

(Unofficial Translation)

ORGANIC ACT ON ANTI-CORRUPTION

B.E. 2561 (2018)

HIS MAJESTY KING MAHA VAJIRALONGKORN BODINDRADEBAYAVARANGKUN;

Given on the 20th Day of July B.E. 2561;

Being the 3rd Year of the Present Reign.

His Majesty King Maha Vajiralongkorn Bodindradebayavarangkun is graciously pleased to proclaim that:

Whereas it is expedient to have the Organic law on Anti-Corruption;

This Organic Act contains certain provisions in relation to the restriction of rights and liberties of a person, in respect of which Section 26 in conjunction with Section 28, Section 32, Section 33, Section 37, and Section 40 of the Constitution of the Kingdom of Thailand so permitted by the virtue of law;

Rationale for and necessity of the restriction of rights and liberties of a person under this Act are to render the performance of the National Anti-Corruption Commission more efficient which shall benefit the public; the enactment of this Organic Act is in accordance with the conditions imposed in Section 26 of the Constitution;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Legislative Assembly, as follows.

Section 1. This Act is called the “Organic Act on Anti-Corruption B.E 2561 (2018)”.

Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. The followings shall be repealed:

(1) Organic Act on Counter Corruption B.E. 2542 (1999)

(2) Announcement of the Council for Democratic Reform No. 31 on the undertakings as per the powers and duties of the National Anti-Corruption Commission dated 30 September B.E. 2549 (2006)

¹ Published in Government Gazette, Vol. 135, Part 52a, dated 21st July 2018.

(3) Act amending the Organic Act on Counter Corruption B.E. 2542 (1999), B.E. 2550 (2007);

(4) Organic Act on Counter Corruption (No. 2) B.E. 2554 (2011);

(5) Organic Act on Counter Corruption (No. 3) B.E. 2558 (2015);

(6) Organic Act on Counter Corruption (No. 4) B.E. 2559 (2016);

(7) Announcement of the National Council for Peace and Order No. 24/2557 on the Organic Acts which remain in force dated 23 May B.E. 2557 (2014), only the parts relating to the Organic Act on Counter Corruption;

(8) Announcement of the National Council for Peace and Order No. 72/2557 dated 27 June B.E. 2557 (2014) on the undertakings under the Organic Law on Counter Corruption.

Section 4. In this Organic Act:

“Public official” means state official, person holding a political position, judge of the Constitutional Court, person holding a position in an independent agency, and the NACC;

“State official” means government official or local official holding a position or receiving regular salary, person performing duties in a state agency or a state enterprise, local administrator, deputy local administrator, assistant local administrator and member of a local assembly, official under the law on local administration or other official as provided by the law, and shall include member of a Board/Commission/Committee or of a Sub-Commission/Sub-Committee, employee of a government agency, state agency or state enterprise and person or group of persons permitted by law to exercise or being assigned to exercise the administrative power established under the government system, state enterprise or other state administration, but shall not include person holding a political position, judge of the Constitutional Court, person holding a position in an independent agency, and the NACC;

“Foreign public official” means any person holding a legislative, executive, administrative or judicial office of a foreign country, and any person performing duties for a foreign country, including for a public agency or public enterprise, whether appointed or elected, permanent or temporary, and whether receiving salary or other remuneration or not.²

“Official of a public international organisation” means international civil servant or any person who is authorised by such organisation to act on behalf of that organisation;³

“Person holding a political position” means

² Amended in implementation of the 2003 United Nations Convention against Corruption (UNCAC), Article 2

³ Amended in implementation of the 2003 United Nations Convention against Corruption (UNCAC), Article 2

- (1) Prime Minister;
- (2) Minister;
- (3) Member of the House of Representatives;
- (4) Senator;
- (5) Political official other than (1) and (2) under the regulations on political officials;
- (6) Political parliamentary official under the regulations on parliamentary officials;

“Person holding a position in an independent agency” means person holding a position in an independent agency under the Constitution except the NACC, and shall include the Auditor-General except for the case under Section 11(1);

“Assistant local administrator” means any person assisting local administrator, and shall include person assisting local assembly or member of local assembly of local administrative organisation as prescribed by the NACC;

“Person holding a high-ranking position” means person holding the position of the head of a government agency at the level of Ministry, Sub-Ministry, Department or a government agency having juristic person status, which is not a person holding political position in respect of civil servants, Permanent-Secretary of the Ministry of Defence, Supreme Commander or Commander-in-Chief of the Armed Forces in respect of military officers, Commissioner-General of the Royal Thai Police, and shall include Provincial Governor, Permanent-Secretary of the Bangkok Metropolitan Administration, member of the Board and the chief executive of a state enterprise, head of independent agency but shall not include the Auditor General, member of the Board and the chief executive of other government agency, person holding other position as prescribed by the law, or person holding equivalent position as prescribed by the NACC;

“Alleged culprit” means person against whom the NACC has a resolution to conduct an inquiry under this Organic Act, whether as principal, instigator, or aider and abettor of an offence;

“NACC” means the National Anti-Corruption Commission

“President” means President of the National Anti-Corruption Commission

“Commissioner” means Commissioner of the National Anti-Corruption Commission

“Secretary-General” means Secretary-General of the National Anti-Corruption Commission

“Office” means Office of the National Anti-Corruption Commission

“Competent official” means Secretary-General, and government official under the Office, and shall include government official or officer who assists the Office, and is appointed by the NACC to perform duties under this Organic Act;

“Chief inquiry officer” means the officer appointed by the NACC from inquiry officers;

“Inquiry” means the search, accumulation, collection and other undertakings in order to obtain facts and evidence;

"Corruption" means the performance or omission of a particular act in office or in the course of official duty, or the performance or omission of a particular act under the circumstance likely to cause other persons to believe that the person so performing or omitting holds such office or has such duty although the office or duty is not held or assumed by such person, or the exercise of power in office or in the course of official duty with a view to acquiring undue advantage for oneself or for other persons, or committing an offence of malfeasance in office or malfeasance in judicial office under the Criminal Code or other laws;

“Unusual wealth” means having unusually large amount of assets, or having unusual increase in assets, or having unusual decrease in liabilities, or acquiring assets without legitimate grounds in consequence of the performance of duty or the exercise of power in office or in the course of duty, including the case of having unusual increase in assets upon comparison of the account showing particulars of assets and liabilities;

“Investigator” means investigator under the Criminal Procedure Code, and shall include special investigation officer under the law on special investigation.

Section 5. In case this Organic Act does not provide otherwise, in any matter prescribing for the notification, submission, or delivery of a letter or document to any specific person, if such notification, submission, or delivery of a letter or a document is made to such person at the domicile or address as in the registration evidence under the law on civil registration, the notification, submission, or delivery shall be deemed lawful under this Organic Act. In case this Organic Act provides for announcement or dissemination to the public, announcement or dissemination on information technology system or system or any other means that is conveniently accessible by the public shall be deemed lawful under this Organic Act.

In case this Organic Act empowers the NACC or the Secretary-General to prescribe or issue any order, if no specific method is prescribed, the NACC or the Secretary-General shall proceed accordingly in a notification, regulation, rule, or order, as the case may be, and if such notification, regulation, rule, or order applies to the public, it shall be published in the Government Gazette, and processed in accordance with paragraph one. However, if any notification, regulation, rule, or order specifically prescribes a procedure, the NACC or the Secretary-General shall clearly prescribe the time limit for each step.

Section 6. In the course of performance, the NACC shall cooperate and support all independent agencies. In case the NACC is of an opinion that a person has committed an illegal act under the duties and powers of other independent agency, the NACC shall notify the relevant independent agency in writing in order that the agency shall proceed in accordance with its respective duties and powers without delay.

In case the NACC is of an opinion that any undertakings under the duties and powers of the NACC may also be the offence under duties and powers of other independent agency, the NACC shall consult with other relevant independent agency in order to prescribe a guideline for the collaboration in order that the performance of duties of each independent agency is efficient and not redundant.

For the purpose of the implementation under paragraph two, the President shall have the power to invite the president of other independent agency to attend meetings for consultation and guideline prescription. All independent agencies shall comply with such guideline.

Section 7.⁴ In the criminal proceedings under this Organic Act, if an alleged culprit or defendant absconds during the prosecution or during the court's adjudication, the time period of such absconding shall not constitute the statute of limitations, and upon final judgement sentencing the defendant, if the defendant absconds during the liability to the sentence, the provision of Section 98 of the Criminal Code shall not apply.

Section 8. The President of the National Anti-Corruption Commission shall take charge and control of the execution of this Organic Act.

CHAPTER I THE NATIONAL ANTI-CORRUPTION COMMISSION

Part I

The National Anti-Corruption Commission

Section 9. The National Anti-Corruption Commission consists of nine Commissioners, all of whom are appointed by the King upon the advice of the Senate, from the persons selected by the Selection Committee.

The selected person must possess the knowledge, expertise, and experience in the field of law, accounting, economics, administration of state affairs, or any other field

⁴ Amended in implementation of UNCAC Art. 29

which is beneficial to the prevention and suppression of corruption, and shall have one of the following qualifications:

(1) Serving or having served in the official service in a position not lower than Chief Justice, Chief Justice of the Administrative Court of First Instance, Chief Justice of the Central Military Court, or Director-General of a State Attorney Department for a period of not less than five years;

(2) Serving or having served in the official service in a position not lower than a Director-General or an equivalent head of the government agency for a period of not less than five years;

(3) Being or having been in a position of the chief executive of a state enterprise or other state agency, which is not a government agency or a state enterprise, for a period of not less than five years;

(4) Holding or having held a position of professor in a university in Thailand for a period of not less than five years, and currently having renowned academic work;

(5) Being or having been a practitioner of a profession certified by law, and having regularly and continuously practised the profession for a period of not less than twenty years up to the date of nomination, and having been certified by the professional organisation of such profession;

(6) Being a person with knowledge, expertise and experience in the field of management, public finance, accounting or enterprise management at the level of not lower than a high-level executive of a public company limited for a period of not less than ten years;

(7) Having been in the position under (1), (2), (3), (4) or (6) for a total period of not less than ten years.

The accumulation of the period of time under paragraph two shall be made up to the date of nomination or the date of the application for selection, as the case may be.

Section 10. In addition to the qualifications specified under Section 9, a Commissioner shall possess the following qualifications:

(1) Being of Thai nationality by birth;

(2) Being not less than forty-five years, but not over seventy years of age;

(3) Having graduated with no lower than a bachelor's degree or its equivalent;

(4) Having manifested evident integrity;

(5) Being of health and capable of efficiently performing duties.

Section 11. A Commissioner must not be under the following prohibitions:

- (1) Being or having been a Judge of the Constitutional Court, or holding a position in any independent agency;
- (2) Being addicted to narcotic drugs;
- (3) Being bankrupt or used to be bankrupt due to corruption;
- (4) Being an owner or shareholder of any newspaper or media business;
- (5) Being a Buddhist monk, Buddhist novice, ascetic or priest;
- (6) Being under revocation of voting rights, regardless of the finality of the case;
- (7) Being of unsound mind or mental infirmity;
- (8) Being under temporary suspension of the right to stand for election, or being deprived of the right to stand for election;
- (9) Having been sentenced to imprisonment and being detained by a court warrant;
- (10) Having been dismissed from official service, state agency or state enterprise on the grounds of corruption in the course of duty or being deemed as having committed corruption or misconduct in the official service;
- (11) Having been ordered by a final judgement or court order for assets to become properties of the state on the grounds of unusual wealth, or having been sentenced by a final judgement to imprisonment on the grounds of committing an offence under anti-corruption law;
- (12) Having been convicted by a final judgement for committing malfeasance in public office or in judicial office; an offence under the law on offences of officials in a state organisation or agency; an offence corruptly committed against property under the Criminal Code; an offence under the law on loans of money amounting to public fraud; an offence of being a producer, importer, exporter or trader under the law on narcotics; an offence of being a host or a proprietor under the law on gambling; an offence under the law on the prevention and suppression of human trafficking; or an offence of money laundering under anti-money laundering law;
- (13) Having been sentenced by a final judgement for committing corrupt practices in an election;
- (14) Being currently under the prohibition from holding a political position;
- (15) Having been removed from office due to the decision of the Constitutional Court that there was a proposal, submission of a motion or commission of any act which resulted in direct or indirect involvement by Members of the House of Representatives, Senators or members of a committee in the use of appropriations;
- (16) Having been removed from office due to the decision of the Supreme Court or Supreme Court's Criminal Division for Persons Holding Political Positions for serious

violation or failure to comply with ethical standards, or displaying unusual wealth, or commission of corruption, or deliberate performance of duties or exercise of powers in contrary to the provisions of the Constitution or laws;

(17) Having been imprisoned by final judgement of the court, except for an offence committed through negligence or a petty offence;

(18) Being or having been a member of the House of Representatives, a Senator, a political official, or a member of a local assembly or local administrator at any time during the period of ten years prior to the application for selection;

(19) Being or having been a member or holder of other position in a political party at any time during the period of ten years prior to the application for selection;

(20) Being a government official holding a position or regularly receiving salary;

(21) Being an official or employee of a state agency, state enterprise or local government organisation, or a director or advisor of a state agency or state enterprise;

(22) Holding any position in a partnership, a company or an organisation operating business with a purpose to making and sharing profit or income, or being an employee of any person;

(23) Being an independent professional;

(24) Displaying behaviour which constitutes serious violation or failure to comply with ethical standards.

Section 12. In the selection of suitable person for appointment as a Commissioner under Section 9, it shall be the duties and powers of the Selection Committee, which consists of:

(1) President of the Supreme Court as chairperson;

(2) President of the House of Representatives and leader of the opposition in the House of Representatives, as members;

(3) President of the Supreme Administrative Court as member;

(4) Person appointed by the Constitutional Court and independent agencies, except the NACC, from person having the qualifications and not being under the prohibitions as prescribed in the Constitution.

The Secretary-General of the Senate shall be the secretary of the Selection Committee, and the Secretariat of the Senate shall perform the duties as the administrative unit of the Selection Committee.

In the process of the appointment of person under (4), the Constitutional Court and independent agencies, except the NACC, shall nominate the person appointed by such organisation as member of the Selection Committee within twenty days as from the date of receiving the notification from the Secretary-General of the Senate. The candidate is

selected from persons who are impartial, honest, and having the understanding of the mission of the NACC, and the candidate to be selected as a Selection Committee member must obtain more than half of the votes of the total number of the judges of the Constitutional Court or commissioners of independent agencies, as the case may be. In the case where no person obtains more than half of the votes, there shall be a re-vote. In such case, if there are more than two candidates, only two candidates with the highest votes shall be eligible for the re-vote. In the case of a vote tie which results in more than two candidates for the two places with the highest votes, the persons with equal votes shall draw lots so that only two candidates in the two places with the highest votes remain. In the latter case, if no candidate receives more than half of the votes of the total number of judges of the Constitutional Court or commissioners of independent agencies, as the case may be, the selection process shall be re-initiated; however, candidates from the first round shall no longer be eligible for selection.

The Secretary-General of the Senate shall announce the list of the Selection Committee members under (4) to the public.

In case there is no person holding a position of member of Selection Committee under (2) or the number of members under (4) is incomplete by any reason, or the period of selection under paragraph three has expired without nomination, the Selection Committee as is shall be able to perform duties and exercise powers. During such period, it shall be considered that the Selection Committee consists of the existing members.

The Selection Committee member under (4) shall hold office until the day before the date when there is a case to select a new member, but shall not include the re-selection or additional selection under Section 13 paragraph four, Section 14 paragraphs two and three, and Section 15. Such Selection Committee member shall vacate office before the expiration of the term upon death, resignation, disqualification, or being under prohibitions.

The candidate appointed as a Selection Committee member under (4) cannot concurrently be a Selection Committee member in the Selection Committee for the Constitutional Court or other independent agencies.

The Chairperson of the Selection Committee and the members of the Selection Committee shall be competent officials under the Criminal Code.

Section 13. In the selection process, the Selection Committee shall deliberate in order to select a person with high responsibility, courage in performing duties, and ethical behaviour that can be a role model for the society, as well as appropriate attitude for the effective performance of duties. In addition to the announcement calling for application, the Selection Committee may select persons who are generally appropriate but with their consent. In this regard, it shall take into consideration the variety of experience in

each field. For this purpose the Selection Committee may interview or ask for opinion in the matter relevant to the duties and powers of the NACC, or conduct other appropriate methods.

In the selection process, the votes shall be open, and each member shall record the justification for selection.

The selected candidate must obtain votes of two-thirds of the total number of the existing Selection Committee members.

If no person has received votes under paragraph three, or there is, but the number is not yet filled, there shall be re-vote for candidate not receiving two-thirds of the votes. In the case where the latter vote does not fill the number of vacancy, there shall be a re-selection for the vacant positions.

Within three days as from the expiration of application period, the Secretary-General of the Senate shall publicly announce the list of candidates. Such announcement shall specify the details related to qualifications and work experience as prescribed by the Selection Committee.

Section 14. The candidate selected to assume Commissioner's office shall receive an approval from the Senate with votes of not less than half of the total number of the existing Senators.

In case the Senate disapproves any selected candidate, there shall be a re-selection *in lieu* and thereafter submission to the Senate for approval. The candidate who was disapproved by the Senate shall not be eligible for the re-selection.

Upon approval by the Senate, in case the President vacates the office, the approved candidate shall confer with the current Commissioners, if any, to elect one among themselves to be the President and inform the President of the Senate of the result. In case the candidate approved by the Senate still does not fill the vacant positions, if the total number of approved candidate(s) and current Commissioners, if any, reaches seven, a meeting to elect the President can be held. In such case and upon appointment by the King, the NACC shall act in accordance with the duties and powers for the time being. During such period, the NACC shall be deemed as consisting of the existing Commissioners, and additional selection to fill the vacant position(s) shall proceed promptly.

The President of the Senate shall report to the King for the appointment of the President and Commissioners, and countersign the Royal Command.

