

## CONFLICT OF INTEREST LEGISLATION

### Background

Conflict of interest may be defined as a situation in which politicians, public servants, consultants, technical/scientific experts, subject matter specialists or even academics have an actual or potential interest (usually financial) that may influence or appear to influence the conduct of their official duties or the quality of advice or recommendations rendered by them.

In the context of decision making by the governance structures and institutions for public good, conflict of interest becomes even more critical in cases where the corporate or private sector or their lobbyists are involved.

*Duty of Loyalty* is a term used in corporate law to describe a fiduciaries' "conflicts of interest" and requires fiduciaries to put the corporation's interests ahead of their own. Extending this logic to governance structures and institutions, government employees, and those representing the government in any form or manner are required to put public interest or citizens' interests and rights ahead of their own interests or that of any other party.

The Fundamental Rights are set out in Part III of the Indian Constitution. The state cannot abridge those rights. The "right to life" is enshrined in Article 21 as a fundamental right. This right has been extended to cover the right to live with human dignity. In *Bandhua Mukti Morcha v Union of India* Justice Bhagwati referring to *Francis Coralie Mullin v Administrator, Union Territory of Delhi*, stated;

*It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullen's case, to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at the least, therefore, it must include protection of the health and strength of workers men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work etc. These are the minimum requirements which must exist in order to enable a person to live with human dignity and no State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these basic essentials.*

Thus *Duty of Loyalty* dictates that every government employee, institution, or anyone representing the government directly or indirectly in any manner ensure that, in cases where conflict of interest exists, the citizens' right to live with human dignity is put ahead of all other interests.

The need to avoid conflicts of interest in governmental decision-making, and particularly when constituting expert committees or advisory bodies, has found statutory recognition in Section 13(1) of the Food Safety and Standards Act, 2006, which requires that the experts co-opted on such committees must be "independent". The Supreme Court, in its Order dated February 8, 2011 in Writ Petition (Civil) No. 681 of 2004 (Center for Public Interest Litigation v/s Union of India and Others), enforced this requirement for independence to avoid conflicts of interest.

International and multilateral agencies and bodies have also accepted and recognised the need to protect public decision-making from private conflicts of interest. For example, Article 5.3 of the Framework Convention on Tobacco Control spells out clearly the duty of the state: "when Parties are setting and implementing public health policies related to tobacco control, they shall '*act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law.*' Similarly, the various agencies and bodies constituted under the aegis of the United Nations, including the World Health Organisation and other agencies, have framed guidelines to prevent conflicts of interest.

The current market liberalization has ushered in an era of new relationships between the state and the markets, with a potential for creating a new relationship between the state and the citizen. Private sector is increasingly being invited to present their solutions to the nation's ills. Yet many services, such as public goods – health care, nutrition, education, water, sanitation, protection of the environment, etc. – cannot be provided by markets. The primary duty of the private sector is to increase its profits for its shareholders, whereas the fundamental and inalienable duty of the State is to provide all its citizens, especially the weakest and poorest, with the minimum requirements to live a life with safety and dignity, regardless of the cost. The Constitution of India makes it incumbent that the state gives primacy to Art. 21 and its expanded interpretation as the right to live with human dignity.

The differing priorities – that of the state and that of the private sector – present in themselves a serious conflict of interest. The current draft **Legislation on**

**Conflict of Interest** is an attempt to safeguard the duty of the State towards its citizens and to uphold Art. 21 of the Indian Constitution as it is currently understood.

**DRAFT**  
**PREVENTION AND MANAGEMENT OF CONFLICT OF  
INTEREST ACT**

*CHAPTER I*  
**PRELIMINARY**

**1. Short title, extent and commencement---**

(1) This Act may be called the Prevention and Management of Conflict of Interest Act, .

