, file in court an inventory of the property, interest confiscated together with an account of the proceeds recovered.

(3) A person appointed under subsection (1) shall realise the property specified in the confiscation order and pay the proceeds in the manner prescribed by the Minister.

(4) A person shall be qualified to be appointed a manager, receiver or administrator if he or she is qualified to act as an insolvency practitioner under the Insolvency Act.

64B. Review of a confiscation order.

(1) A person who has an interest in a property in respect of which a confiscation order has been made may within fourteen days, apply to court for a review of the confiscation order.

(2) An application for a review under sub section (1) shall not be heard by the court unless the applicant has served the the Director of Public Prosecutions or the Inspector General of Government with the application.

(3) The applicant under subsection (1) shall adduce evidence to show that he or she acquired the property or interest lawfully.

(4) The court may revoke or vary the confiscation order or make the order subject to such conditions as it thinks fit.

64C. Confiscation costs.

Where the court orders confiscation of property under section 64, the costs of enforcing the order shall be recovered from the proceeds of recovery.”

10. Amendment of section 65 of the principal Act

The principal Act is amended in section 65 by substituting for subsection (2) the following—

“(2) For the purposes of subsection (1), a person is taken to have absconded, if reasonable attempts to arrest the person under a warrant have been unsuccessful during the period of six months commencing on the day the warrant was issued, and the person shall be taken to have absconded on the last day of that period.”

11. Amendment of section 67 of the principal Act

The principal Act is amended in section 67 by deleting the words “responsible for justice” appearing in the first line.

12. Insertion of new sections 67A, 67B and 67C.

The principal Act is amended by inserting immediately after section 67 the following new sections—

“67A. Power of the Chief Justice to make rules .

The Chief justice shall make rules to regulate the procedure—

- (a) for confiscation and recovery orders;
- (b) to be applied by persons appointed as managers, receivers or administrators; and
- (c) for any related matters.

67B. Declaration of reciprocating States or territories and courts and reciprocity with other States or territories

(1) Where the Minister is satisfied that any state, has enacted laws for confiscation or recovery orders which have the same effect as this Act, the Minister may by statutory instrument declare the State to be a reciprocating state for purposes of this Act.

(2) Uganda may enter into reciprocal agreements, treaties or arrangements, for cross-border recovery of the benefit derived from an act of corruption through a confiscation order or recovery order, using the terms of the agreement, treaty or arrangement and the provisions of this Act shall apply with the necessary modifications, consistent with the subsisting agreement, treaty or arrangements to which the case is subject.

67C. Extraterritorial enforcement.

(1) Where the the Director of Public Prosecutions or the Inspector General of Government believes that any property that is a subject of court order is situated in a country or territory outside Uganda, the the Director of Public Prosecutions or the Inspector General of Government shall send the request for assistance to the Minister to forward to that country for purposes of enforcement.

(2) Where no confiscation order has been made, a request for assistance shall be a request to the Government of the receiving country to—

- (a) provide a list of property owned by or in which the person named in the request has interest;
- (b) ensure that the named person is prohibited from dealing with property in which he or she has an interest;
- (c) realise property and that the proceeds are transmitted to the consolidated fund; and

- (d) do any act which appears reasonable for the fulfillment of the request.

(3) A request for assistance shall not be made for the purposes of this section in a case where a confiscation order has been made and has been satisfied, discharged or quashed.

(4) If property is realised in pursuance of a request under subsection (2) the amount ordered to be paid under the confiscation order must be taken to be reduced by an amount equal to the proceeds of the realisation.

(5) A certificate issued by or on behalf of the requested government is sufficient evidence of the facts it states —

- (a) that the property has been realised in pursuance of a request made under subsection (2);
- (b) in respect of the date of realisation; and
- (c) in respect of the proceeds of realisation.

(6) Where the proceeds of realisation made in pursuance of a request under subsection (2) are expressed in a currency other than Uganda shillings, they must be taken to be the equivalent of Uganda shillings calculated in accordance with the rate of exchange prevailing at the end of the day of realisation.”

Cross Reference

Companies Act 2012, Act No. 1 of 2012.

Insolvency Act 2011, Act No. 14 of 2011