Section 15. The candidate approved by the Senate as a Commissioner who has not yet vacated office under Sections 11(20), (21), or (22), or is still engaged in a profession under Section 11(23) must present evidence of resignation or termination from engaging in such profession to the President of the Senate within the period as provided by

the latter, which must be prior to the latter's report to the King for appointment. Failure to present the evidence within such period shall be deemed that such person waived his or her rights to the position and a re-selection shall be initiated.

Section 16. In case a question pertaining to the qualifications or prohibitions of an applicant or a selected candidate arises, the Selection Committee shall have duties and powers to deliberate on the matter, and its decision shall be final. The motion for deliberation of the Selection Committee under paragraph one shall be under the rules and procedures as prescribed by the Selection Committee.

The decision shall be made by open votes.

The provisions of paragraphs one, two, and three shall apply *mutatis mutandis* to the case where a question pertaining to the qualifications and prohibitions of the Selection Committee arises. However, the Selection Committee member who is accused of disqualification or being under prohibition may not be present at the meeting during the deliberation and decision making.

Section 17. The Chairperson of the Selection Committee and members of the Selection Committee shall receive meeting allowance and other remuneration as prescribed by the President of the Senate. However, the meeting allowance shall be prescribed for each meeting at the rate of not less than half of that which is received per month by the President or Commissioner of the Parliamentary Officials Commission under the law on parliamentary officials, as the case may be.

Section 18. A Commissioner shall hold office for seven years as from the date of the appointment by the King and shall hold office for one term.

In case a Commissioner vacates office upon the expiration of term, he or she shall continue to perform duties until there is a replacement.

Section 19. In addition to the vacation from office upon the expiration of term, a Commissioner shall vacate office upon:

- (1) Death;
- (2) Resignation;
- (3) Being disqualified under Sections 9 or 10, or being under prohibition under Section 11;
- (4) Other grounds under the Constitution

Upon vacation of the presidential office, the President shall also vacate Commissioner's office. Should a question whether any Commissioner vacates office under

(2), or (3) arises, the Selection Committee shall have the duties and powers to deliberate on the matter, and its decision shall be final.

In case there is no person holding the position of the President, or the President is unable to perform duties, the Commissioners shall elect one among themselves to perform the duties of the President.

During a Commissioner's vacation of office prior to the expiration of term, and the replacement has not been appointed, the remaining shall continue to perform duties, unless there remain less than five Commissioners.

In case a Commissioner is to vacate office upon the expiration of term, the selection of new Commissioner shall take place within one hundred and twenty days before the expiration date. However, if a Commissioner vacates office upon other grounds except the expiration of term, the selection of a new Commissioner shall take place within ninety days as from the vacation of office.

Section 20. Upon request with reasonable evidence for a Commissioner's vacation of office under Section 19 (2) or (3), the Secretary-General of the Senate shall submit the matter to the Chairperson of the Selection Committee within five days as from the date of receiving the request, and the Selection Committee shall consider the matter promptly. The decision shall be made by a majority vote. In the case of vote tie, the Chairperson of the Selection Committee shall have an additional vote as a casting vote.

Evidence under paragraph one shall be as prescribed by the Selection Committee.

Section 21. In case a Commissioner has to halt the performance due to being accused, and the Supreme Court or the Supreme Court's Division for Person Holding a Political Position accepts the charge, resulting in less than half of the total number of the Commissioners, the President of the Supreme Court and the President of the Supreme Administrative Court shall jointly appoint a person with the same qualifications and not being under prohibitions as temporary Commissioner to fill the vacant position. The appointed person shall perform the duties as a Commissioner until the Commissioner he or she replaces shall be able to perform the duties, or until a new Commissioner is appointed.

Section 22. The quorum of a meeting of the Commission requires the presence of not less than five Commissioners. Absence of any Commissioner shall be recorded in the meeting minutes.

A resolution of the NACC shall be made by a majority of votes, unless provided otherwise by this Organic Act. The presiding President and Commissioners must cast a vote to reach a resolution. In casting a vote, each Commissioner shall have one vote.

In the case vote-tie, the presiding Commissioner shall have an additional vote as a casting vote.

Failure to attend the meeting, or absence from the meeting, or cast a vote without reasonable grounds shall be deemed a deliberate violation of or failure to comply with ethical standards. However, this does not deprive him or her of the right to resign before the vote.

The President shall preside over the meeting. If the President is not present at the meeting, the attending Commissioners shall elect one Commissioner to preside over the meeting, provided that it is in accordance with the meeting criteria and rules of procedures as prescribed by the NACC.

The President and Commissioners shall receive meeting allowance for each meeting at the rate equivalent to that of a commissioner under the Royal Decree on meeting allowance of commissioners.

Section 23. The vote for a resolution that a person holding a political position, judge of the Constitutional Court, or a person holding a position in an independent agency appears to be unusual wealthy, commits malfeasance in office or deliberately performs duties or exercise powers in contradiction to the provision of the Constitution or laws, or seriously violates or fails to comply with ethical standards, shall be made by a vote of not less than half of the existing Commissioners.

The provision of paragraph one shall apply *mutatis mutandis* to the vote for resolution that a person holding a political position, judge of the Constitutional Court, a person holding a position in an independent agency and a state official deliberately fails to submit the account showing particulars of assets and liabilities, or deliberately submits a false account of assets and liabilities, or conceals fact which should be disclosed, and has a behaviour which is reasonable to believe that there is an intention to conceal the source of such asset or liability, or a state official is unusual wealthy, commits corruption or malfeasance in office, or malfeasance in judicial office.

Section 24. In a vote of the Commission under Section 23 or other matter prescribed by the NACC, the Commissioners shall cast a vote in writing in accordance with the form prescribed by the NACC, which at least consists of subject and issue of vote, the vote, and signature of the Commissioner who cast the vote, and the Secretary-General shall compile a record.

The resolution as processed under paragraph one shall be implemented without the need for approval of NACC meeting minutes. In the case where there must be a decision, upon the approval of the decision by the NACC and signature by the President or person acting on his or her behalf, the decision shall be deemed to be NACC decision.

The approval under paragraph two may be made by a Commissioner or Commissioners assigned by the NACC as the person deliberating on the approval on behalf of the NACC.

In case the NACC vacates office or unable to perform duties *en masse* before signing the decision, the Secretary-General shall record such event in the decision, and sign that decision. Upon the Secretary-General's signature, the decision shall be binding.

Section 25. A Commissioner shall perform duties full-time, and the performance of duties and exercise of powers of the NACC shall be with integrity, fairness, courage, and without any prejudice in exercising discretion, and in compliance with ethical standards. During the office term, a Commissioner shall not take academic or training course of any curricular or project, unless it is a curricular or project organised by the NACC specifically for the Commissioners.

Section 26. Salary, position emoluments and other benefits of the President and the Commissioners shall be in accordance with the law on such matters.

The President and the Commissioners shall receive monthly reception allowance at the lump sum rate as prescribed by the Ministry of Finance, which shall not be less than the position emoluments of the President or a Commissioner.

Section 27. The President and Commissioners who have been holding office for not less than one year are entitled to emolument, which is a one-off payment upon vacation of office on one of the following grounds:

- (1) Expiration of term;
- (2) Death;
- (3) Resignation;
- (4) Reaching seventy years of age.

Gratuity shall be calculated by multiplying the salary under Section 26 by number of years in office. Fraction of the year shall be counted as one year.

Right to gratuity is an exclusive right and may not be transferred, unless in case of death, the gratuity shall be transferred to the spouse and the heir(s) as informed. If such death is caused by the performance of duties or in the course of performance, he or she shall be entitled to two times of the gratuity as prescribed in paragraph two.

Part II**Duties and powers of the NACC**

Section 28. The NACC has the following duties and powers:

(1) Conduct an inquiry and prepare opinion in case there is an allegation that a person holding a political position, a judge of the Constitutional Court, a person holding a position in an independent agency is involved in circumstances of unusual wealth, corruption, or deliberate performance of duties or exercise of powers in contrary to the provisions of the Constitution or laws, or serious violation of or failure to comply with the ethical standards;

(2) Conduct an inquiry and decide whether a state official is unusually wealthy, has committed an offence of corruption, or malfeasance in public office or malfeasance in judicial office;

(3) Obligate persons holding political positions, judges of the Constitutional Court, persons holding positions in independent agencies and state officials to submit account showing particulars of assets and liabilities of themselves, spouse and children who have not yet become *sui juris*, and to inspect and disclose the results of the inspection of such accounts;

(4) Conduct inquiry in order to take legal action in other offences provided by this Organic Act, or those prescribed by the law to be under the duties and powers of the NACC;⁵

(5) Other duties and powers provided by the Constitution, this Organic Act or other laws.

In implementing (4), in respect of offences under this Organic Act, the NACC may undertake by itself, or delegate to other competent agency.

Section 29. The NACC shall annually submit an inspection report and performance report along with observations to the Parliament. In addition, the President or a Commissioner assigned by the NACC shall verbally report to the Parliament, and such reports shall be published in the Government Gazette as well as made available to the public.

Section 30. Performance of duties under Section 28(1), (2), and (4) shall include the undertakings with other person who is the principal, instigator, or aider and abettor as well as donor, requested donor, or pledged donor, or juristic person involving

⁵ Amended in implementation of UNCAC Art. 16

with the giving of property or other benefits to the person under Section 28(1), (2), and (4) in order to illegally induce performance or omission or delay a performance of an act.

The proceedings under Section 28(1), (2), and (4) shall apply to undertakings in the case of a single act violating several provisions, and one of the provisions shall be undertaken under Section 28 (1), (2), and (4), and the case of inter-related offences, and any offence which must be concurrently undertaken.

Section 31. In the performance of duties under Section 28(1), (2), (3) and (4) of the NACC or person assigned by the NACC, it shall be the duty of the NACC to provide measure or guideline to render the performance of duties efficient, swift, honest, and fair.

Section 32.⁶ The NACC shall have the duties and power to propose measures, opinion, and recommendation to the Cabinet, Parliament, Courts of Justice, independent agencies, or public prosecution organ in the following matters:

(1) Improve the performance of government service or formulating action plans or projects of government agencies, state enterprises or other state agencies in an endeavour to combat corruption and the commission of an offences of malfeasance in office or in judicial office;

(2) Provide efficient measures and mechanisms to strictly prevent and eradicate corruption and misconducts in both the public and private sectors;

(3) Propose the amendment of laws, statutes, regulations, ordinance, or any measures which may be a channel for corruption or misconduct or which may render state official incapable of performing duty for the interest of the state.

In the development of a measure, an opinion, and a recommendation under paragraph one, the NACC may conduct public consultation in the matters that affect public interest in accordance with the criteria and procedures as prescribed by the NACC.

Upon receipt of a measure, an opinion, and a recommendation of the NACC, in case the agency under paragraph one is unable to implement, such agency shall notify the NACC of the problem and obstacle no later than ninety days as from the date of receiving notification from the NACC.

Section 33. To enlist participation and cooperation from the public and government agencies in the prevention and suppression of Corruption, the NACC shall impose measures and mechanisms necessary to the following undertakings:

(1) Encouragement of public participation in education campaign, fighting corruption or whistle blowing with protection scheme, as well as making available channel for submission of information, clue, or evidence for offences under the duties and powers of

⁶ Amended in implementation of UNCAC Arts. 10 and 13

the NACC. Such channel shall be simple, convenient, without complicated procedures, and not causing negative effect to the informant. Such encouragement includes undertakings to prevent corruption, and development of attitude and value pertaining to integrity;

(2) Assist and support state agencies to provide notification mechanism in case of the circumstance indicative of corruption within agency;

(3) Encourage the public and communities to better understand the danger of corruption and dependency on nepotism of the society in order to encourage the widespread resistance of corruption and misconduct;

(4) Apply recommendations from the public or state agencies to improving the efficiency in the performance of duties of the NACC and the Office.

To implement (1), (2), and (3) the NACC shall appoint a committee for the purpose of offering advice, assistance, and cooperation.

The Committee under paragraph two shall comprise the President as Chairperson, one Commissioner assigned by the Commission, Secretary-General of the Public Sector Anti-Corruption Commission, President of the Higher Education Commission, Director of the Bureau of Budgets as *ex officio* members, not more than four representatives from the private sector and civil society relating to the prevention and suppression of corruption, and not more than three experts appointed by the NACC as members. The appointment of representatives from the private sector and civil society, and experts shall be in accordance with the criteria and procedures as prescribed by the NACC and they shall hold office for a term of three years. The Secretary-General shall be a committee member and secretary, and shall appoint not less than two competent officials as assistant secretaries to assist in the performance of duties or perform any act as entrusted.

Section 34. In the performance of duties under this Organic Act, the NACC shall have the following powers:

(1) To issue an order instructing government official, officer or employee of a government agency, state agency, state enterprise or local government agency to give statement or deliver relevant documents or evidence for the purpose of inquiry;

(2) To summon any person to give statement or to submit accounts, documents, or any evidence for the purpose of inquiry;

(3) To file a motion to competent court for issuance of a warrant permitting entry into dwelling-place, place of business or any other place including a vehicle of any person at any time from sunrise to sunset or during working hours for the purposes of inspecting, searching, seizing or freezing documents, property or other evidence related to the matter under inquiry; and if such action is not completed within such time, it may be continued further until completion;

(4) To issue an order requesting a government agency, state agency, state enterprise, local governmental agency, or private entity to clarify the fact, facilitate, or assist in the performance of duties of the NACC;

(5) To hire a consultant or expert in the search of information relating to assets or liabilities, and the proceedings of asset recovery in a foreign jurisdiction. The hiring shall be in accordance with the regulations as prescribed by the NACC.⁷

Section 35. In case the NACC has reasonable grounds to suspect that there is any undertaking in a state agency which may lead to corruption, or which appears that there may be corruption, the NACC shall investigate promptly. If the result indicates that there is a reason for precaution, the NACC may reach a resolution with not less than two-thirds of the existing Commissioners to issue a letter notifying such state agency and the Cabinet together with recommendations for solutions.

A state agency and the Cabinet have the duty to act as appropriate to the case to promptly prevent corruption or damage to public interests or the public. Should the information not be relevant to official secret, it shall be made publicly available.

Section 36. The NACC, competent official, and person appointed or assigned by the NACC to perform any duty shall not disclose information which contains personal data obtained from the performance of duties.

In the disclosure of information regarding undertakings of the NACC in each procedure, no information relating to details of an alleged, whistleblower, and witness shall be disclosed. Neither shall any act making the details of such person known be permitted. Disclosure of any other information to the public shall be under the following conditions:

(1) At the pre-inquiry stage, name of the alleged shall not be disclosed, unless there is a necessity for the purpose of inquiry or preliminary inquiry, and the permission from the NACC is granted;

(2) During an ongoing inquiry or preliminary inquiry with sufficient evidence and prior to the NACC's deliberation, disclosure of information shall be in accordance with the procedure and conditions as prescribed by the NACC;

(3) When the NACC has an opinion or decision that the alleged culprit appears to have committed an offence, it may disclose the opinion or the decision. However, the name of the alleged, whistleblower, or witness may not be disclosed. Such disclosure shall also not affect the case or safety in life or property of relevant person(s).

No information report or report of inspection, investigation, inquiry, or preliminary inquiry as well as all documents relating to the ongoing inspection, investigation, inquiry, or preliminary inquiry shall be disclosed nor disseminated, until the NACC has

⁷ Amended in implementation of UNCAC Art. 53

deliberated and reached a resolution in such matter, unless for the purpose of the inquiry or preliminary-inquiry. However, such information shall be classified as official secret.

Section 37. In case of disclosure of information in violation of Section 36, the Secretary-General shall promptly conduct inspection to find the person disclosing the information, and take a disciplinary action against such person. Deliberate act shall be deemed a serious disciplinary offence. The Secretary-General's failure to investigate shall be deemed his or her negligence, and the NACC shall proceed as deemed appropriate.

Section 38. In case the NACC conducts an inspection or inquiry so as to reach an opinion or decision in relation to an act of any person, and there is a necessity to obtain information relating to financial transaction of such person or relevant person, the NACC shall have the power to request such information from the Anti-Money Laundering Office as necessary, and the Anti-Money Laundering Office shall deliver such information to the NACC. Such delivery shall be deemed a lawful undertaking under the law on Anti-Money Laundering.

Section 39. During an inquiry, or upon the NACC's resolution that a person commits an offence with criminal penalty, if there are reasonable grounds to believe that the alleged culprit is to evade, the NACC or the person assigned by the NACC shall have the power file a motion to the competent court to issue an arrest warrant and detain such person.

In the arrest and detention of person under paragraph one, the NACC may assign a competent official, administrative officer or police officer, or investigator to proceed on its behalf. Such competent official, administrative or police officer, or an investigator shall perform the task as assigned promptly. In this regard, such assigned competent official shall be administrative or police officer under the Criminal Procedure Code.

For the purpose of the performance of duties under this Organic Act, in an arrest, detention, and bail, the relevant provisions of the Criminal Procedure Code shall apply *mutatis mutandis*.

In case of corruption in the course of duty, which occurs in the form of flagrant offence, a Commissioner, inquiry officer assigned by the NACC, and administrative officer or high-ranking police officer shall have the power to arrest the criminal without warrant. Upon the arrest, the criminal shall be handed over to the investigator for detention under the Criminal Procedure Code.

Section 40. In the Performance of duties under this Organic Act:

(1) The President and Commissioners shall be judicial officials under the Criminal Code;

(2) (2) An inquiry committee member, chief inquiry officer, inquiry officer, and competent official shall be official under the Criminal Code.

In an inspection, investigation, inquiry, or preliminary inquiry under this Organic Act, the President, Commissioner, inquiry committee member, Secretary-General, chief inquiry officer, and inquiry officer shall be administrative officer or high-ranking police officer, and shall have the powers in accordance with the Criminal Procedure Code in the same manner as investigator.

For the purpose of the proceedings under this Organic Act, the competent official assigned or authorised to file, defend, or take the case on behalf of the NACC shall have the power to stand and undertake the proceedings in the Court in accordance with regulations as prescribed by the NACC.