(2) It shall extend to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

**2. Definitions.---** In this Act, unless the context otherwise requires---

(a) **“Commission”** means Conflict of Interest Commission set up under Section of the Act;

(b) **“Commissioner”** means Conflict of Interest Commissioner appointed under Section of the Act;

(c) **“Conflict of Interest”** means the existence of conflict between the public duty of a public official or consultant and the private interest of such official or consultant or any other person, in which the private interest of such official, consultant or other person could improperly influence the performance of official duties and responsibilities by any person, or result in breach of public trust, or be calculated to further the private or commercial interest of any person or organisation;

A conflict of interest may exist even if no unethical or improper act results from it. It can create an appearance of impropriety that can undermine

confidence in the individual, his/her constituency or organization. Both actual and perceived conflicts of interest can undermine the reputation and work of the public body/authority/project;

A conflict of interest situation exists when a public official/consultant/person serving on a public body/authority/project or whose recommendations are sought for any public project by any public authority or body, or who is inducted or proposed to be inducted on any committee or sub-committee or advisory body established for any public project has served in a private organisation within the past twenty four months, or is currently serving in a private organisation or will be serving in a private organisation within the following twenty four months.

(d) **“Consultant”** means any person whose expert services, advice or recommendations are sought for any public project by any public authority or body, or who is inducted or proposed to be inducted on any committee or sub-committee or advisory body established for any public project;(e) **“Person”** means any individual or association of persons or body or organisation, whether incorporated or not, and includes any trust, foundation or multilateral agency or organisation;

(f) **“Private interest”** means an interest that is of personal financial, commercial or other benefit to a public official or the organisation to which he belongs or has belonged or has links to, or that can lead to financial, commercial or other benefits to any person or corporation or organisation.

(g) **“Public authority or body”** means and includes:

- (i) the Central Government or any ministry or department thereof;
- (ii) a State Government or any ministry or department thereof;
- (iii) any authority, organisation or body established by or under the Constitution of India or under any law made by Parliament or the Legislature of any State;
- (iv) any authority, organisation or body owned, controlled or financed, directly or indirectly, by funds provided by the Central Government or any State Government;

- (v) any non-Government organisation which is substantially financed, directly or indirectly, by funds provided by the Central Government or any State Government;
  - (vi) any scientific, technical or research institution, university or deemed university which is consulted by, or whose facilities or faculty are utilized for obtaining expert services or recommendations for decision-making by, Governments or entities enumerated in (i) to (v) of this clause;
  - (vii) any private organisation, agency or body which is consulted by, or whose facilities or employees are utilized for obtaining expert services or recommendations for decision-making by, Governments or entities enumerated in (i) to (v) of this clause.
- (h) **“Public project”** for the purposes of this Act means any project or program or activity or scheme proposed or undertaken by the Central Government, a State Government or any of the entities enumerated in sub-clauses (i) to (v) of clause (g) of this Section, including projects, programs or activities proposed or undertaken through public-private partnership, privatization, international or multilateral cooperation or collaboration, or in furtherance of international treaties or conventions;
- (i) **“Public official”** for the purposes of this Act means any person employed or for the time being engaged by a public authority or body, whose services are at the relevant time utilized for any public project, and includes any member of a committee or consultative group constituted by any public authority or body for the purposes of a public project;

## *CHAPTER II*

### **CONFLICT OF INTEREST**

3. **Duty of public authority or body** ---- (1) A public authority or body which is engaged in planning or performance of a public project shall not engage or utilize any public official or person or consultant for such project if they know

or have reason to believe that such public official or person or consultant has or is likely to have a conflict of interest in respect of such project.

(2) If at any time it comes to the attention of such public authority or body that any public official or person or consultant has or is likely to have a conflict of interest in respect of such project, the public authority or body shall forthwith ensure that such public official or person or consultant ceases to be engaged or employed or associated with such project, regardless of whether such public project commenced before or after the coming into force of this Act, or whether the appointment or engagement of such public official, person or consultant was prior to this Act.

(3) If at any time it comes to the attention of such public authority or body that any recommendation was made or decision taken with the participation of a public official, person or consultant who has or was likely to have had a conflict of interest in respect of the concerned public project, the public authority or body shall forthwith re-examine such recommendation or decision after complying with sub-section (2), and upon such re-examination shall take a fresh decision or make a fresh recommendation if it deems fit.