Section 41.⁸ In case the NACC, any Commissioner, inquiry committee member, chief inquiry officer, inquiry officer, and competent official, is being prosecuted, whether in a civil, criminal, or administrative case, and whether during his office term or after the term, if such legal action was derived from resolution, order, or performance of duties, the Office shall have the power to render assistance to such person in defending the case. The NACC may assign a competent official to defend the case, or in case where public prosecutor is not a plaintiff, it may request the latter to defend the case on behalf of those persons. Such assistance shall include court fees, and lawyer fees under the criteria, procedures, and conditions as prescribed by the NACC.

In the course of performance and the exercise of discretion of the NACC, a Commissioner, inquiry committee member, chief inquiry officer, inquiry officer, and competent official, in reaching an opinion, resolution, order in an inspection, investigation, inquiry, or preliminary inquiry under this Organic Act which encloses appropriate reason and which is done in good faith shall be legally protected.

Part III

Scrutiny of performance of the National Anti-Corruption Commission

Section 42. A Commissioner shall submit an account of assets and liabilities of himself or herself, his or her spouse and children who have not yet become *sui juris*, including assets directly or indirectly consigned to the possession or administration of other

⁸ Amended in implementation of UNCAC Art. 36

persons, to the President of the Senate. Provisions of Chapter V, Management of Assets, Sections 105 to 133 shall apply *mutatis mutandis* by conferring the power of the NACC to the President of the Senate. The President of the Senate shall appoint a committee for assets and liabilities inspection to conduct preliminary inspection prior to submission to the President of the Senate for consideration.

The President of the Senate shall arrange for the accounts inspection under paragraph one, and in this case the provision of Section 34 shall apply *mutatis mutandis* to the performance of duties of the President of the Senate.

In case of the spouses under paragraph one, the provision of Section 102 paragraph two shall apply *mutatis mutandis*.

Section 43. In case of offence concerning the fact that any Commissioner intentionally fails to submit an account of assets and liabilities to the President of the Senate, or intentionally submits such account with false statements, or conceals facts which should have been disclosed, and displays behaviour indicative of having the intention to not disclose the sources of assets or liabilities, the President of the Senate shall refer such matter to the Attorney- General for the purpose of instituting a prosecution in the Supreme Court's Criminal Division for Persons Holding Political Positions. Provisions of Sections 77 and 81 shall apply *mutatis mutandis*.

Section 44. In case any Commissioner appears to become unusually wealthy, the President of the Senate shall furnish case report along with evidential documents to the President of the Parliament to notify Members of the House of Representatives and Senators for further consideration and undertakings.

Section 45. Members of the House of Representatives, Senators, or members of both Houses of not less than one-fifth of the total number of the existing members of both Houses, or those entitled to vote amounting to not less than twenty thousand persons shall have the rights to lodge a petition with the President of the Senate with reasonable evidence that any Commissioner is under the circumstances indicative of unusual wealth, commission of corruption or an intentional exercise of power contrary to the provision of the Constitution or laws, or serious violation or failure to comply with ethical standards. In case the President of the Senate finds that there are reasonable grounds to suspect that there has been a commission as alleged, he or she shall refer the matter to the President of the Supreme Court to appoint a panel of independent inquisitors under the Organic Act on Criminal Procedure for Holders of Political Offices, and the provision of Section 87 shall apply *mutatis mutandis*.

The allegation under paragraph one shall include the lodging of a petition that any Commissioner and any other person is the principal, instigator or aider and abettor in the commission of a criminal offence, including the payer, offeror or pledged offeror of property or any other benefits to the Commissioner to induce a commission or omission or delay of an act which constitutes a malfeasance in office.

CHAPTER II INQUIRY

Section 46. In conduct of inquiry or preliminary inquiry, the NACC, inquiry committee, chief inquiry officer or inquiry officer, as the case may be, shall conduct such inquiry so as to obtain accurate fact whether it may have positive or negative effects on alleged culprit.

The NACC, inquiry committee, chief inquiry officer or inquiry officer shall not deny the receipt of any evidence submitted by alleged culprit by reason of exceeding time limit or procedural lapse unless the NACC has already reached a resolution that the alleged culprit is found guilty or is of the opinion that alleged culprit intentionally causes delay or dishonestly exercises his or her rights.

In case an alleged culprit requests the NACC, inquiry committee, chief inquiry officer or inquiry officer to summon any person or require the presentation of documents from any person, the NACC or inquiry officer shall proceed as requested but the alleged culprit shall submit such request within thirty days as from the date of receipt of the notification of the allegation. Unless the NACC, inquiry committee or the Commissioner in charge of the case is of the opinion that alleged culprit intentionally causes a delay or dishonestly exercises his or her rights, or the requested person or document has no effect on the determination of the NACC but the grounds for such denial shall be recorded in the inquiry report or preliminary inquiry report.

Section 47. The NACC and the Secretary-General shall have the duty to oversee and strictly monitor the performance of the officials, who are involved in the conduct of inquiry, to perform the duties to the completion within the period of time as prescribed under this Chapter. In case where any official fails to perform duty within the time limit, the NACC or the Secretary-General, as the case may be, shall initiate a disciplinary action as appropriate to the case.

Section 48. When it appears to the NACC, whether or not there is an allegation, that there is a commission of offence that falls within the purview of the NACC, the NACC shall forthwith proceed with the matter in accordance with its duties and powers. In case there is a necessity to conduct an inquiry, the NACC shall complete the inquiry and reach an opinion or decision within the time limit as prescribed by the NACC but no later than two years as from the date that the inquiry is initiated.

In prescribing the time period under paragraph one, the NACC shall take into account the swiftness and complexity of the inquiry and the statute of limitations of the case. Prescription of the time limit may be varied according to particular category of the inquiry.

In case of necessary cause that hinders the completion of the inquiry within the time limit under paragraph one or paragraph two, the NACC may extend such period of time as deemed appropriate but shall not exceed three years in total, unless the inquiry must be conducted overseas, or requires foreign agencies to conduct an inquiry, or requests evidence from foreign countries, the time limit may be extended as deemed necessary.

In case the NACC receives the notification from the Auditor General that there is reasonable evidence to believe that the disbursement of state funds is indicative of commission of corruption, or intentional performance of duty or exercise of power contrary to the provisions of the Constitution or law, and is also the case where the Auditor-General does not have the power to carry out any undertaking, the NACC shall proceed with the matter without delay. In this case, any document and evidence inspected or produced by the Auditor General shall be deemed as part of the inquiry report of the NACC.

Under the statute of limitations, upon exceeding the time limit under paragraph one or paragraph two or as prescribed under this Organic Act, the NACC shall maintain duties and powers to inquire and reach an opinion or decision or continue to perform in accordance with its duties and powers. However, the NACC shall consider initiating investigation or penalising any relevant person, as deemed appropriate, without delay.

Section 49. For the purpose of undertaking under the duties and powers of the NACC, whether or not there is an allegation, the Secretary-General or the person entrusted by the Secretary-General shall conduct a preliminary inspection of the matter in accordance with the criteria as prescribed by the NACC. Upon preliminary inspection, should there be insufficient information or detail for further proceeding with the matter, or the allegation is not within the duties and powers of the NACC, or it is the matter that the NACC is prohibited from receiving for consideration in accordance with Section 54 or Section 55 (1), a proposal shall be made to the NACC to consider denial to admit the matter for consideration in accordance with the duration and procedures as prescribed by the NACC. After the NACC

issued order denying the matter for consideration, in case where the allegation has been made, the NACC shall notify the accuser thereof in writing.

In the undertaking under paragraph one, the NACC may assign one or more Commissioners to deliberate on the matter or issue any order on its behalf.

Any allegation which has no grounds for denial for deliberation under paragraph one shall be further proceeded.

The alleged culprit who disagrees with the Commissioner's denial order under paragraph two may request in writing the NACC to reconsider the order within thirty days as from the date of the receipt of the notification.

In preliminary inspection, the Secretary-General or chief inquiry officer shall also have powers in accordance with Section 34 (1), (2) and (3).

Section 50. In conducting an inquiry, the NACC may entrust the Secretary-General, chief inquiry officer or inquiry officer with a task of conducting preliminary inquiry.

In performing the duty as entrusted under paragraph one, the Secretary-General, chief inquiry officer or inquiry officer shall perform such duty in a form of committee, which consists of the Secretary-General or chief inquiry officer as chairperson together with at least one inquiry officer as member, and may also consist of assistant inquiry officer or competent official to provide assistance in performing the duty. The inquiry against alleged culprit and examination of witnesses shall be conducted by the Secretary-General, chief inquiry officer and one inquiry officer in accordance with the criteria, procedures and conditions as prescribed by the NACC.

The preliminary inquiry under paragraph one shall be completed and a report shall be furnished and submitted to the NACC within one hundred and eighty days as from the date of the entrustment.

Within the time limit under Section 48, in case the preliminary inquiry may not be conducted within the time limit as prescribed under paragraph three, the Secretary-General, chief inquiry officer or inquiry officer shall provide explanation concerning the impediments and obstacles to the said conduct, and provide recommendation for solution as well as the duration to allow the NACC to consider the extension. Such extension may be granted but not exceed two times. Each extension shall not exceed the period of sixty days. In this regard, the NACC may entrust one or more Commissioner with the power to extend such time limit on its behalf.

In case the NACC has accepted any matter for deliberation, if the matter cannot be proceeded due to the expiration of the statute of limitations which results from a failure to comply with time limit under Section 48 paragraph one or paragraph three, the NACC shall issue an order for termination of all criminal proceedings. If the expiration of the

statute of limitations has resulted from a commission of wrongful act or intentional omission or negligence of any person, the NACC shall impose penalty on such person without delay.

In preliminary inquiry, the Secretary-General and chief inquiry officer shall also have the power in accordance with Section 34(1), (2) and (3).

For the purpose of overseeing any preliminary inquiry to ensure that it is conducted thoroughly and impartially, the NACC may entrust each Commissioner with the duty to oversee preliminary inquiry in particular area as prescribed by the NACC.

Section 51. In conducting an inquiry of any matter that is of importance with wide and significant impact, or in case of an inquiry against a person holding a political position, a judge of the Constitutional Court or a person holding a position in an independent agency, the NACC shall conduct the inquiry, or entrust at least two Commissioners together with other person to be inquiry committee.

In the entrustment of other person to be the inquiry committee member under paragraph one, the NACC may entrust chief inquiry officer or qualified person under paragraph four to assist the inquiry committee in the performance of duties as deemed appropriate.

The inquiry committee under paragraph one has the power to appoint chief inquiry officer or inquiry officer and competent official to assist the inquiry committee in performing its duty as deemed appropriate.

In case it is necessary to have qualified person with knowledge and expertise in the area that relates to the matter under inquiry, the inquiry committee shall have the power to assign such qualified person, who does not have qualification under Section 56, to be an advisor, or propose to the NACC to appoint such person to be member of the inquiry committee.

The advisor under paragraph four shall be entitled to the same meeting allowances as Commissioner.

The inquiry committee under paragraph one shall complete the inquiry and furnish the inquiry file to the NACC for deliberation within one year as from the date of the entrustment of the committee. Provisions under Section 50 paragraphs four, five and six shall apply *mutatis mutandis*.

In case the NACC conducts the inquiry by itself, provisions under paragraphs three, four and five shall also apply *mutatis mutandis*.

Section 52. In deliberation of preliminary inquiry report or inquiry file, the NACC shall have the powers to conduct additional inquiry or issue order to conduct the additional inquiry as deemed appropriate.

In case the NACC approves of the preliminary inquiry report and inquiry file, including the file obtained from the additional inquiry, the report and file shall be deemed as the inquiry file of the NACC. In addition, the NACC shall consider the matter to pass a resolution whether it has a *prima facie* case within sixty days from the date of convening the meeting under Section 75 paragraph two.

Section 53. In addition to the criteria, procedures and conditions concerning a preliminary inspection, inquiry and preliminary inquiry in accordance with this Organic Act, the NACC shall have the power to issue regulations prescribing additional details of preliminary inspection, inquiry and preliminary inquiry. However, it shall not impose unnecessary procedures or obstacles to obtaining the accurate fact. At a minimum, there must be a clear prescription of the time limit and scope of duties and responsibilities of each respective level of the officials, as well as the follow-up and monitoring systems to ensure efficiency, swiftness, trustworthy and fairness of the performance of duties.

Section 54. The NACC is prohibited from accepting or invoking for deliberation any matter which is of the following descriptions:

- (1) Matter involving the same allegation or issue as that in respect of which the NACC has reached its final decision, unless the fresh evidence that is material to the case is obtained which may cause the change in the its decision;
- (2) Criminal case with the same issue that has been admitted by the Court or has been adjudicated by a Court's final decision or order, except for a case that has been withdrawn or abandoned, or a case where the court has not yet decided on the substance of the case, the NACC may accept or invoke such allegation for deliberation;
- (3) The accused or alleged culprit is dead, unless in case of unusual wealth.

Section 55. The NACC is prohibited from accepting or invoking deliberation the allegation which is of the following descriptions, unless there is clear evidence and the NACC finds that such matter is of particular commission that causes significant damage:

- (1) Matter that has lapsed for a period of more than ten years as from the date of its occurrence up to the date of the allegation;
- (2) An allegation against the accused or alleged culprit whom the NACC finds that proceedings against such person under other laws have been completed and lawfully conducted, and there is no reasonable cause to suspect that such proceedings were unjustly carried out.
- (3) The accused or alleged culprit has vacated public office or position in relation to the allegation for a period of more than five years. In case there is deliberation

within such period of time, although a period of five years has lapsed, the NACC shall have power to proceed further.

Section 56. Commissioner, inquiry committee, chief inquiry officer, inquiry officer, assistant inquiry officer or competent official shall not attend any inquiry, deliberation or determination of cases under the following circumstances;

(1) Having knowledge of the events or having previously conducted an investigation or considered the alleged matter in a capacity other than a Commissioner, inquiry committee, chief inquiry officer, inquiry officer, assistant inquiry officer or competent official;

(2) Being of interest in the matter to which the allegation relates;

(3) Having hostility towards the person making the allegation or the alleged culprit;

(4) Being the person making the allegation or such person's or the alleged culprit's spouse, ancestor, descendant, or sibling of full or half-blood;

(5) Having close relationship with the person making the allegation or the alleged culprit in the capacity as such person's relative or being such person's partner or having mutual commercial benefits or conflicting interest vis-à-vis the person making the allegation or the alleged culprit.

In the performance of any matter, the Commissioner, inquiry committee, chief inquiry officer, inquiry officer, assistant inquiry officer or competent official, who is under the circumstance under paragraph one, shall notify the NACC or the person entrusted by the NACC thereof without delay. In the meantime, such person shall not be involved in any proceedings of the matter until the NACC or the person entrusted reaches a decision, which shall be completed within seven days from the date of receipt of the notification.

The alleged culprit or interested person may challenge a Commissioner, inquiry committee, chief inquiry officer, inquiry officer, assistant inquiry officer or competent official with circumstance under paragraph one who is appointed and entrusted by submitting a petition to the NACC or the entrusted person for consideration within thirty days as from the day of appearance of such matter. During the consideration, the Commissioner, inquiry committee, chief inquiry officer, inquiry officer, assistant inquiry officer or competent official who is challenged shall be temporarily suspended from his or her duty.

Submission of a challenge, consideration of a challenge and appointment or entrustment of person that is under the circumstance under paragraph two shall be in accordance with the criteria, durations, procedures and conditions as prescribed by the NACC.

Section 57. During an inquiry, if it appears that the alleged culprit vacates office or vacates the government service by any other reason than death, the NACC shall have the power to proceed with the inquiry for the purpose of taking criminal proceedings, initiating disciplinary action, or making a request that the property devolve to the State.

In case the alleged culprit vacates office or vacates the government service by reason of death, the NACC shall have the power to further conduct an inquiry for allegation of unusual wealth.

Section 58. In case the NACC reaches a resolution that the allegation has no *prima facie* case, the Office shall notify the alleged culprit promptly, which shall not be later than fifteen day as from the date of the resolution. In addition, the justification of the resolution shall be disclosed to the public unless it is the investigation under Section 88.

Section 59. Allegations made against state official which are under the duties and power of the NACC shall be submitted to the NACC or the Office.

Subject to Section 55, allegations made against state official shall be proceeded while the alleged person is serving as state official or has vacated office for a period of no more than five years, but does not preclude the NACC's power to invoke the allegation made or if there is a reasonable cause for suspicion for proceeding with inquiry. However, such inquiry shall be conducted within ten years as from the date on which the accused has vacated office or position, as the case may be.

In case of invoking the allegation for deliberation or there is a reasonable cause for suspicion for proceeding with inquiry within the time limit under paragraph one, the NACC shall have the power to take action against other state officials who are the principal, instigator or aider and abettor involved in the matter, whether the said person has vacated office or the position.

Section 60. The allegation concerning commission of offences under the duties and power of the NACC in accordance with this Organic Act shall at least contain the following particulars:

- (1) Name and address of the person making the allegation;
- (2) Name or position of the accused;
- (3) Allegation and circumstances under which the alleged offence was committed, together with, or by reference to, evidence.

The person making allegation may or may not be the injured person.

Allegation under paragraph one may be made verbally or in writing, and may be delivered by any means which can ensure the arrival to the Office. In case the allegation is

made verbally, competent official or inquiry officer shall have the duty to record of all details and information in accordance with paragraph one.

The Office shall make available a system for keeping confidential record of the name and address of the person making allegation, and such record shall not be disclosed in any case. In addition, the name and address of the person shall be removed from the written allegation.

An allegation letter in which the name and address of the person making the allegation is not shown, if it contains the particulars under (3), the NACC shall not deny acceptance for deliberation of such allegation.

Allegation against person under this Section shall also apply to foreign public official, official of a public international organisation or any person alleged to have committed the offence as prescribed by this Organic Act.

Section 61. In case an injured person lodges a complaint or an allegation is made to investigator to take legal proceedings against state official or any person who committed any offence that is under the duties and power of the NACC, the investigator shall inquire into facts and gather preliminary evidence, and refer the matter to the NACC within thirty day as from the date of receipt of the complaint or accusation

In case the NACC has considered the matter and is of the opinion that the matter under paragraph one is not under its purview, or even if the matter is under its purview but is not of particular serious allegation against state official and the NACC agrees to entrust investigator to conduct the inquiry, the NACC shall return the matter to the investigator within thirty days from the date of receipt from the investigator and may prescribe the time limit for the conduct of inquiry by the investigator.

For the purpose of efficient and timely undertaking, the NACC shall publish guideline for circulation to investigators to inform them of particular category of matters under the duties and powers of the NACC.

In case there are reasonable grounds to file a motion to court for issuance of arrest warrant on the persons under paragraph one or paragraph two, investigator or administrative official or high-ranking police officer shall have power to file a motion to the competent court to issue the warrant for the said person's arrest. In case there are other necessary grounds which justify an arrest without warrant, investigator or administrative official or police officer shall have power to arrest such person.

Administrative official or police officer who arrests such person shall hand over the arrested person together with the arrest record to investigator or the NACC within forty-eight hours from the time when arrested person arrives at the office of the investigator but the duration for ordinary journey in transporting the arrested person from the place of arrest to the office of the investigator shall not be included in such period of forty-eight hours.

In case of unnecessary to remand the arrested person in custody, the NACC shall release such person with or without bail.

In case of necessity for remanding the arrested person in custody, the NACC shall submit a motion to the court for the issuance of a warrant of detention in accordance with the criteria and for the duration as prescribed in the Criminal Procedure Code for the offence to which the complaint relates.

Section 62. In case a state official holding a position of or the equivalent of high level director and lower is alleged to have committed an offence, or state official is alleged to have committed a minor offence, and the offences are under the duties and powers of the NACC, the NACC may entrust the Public Sector Anti-Corruption Commission, in accordance with the Executive Measures on Anti-Corruption law, to proceed with the matter on its behalf.

In case the NACC has received the allegation under paragraph one; the Office shall refer such allegation to the Office of the Public Sector Anti-Corruption Commission for further proceedings within thirty days as from the date of receipt of the allegation.

The comparison of the position under paragraph one shall be in accordance with the criteria as prescribed by the NACC.

For the purpose of the timely and efficient performance under paragraph one, the NACC may prescribe the criteria for conducting inquiry and making decision on the *prima facie* case by the Public Sector Anti-Corruption Commission and the Office of the Public Sector Anti-Corruption Commission for consistency with the performance of the NACC in accordance with Organic Act.

In performance of the duties and exercise of the power under paragraph one; the Public Sector Anti-Corruption Commission shall proceed under the same time limits as the NACC under this Organic Act.

Section 63. In case the NACC deems appropriate, it may refer the matter under its duties and powers in accordance with Section 28(2) and (4), which is not serious offence, to investigator to further proceed with the matter in accordance with the Criminal Procedure Code.

Section 64. In case the NACC is of an opinion that an allegation is not a serious offence or does not fall under its duties and powers, the NACC may refer the matter to the superior or a person having power to appoint or remove the accused for the purpose of commencing disciplinary proceedings in accordance with their duties and powers.

Section 65. When the NACC entrust state agencies with duties in accordance with Sections 61, 62, 63 and 64, such agencies shall proceed with their duties and powers and report the result to the NACC for acknowledgement in accordance with the criteria and procedures and within the duration as prescribed by the NACC.

Section 66. In case the NACC disagrees with the result of performance report under Section 65, or the NACC finds that the accused may not be treated fairly or such performance may not be conducted in an impartial manner, the NACC shall have the power to issue order or may summon the inquiry or investigation report for proceeding with the matter. In this regard, the NACC may entirely conduct a new inquiry or use the outcome of the inquiry or investigation conducted by the state agency, whether entirely or partly, as part of the NACC's inquiry report.

Section 67. Inquiry or preliminary inquiry shall not be conducted in violation of rights and freedom of a person in accordance with the provision of the Constitution and law, and shall not commit or cause to be committed any act which amounts to a promise, threat, deception, torture, use of physical force or any unlawful act so as to induce the person to give any statements with respect to the matters that relates to the inquiry or preliminary inquiry.

Examination of witness or person giving testimony shall be conducted by recording the statement on the material that is able to transmit moving images or sounds, or by any other means, and the witness or person giving statement has already verified the accuracy of the record of statement. Commissioner or inquiry officer may make a copy of such record in writing or on any other materials. In case where the person giving statement aged not more than eighteen years, the procedure, in accordance with the Criminal Procedure Code, shall apply accordingly.

For the purpose of inquiry, the NACC may incorporate evidence and witnesses derived from the inquiry lawfully obtained from foreign jurisdiction for the purpose of usage as supporting evidence in the relevant inquiry file.

Section 68. When the NACC has entrusted an inquiry committee with a task to conduct an inquiry under Section 51 or entrusted a person to conduct a preliminary inquiry, the inquiry committee or the person conducting the preliminary inquiry shall have the same duties and powers as the NACC on any matter concerning the inquiry.

Section 69. In case it appears from the inquiry or preliminary inquiry that there is a circumstance convincingly indicative of the possibility of the transfer, move, transformation or concealment of the property that the alleged culprit has used in the

commission of an offence or is unlawfully acquired in connection with the commission of the offence that is under duties and powers of the NACC or the property vis-à-vis unusual wealth, the NACC shall proceed as follows:

(1) In case where the commission of the offence has a criminal penalty, the NACC shall have the powers to issue an order of temporary seizure or freezing of property without prejudice to the right of the alleged culprit to submit an application for using such property with or without bail or security.

(2) In case of property vis-à-vis unusual wealth, the NACC shall have the powers to issue an order of temporary seizure or freezing of such property which must be within one year from the date of the seizure or freezing or until the Court passes a final judgment dismissing the case. However, if the owner or a person in possession of such property is able to prove that the property is not related to unusual wealth, the NACC shall issue an order of release of seizure or freezing without delay without prejudice to the right of the person to submit an application for using such property with or without bail or security. Property of the alleged culprit shall include the property that is under the ownership of another person and there is circumstance indicating that the property or its ownership is held by a nominee. In such case, the person holding title to the property has the right to prove that the property is not related to the unusual wealth.

Section 70. During an inquiry or preliminary inquiry, if the NACC, inquiry committee or the Commissioner entrusted under Section 50 paragraph seven finds that there is sufficient evidence to support that an allegation has a *prima facie* case for an offence, the NACC or inquiry officer shall notify the alleged culprit of the allegation and prescribe a reasonable time limit within which the alleged culprit may give explanations and present evidence or bring witnesses to testify in support of the explanations.

Notification of the allegation under paragraph one shall include the details of the fact related to commission of the offence by the alleged culprit and sufficient information of the allegation so as to allow the alleged culprit to fully understand such allegation. In the case of the allegation concerning unusual wealth, the detail of the assets which constitute the unusual wealth, the place that the assets are located, names and addresses of the person possess or hold title to the assets shall be notified, as far as possible, during the notification of the allegation. The alleged culprit shall also be informed of the right to challenge under Section 56.

The notification of the allegation shall be made in writing in accordance with the criteria and procedure as prescribed by the NACC.

Section 71. If the alleged culprit has evidence that he/she has not received a notification of allegation, the NACC shall provide the alleged culprit with opportunities to

give explanations concerning the allegation and present evidence or bring witnesses to testify in support of the explanations within the time limit as prescribed by the NACC but such request shall be submitted before the filing of the case to the Court.

The opportunities provided to alleged culprit for giving explanations under paragraph one shall not affect any inquiry that has been previously conducted.

Section 72. In notifying the allegation under Section 70, the NACC or inquiry officer shall inform and deliver the summary of facts and evidence to the alleged culprit. Such summary shall include sufficient details that are beneficial to the defence of the allegation, and shall inform the alleged culprit of his or her rights under Section 73 and the alleged culprit shall affix his or her signature for acknowledgement thereof.

The summary of facts under paragraph one shall not disclose the name, position, address of the alleged culprit or witness, or any other information that results in the disclosure of the alleged culprit or witness, unless there is necessity for allowing the alleged culprit to fully understand the allegation in accordance with the criteria as prescribed by the NACC.

Section 73. In defending the allegation and giving testimonies, the alleged culprit shall have the right to have the presence of his or her attorney or person in whom he or she reposes trust, consisting of no more than three persons, for hearing the defence or testimonies.

Section 74. If the NACC finds that any evidence in an inquiry file which might be of reference in the future will be lost or become difficult for the hearing of witness afterward, the NACC may file a motion to the court for issuance of order for immediate taking of such witness and evidence in accordance with the Procedure for Corruption and Misconduct Cases law or the Organic Act on Criminal Procedure for Holders of Political Offices.

Section 75. Upon completion of an inquiry, an inquiry file shall be prepared and submitted to the President. Such file shall contain the following particulars:

- (1) Name and position of the alleged culprit;
- (2) Matter to which the allegation relates;
- (3) Allegation, defence of the allegation, summary of facts and relevant evidence obtained from the inquiry;
- (4) Reasoning given in deliberation and decision of both issues of fact and issues of law;
- (5) Relevant provisions of law;

(6) Summary of opinion on the matter to which the allegation relates.

A meeting of the NACC shall be convened to deliberate on the inquiry file for reaching a resolution without delay. The inquiry file shall be submitted to the Meeting no later than thirty days as from the date of receipt of the file by the President, unless there is an arrangement for the meeting to be daily convened and there are other pending matters.

In the preparation of a preliminary inquiry report, paragraph one shall apply *mutatis mutandis*.

The NACC shall deliberate on inquiry files in chronological order by date of the receipt of the inquiry files. In case the NACC finds that any matter may severely affect the interest of the state or the people, such matter may be considered first.

CHAPTER III
PROCEEDINGS AGAINST PERSON HOLDING A POLITICAL POSITION
AND PERSON HOLDING A SPECIFIC POSITION

Part I

**Prosecution of Corruption, or Intentional Performance of Duties or Exercise of Powers
Contrary to the Provision of the Constitution or Laws**

Section 76. Upon the NACC resolution that person holding a political position, judge of the Constitutional Court or person holding a position in an independent agency is under circumstances of corruption in the course of duty, or intentional performance of duties or exercise of powers contrary to the provision of the Constitution or laws, the NACC shall furnish a report, inquiry file, document, evidence and opinion, including their electronic copies, to the Attorney-General within thirty days as from the date of reaching the resolution to allow the Attorney-General to file case against such person to the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions. With regard to this, the alleged culprit shall not be referred to the Attorney-General, but he or she shall be informed thereof.

Section 77. Upon receipt of the inquiry file under Section 76, the Attorney General shall initiate the case to the Supreme Court's Criminal Division for Persons Holding Political Positions within one hundred and eighty days as from the date of receipt of the file.

In case the Attorney General finds that the inquiry file is incomplete for justification of initiation of a prosecution, the Attorney General shall inform the NACC of the

matter along with specification of all the incomplete issues within ninety days as from the date of receipt of the matter. In this case, the Attorney General and the NACC shall appoint a joint committee consisting of representatives of each side of an equal number, with no more than five representatives on either side, within fifteen days as from the date of receipt of the information of the Attorney General. The joint committee shall collect evidence to completion as well as perform any undertaking in order to complete the inquiry file within ninety days as from the date of appointment for referral to the Attorney General for further prosecution. The joint committee shall have powers in accordance with Section 34(1), (2), (3) and (4).

In case the joint committee fails to reach a mutual agreement on the matter, the NACC shall further proceed by initiating the prosecution by itself. In case the NACC deems the initiation of the prosecution appropriate, it shall initiate the prosecution within the statute of limitations but no later than ninety days as from the date of the failure to reach the mutual agreement.

The Office shall facilitate any performance of the joint committee under paragraph two and assign its officials to perform the secretariat function.

In case the NACC initiates the prosecution by itself, a public prosecutor is prohibited from defending on behalf of the defendant.

The period of time under paragraph one shall not include the period for undertaking under paragraphs two and three.

The period of time prescribed under this Section, in case of unavoidable necessity, the Attorney General or the NACC may extend such period of time but not exceed one half thereof. Upon the extension of such period of time, the Attorney General or the NACC shall inform the other side of such extension. In performing duties and extending the period of time, the statute of limitations shall be taken into consideration.

The prosecution after the expiration of the period of time as prescribed under this Section shall be initiated if it is done within the statute of limitations. However, it shall be the duty of the State Attorney Committee, the Attorney General or the NACC, as the case may be, to conduct investigation. If it appears that the non-compliance within the prescribed period of time results from intent, omission or negligence in performance of duties of any person, such person shall be punished without delay.

Section 78. In filing a case to the Supreme Court's Criminal Division for Persons Holding Political Positions, the Attorney General or the NACC shall notify the alleged culprit to appear in the court on the date that the case is filed. Unless in case the alleged culprit has been already remanded in custody under Section 39, the Attorney General or the NACC shall inform investigator to bring such person to appear in the court on the date that the case is filed.

In case the Attorney General or the NACC has formerly notified the alleged culprit under paragraph one but the alleged culprit does not appear in the court without notification of the grounds for his or her non-appearance, the Attorney General or the NACC or the person entrusted by the Attorney General or the NACC shall have the power to submit a motion to the Court for issuance of a warrant of arrest.

Section 79. In case the Attorney General is a plaintiff, when the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions reaches a judgment, if the Attorney General agrees to appeal against the judgment in the Plenary Session of the Supreme Court, such appeal shall be further proceeded.

In case where Attorney General is of opinion not to appeal under paragraph one, he or she shall inform the NACC for acknowledgement and shall take into consideration the opinions of the NACC.

In case the NACC is a plaintiff, the decision as to appeal or not shall be in accordance with the resolution of the NACC.

Section 80. In case the NACC files the case by itself, it may assign competent official to proceed with the matter on its behalf or consider assigning a lawyer to proceed thereof in accordance with the criteria as prescribed by the NACC.

Section 81. In case the Supreme Court's Criminal Division for Persons Holding Political Positions has accepted the case under Section 77, the alleged culprit shall cease the performance of his or her duties until a judgement is rendered, unless the Supreme Court or the Supreme Court's Criminal Division for Persons Holding Political Positions has ordered otherwise. In case the Supreme Court or the Supreme Court's Criminal Division for Persons Holding the Political Positions has rendered a judgment deciding that the alleged culprit has committed the offence as accused, the convicted person shall vacate office from the date the person ceases performing duties, and the Court shall revoke the right to apply for candidacy in an election of such person and may or may not revoke his or her right to vote for a period of not more than ten years.

Any person whose right to apply for candidacy in an election has been revoked in any case shall permanently have no right to apply for candidacy in an election or selection of Members of the House of Representatives, Senators, members of a local assembly or a local administrator, and shall have no right to hold any political position.

Section 82. In filing a case to the Supreme Court's Criminal Division for Persons Holding the Political Positions, if the act of the alleged culprit caused damage to property or constituted a tort against a state agency or other person, the Attorney General or the NACC,

as the case may be, may file a motion in the Court for a judgment to annul such act or wrongful order constituting a tortuous commission.

For damages occurred under paragraph one, the NACC shall notify the relevant state agencies to take action, in accordance with their duties and powers, so as to indemnify the damages.

The filing of the motion under paragraph one shall include the revoking of right or document of title in respect of which the state official has given approval or granted permission or commission of any act in an unlawful manner.

Section 83.⁹ In filing a case to the Supreme Court's Criminal Division for Persons Holding the Political Positions, if the alleged culprit or the person participating in the commission of offence has used or acquired property in an unlawful manner as a result of the commission of corruption, or deliberately performed duties or exercised powers in contrary to the provisions of the Constitution or laws, the Attorney General or the NACC, as the case may be, may file a motion to the Supreme Court's Criminal Division for Persons Holding the Political Positions for the confiscation of the following properties, unless it is the property of another person who has no connivance with the commission of the offence:

(1) Property which any person used or had in his or her possession for using in the commission of the offence;

(2) Property or interest that can be calculated into monetary value, which has been given, requested to give or pledged to give to the alleged culprit by any person in an unlawful manner

(3) Property or interest that can be calculated into monetary value which a person has obtained from the commission of or from his involvement as an instigator, an aider and abettor or a publisher or announcer in order for another person to commit the offence;

(4) Property or interest that can be calculated into monetary value which a person has obtained from a disposal, distribution or transfer in any manner of the property or interest under (1) or (3).

(5) Fruits or any other interests occurring from the property or interest under (1), (3) or (5)

Section 84.¹⁰ For the purpose of submission of a motion to the Supreme Court's Criminal Division for Persons Holding the Political Positions for the confiscation under Section 83, the NACC may undertake a calculation of value of the property at the time of the acquisition of such property by the alleged culprit or the value of the property at the

⁹ Amended in implementation of UNCAC Art. 31

¹⁰ Amended in implementation of UNCAC Art. 31

time that the NACC has passed a resolution that the alleged culprit commits an offence, depending upon whichever value is higher at that time, and may file a motion to the Supreme Court's Criminal Division for Persons Holding the Political Positions for issuance of order to make monetary payment or confiscate any other property of the same value of the alleged culprit *in lieu*.

In case of the Supreme Court's Criminal Division for Persons Holding the Political Positions issues order for the confiscation of the property obtained from the commission of offence, even where a final judgment has not been rendered, the Secretary-General shall have the power to retain and manage such property until the final judgment is rendered, or the Supreme Court's Criminal Division for Persons Holding the Political Positions has ordered otherwise.

Section 85. Retention and management of the property under Sections 69 and 84 shall be in accordance with the criteria as prescribed by the NACC.

In case the property under paragraph one is unsuitable for retention, or the retention of such property may impose an excessive burden on the government service rather than taking such property for other use, the Secretary-General may order the interested person to take the property for retention or use, with bail or security, or undertake auction sales, or use the property for the interest of government service and report the matter back to the NACC for acknowledgement.