(4) A public authority or body referred to in sub-section (1) shall not, except when it is unavoidable in the public interest, accept funding or donations from any person if they know or have reason to believe that such person has or is likely to have a conflict of interest in respect of such project;

Provided that where acceptance of funding from such person is unavoidable in the public interest, reasons will be recorded for the same, and the public authority or body will seek to obtain such funding from all competitors in the concerned field.

**4. Duty of individual**----- A public official, consultant or a member or employee of any public authority or body shall not render advice or make a recommendation or decision or participate in making a recommendation or decision in respect of a public project if the concerned person has a conflict of interest or knows or reasonably should know that in the making of the recommendation or decision there is the opportunity to further the concerned person's private interest or to further another person's private interest.

**5 Insider Information** ---- (1) A public official, consultant or a member or employee of any public authority or body shall not use information that is

obtained in his or her capacity as a public official, consultant, member or employee and that is not available to the general public to further or to seek to further the concerned person's private interest or to further another person's private interest.

(2) A public official, consultant or a member or employee of any public authority or body shall not divulge or communicate information described in subsection (1) to another person if the concerned person knows or reasonably should know that the information may be used for a purpose described in that subsection.

6. **Influence -----** A public official, consultant or a member or employee of any public authority or body shall not use his or her office to seek to influence a decision made by another person so as to further the concerned person's private interest or to further another person's private interest.

### **Gifts, services and benefits**

7(1) A public official, consultant or a member or employee of any public authority or body shall not accept any direct or indirect benefit including but not limited to fee, payment, gifts, services that are monetary or in kind, hospitality including travel costs, personal benefit, research funding, gifts to family members and the like, except lawful compensation, from any person who he knows or has reason to believe has or is likely to have a conflict of interest in respect of any public project with which the public official, consultant, member or employee of a public authority or body is concerned.

(2) Nothing contained in subsection (1) shall apply to a gift or personal benefit that is received as an incident of the protocol or social obligations that normally accompany the responsibilities of office, provided that such gift or personal benefit is immediately reported in writing to the concerned public authority or body.

(3) The gift disclosure statement shall

(a) be in the form prescribed by the Commissioner, and

(b) indicate the nature of the gift or personal benefit, its source and the circumstances under which it was given and accepted.

### **Procedure on Conflict of Interest**

8. Without prejudice to the provisions of Section 4, a public official, consultant or a member or employee of any public authority or body who knows or has reasonable grounds to believe that he or she has a conflict of interest in a matter



that is before the Committee/Panel/Board/ Authority/ Any other decision making or implementing body, shall, if present at a meeting considering the matter,

(a) disclose the general nature of the conflict of interest, and

(b) withdraw from the meeting without voting or participating in consideration of the matter.

9. **[Heading]** – If it is found that any public official, consultant or employee or member of any public authority or body has or had a conflict of interest, then such person shall forthwith be removed from the said public body or authority, and all decisions taken by the said public authority or body during the tenure of such a person herein removed shall thereafter be reviewed by public authority or body after the removal of such a person.

(2) Such public authority or body shall inform the Commission about the removal of the concerned person and the results of the review of all the decisions taken during the tenure of the said person, and shall also notify the same on their website.

**PROVISIONS APPLYING TO ALL MEMBERS OF COMMITTEE, MEMBERS  
OF PANELS AND MEMBERS OF BOARD/AUTHORITY/  
COMMISSION/OTHER DECISION MAKING/IMPLEMENTING BODY**

**Prohibited activities**

10. A member of the above bodies shall not

(a) engage in any trade, occupation or employment or in the practice of any profession that can be construed as giving rise to conflict of interest,

(b) engage in the management of a business carried on by a corporation or a Business Interest Organisation

(c) carry on business through a partnership or sole proprietorship,

(d) hold or trade in securities, stocks, futures or commodities, of commercial enterprises that may benefit directly or indirectly through policy decisions or implementation, or

(e) hold an office or directorship in a commercial enterprise or a Business Interest Organisation or have held an office or directorship in a commercial enterprise or a Business Interest Organisation for the past twenty four months.