In allowing the interested person to take the property for retention or use, undertaking auction sales, or using the property for the interest of government service under paragraph two shall be in accordance with the criteria as prescribed by the NACC.

If it is appeared thereafter that the property sold at auction or used for the interest of government service under paragraph two are not involved with the commission of offence, such property shall be returned to the owner or possessor together with compensation for any damages and depreciation in accordance with the amount as prescribed by the NACC. If such return is not feasible, compensation shall be made to the owner or possessor in the form of payment equivalent to the assessable price on the date of the seizure or freezing of the property or in accordance with the price obtained from the auction sale thereof.

The assessment of damages and depreciation under paragraph four shall be as per the criteria prescribed by the NACC.

Section 86. In case the Supreme Court's Criminal Division for Persons Holding Political Positions reached the final judgment to dismiss a case, and if a person holding political position, judge of the Constitutional Court or persons holding positions in an independent agency suspends his or her performance of duties but has not yet been

removed from the position, he or she shall resume his or her duties as from the date the Court has reached the judgment and if, during the suspension of duties, he or she has not received salary, position emolument, rewards, or other benefits, he or she shall retain the rights as if he or she has always been performing such duties during the suspension of performance of duties. In case such person is removed from the position prior to the judgment, the salary, position emolument, rewards or other benefits shall be paid until the date before the date of removal from office.

Part II

Prosecution of Cases in Violation of or Serious Failure to Comply with the Code of Ethics

Section 87. If the NACC has inquired and is of the opinion that a person holding political position, judge of the Constitutional Court or person holding political positions in independent agency violated or seriously failed to comply with the code of ethics, the NACC shall submit such matter to the Supreme Court for adjudication.

The submission to the Supreme Court under paragraph one and the adjudication of the Supreme Court shall be in accordance with the Rules of the Plenary Session of the Supreme Court which shall prescribe the use of the inquisitorial system and shall expeditiously proceed.

The provisions of Sections 81 and 86 shall apply *mutatis mutandis*.

In regard of the submission to the Supreme Court under paragraph one, the NACC shall have the power to assign a competent official to proceed in the Court on its behalf.

Part III

Procedure in Case of Violation of Section 144 of the Constitution

Section 88. When it appears to the NACC or when the NACC is informed by a state official under the provisions of Section 144 paragraph four of the Constitution, the NACC shall undertake a confidential investigation expeditiously and, in any case, no person shall disclose the information related to the informant.

A state official including the Auditor General who undertakes a project or approves or allocates the budget with the knowledge that the operation contravenes the provisions of Section 144 paragraph one or paragraph two of the Constitution shall be

excluded from the liability under the Constitution particularly when he or she has informed the NACC prior to the NACC's initiation of the investigation.

The investigation under paragraph one shall be in accordance with the criteria, procedures and conditions as prescribed by the NACC.

When the NACC has conducted an inquiry and is of the opinion that there is a *prima facie* case, it shall submit the opinion to the Constitutional Court without delay and the Constitutional Court shall further proceed under the provisions of Section 144 paragraph three of the Constitution.

In a necessary case and upon receiving a request, the NACC shall provide the same protection for the state official under paragraph one as the witness protection under Section 131.

Section 89. Demanding the return of money in case of violation of the provisions of Section 144 paragraph three or paragraph four of the Constitution shall be made within twenty years as from the date of allocation of budget. Provisions of Section 55(1) shall not apply to the proceeding under this Section.

CHAPTER IV PROCEDURE AGAINST A STATE OFFICIAL

Section 90. In case the NACC is of the opinion in accordance with Section 70 and is of the opinion that allowing the alleged state official to continue performing his or her duties may cause damages to the government service or obstruct the continuity of the inquiry, the NACC shall submit the matter to the superior of the alleged culprit to order the temporary suspension of performance of duties. If, subsequently, the inquiry result appears that the accusation has no grounds, the NACC shall expeditiously inform the superior of the alleged culprit to allow him or her to return to duties.

Upon receipt of the matter from the NACC under paragraph one, the superior of the alleged culprit shall have the power to order such alleged culprit to stop performing his or her duties for a period of six months or until receiving further notification of the result of the deliberation of the NACC which the NACC shall complete within six months as from the date of notifying the superior under paragraph one. In case the time period of six months has expired and the NACC has not yet issued the decision, the superior shall order the alleged culprit to return to his or her duties.

In case the alleged state official is the local administrator or member of the local assembly, the provincial governor shall be deemed as superior of such the alleged and shall have the power to order under paragraph two.

The provisions in this Section shall not be deprivation of power of the superior of the state official who shall proceed under the existing law on personnel administration applied to such alleged culprit.

The provisions in this Section shall not apply to state officials who are judiciary officials under the law on regulations for judicial officials, judicial official under the law on the establishment of Administrative Court and Administrative Cases Procedure or public prosecutors under the law on public prosecutors.

Section 91. When the NACC has conducted an inquiry and has reached a resolution that a state official has committed an offence on the grounds of corruption in performing his or her duties, or malfeasance in office, or malfeasance in judicial office, or related offences, it shall conduct the followings:

(1) In case there are grounds for criminal penalty, the NACC shall submit a report, inquiry file, documentary evidence, electronic copy and decision to the Attorney-General within thirty days for further initiation of prosecution;

(2) In the case there are grounds for disciplinary penalty, the NACC shall submit a report, inquiry file, documentary evidence and decision to the superior or authorised person for removal within thirty days for further disciplinary procedure.

Section 92. When the NACC submits the inquiry file to the Attorney-General to prosecute a criminal case, the NACC shall notify the alleged culprit to report himself or herself to the Attorney-General under the prescribed time period.

If the alleged culprit fails to report himself or herself under the prescribed time period, the NACC shall further proceed under Section 39.

Part I

Prosecution against State Officials

Section 93. Upon receipt of the criminal case file under Section 91, the Attorney General shall consider initiating prosecution to the competent court within one hundred and eighty days as from the date of the receipt of the case file.

Provisions in Section 77, Section 78, Section 80, Section 81, Section 82, Section 83, Section 84, Section 85 and Section 86 shall apply *mutatis mutandis* to the prosecution of cases with state official.

Section 94. When the competent court renders judgement in the case where the Attorney General is the plaintiff as per the case received from the NACC, if the Attorney General will not appeal to the Court of Appeal or to the Supreme Court, he or she shall

consult the NACC. In case of disagreement and the dispute cannot be resolved, the Attorney General shall consider to proceed by taking into consideration the fairness and interest of the country and shall inform the public of the justification.

When the Attorney General has initiated the prosecution under paragraph one, such case cannot be withdrawn unless the NACC and the Attorney General agree that the withdrawal is for the purpose of fairness.

Section 95. In the prosecution of the case, if the alleged culprit is in the position of Attorney General during the commission of an offence or during the allegation, the President shall have the power to initiate the case or submit the complaint to the Court with jurisdiction.

Section 96. In the prosecution of the case where the person is under the competence of Military Court and the case falls under jurisdiction of the Military Court, the Attorney General shall be the Military Attorney under the law on the Charter of Military Court, or may assign a Military Attorney to initiate the case on its behalf.

Section 97.¹¹ In the proceeding against a foreign public official, official of an international organisation or a person committing an offence under this Organic Act, the provisions of Section 91(1), Section 92, Section 93 and Section 94 shall apply *mutatis mutandis*.

Part II

Disciplinary Proceeding against a State Official

Section 98. When the superior or the person having the power to appoint and remove the alleged culprit has received the case file from the NACC under Section 91, such person shall consider the disciplinary penalty for the offence ruled by the NACC without having to appoint the disciplinary investigation committee. In considering the disciplinary proceeding against the alleged culprit, the inquiry case file of the NACC shall be deemed as the disciplinary case file of the disciplinary investigation committee under the law, regulations or rules on personnel management of such alleged culprit, as the case may be.

In case the alleged culprit is a judicial official under the law on regulations of judicial officials of the Court of Justice, judges of the Administrative Court under the law on establishment of the Administrative Court and administrative case procedure, or prosecutors

¹¹ Amended in implementation of UNCAC Art. 16

under the regulations on prosecutors, the President shall expeditiously submit the report and documentary evidence including opinion to the President of the Court of Justice, President of the Administrative Court or the Chairperson of the Public Prosecutor Commission, as the case may be, to deliberate in accordance with the law on regulations of judicial officials of the Court of Justice, the law on establishment of the Administrative Court and administrative case procedure or under the regulations on public prosecutors. The report and documentary evidence of the NACC shall constitute a part of the opinion for disciplinary consideration in the investigation. The result shall be notified to the NACC within fifteen days from the date of reaching the result.

In the disciplinary proceeding under paragraph one, the superior or the person having the authority to appoint and remove personnel shall impose penalty on the alleged culprit within thirty days from the date of receiving the matter from the NACC, or within thirty days from the day the superior or the person having the authority to appoint and remove personnel has been informed of the resolution of the NACC for review under Section 99 paragraph two. In this regard, regardless of whether such alleged culprit has been removed from office before or after the NACC reaches resolution on the offence, except in case the NACC reached the resolution after the expiration of time limit under Section 48. This, however, shall not deprive the NACC of the power to further proceed with the criminal proceeding.

In case the alleged culprit does not fall under purview of law, regulations or rules on discipline, when the NACC reaches the resolution that the alleged culprit has committed an offence under the allegation, the case file shall be submitted to the superior and the person having the power to appoint and remove to proceed in accordance with the duties and powers.

In submitting the case file for inquiry for the disciplinary proceeding against the alleged culprit, the NACC or the President may assign the Secretary-General or the entrusted person to proceed on its behalf.

Section 99. In considering the disciplinary penalty following the decision of the NACC, if the superior or person having the power to appoint and remove has acquired new evidence indicating that the alleged culprit did not commit the offence as alleged or the commission of an act fell under a different offence than the one being alleged of, the superior or the person having the power to appoint and remove shall submit a letter including such evidence to the NACC for revision of the decision within thirty days as from the date of receiving the matter from the NACC.

For the purpose of justice, in conducting a revision under paragraph one, the NACC shall comprehensively examine the evidence and notify the resolution to the superior

or the person having the power to appoint or remove for acknowledgement and further proceeding.

Section 100. The superior or the person having the power to appoint or remove or any person who fails to comply with Section 98 without any reasonable grounds shall be deemed intentionally performing duties in violation of the law or committed serious and wrongful disciplinary act under the law, regulations or rules on personnel management of such alleged culprit.

In the case of paragraph one, or in case the NACC is of the opinion that the disciplinary proceeding is incorrect or inappropriate, it shall submit the opinion to the Prime Minister. The Prime Minister shall have the power to issue order as appropriate, or, in the necessary case, the NACC may request the Civil Service Commission under the law on Civil Service or other committees which have the duties to supervise compliance of the law, regulations or rules of the personnel management of state officials, or committee which has duties to administer state enterprises, or the person appointing the committee, sub-committee, employees of the public sector, state agency or state enterprise, as the case may be, to further consider proceeding under the duties and power. In the case where the alleged culprit is a judicial official under the law on regulations of judicial officials of the Court of Justice, judges of the Administrative Court under the law on establishment of the Administrative Court and administrative case procedure or public prosecutors under the regulations on public prosecutors, the NACC shall submit the opinion to the President of the Court of Justice, President of the Administrative Court or the Chairperson of the Public Prosecutor Commission.

Section 101. A person being penalised under Section 98 who has the right to file a case to the Administrative Court may initiate a case to the Administrative Court within ninety days as from the date of serving the penalty with no need to appeal under the law, regulations or rules of the personnel management of such person, or proceed with the appeal of the exercise of discretion of the superior in determining penalty under the law, regulations or rules on the personnel management of such alleged culprit prior to the appeal.

In case the penalised person bring the case to the Administrative Court without initiating a case against the NACC, the Administrative Court shall inform the NACC and the NACC shall also have the right to associate itself as party in the case.

CHAPTER V
PROCEEDINGS IN RELATION TO PROPERTIES

Part I

Submission of Account of Assets and Liabilities and Inspection

Section 102. In the proceedings under Section 28(3), the NACC shall at a minimum prescribe that the following persons must submit the account of assets and liabilities of himself or herself, spouse and children who have not yet become *sui juris* to the NACC:

- (1) Person holding political position;
- (2) Justice of the Constitutional Court;
- (3) Person holding a position in an independent agency;
- (4) Judicial official under the law on regulations of judicial officials of the Court of Justice who is in the position of the Director-General and above;
- (5) Official of the Administrative Court under the law on establishment of Administrative Court and administrative case procedure who is in the position of the Director-General of the Administrative Court of First Instance and above;
- (6) Public prosecutors under the law on regulations of public prosecutors who is in the position of the Director-General and above;
- (7) Person holding a high-ranking position;
- (8) Other positions as obliged by other laws to submit the account of assets and liabilities;
- (9) Local administrator, deputy local administrator, assistant local administrator and members of the local assembly as prescribed by the NACC.

Spouses under paragraph one shall include persons living together as husbands and wives without registering marriage certificate under the criteria as prescribed by the NACC.

Section 103. The position of a public official who must submit the account of assets and liabilities of his or her, spouse, children who have not yet become *sui juris* to the NACC shall be as prescribed by the NACC. Provisions of Section 102 paragraph two shall apply *mutatis mutandis*.

Section 104. When the NACC prescribes the positions for which the account of assets and liabilities shall be submitted under Sections 102 and 103, it shall publish such prescription to the public and inform the respective supervisory agency.

Section 105. Submission of account of assets and liabilities to the NACC shall be made with evidence which can prove the actual existence of the assets and liabilities including the evidence of income tax of a natural person in the previous tax year. In case of submission of documents, the person submitting such documents shall sign and certify, on every page, the accuracy of the account of assets and liabilities and each of the copies including the details of the documents attached to the submitted account of assets and liabilities. In this regard, the assets and liabilities to be submitted shall include the assets and liabilities in foreign jurisdictions and include assets of such person which are being entrusted in the possession or supervision of other persons whether directly or indirectly.

The criteria, duration, extension of time, procedure for submission of account of assets and liabilities and evidence pertaining thereto under paragraph one shall be as prescribed by the NACC and may be submitted through the electronic means. Such prescription shall also take into account the technological development appropriate to the form and method to replace documents and shall be in accordance with the law on electronic transactions. Period for submission of account of assets and liabilities shall not be less than sixty days.

Submission of account of assets and liabilities under paragraph one shall be as follows:

(1) Positions under Section 102(1), (2), (3) and (9) shall be submitted upon taking office and vacation from office;

(2) Positions under Section 102(4), (5), (6), (7), (8) and other positions as prescribed by the NACC, except (1), shall be submitted upon taking office and vacation from office of the state official and every three year throughout the time of being in the position as the state official;

In case under (1), if a person has vacated office and has been appointed to the previous position or a new position within one month, such person is not under obligation to submit the account of assets and liabilities upon vacation from office and taking office in a new position. However, this does not prohibit such person from submitting the account as evidence.

In case under (1) or (2), where any public official is appointed to other position which requires submission of assets and liabilities account, such public official is not under obligation to re-submit account of assets and liabilities. However, this does not prohibit such person from submitting the account as evidence.

Section 106. For the purpose of public participation in inspection of assets and liabilities, the NACC shall disclose the accounts of the assets and liabilities, location of the immovable properties and documents pertaining thereto of the person holding the position under Section 102(1), only the Prime Minister, Minister, Member of the House of

Representatives, Senator and persons under Section 102(2), (3), (7) and (9) including spouse and children who have not yet become *sui juris* of such person, to the public without delay. Such disclosure shall not exceed thirty days as from the deadline of submission of the account. The account showing particulars of the assets and liabilities, location of the immovable properties and documents pertaining thereto shall not specify the registration details of the assets, the photos of the assets or personal information unnecessarily or which may cause danger to the owner of the information as prescribed by the NACC. The duration for disclosure shall be clearly specified.

Disclosure of the account of assets and liabilities of a person under Section 102(9) of any position shall be as prescribed by the NACC.

In case the NACC is of the opinion that the disclosure of information under paragraph one may cause danger to the owner of information, the NACC shall delete or edit or conduct other acts which will result in not revealing such information prior to disclosure to the public and shall notify the person submitting the account.

Section 107. Upon the appointment or order removing a state official from the position whereby such position is prescribed by the NACC to submit the account of assets and liabilities, the superior of such agency shall notify the NACC within thirty days from the date of appointment or removal order. In case of an elected state official, it shall be the duty of the Election Commission to make notification.

Section 108. In regard to the account of assets and liabilities submitted to the NACC, the Office shall provide the measure preventing any modification to the statement or document.

Section 109. Any person having obligation to submit the account of assets and liabilities to the NACC who fails to submit the account of assets and liabilities under the prescribed time period, the Office shall notify such person in writing by registered mail or information technology system. Such notification shall include the extension of period not exceeding thirty days from the date of notification and, in case of necessity, it may be extended for no more than thirty days.

When it appears that the account of assets and liabilities or documents pertaining thereto obtained under paragraph one is incomplete or contains inaccurate information and there is no circumstance indicative of intention to conceal the assets or liabilities, the Secretary-General or the person entrusted by the Secretary-General shall notify such person to complete or correct within the time period as prescribed by the Secretary-General.

Upon the expiration of time period under paragraph one or paragraph two, if such person has not yet submitted the account of assets and liabilities, submits incomplete account or inaccurate information and there is a circumstance indicative of the intention to conceal the assets or liabilities, the Office shall submit the matter to the NACC to further proceeding under Section 114.

Section 110. In inspection of the assets and liabilities, the NACC shall inspect the accuracy and actual existence of the assets and liabilities under the account initially submitted to the NACC. Upon subsequent submission, the change in assets and liabilities shall be inspected.

In conducting the undertaking under paragraph one, the NACC may assign a competent official or inquiry officer to inspect under paragraph one prior to submission to the NACC in accordance with the criteria, procedure, time period for completion of inspection or consideration of dispute, and conditions as prescribed by the NACC.