### **Approval by the Commissioner**

#### **Restrictions applicable to the Committee/Panel/Board/Authority/Other decision-making/implementing body**

11. The above body/bodies or a member of such a body shall not knowingly award a contract to or approve a contract with, or grant a benefit to, a former member of the body until twenty-four months have expired after the date on which the former member ceased to hold office.

#### **Restrictions applicable to former members**

12. (1) No former member of the Committee/Panel/Board/ Authority/Other decision-making/implementing body shall, unless twenty-four months have expired after the date when he or she ceased to hold office as a member of the said body

(a) accept a contract or benefit that is awarded, approved or granted by the Committee/Panel/Board/ Authority/Other decision-making/implementing body, a member of the Committee/Panel/Board/ Authority/Other decision-making/implementing body or an employee of a department or office of the Central or State government, or a Public Sector Undertaking of the Central or State government

(b) make representations on his or her own behalf or on behalf of any other person, corporation, commercial sector or Business Interest Organisation with respect to a contract or benefit.

## **DISCLOSURE**

### **Public disclosure statement**

13. (1) Every public official, consultant, member or employee concerned with a public project shall file with the public authority or body a public disclosure statement in the form prescribed by the Commissioner.

(2) Where a consultant or member of any committee, sub-committee, advisory or recommendatory body established by a public authority or body is employed or engaged by any other person, corporation or organization, or is nominated or deputed for the purpose by any other person, corporation or organization, then such other person, corporation or organization shall also file with the public authority or body a **public disclosure statement** in the form prescribed by the Commissioner.

(3) A **public disclosure statement** shall be filed

(a) within thirty days after becoming a member of the Committee/sub-committee/ Advisory body/Panel/ Board/ Authority/Other decision-making/implementing body,

(c) in each subsequent year at the time specified by the Commissioner.

(4) Every person named in sub-section (1) who is a member on the coming into force of this section shall file a **public disclosure statement** in the prescribed form within thirty days after the coming into force of this section.

(5) Subject to subsection (6), a **public disclosure statement** shall contain

(a) interests of the member and, so far as is known by the member, of the member's spouse and minor children, and of private corporations controlled by the member, the member's spouse and minor children, or any of them, and

(b) any salary, financial assistance or other benefit the member has received from any person, corporation or organisation other than the employer during the preceding twelve months, or is likely to receive during the next twelve months.

(6) The following is not required to be disclosed in a **public disclosure statement** with respect to a member or the member's spouse or minor children:

(a) the primary residence owned or controlled by any such person;

(b) the primary recreational property owned or controlled by any such person;

(c) automobiles owned or controlled by any such person;

(d) items of domestic, household or personal use or ownership, including cash, non-convertible bonds, trust and bank certificates and registered retirement savings plans which are not self-administered.

(7) The person concerned shall file a statement of material change in the disclosure with the public authority or body, in the form prescribed by the Commissioner, within thirty days---

(a) after a change in the assets, liabilities or financial or business interests of the member or his or her spouse and minor children, or any private corporation represented by any of them,

(c) after an event causes a person to become or cease to be a member of the member's family, if the change or event would reasonably be expected to have a significant effect on the information previously disclosed.

#### **Failure to file public disclosure statement**

14(1) Where a public official, consultant, member or employee concerned with a public project fails to file a public disclosure statement within the prescribed period, the public authority or body shall not permit such person to attend the meetings of, or to participate in the committee, sub-committee, advisory or recommendatory body or in any other aspect of the concerned public project, and shall forthwith report the said failure to the Commissioner .

(2) Where a member fails to file a public disclosure statement by the date specified by the Commissioner under subsection (1) or fails to appear for consultation by the date specified by the Commissioner under subsection (1.1), the Commissioner shall prepare a report with the name of the member concerned and for public disclosure

15. The public disclosure statement filed by the concerned person, corporation or organization is deemed to be a public document, and shall be notified by the responsible public body/authority/ project and the Commission on its website. The same will made available on payment of reasonable charges to any person seeking a copy of the said statement.

## **CHAPTER \_\_\_\_**

### **OFFENCES AND PENALTIES**

16. **Offences and Penalties**----- (1) Whoever contravenes or attempts to contravene or abets in the contravention of section 3 or section 4 or section 5 or section 6 or section 8 or section 9 shall be punishable with imprisonment for a

term which may extend to five years, or with fine which may extend to ten lakh rupees, or with both.

(2) Whoever contravenes or attempts to contravene or abets in the contravention of section 11 or section 12 shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to five lakh rupees, or with both.

(3) Whoever contravenes or attempts to contravene or abets in the contravention of any provision of this Act or the Rules framed thereunder, for which no other penalty is prescribed, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one lakh rupees, or with both.

**17. Offences by companies. ----** (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation--*For the purpose of this section,--

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm

**18. Offences to be cognizable and non-bailable.** ---- The offences under this Act shall be cognizable and non-bailable.

**19. Cognizance of offences.** --- No Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall take cognizance of and try any offence punishable under this Act.

## **CONFLICT OF INTEREST COMMISSION**

### **Constitution of Commission**

20(1) The Central Government shall, by notification, constitute a body to be known as the Conflict of Interest Commission to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.

20(2) The Commission shall consist of the following Members, namely :-

(a) a Chairperson who is a person of eminence and has done outstanding work for promoting human rights and,

(b) eight Members, out of which at least six shall be from civil society organisations, and two shall be women, from the following fields, to be appointed by the Central Government from amongst persons of eminence, ability, integrity, standing and experience in

(i) education

(ii) public health including women and children's health,

(iii) food and nutrition

(iv) employment and livelihood

(v) agriculture

(vi) environmental sciences

(vii) natural resource management

(viii) economics

20(3) The office of the Commission shall be at Delhi.

### **Appointment of Commissioner**

21. The Central Government shall, by notification, appoint the Commissioner and other Members:

Provided that the Commissioner shall be appointed on the recommendation of a three member Selection Committee constituted by the Central Government under the Chairmanship the Prime Minister

### **Term of Office and conditions of service of Commissioner and Members**

22(1) The Commissioner and every Member shall hold office as such for a term of three years from the date on which he or she assumes office:

Provided that no Commissioner or Member shall hold the office for more than two terms:

Provided further that no Commissioner or any other Member shall hold office as such after he or she has attained

(a) in the case of the Commissioner, the age of sixty-five years; and

(b) in the case of a Member, the age of sixty years.

22(2) The Commissioner or a Member may, by writing under his hand addressed to the Central Government, resign his office at any time.

### **Salary and allowances of Commissioner and Members**

23. The salary and allowances payable to, and other terms and conditions of service of, the Commissioner and Members, shall be such as may be prescribed by the Central Government:

Provided that neither the salary and allowances nor the other terms and conditions of the Commissioner and Members, as the case may be, shall be varied to his or her disadvantage after his or her appointment.

### **Removal from Office**

24(1) Subject to the provisions of sub-section (2), the Commissioner may be removed from his or her office by an order of the Central Government on the ground of proved misbehaviour or incapacity.

24(2) Notwithstanding anything contained in sub-section (1), the Central Government may by order remove from office the Commissioner or any other Member, if the Commissioner or, as the case may be, such other Member,-

- (a) is adjudged an insolvent; or
- (b) engages during his or her term of office in any paid employment outside the duties of his office; or
- (c) refuses to act or becomes incapable of acting; or
- (d) is of unsound mind and stands so declared by a competent court; or
- (e) has so abused his office as to render his or her continuance in office detrimental to the public interest; or
- (f) is charged with Conflict of Interest; or
- (g) is convicted and sentenced to imprisonment for an offence, which in the opinion of the Central Government involves moral turpitude; or
- (g) is, without obtaining leave of absence from the Commission, absent from three consecutive meetings of the Commission.

24(3) No person shall be removed under this section until that person has been given an opportunity of being heard in the matter.