For the purpose of inspection of assets and liabilities, the provisions of Sections 34 and 38 shall apply *mutatis mutandis* to the inspection of assets and liabilities and the competent official or inquiry officer shall also have the powers under Section 34(1), (2) and (3).

Section 111. Subject to Section 106, the NACC shall disclose the result of inspection of assets and liabilities of persons, as prescribed by the NACC to submit the account of assets and liabilities, under this Organic Act to the public. Such disclosure shall indicate whether the account is normal or abnormal.

In case the result of investigation shows no abnormality, such disclosure shall not deprive the NACC of the power to proceed with additional investigation where there are reasonable grounds for suspicion thereafter of accuracy or existence.

Section 112. In inspection of assets and liabilities, the NACC shall have the power to order state agencies, financial institutions, or any relevant person to inspect the accuracy or actual existence as appeared in the account of assets and liabilities submitted to the NACC, or any asset or liability not listed in the account of assets and liabilities, and shall notify the result to the NACC within the time limit as prescribed by the NACC. Provisions of law prohibiting any agency from disclosing the information in possession shall not apply to such notification.

Section 113. In case the result of inspection of change in assets and liabilities finds that there is a circumstance indicative of unusual wealth, the NACC shall conduct an inquiry for subsequent request for assets to become properties of the State.

Section 114. When it appears that any person who has the duty to submit the account of assets and liabilities to the NACC intentionally fails to submit or intentionally submits the account of assets and liabilities with the false statement or conceals the fact which should have been disclosed and there is a reasonable circumstance indicative of an intention to not disclose the sources of such assets or liabilities, the NACC or competent official assigned shall inform such person of the allegation and specify reasonable time period for such person to give explanation in accordance with the criteria and procedure as prescribed by the NACC. Such procedure shall be submitted to the NACC for further deliberation.

In the case under paragraph one, if the NACC reaches a resolution that any person intentionally fails to submit the account of assets and liabilities or intentionally submits the account of assets and liabilities with false statement or conceals the fact which should have been disclosed, and there is a reasonable circumstance indicative of an intention to not disclose the sources of such assets or liabilities, the NACC shall undertake the followings:

(1) In case of person under Section 102(1), (2), (3) and (9), refer the matter to the Supreme Court's Criminal Division for Persons Holding Political Positions for consideration. In this regard, the Supreme Court's Criminal Division for Persons Holding Political Positions shall have the power to consider and rule on cases of the persons under Section 102(9);

(2) In case of state official, except for state officials under Section 102(9), refer the matter to the Criminal Court for Corruption and Misconduct Cases.

In the prosecution of the alleged culprit under paragraph two, the provisions of Section 80, Section 81 and Section 86 shall apply *mutatis mutandis*.

Part II

Proceedings in the Case of Unusual Wealth

Section 115. When it appears to the NACC regardless of whether there is an allegation or the NACC has reasonable grounds to suspect that any public official is unusually wealthy, the NACC shall expeditiously conduct the inquiry.

The provisions in Chapter II on inquiry shall apply *mutatis mutandis* to the allegation and inquiry of the NACC under paragraph one unless otherwise particularly provided.

Section 116. In conducting an inquiry or reaching opinion or decision on whether or not a person is unusually wealthy, the NACC shall have the power to inspect the

sources of the assets and liabilities, financial movement or transaction of such person and perform any other acts to obtain the fact to complement the deliberation. In case the alleged culprit has submitted the account of assets and liabilities, regardless of whether it was submitted to the NACC or was the submission under Section 130, the NACC shall compare the account of assets and liabilities with the existing assets during the time of inquiry including the income and expenses, and income tax of such person. For this purpose, the NACC shall have the power to order the alleged culprit to submit the account of assets and liabilities according to the list and time period as prescribed by the NACC regardless of whether such person has previously submitted the account of assets and liabilities.

The time period under paragraph one shall not be less than thirty days but not exceed sixty days.

Upon undertaking the inquiry under paragraph one, the death of the alleged culprit shall not deprive the NACC of the power to continue its investigation. However, the case shall be finalised within two years from the date of the death of such person.

Section 117. Upon being notified of an allegation of unusual wealth, the alleged culprit shall have the duty to prove or illustrate sources of his or her income or assets.

Section 118. In case where NACC has conducted an inquiry and is of the opinion that a person holding political position, judge of the Constitutional Court or person holding a position in an independent agency is unusually wealthy, the NACC shall submit a report, inquiry case file, document, evidence and opinion to the Attorney General within thirty days as from the date of the NACC's resolution for the Attorney General to initiate a case in the Supreme Court's Criminal Division for Persons Holding Political Positions to order such assets including other assets or benefit obtained in exchange of such assets to become properties of the state due to unusual wealth. Provisions of Section 84 shall apply *mutatis mutandis*.

Section 119. Upon receiving a case file under Section 118, the Attorney General shall proceed to file a motion to the Supreme Court's Criminal Division for Persons Holding Political Positions for the assets to become properties of the state within ninety days as from the date of receipt of the case file from the NACC, and the provision of Section 77 shall apply *mutatis mutandis*.

In case of requesting the assets to become properties of the state, the alleged culprit shall bear the burden of proof to the Court that such assets were not derived from unusual wealth.

The Court fees shall be waived for the prosecution or request for assets to become properties of the State.

Section 120. In case the Supreme Court's Criminal Division for Persons Holding Political Positions accepts a case under Section 119, the provision of Section 81 shall apply *mutatis mutandis*.

In case the Supreme Court's Criminal Division for Persons Holding Political Positions rules that the assets shall become properties of the State, the assets from such person's commission of offence shall be confiscated including all the assets or other benefits obtained in exchange of such assets.

The provision of Section 82 shall apply *mutatis mutandis* to the case of unusual wealth.

In case the Attorney General submits the request under Section 119 against other persons who are not holding a political position, justice of the Constitutional Court, or a person holding position in an independent organ as the principal, instigator or aider and abettor, the Supreme Court's Criminal Division for Persons Holding Political Positions shall have the power to consider and rule on case for such person.

Section 121. In case the final judgement or order dismisses the case on the grounds that a person holding political position, justice of the Constitutional Court or person holding position in an independent agency is not unusually wealthy as being alleged, the provision of Section 86 shall apply *mutatis mutandis*.

Section 122. In case the NACC has conducted an inquiry and decided that a state official is unusually wealthy, the NACC shall submit a report, inquiry case file, document, evidence and opinion to the Attorney General within thirty days as from the date of decision for the Attorney General to proceed with the motion to the Criminal Court for Corruption and Misconduct cases to order for confiscation of unusual wealth to become properties of the state and the provisions of Section 83, Section 84, Section 119, Section 120 and Section 121 shall apply *mutatis mutandis*.

In case the state official under paragraph one is the person holding the position of Attorney General, the President shall file a motion to the Criminal Court for Corruption and Misconduct cases for confiscation of unusual wealth to become properties of the state. Provision of Section 80 shall apply *mutatis mutandis*.

In case under paragraph one, the NACC shall notify the decision including summary of facts to the superior or person having the power to appoint or remove the alleged culprit within thirty days as from the date of the decision to dismiss within sixty days

as from the date of being notified and such conduct shall be deemed corruption in the course of duties.

The provisions in paragraph three shall not apply to alleged culprit who is a judicial official under the law on regulations for judicial officials, judicial official of the Administrative Court under the law on establishment of Administrative Court and Administrative Case Procedure or public prosecutors under the law on public prosecutors. In case the NACC has conducted an inquiry and decided that such government official is unusually wealthy, it shall notify the President of the Judicial Commission, the President of the Judicial Commission of Administrative Court or the President of the Public Prosecutors Commission, as the case may be, for further consideration and proceeding with the matter in accordance with the law on regulations for judicial officials, the law on establishment of Administrative Court and Administrative Case Procedure or the law on public prosecutors, as the case may be. In case an order of dismissal is issued, it shall be deemed to be the dismissal due to corruption in the course of duty.

In case the alleged culprit is a local administrator, deputy local administrator, assistant local administrator, or member of the local assembly, the decision including summary of facts shall be submitted to the person having the power to order dismissal. Such order shall be made within sixty days as from the date of being notified and it shall be deemed that the alleged culprit committed an offence of corruption in duties.

The superior or person authorised to appoint or remove from office under paragraph three, or person authorised to dismiss under paragraph five shall have the power to order dismissal without any investigation or resolution from the Cabinet or approval from the personnel management organisation.

Section 123. In case the final judgment of the Court dismisses the motion on the grounds that the state official is not unusually wealthy as alleged, and if the alleged culprit has been dismissed or removed under Section 122 paragraph three or five, the superior, or person having the authority to appoint or remove, or the person having the authority to dismiss from office, as the case may be, shall withdraw the dismissal or removal order expeditiously. In addition, such person shall be entitled to salary, wage, remuneration or other entitled benefits as if he or she were not dismissed or removed. In this regard, it shall be in accordance with the regulations on personnel management or resolution of the Cabinet.

In the case under paragraph one, if the alleged culprit is a government official under Section 122 paragraph four, any proceeding shall be in accordance with the regulations as prescribed by the Judicial Commission, Judicial Commission of the Administrative Court, or the Public Prosecutors Commission, as the case may be.

In regard of proceedings under paragraphs one and two, such person shall be treated with justice under the laws, regulations or rules on personnel management for such alleged culprit. In the case where there are no laws, regulations or rules, it shall be proceeded in accordance with the resolution of the Cabinet. In this regard, no State Agency shall raise objection on the grounds of statute of limitations for not being able to provide justice to such person.

Section 124. With regard to any transfer or act relating to the assets of a public official which is made after the NACC has ordered such public official to declare the particulars of assets and liabilities of the alleged culprit under Section 116, if the NACC or the Attorney General, as the case may be, submits motion to the Court, the Court shall have the power to revoke such transfer or suspend such act except in case where the transferee or beneficiary satisfies to the Court that the transfer of assets or benefits was made in good faith and with consideration.

Section 125. If the Court issues a judgement or an order that an asset of any alleged person on the grounds of unusual wealth to become property of the State, such asset shall become property of the state as from the date of the court ruling. In case where asset cannot be executed in whole or in parts, other assets of the alleged culprit shall be executed within the period of ten years as from the date of the final judgement of the Court, but it shall not exceed the value of assets which the Court ordered to become property of the state.

In case the judgement or order is final and if it appears that the transfer or act is made relating to the assets before or after the judgement or order which results in not being able to execute the assets which the Court orders to become property of the State, the NACC shall have the power to submit a motion to the Court to revoke such transfer. In case such revocation is not feasible due to the transformation of assets or other reasons, it shall proceed in accordance with Section 84 *mutatis mutandis*.

CHAPTER VI CONFLICT OF PERSONAL AND PUBLIC INTERESTS

Section 126. In addition to public officials as specifically prescribed in the Constitution, members of the Board/Commission/Committee, persons holding positions in an independent agencies and public officials as prescribed by the NACC are prohibited from undertake the followings:

(1) Being a contractual party or being a stakeholder in a contract made with a state agency in which such public official performs duties as the public official having direct or indirect authority in supervision, monitoring, control, inspection or prosecution;

(2) Being a partner or shareholder in a partnership or company which is a contractual party to a state agency which such public official performs duties as the public official having direct or indirect authority in supervision, monitoring, control, inspection or prosecution except being a shareholder in a limited company or public limited company with the amount of shares not exceeding that as prescribed by the NACC;

(3) Obtaining concession or possessing the concession rights from the state, government agency, state agency, state enterprise or local administration or being a contractual party with the state, government agency, state agency, state enterprise or local administration in the monopolistic manner, or being a partner or shareholder in a partnership, company receiving the concession or being a contractual party in capacity as the public official having direct or indirect authority in supervision, monitoring control, inspection or prosecution except being a shareholder in a limited company or public limited company with the amount of shares not exceeding that as prescribed by the NACC;

(4) Being a relevant stakeholder as a member of the Board, consultant, agent, staff or employee in private entity under the supervision, monitoring, control, or inspection of a state agency to which such public official is attached or performs duties as the public official which, by nature of such business interest of the private entity, may be in conflict to or against the public interest or government interest, or affect the independence of the performance of duties of such public official.

The provisions of paragraph one shall also apply to the spouse of such public official under paragraph one. Undertaking of business by the spouse shall be deemed as undertaking of business of the public official except in the case where the spouse has undertaken such business prior to the public official's taking of office.

The spouse under paragraph two shall include persons living together as husband and wife without registering marriage certificate. In this regard, it shall be in accordance with the criteria prescribed by the NACC.

Public official with the conditions under (2) or (3) shall undertake to ensure that he or she no longer has such condition within thirty days as from the date of taking position.

Section 127. Members of a Board/Commission/Committee, persons holding office in independent agencies, persons holding high-ranking positions and persons holding political positions as prescribed by the NACC are prohibited from undertaking any act under Section 126(4) within two years as from the date of vacation from office.

Section 128. Public officials are prohibited from accepting assets or any other benefits which may be calculated in monetary value from any person except for the assets or benefit which may be entitled to such persons under the laws, regulations or rules permitted by virtue of law, unless the acceptance of assets or other benefits is on ethical basis under the criteria and amount as prescribed by the NACC.

The provisions in paragraph one shall not apply to the acceptance of assets or other benefits from ancestors, heirs or relatives in accordance with custom or on ethical basis within the appropriate capacity.

The provisions in paragraph one shall apply *mutatis mutandis* to the acceptance of assets or other benefits of a person who has vacated office of a public official for less than two years.

Section 129. Any act which contravenes the provisions in this Chapter shall be deemed commission of malfeasance in office or malfeasance in judicial office.

CHAPTER VII PROMOTION OF PREVENTION AND SUPPRESSION OF CORRUPTION

Section 130. State officials who are not required to submit the account of assets and liabilities under Sections 42, 103, and 158 shall submit the account of assets and liabilities to the head of the government agency, state enterprise or state agency to which he or she is attached or for which he or she performs duties as prescribed in the Royal Decree.

The provisions of paragraph one shall not apply to state official who does not have regular salary or permanent position.

In case the state official under paragraph one holds several positions, he or she shall be required to submit the account of assets only for the position which he or she regularly performs the duties.

The account of assets and liabilities submitted under paragraph one shall be kept at a state agency to which such state official is attached and shall be deemed to be official secret which cannot be disclosed except for the submission to the NACC as requested by the NACC, or when the NACC prescribes that such person holding the position shall submit the account of assets and liabilities under Section 103, or in case where there is a disciplinary investigation against such state official.

In case a state official has transferred to a new state agency, the previous agency shall deliver the account of assets and liabilities of such person to the new agency

to which such person has transferred within three months as from the date of vacation from the previous office.

The submission time period, form, criteria, submission method and maintenance of the account of assets and liabilities under paragraph one shall be as prescribed in an Royal Decree, which shall take into account the feasibility of the inspection, convenience, and non-excessive burden. In such Royal Decree, there may be exemption for temporarily hired state official or certain category of state official who is not required to submit the account of assets and liabilities under paragraph one.

The Prime Minister shall take charge and control of the Royal Decree under paragraphs one and six.

Section 131. In case the NACC finds it appropriate to provide protection measures for the alleged, injured person, petitioner, complainant, person giving testimony or whistleblower providing a clue or information relating to the performance of duties of the NACC, the NACC shall provide such person with the protection and assistance measures. The law on witness protection in a criminal case shall apply *mutatis mutandis* and the power of the Minister as prescribed by such law shall be the power of the NACC. In such proceeding, the NACC shall have the power to prescribe any other appropriate measures to ensure safety of the person entitled to protection and assistance and shall have the power to order a police officer or other officer to render support as necessary.

The undertaking under paragraph one must obtain prior consent from the person who is entitled to protection or assistance.

In case of damage to life, body, sanitary, reputation, assets or rights of the person under paragraph one, or spouse, ancestors, descendants, or any persons who have close relationship with such person due to an intentional criminal offence caused by undertaking or providing a statement, or clue or information to the NACC, such persons or descendants shall have the right to submit a request to the NACC to obtain necessary and appropriate compensation under the law on witness protection in criminal cases as well.

In case the person under paragraph one is a state official and the NACC is of the opinion that the undertaking or provision of a statement or clues or information of such person is highly beneficial to the prevention and suppression of corruption, and should be honoured as the role model for state officials and the public, the NACC shall propose to the Cabinet for special consideration of promotion of salary and position for such person. In this regard, it shall be in accordance with the criteria, procedures and conditions as prescribed by the NACC upon approval of the Cabinet.

Section 132. Subject to Section 135, any person who provides a statement or clues to the NACC or competent official that an offence under this Organic Act has been

committed, if done in good faith, he or she shall be protected from both civil and criminal liabilities.

Section 133. In case a person under Section 131 paragraph one is a public official, when such person submits a request to the NACC that his or her continued performance of duties in the current assignment may result in abuses or unfair treatment due to the allegation or testimony or provision of clue or information, and the NACC is of the opinion that there is reasonable evidence that such event may occur, it shall propose to the Prime Minister to consider ordering the protection or other appropriate measures, and may propose to prescribe other position and benefits to protect such person in other state agency at the level and position not lower than those such person formerly held.

Section 134. In case of public official involved in the commission of an offence due to his or her superior's order, if such person has already submitted the letter of objection to the superior for revision or confirmation of order or has notified the NACC of clues, information or facts within thirty days as from the date of such conduct, such person shall not be liable.

Section 135. If any person involved in the commission of an offence with a public official has given statement or reported clues or information which constitutes material evidence upon which decision on the *prima facie* case against such other public official or alleged culprit is made, and the NACC deems appropriate, the NACC may take such person as witness and not subject such person to legal proceedings. In this regard, it shall be in accordance with the criteria, procedures and conditions as prescribed by the NACC.

When the NACC reaches a decision to take the person under paragraph one as witness, no criminal prosecution or disciplinary action shall be initiated against the person taken as witness and such person may receive assistance as deemed appropriate until the case is final, unless such person violates the criteria, procedures and conditions for the taking of witness under paragraph one.

The protection under paragraph two shall cover both the location of witness and promotion of salary as well as other benefits, unless such person does not deserve such protection upon consideration of the circumstance and nature of the commission of the offence, or violates criteria for the taking of witness.

Section 136. When the superior of a public official orders the disciplinary investigation against the public official on the grounds of corruption in course of duties, he or she shall notify the NACC within thirty days as from the date of such order. In such case,

the NACC may order the superior to report progress and result of the investigation, or to submit the matter to the NACC for further proceeding, and the provisions of Section 66 shall apply *mutatis mutandis*.

Section 137. In the conduct of fact inquiry of an allegation that a public official is unusually wealthy, if any person gives a lead, clue, information or fact in connection with assets or liabilities of the alleged culprit or the person under inspection, including the principal, instigator or the aider and abettor to the NACC, and the giving of such lead, clue, information or fact results in the unusual wealth becoming property of the state as per the final ruling of the court, such person may receive a reward from the National Anti-Corruption Fund in accordance with the criteria as prescribed by the NACC.

CHAPTER VIII INTERNATIONAL COOPERATION

Section 138.¹² In the undertakings related to foreign affairs for the prevention and suppression of corruption, the NACC shall have the duties and powers as follows:

- (1) To be the competent authority for international cooperation under international obligations and agreements in anti-corruption;
- (2) To execute in accordance with the request for assistance from foreign countries in corruption cases where the central authority under the law on mutual legal assistance in criminal matters submits the matters to the NACC to proceed, or to consider providing assistance to a foreign country in a corruption case which is not a request for assistance under the law on mutual legal assistance in criminal matters.

Section 139.¹³ When it appears to the NACC, regardless of an allegation, that a foreign public official, official of public international organisation or associated person commits an offence under Section 173, Section 174, Section 175, or Section 176, the NACC may consider submitting the matter to the foreign authority having the duties and power to undertake the case under the law of such country. In this regard, international cooperation shall be proceeded under the law on such matter.

¹² Amended in implementation of UNCAC Arts. 36 and 43

¹³ Amended in implementation of UNCAC Art. 47

Section 140.¹⁴ Upon a request for assistance from a foreign country under the law on mutual legal assistance in criminal matters to proceed against a foreign public official, official of a public international organization, or any person on the grounds that an offence was committed under Section 173, Section 174, Section 175, Section 176, or Section 177, the NACC shall have the powers to conduct inquiry and make a decision or to perform any other act as requested.

With regard to the offences under Section 172, Section 173, Section 174, Section 175, Section 176, and Section 177, if the offender is of Thai nationality or a public official, or the offence is committed against a person of Thai nationality or a public official, although the offence is committed outside the Kingdom, he or she shall be liable to punishment in the Kingdom. In addition, the NACC shall have the powers to conduct an inquiry and reach an opinion or make a decision in accordance with this Organic Act. In this regard, cooperation for the purpose of conducting an inquiry and reaching an opinion or making a decision shall be in accordance with the law on such matter.

In the undertaking under paragraphs one and two, provisions of Section 83, Section 84 and Section 85 shall apply *mutatis mutandis* to assets which must be confiscated. However, provisions which provide that the confiscated assets shall become properties of the state shall not apply. In such case, management of the confiscated assets shall be in accordance with the agreement made with the requesting country.

CHAPTER IX

OFFICE OF THE NATIONAL ANTI-CORRUPTION COMMISSION

Section 141. There shall be the Office of the National Anti-Corruption Commission called by abbreviation as “Office of the NACC” as a government agency and a status of juristic person directly accountable to the NACC.

Section 142. The Office shall have the duties and powers as follows:

- (1) To be responsible for administration work and undertakings so that the NACC accomplishes the missions and duties as prescribed in the Constitution, this Organic Act and other laws;
- (2) To facilitate, coordinate, cooperate, promote and support the performance of duties of the NACC and Commissioners;
- (3) To cooperate and provide international cooperation in the matters related to the prevention and suppression of corruption;

¹⁴ Amended in implementation of UNCAC Arts. 43, 46, 48, 55 and 57

(4) To undertake or arrange for compilation, analysis, studies, and dissemination of information and knowledge related to corruption and misconduct, and detrimental effects of corruption and misconduct both in the public and private sectors;

(5) To promote and encourage the public mobilisation for participation in education campaigning, fighting corruption, or providing clues under the mechanism as prescribed by the NACC under Section 33;

(6) To provide recommendation and consultation to government agencies, state agencies, state enterprises, or local administrations or public officials or the private sector in preventing and suppressing corruption;

(7) To establish an information technology system related to matters under the proceedings of the NACC which shall, at a minimum, identify the responsible person and progress of the proceeding of each matter accessible for examination by Commissioners at all times;

(8) To perform other acts as entrusted by the NACC and as prescribed by the laws.

In the undertaking under (6), the Office shall provide response within thirty days except there is a necessity impeding the completion within the time limit. In such case, the President may extend the time period as deemed necessary but not exceeding the total period of ninety days.

Section 143. In supervision of the Office, the NACC shall have the powers to issue regulations and notifications in the following matters:

(1) Division of internal departments within the Office and scope of duties of such departments;

(2) Administration and management of finance and properties, budget and procurement of the Office;

(3) Issuance of regulations on preparation, disclosure, dissemination, maintenance and destruction of documents and information in the possession of the NACC and the Office. In this regard, the dissemination of information shall be made accessible for persons with disabilities;

(4) Issuance of regulations on maintenance and management of evidence and impounded items in a case and properties, including the distribution, assignment to other persons for maintenance or distribution of such properties;

(5) Prescription of criteria and procedures for disbursement of allowance, accommodation fee, transportation fee, other expenses and remuneration of witness or person assisting the performance of duties upon request by a competent official, or person entrusted by the NACC to perform duties under this Organic Act;

(6) Issuance of regulations regarding appointment of committees, sub-committees and groups of persons to assist the NACC or the Office in the performance of duties which is not the conduct of inquiry, and prescription of meeting allowance to such appointed persons;

(7) Issuance of regulations regarding the prescription of meeting allowance of the inquiry committee under Section 51, committees under Section 33 paragraph two, and sub-committees under Section 33 paragraph three.

Implementation of (1) shall take into account efficiency, cost-effectiveness and flexibility of the undertaking.

Regulations or Notifications under paragraph one shall be signed by the President and shall come into force upon its publication in the Government Gazette.

Section 144. The NACC shall be the central personnel management agency of the Office with the duties relating to personnel management of the Office, and shall have the powers to issue regulations or notification in the following matters:

(1) Prescription of positions, salary, extra emolument for position and remuneration or other entitlements and benefits of the Secretary-General, government official, government staff and employees of the Office;

(2) Selection, assignment, appointment, transfer, removal, prescription of qualifications and prohibitions, prescription of ethical standards, efficiency, performance evaluation, disciplinary investigation, vacation from office, complaint and appeal of penalty, and other matters relating the personnel administration for the Secretary-General, government officials, government staff, and employees of the Office including the procedures and conditions in the employment of government staff and employees of the Office;

(3) Acting on behalf of, acting for, and acting in capacity of government officials of the Office;

(4) Working days and hours, official holidays in accordance with the custom, and annual official holidays;

(5) Prescription of the uniform and attire of Commissioners, Secretary-General, government officials, government staff and employees of the Office;

(6) Employment and appointment of advisors, specialists, or experts in particular field which shall be beneficial to the performance of duties of the Office including the wage or other remunerations for such persons;

(7) Arrangement of welfare or other assistances to the Secretary-General, government officials, government staff and employees of the Office;

(8) Maintenance of profile records and monitoring of retirement of government officials of the Office.

Prescription of positions under (1) shall, at a minimum, provide for the positions of assistant inquiry officer and inquiry officer. Assistant inquiry officers and inquiry officers shall have specific qualifications under Section 146 (1).

In the performance of duties under paragraph one, the NACC shall appoint no more than three external experts in the field of human resource management, administration and management, or budget administration as committees with the Secretary-General as committee and secretary. Not more than three government officials of the Office may be appointed as assistant secretary. In this regard, an independent sub-committee to supervise or consider complaints or appeals may be appointed. A sub-committee to perform any acts as entrusted or to perform duties in the ordinary sub-committee in the Ministries under the law on civil service management may also be appointed. The composition, duties and powers shall be in accordance with the criteria and procedure as prescribed by the NACC as the central personnel management agency of the Office.

The issuance of regulations or notifications related to the personnel administration under paragraph one shall take into account the fairness, morale and spirit of personnel. Prescription under (1) shall also particularly take into account the cost of living and living sufficiency and different responsibilities of each position and level of government official, government staff and employees.

Regulations or notifications under paragraph one shall be signed by the President and shall come into force upon its publication in the Government Gazette.

The law on regulations on the civil service shall apply *mutatis mutandis* to the disciplinary conduct and disciplinary penalties of competent officials.

The performance of duties of the central personnel management agency of the Office and the appointed sub-committees shall be entitled to meeting allowance at the equivalent rate to that of the Civil Service Commission or Extraordinary Committee of the Office of the Civil Service Commission, as the case may be.

In the *mutatis mutandis* application of the law on the regulations of civil service administration, the definition of “CSC” shall mean “NACC as the central personnel management agency of the Office of the NACC” and the definition of “government agency with the head of the agency directly accountable to the Prime Minister” shall mean “Office of the NACC”.

Section 145. Government officials of the Office shall mean persons being assigned and appointed to be government officials under this Organic Act.

Government officials of the Office shall be government officials under the law on government provident fund and shall be entitled to pensions and other benefits in accordance with the law on such matter.

The disbursement of salary and remuneration shall be as prescribed in the regulations.

Section 146. Positions of government officials of the Office shall be as prescribed by the NACC and shall be divided as follows:

(1) Government officials of the Office in the branch of judicial procedure shall be persons graduating with a Master of Laws degree or higher, or having passed the examinations under the curriculum of the Institute of Legal Education of the Thai Bar Association, or graduating with a Bachelor's degree in law and other fields which will be beneficial to the performance of duties of the Office. In this regard, such persons shall also have the knowledge and experience which is beneficial to the conduct of inquiry and deliberation on cases, or provision of legal opinion, or proceeding in Court in accordance with criteria, procedures and conditions as prescribed by the NACC;

(2) General government officials of the Office shall be divided into different categories in accordance with the profession and assigned missions. In this regard, academic positions under the law of regulations on civil service may be prescribed.

Executive positions under (1) and (2) shall be as prescribed by the NACC.

The NACC may appoint the Secretary-General, Deputy Secretary-General, Assistant Secretary-General and persons holding office at the level of Directors or equivalent positions to the Director in the Office as chief inquiry officers. In this regard, it shall be in accordance with the criteria, procedures and conditions as prescribed by the NACC.

Section 147. Ethical standards as prescribed under Section 144 (2) shall provide for the penalties for violation of or incompliance with such standards.

In case there are reasonable grounds with sufficient evidence indicative that a government official or employee of the Office acted dishonestly or facilitated or abused any person in the performance of duties, disciplinary action shall be undertaken expeditiously. In the meantime, the NACC shall expeditiously remove such person from his or her position or from the area where such person performs duties.

Provisions of paragraphs one and two shall apply *mutatis mutandis* to the Secretary-General. In this regard, the NACC shall have the power to suspend the performance of duties for the time being.

Section 148. The Office shall have the Secretary-General as the superior of government officials and employees of the Office. The Secretary-General shall have the responsibilities towards the performance of the Office, and shall be directly accountable to the NACC. The NACC may prescribe the positions of Deputy Secretary-General, Assistant

Secretary-General or other equivalent positions to assist in commandment and the performance of duties.

The process of acquisition of the Secretary-General shall be as prescribed by the NACC.

In case of appointment of the Secretary-General, Deputy Secretary-General, or other equivalent positions, the NACC shall propose the matter to the Prime Minister to inform the King for appointment of such persons.

Section 149. The Secretary-General must be a person with evident integrity, performs duties and exercises powers with integrity, fairness, courage, impartiality, with ethics and without any prejudice and must possess the qualifications, experience, and expertise which will be beneficial to the performance of the Office as prescribed by the NACC.

The Secretary-General shall be in office for a term of five years as from the date of appointment and shall be in office for only one term.

Section 150. In addition to vacation from office on the expiration of term, the Secretary-General shall vacate office upon:

- (1) Death;
- (2) Being removed from office under the law on government provident fund or lack of the qualifications or having any of the prohibitions under Section 144(2);
- (3) Resignation;
- (4) Proposal made by the NACC to the Prime Minister to inform the King for removal from office due to failure of performance evaluation according to the regulation or notification issued under Section 144(2).

In case the Secretary-General vacates office on the expiration of the term but still remains a government official under the law on government provident fund, or vacates office prior to the expiration of the term under paragraph one (3) and (4), such person shall be in the position of advisor to the Office or any other equivalent positions.

Section 151. The Secretary-General shall have the duties and powers in supervising the general performance of the Office to comply with the laws, regulations, notifications and resolutions of the NACC and shall have the duties and powers as follows:

- (1) To assign, appoint, transfer, remove, promote salary or wage, impose disciplinary action on government officials, government staff or employees of the Office including ordering government officials, government staff or employees of the Office to be removed from the position in accordance with the regulations as prescribed by the NACC under Section 144(2);

(2) To prescribe the regulations related to the performance of the Office so far as it is not in contradiction to the regulations, notifications, or resolutions of the NACC;

(3) Duties and powers as prescribed by this Organic Act or other laws and as prescribed by the NACC.

Section 152. For the affairs of the Office involving external personnel, the Secretary-General shall be the representative of the Office. For this purpose, the Secretary-General may assign any person to perform a particular official function on his or her behalf in accordance with the regulations as prescribed by the NACC and published in the Government Gazette.

In the undertaking under paragraph one, if it is an important matter related to the budget of the Office and other matters which affect the performance of missions of the NACC as prescribed by the NACC, the Secretary-General shall request for prior approval from the NACC.

Section 153. The NACC shall propose the budget expenditure for allocation of funds for the NACC and the Office in the annual budget expenditure bill or additional annual budget expenditure bill, as the case may be.

In case the NACC is of the opinion that the budget allocated is insufficient, the NACC shall propose a request to amend a motion directly to the budget appropriation committee of the House of Representatives.

In proposing the budget expenditure under paragraphs one and two, the NACC shall notify the Cabinet of the existing income and assets.

Section 154. When the Annual Budget Expenditure Act or Additional Annual Budget Expenditure Act under Section 153 comes into force, the Office shall prepare the annual budget expenditure for approval from the NACC and disseminate it to the public.

Disbursement of the budget of the Office shall be as prescribed in the annual budget expenditure under paragraph one unless otherwise approved by the NACC on a case by case basis.

In disbursing of the allocated budget, the Office shall submit the information on the disbursement of budget to the Comptroller General's Department by specifying the amount of money to be disbursed in each quarter, three months per quarter and the Comptroller General's Department shall disburse the money to the Office within three days before the new quarter. In case it is necessary for the Office to spend more money than previously notified, the Comptroller General's Department shall disburse the money as requested by the Office.

Section 155. Assets of the Office shall not be under the liability of the execution of cases and no one shall raise the statute of limitations for objection.

Section 156. The Office shall prepare the balance sheet, financial statement and revenue account to the auditor within ninety days as from the end of the accounting year.

Office of the Auditor General shall be the auditor of the Office and shall inspect and certify the account and all financial reports of the Office by illustrating the extent to which the disbursement of money is in accordance with the purposes, cost-efficient, producing the desired results, efficient and reasonable and subsequently propose the audit report to the Parliament and the Cabinet without delay.

Section 157. Subject to the law on firearms, ammunitions, explosive substance, fireworks and firearm-like items and the law on armament control, for the purpose of performance of duties under this Organic Act, Commissioners, members of inquiry committees, chief inquiry officers, inquiry officers and competent officials shall possess, deploy, and carry firearms, ammunitions, armament and related items as deemed necessary. The possession, deployment and carrying of firearms, ammunitions, armament and related items shall be in accordance with the regulations as prescribed by the NACC.

Section 158. Competent officials from the level of Directors of the bureau, assistant inquiry officers, inquiry officers, chief inquiry officers and competent officials whose positions and duties are related to the inspection of assets and liabilities shall have the duty to submit the account of assets and liabilities of his or hers, spouse, and children who have not yet become *sui juris* as well as the assets assigned to be in direct or indirect possession or supervision of other persons to the NACC for inspection and disclosure of result of the inspection. In such inspection, for the purpose of good governance and prevention of conflict of interest, the NACC may prescribe the regulations on the assignment of the competent officials to inspect accounts of assets and liabilities in a particular case.

The provisions of Section 43 shall apply *mutatis mutandis* to the proceeding against the person under paragraph one.

Section 159. For the purpose of good governance and prevention of conflict of interest, when it appears to the NACC that a competent official is unusually wealthy, committed an offence of corruption, or offence against the official position, the NACC may undertake the inquiry or appoint an inquiry committee.

NACC shall complete its deliberation and reach a decision under paragraph one within sixty days as from the date of receipt of inquiry case file.

Section 160. When the NACC has been notified by the Ombudsman that the Ombudsman has proceeded under the Organic Act on State Audit and has the reasonable evidence to believe that there is a circumstance that an official of the Office has committed corruption in the course of duty, intentionally performed duties or exercised power in contradiction to the provisions of the Constitution or laws, if the NACC is of the opinion that the preliminary inquiry of the Ombudsman is likely to affect the performance of duties of such competent official, the NACC may notify the Ombudsman with justification for termination of the proceeding and submission of the matter to the NACC for further undertakings of the inquiry under this Organic Act and the result of the proceeding shall be notified to the Ombudsman.

In case the NACC is of the opinion that the Ombudsman should continue undertaking the preliminary inquiry, when the Ombudsman has submitted the preliminary inquiry case file to the NACC, the NACC shall consider the preliminary inquiry case file, documents and evidence made by the Ombudsman as part of the inquiry case file of the NACC.