#### **Vacation of office by Commissioner or member**

25(1) If the Commissioner or, as the case may be, a Member,

- (a) becomes subject to any of the disqualifications mentioned in section 24; or
- (b) tenders his or her resignation under sub-section (2) of section 22, his or her seat shall thereupon become vacant.

25(2) If a casual vacancy occurs in the office of the Commissioner or a Member, whether by reason of his or her death, resignation or otherwise, such vacancy shall be filled within a period of ninety days by making afresh appointment in accordance with the provisions of section 21 and the person so appointed shall hold office for the remainder of the term of office for which the Commissioner, or a Member, as the case may be, in whose place he or she is so appointed would have held that office.

#### **Vacancies, etc. not to invalidate the proceedings of the Commission**

26. No act or proceeding of the Commission shall be invalid merely by reason of

- (a) any vacancy in, or any defect in the constitution of the Commission; or
- (b) any defect in the appointment of a person as the Commissioner or a Member;



(c) any irregularity in the procedure of the Commission not affecting the merits of the case.

### **Procedure for transacting business**

27(1) The Commission shall meet regularly at its office at such time as the Commissioner thinks fit, but three months shall not intervene between its last and the next meeting.

27(2) All decisions at a meeting shall be taken by majority:

Provided that in the case of equality of votes, the Commissioner, or in his or her absence the person presiding, shall have and exercise a second or casting vote.

27(3) If for any reason, the Commissioner is unable to attend the meeting of the Commission, any Member chosen by the Members present from amongst themselves at the meeting, shall preside.

27(4) The Commission shall observe such rules of procedure in the transaction of its business at a meeting, including the quorum at such meeting, as may be prescribed by the Central Government.

27(5) All orders and decisions of the Commission shall be authenticated by the Commissioner or any other officer of the Commissioner in this behalf

## **FUNCTIONS AND POWERS OF THE COMMISSION**

### **Functions of the Commission**

28 (1) The Commission shall perform all or any of the following functions, namely:-

(a) examine and review the safeguards provided by or under any law for the time being in force for prevention of Conflict of Interest in decision making and implementation of any policy or programme of the Government of India and State Governments

(b) present to the Central Government, annually and at such other intervals, as the Commission may deem fit, reports upon the working of those safeguards;

(c) examine all policies and programmes of the Central Government for Conflict of Interest in decision making and implementation and initiate proceedings in such cases;

(d) examine proposals for Public Private Partnerships for conflict of interest and make recommendations to the Central Government

- (e) examine policies, programmes and Public Private Partnerships initiated before the setting up of the Commission for conflict of interest and institute remedial action if such conflict of interest is found to be existing or having existed when the decision was taken or the programme implemented
- (f) study treaties and other international instruments and undertake periodical review of existing policies, programmes and other activities for conflict of interest;
- (g) spread Conflict of Interest literacy among various sections of the society and promote awareness of the safeguards available to prevent it through publications, the media, seminars and other available means;
- (h) inquire into complaints and take *suo moto* notice of matters relating to conflict of interest
- (i) such other functions as it may consider necessary for safeguarding the interests of the people and their human rights and any other matter incidental to the above functions.

(2) The Commission shall not inquire into any matter which is pending before a State Commission or any other Commission duly constituted under any law for the time being in force.

### **Powers of the Commission**

29 (1) The Commission shall, while inquiring into any matter referred to in clause (h) of sub-section (1) of section 27 have all the powers of a civil court trying a suit under the Code of Civil Procedure, 1908 and, in particular, in respect of the following matters, namely:-

- (a) summoning and enforcing the attendance of any person and examining him or her on oath;
- (b) discovery and production of any document;
- (c) receiving evidence on affidavits;
- (d) requisitioning any public record or copy thereof from any court or office; and
- (e) issuing commissions for the examination of witnesses or documents.

29(2) The Commission shall have the power to forward any case to a Magistrate having jurisdiction to try the same and the Magistrate to whom any such case is forwarded shall proceed to hear the complaint against the accused.

30. The Commission may take any of the following steps upon the completion of an inquiry held under this Act, namely :- .

(i) where the inquiry discloses Conflict of interest, initiate measures to remove such conflict

(ii) approach the Supreme Court or the High Court concerned for such direction, orders or writs as that Court may deem necessary;

### **Annual Report**

31. The Commissioner shall in each year submit to the an annual report describing the progress and activities of the Commissioner in the previous year.

## **INVESTIGATION INTO BREACHES**

### **Request for investigation**

32(1) Any person may request in writing that the Commissioner investigate an alleged breach of this Act by a member of a policy or decision-making or implementing body.

32(2) A request under subsection (1) shall be in the form of an affidavit and shall set out the grounds for the belief and the nature of the alleged breach.

32(3) The decision-making or implementing body may request that the Commissioner investigate any matter respecting an alleged breach of this Act by a member.

### **Investigation and inquiry**

33(1) On receiving a request under section 32, the Commissioner may conduct an investigation with or without conducting an inquiry.

33(2) The Commissioner shall provide the member who is the subject of the investigation with reasonable notice and shall give the member an opportunity to respond to the allegation.

33(2.1) When the Commissioner conducts an investigation or an inquiry under this section, the member who is the subject of the request under section 32 shall respond promptly and completely to all of the Commissioner's questions and requests for information.

33(3) Where the Commissioner elects to conduct an inquiry under this section, the Commissioner has all the powers and privileges conferred on a commissioner under Section 29(2) of this Act.

33(4) If the Commissioner is of the opinion that the request is frivolous, vexatious or not made in good faith, or that there are no grounds or insufficient grounds for an investigation, the Commissioner may refuse to conduct an investigation, or may cease the investigation.

33(5) If the Commissioner refuses to conduct an investigation or ceases an investigation, the Commissioner shall inform

(a) the member against whom the allegation was made, and

(b) the person or the decision making or implementing body who made the request

34. The provisions of this Act, and the powers and actions taken by the Commissioner or other authorities hereunder, shall be without prejudice to the provisions of the Prevention of Corruption Act and/or any other law dealing with conduct, discipline or vigilance of government servants or public authorities.

### **Police investigation or charge**

35 If the Commissioner, when conducting an investigation, discovers that the subject matter of the investigation is being investigated by police or that a charge has been laid, the Commissioner shall suspend the investigation until the police investigation or charge has been finally disposed of, and shall make public disclosure of the matter.

### **Report of Commissioner**

36(1) Where a request is made under section 32 and the Commissioner has determined that the request does not fall within the scope of subsection 33(4), the Commissioner shall, upon completion of an investigation, report to

(a) the decision making or implementing body to which the member belongs,

(b) the member who is the subject of the investigation,

(c) if the request was made by a member under subsection 32(1), that member.

36(2) Where it appears to the Commissioner that a report may adversely affect a member, the Commissioner shall inform the member of the particulars and give the member the opportunity to make representations before the Commissioner completes the report.

**36(3)** The report of the Commissioner shall set out

(a) the facts found by the Commissioner,

(b) the findings as to whether or not a member has breached the Act and the nature of the breach, and

(c) the recommended sanction, if any

**36(4)** The Commissioner's report shall remain confidential until it is laid before the decision making or implementing body the member belongs to, and no person shall disclose all or any portion of it before that time.

### **Recommended sanctions**

**37(1)** Where the Commissioner conducts an investigation under section 33 and finds that a member has breached any of sections 2 to 4, 6,8 to 11, 13, inclusive, or has failed to file a gift disclosure statement, a public disclosure statement or a statement of material change within the time provided by this Act or has failed to disclose relevant information in that statement, the Commissioner may recommend that the member be expelled from membership in the said decision making or implementing body.

### **Public Disclosure of sanctions**

**38** Where the Commissioner conducts an investigation under Section 33 and finds that a member has breached any of the sections mentioned in 37(1) the Commissioner will make a public disclosure of the findings and the sanctions against the member and post the same on the website of the Commission.