Section 161. There shall be provincial office of the Office of the National Anti-Corruption Commission by abbreviation of “Provincial Office of the NACC” as a government agency within the Office, having the duties and powers related to the preliminary inspection, submission of the account of assets and liabilities, inspection of assets and liabilities and other duties and powers as prescribed by the NACC and the Office. This shall not include the duties and powers for the conduct of preliminary inquiry unless the NACC has reached a resolution to assign the preliminary inquiry for a particular case. The Director of the Provincial Office of the NACC shall be the head of the provincial office.

For the purpose of the official administration, there shall be regional office of the Office of the NACC in the amount as prescribed by the NACC but shall not exceed twelve regions and there shall be the head of the regional office of the NACC as the superior accountable to the NACC and the Secretary-General.

Regional Office of the NACC shall have the duties and powers in conducting preliminary inquiry, supervising performance of duties of provincial offices and shall have other duties and powers as prescribed by the NACC and the Office.

CHAPTER X
NATIONAL ANTI-CORRUPTION FUND

Section 162. There shall be the National Anti-Corruption Fund within the Office by the abbreviation of “NACC Fund” for the purposes as follows:

(1) To support public participation in inspecting the use of state power and to support the private sector in conducting public relations or campaigning to prevent corruption;

(2) To be disbursed in providing the protection and assistance measures and remuneration under Section 131 and rewards under Section 137;

(3) To be disbursed in the protection of performance of duties of the NACC, Commissioners, chief inquiry officers, inquiry officers and competent officials under Section 41;

(4) Other expenses which will benefit the performance of duties of state agency whose duties and powers are relevant to countering corruption.

Section 163. NACC Fund shall consist of money and properties as follows:

(1) Subsidies obtained from the Government for the NACC Fund;

(2) Fruits derived from money or properties of the NACC Fund.

Money and properties belonging to the NACC Fund are not subject to delivery to the Ministry of Finance as state income under the law on treasury and the law on budgetary procedure.

Money and properties of the NACC Fund shall be disbursed in accordance with the purposes under the criteria and procedures as prescribed by the NACC.

Section 164. Acceptance of money, disbursement of money, deposit of money and properties of the NACC Fund and inspection shall be in accordance with the regulations as prescribed by the NACC.

Section 165. The duties and powers in administration and management of the NACC Fund shall be in accordance with the regulations as prescribed by the NACC. Such regulations shall, at a minimum, establish the NACC Fund Committee to supervise and be responsible for the acceptance and disbursement of the Fund in accordance with purposes. Such NACC Fund Committee shall, at least, consist of one representative from a government agency which is not the Office, one representative from a private organisation related to countering corruption.

Section 166. Within ninety days as from the date of the end of the budget year, the NACC Fund shall submit the financial report of the previous year to the Office of the Auditor General for inspect and opinion. The Office of the Auditor General shall submit the result to the NACC and publish it to the public.

CHAPTER XI PENALTIES

Section 167. Any person having the duty to submit the account of assets and liabilities as prescribed by the NACC under Section 28(3), Commissioners under Section 42 or competent officials under Section 158 who intentionally fails to submit the account of assets and liabilities and documents attached to the account to the NACC or the President of the Senate, as the case may be, within the time period as prescribed by this Organic Act, or intentionally submits the account of assets and liabilities with false statement or conceals fact which should have been disclosed and there is a circumstance that there is the intention to conceal the sources of assets or debts, shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 168. Any public official who violates Section 126 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both.

In case of the offence under Section 126 paragraph two, if it can be proven that such public official has the knowledge of or agrees to the offence, such public official shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both.

Section 169. Any public official who violates Section 128 shall be liable to imprisonment for a term not exceeding three years or to a fine not exceeding sixty thousand Baht or to both.

Section 170. Any public official who violates Section 127 shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 171. Any public official who performs or omits to perform an act which is under the circumstance which may lead other persons to believe that he or she is in the position or has duty despite not being in such position or having such duty in order to

earn illegal benefit for himself or herself or for others shall be liable to imprisonment for a term of one to ten years or to a fine of two thousand Baht to twenty thousand Baht or to both.

Section 172. Any public official who performs or omits to perform an act in the position or duties or abuses power in the position or duties to cause damages against any person, or performs or omits to perform duties in bad faith shall be liable to imprisonment for a term of one to ten years or to a fine of two thousand Baht to two hundred thousand Baht or to both.

Section 173.¹⁵ A public official, foreign public official or official of an international organisation who requests, accepts, or agrees to accept any assets or other benefits for himself or herself or other person in order to act or omit an act in position, regardless of whether such act is legitimate or illegitimate towards the duty, shall be liable to imprisonment for a term of five to twenty years or life imprisonment and to a fine of one hundred thousand Baht to four hundred thousand Baht.

Section 174.¹⁶ Any public official, foreign public official or official of an international organisation who performs or omits to perform an act in position with the intention to obtain the assets or other benefits which he or she requests, accepts, or agrees to accept before taking office shall be liable to imprisonment for a term of five to twenty years or life imprisonment and to a fine of one hundred thousand Baht to four hundred thousand Baht.

Section 175.¹⁷ Any person who requests, accepts or agrees to accept any assets or other benefits for himself or herself or other person as a reward in inducing or having induced a public official, foreign public official or official of an international organisation, through corruption or illegal means or by influence, to perform or omit to perform the duty which benefits or inflicts detriment on any person shall be liable to imprisonment for a term not exceeding five years or to a fine not exceeding one hundred thousand Baht or to both.

Section 176.¹⁸ Any person who gives, offers to give, or promises to give any property or benefit to a public official, foreign public official, official of a public international

¹⁵ Amended in implementation of UNCAC Art. 16

¹⁶ Amended in implementation of UNCAC Art. 16

¹⁷ Amended in implementation of UNCAC Art. 16

¹⁸ Amended in implementation of UNCAC Arts. 12, 16 and 26

organisation with an intent to induce such person to wrongfully perform, not perform or delay the performance of any duty in his or her office shall be liable to an imprisonment for a term of not exceeding five years or a fine of not exceeding one hundred thousand Baht or to both.

In case the offender under paragraph one is a person associated with any juristic person and the action was taken for the benefit of such juristic person, provided that such juristic person does not have in place appropriate internal control measures to prevent the commission of such offence, the juristic person shall be deemed to have committed the offence under this Section and shall be liable to a fine of one to two times of the damages caused or benefits received.

The juristic person under paragraph two shall mean juristic person established under Thai laws and juristic person established under the foreign laws which operates business in Thailand.

A person associated with a juristic person under paragraph two shall mean a representative, employee, agent, affiliated company, or any person acting for or on behalf of such juristic person, regardless of whether having the power or authority to take such action.

Section 177.¹⁹ Any person obstructs the justice under this Organic Act or the related anti-corruption law in the investigation or conduct of inquiry, prosecution or case proceeding to cause disorder, if the act is one of the following acts, such person shall be liable to imprisonment of not exceeding ten years, or to a fine not exceeding two hundred thousand Baht or to both:

(1) Giving, offering, or promising to give any property or benefit to an injured person or witness to induce such person not to meet an official with duties and powers relating to anti-corruption enforcement, investigator, public prosecutor or not to go to the Court to provide facts or testimony or to provide false facts or testimony, or not to provide facts or testimony in the proceeding against an offender;

(2) Using force to intimidate or to threaten, to coerce or deceive, or perform an illegitimate act to prevent an injured person or witness from going to meet a competent official who has the duties and powers relating to anti-corruption enforcement, an investigator, public prosecutor or from not going to the Court to provide facts or testimony or to provide false facts or testimony, or to not provide facts or testimony in proceeding against an offender;

(3) Damaging, destroying or causing loss or rendering useless, taking away, amending, transforming, concealing or hiding any document, or evidence or forging, making or using any false document or evidence in the proceeding against an offender;

¹⁹ Amended in implementation of UNCAC Art. 25

(4) Using force, intimidating, threatening, coercing or conducting any other illegitimate act against an official with the duties and powers relating to anti-corruption, enforcement judicial officials, public prosecutors, or investigators to induce to wrongfully perform, not perform or delay the performance of any duty in his or her office.

If a public official is the offender under paragraph one, such public official shall be liable to two times of the prescribed penalty.

Section 178. Any person who fails to comply with an order of the NACC, inquiry committee, or chief inquiry officer under Section 34(1), (2) or (4) or fails to comply with Section 116 shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

Section 179. Any person who fails to comply with an order of the NACC under Section 112 without reasonable grounds shall be liable to a fine not exceeding ten thousand Baht and a daily fine of one thousand Baht per day until he or she complies with the order.

Section 180. Any person who discloses statement, fact, or information which the NACC or competent official has obtained from the performance of duties under this Organic Act shall be liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both unless the disclosure is under Section 36.

If the disclosure under paragraph one is the disclosure of name and address of the alleged, or name and address of the person providing leads or clues, or information or fact, or disclosing the record prepared under Section 60 paragraph four, such person shall be liable to imprisonment for a term of one to five years and a fine of twenty thousand Baht to one hundred thousand Baht.

Section 181. Any person who moves, damages, destroys, hides, takes away, causes disappearance, or renders useless any properties which the chief inquiry officer, inquiry committee, or the NACC has seized or frozen or ordered delivery or which he or she is aware or is supposed to be aware that it shall become property of the State under this Organic Act shall be liable to imprisonment for a term not exceeding three years, or to a fine not exceeding three hundred thousand Baht or to both.

Section 182. Any person who obstructs the performance of duty of the NACC, Commissioners, Secretary-General, inquiry committee, chief inquiry officer, inquiry officer or competent official under this Organic Act or as prescribed by other laws shall be

liable to imprisonment for a term not exceeding one year or to a fine not exceeding twenty thousand Baht or to both.

If such obstruction of performance of duty under paragraph one is committed with force or threat of force, such person committing the offence shall be liable to imprisonment for a term not exceeding two years or to a fine not exceeding forty thousand Baht or to both.

Section 183. Any Commissioner, competent official, person or group of persons entrusted by the NACC who commits an offence under Section 180 or commits an offence of corruption in the course duty or malfeasance in office shall be liable to two times the penalty as prescribed for such offence. In case where such person unfairly performs duties, it shall be deemed to be an offence of malfeasance in office.

Section 184. Any person who reports false statement to a competent official, provides false accusation or testimony to the Court to cause any person to be under inquiry, to receive penalty or more severe penalty shall be liable to imprisonment for a term not exceeding seven years or to a fine not exceeding one hundred and forty thousand Baht or to both.

TRANSITORY PROVISIONS

Section 185. The President of the National Anti-Corruption Commission and Commissioners of the National Anti-Corruption Commission who are in office prior to the date this Organic Act comes into force shall continue to be in office until the expiration of term as prescribed by the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments, or be removed from office under Section 19, except in case of Section 19(3). The provisions relating to disqualification under Section 9 or prohibitions under Section 11 (1) and (18) shall not apply.

Section 186. The Secretary-General of the National Anti-Corruption who is in office prior to the date this Organic Act comes into force shall continue to be the Secretary-General of the National Anti-Corruption Commission under this Organic Act until the expiration of term as prescribed by the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments or be removed from office for other reasons as prescribed in this Organic Act.

Section 187. Commissioners of the Provincial Anti-Corruption Commission under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments who are in office before this Organic Act has come into force shall be removed from office as from the date this Organic Act comes into force.

Section 188. Persons who have the duty to submit the account of assets and liabilities to the National Anti-Corruption Commission under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments or as prescribed by the National Anti-Corruption Commission under such Organic Act shall retain the duty to submit the account of assets and liabilities unless otherwise is prescribed by the National Anti-Corruption Commission under this Organic Act. The previous submission of account of assets and liabilities under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall be deemed the submission under this Organic Act.

In case the National Anti-Corruption Commission reaches the resolution that a person has intentionally refused to submit the account showing particulars of assets and liabilities and complementary documents, or intentionally submitted the account showing particulars of assets and liabilities and complementary documents containing false statement or concealing facts which were supposed to be disclosed before the date this Organic Act comes into force, such resolution shall be valid and continue to be proceeded under this Organic Act.

Section 189. Office of the National Anti-Corruption Commission under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall be Office of the National Anti-Corruption Commission under this Organic Act.

All rights, duties and obligations which Office of the National Anti-Corruption Commission possesses under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments in relation to any person prior to the date this Organic Act comes into force shall be transferred to Office of the National Anti-Corruption Commission under this Organic Act.

Section 190. All assets, budgets, rights, debts, obligations, government officials and employees of Office of the National Anti-Corruption Commission under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall be transferred to Office of the National Anti-Corruption Commission under this Organic Act and it shall be deemed that other rights and benefits enjoyed by such government officials or employees under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall continue to be other rights and benefits enjoyed under this Organic Act unless otherwise prescribed in the regulations issued under Section 144(1).

Section 191. Dismissal from position which was proceeded under Chapter V of the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall remain effective. Calculation of the time period for deprivation of rights in political office or government position of the person being dismissed shall be continued.

Section 192. In proceeding to review an allegation, fact finding and evidence gathering, conduct of inquiry and reaching opinion or decision and proceeding to have the assets become properties of the state due to unusual wealth or unusual increase in assets, all legitimate proceedings under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments prior to the date this Organic Act comes into force shall be valid and shall continue to be proceeded under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments. The Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments including all regulations, rules, ordinances, notifications and orders issued under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments or relevant resolutions of the National Anti-Corruption Commission being enforced prior to the date this Organic comes into force shall continue to be enforced unless otherwise prescribed by a resolution of the National Anti-Corruption Commission to be undertaken under this Organic Act.

The undertakings under paragraph one shall be completed under Section 48 except in case such time period has expired or the remaining time period is shorter than the prescribed period, the calculation of time period shall recommence as from the date this Organic Act comes into force.

For the purpose of prosecution in case the National Anti-Corruption Commission reaches a resolution to submit a complaint to or initiate a case in the Court, or to entrust an inquiry officer or appoint an attorney to initiate a case on its behalf, or is in the process of submitting the case to the Attorney General under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments prior to the date this Organic Act comes into force shall be valid and shall continue to proceed under this Organic Act.

For the purpose of adjudication and ruling of the Court of cases submitted or proceeded in Court before this Organic Act comes into force, it shall be deemed to be valid until the cases become final under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments.

Section 193. Competent officials appointed as chief inquiry officers, inquiry officers, or assistant inquiry officers before this Organic Act comes into force shall remain in office. Competent officials in the branch of judicial procedure who lack the qualifications under Section 146 (1) shall be required to pass the training of the curriculum related to

inquiry process and procedures under this Organic Act as prescribed by the National Anti-Corruption Commission and the National Anti-Corruption Commission shall appoint these officials to be assistant inquiry officers or inquiry officers, as the case may be.

Section 194. All regulations, rules, ordinances, notifications and orders issued under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments, or resolutions of the National Anti-Corruption Commission in force prior to the date this Organic Act comes into force shall remain effective so long as they do not contradict or be in conflict with the Constitution or this Organic Act, or until being annulled or amended by the regulations, rules, ordinances, notifications, orders or resolutions issued under this Organic Act.

The proceedings of the National Anti-Corruption Commission under the Constitution which have been legitimately undertaken before the date this Organic Act comes into force shall continue to be undertaken so far as it is not contradictory or inconsistent to the Constitution or this Organic Act.

Section 195. During the period while there is no notification under Section 126(2) and (3), the criteria relating to the amount of shares under the law on management of partnership stakes and shares of Ministers shall apply *mutatis mutandis* to the President of the National Anti-Corruption Commission, Commissioners of the National Anti-Corruption Commission, persons holding positions in independent agencies or public officials prescribed by the National Anti-Corruption Commission until such notification under Section 126(2) and (3) is issued.

Calculation of the time period under Section 126 paragraph four for the President of the National Anti-Corruption Commission, Commissioners of the National Anti-Corruption Commission, persons holding positions in independent agencies or public officials prescribed by the National Anti-Corruption Commission who are in office before this Organic Act comes into force shall be continued from the date this Organic Act comes into force.

Section 196. All allegations against state officials under the grounds of corruption in the course of duty, malfeasance in office, or malfeasance in judicial office which the National Anti-Corruption Commission has reached a resolution to assign the Office of the Public Sector Anti-Corruption Commission to conduct an inquiry and reach decision on the offence committed by state official on behalf of the National Anti-Corruption Commission before this Organic Act comes into force shall be valid and the Office of the Public Sector Anti-Corruption Commission shall continue to proceed under the Act on Executive Measures in Anti-Corruption B.E. 2551 (2008) and its amendment until an assignment is made under this Organic Act.

Section 197. During the period while there are no regulations, rules, ordinances, notifications, orders or resolutions under Section 144, all regulations, rules, ordinances, notifications, orders or resolutions issued under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments or under the law on regulations on Civil Service, as the case may be, or the resolutions of the National Anti-Corruption Commission which are enforced before the date this Organic Act comes into force shall remain effective until being annulled or amended by the regulations, rules, ordinances, notifications, orders or resolutions under this Organic Act.

Government officials of the Office of the National Anti-Corruption Commission shall have the rights to receive salary, extra emoluments and remunerations or other benefits as prescribed under the Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments until issuance of the regulations under Section 144 (1) of this Organic Act.

Section 198. All the provisions of laws, statutes, regulations, rules, notifications, orders or resolutions of the Cabinet which refer to state officials under the Organic law on anti-corruption being in force before the date this Organic Act comes into force shall be deemed to refer to public officials under this Organic Act.

Section 199. Any proceedings in court against local administrators, deputy local administrators, assistant local administrators and members of the local assembly in capacity as persons holding political positions shall continue to be under adjudication of the Court until finalisation and Organic Act on Counter Corruption B.E. 2542 (1999) and its amendments shall be deemed as remaining in force.

Section 200. In the initial period, to avoid excessive burden, the enactment of the Royal Decree under Section 130 may prescribe different enforcement dates for each level or category of state officials as deemed appropriate.

Countersigned by

General Prayut Chan-o-cha

Prime Minister