



BE PART OF THE FIGHT!

ACC NAMIBIA PRESENTATION

**“OECD AFRICA ACADEMY FOR TAX AND FINANCIAL CRIME
INVESTIGATION: CONDUCING FINANCIAL INVESTIGATION
(FOUNDATION) VIRTUAL PROGRAMME**

BY

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PREAMBLE

- **Corruption has become a global threat**
- **This evil is a serious obstacle to social stability and economic growth**

PREAMBLE “cont”

- It harms the economy, undermines the rule of law and weakens the public trust in government
- More and more nations of the world realize joint and concerted efforts are very crucial to eradicate corruption



NAMIBIA'S COMMITMENT TO INTERNATIONAL ANTI-CORRUPTION CONVENTIONS / PROTOCOLS

OUR GOVERNMENT SIGNED THE United Nations Convention Against Corruption (UNCAC) on 09th December 2003 in Merida, Mexico when the Convention was first opened for signature from 9 to 11 December 2003. Government then ratified same Convention on 03 August 2004.

The Government also signed and ratified the following Conventions and Protocols:

Convention/Protocol	Date Signed	Date Ratified
United nations Conventions Against Transnational Organized Crime	29 December 2000	16 August 2002
Southern Africa Development Community Protocol Against Corruption	14 August 2001	27 April 2004
African Union Convention on Preventing and Combating Corruption	09 December 2003	27 April 2004

INSTITUTIONAL OVERVIEW

The Anti-Corruption Act, 2003 (Act 8 of 2003) was passed in 2003 but only came into force in April 2005. Director-General and Deputy Director -General were nominated by the then His Excellency President, Hifikepunye Pohamba and appointed by the National Assembly in November 2005.

The Anti-Corruption Commission was commissioned on 1 February 2006. Section 2(1) of the Anti-Corruption Act, 2003 (Act No 8 of 2003) emphasizes the independence and impartiality of the Anti-Corruption Commission (ACC). The autonomy of the ACC requires that it conducts its business and makes its decisions without influence from any institution. In the spirit of the autonomy of the ACC, the institution continues to lead the fight against corruption through effective law enforcement and the implementation of preventative measures.

At the time, ACC had to deal with numerous administrative matters to ensure that the Commission is up and running. One of the immediate items undertaken was a benchmarking exercise to neighbouring countries such as Kenya and Botswana. Fact finding visit to Botswana helped ACC to come up with a proposed staff structure to the Public Service Commission.

INSTITUTIONAL OVERVIEW (Cont..)

To date, the Anti-Corruption Commission has 106 staff members; comprising of the Director-General, Deputy Director-General; Executive Director; 30 Investigators; 19 Public Education and Corruption Prevention Officers; 25 Administration staff and 2 Security and Risk Management Officers. Furthermore, the Anti-Corruption Commission had successfully constructed its own head office in Windhoek and managed to open three regional offices in Oshakati, Otjiwarongo and Swakopmund respectively.

MANDATE/FUNCTION OF ACC (in brief)

In terms of section 3 of ACA, the ACC's main function is to investigate matters that in its opinion raise suspicion that the following has occurred or is about to occur :

- Investigate corrupt practices and alleged corrupt practices as defined in Chapter 4 of the Anti-Corruption Act:- **CONDUCT CONSTITUTING CORRUPTION; OR CONDUCT PRONE OR CONDUCIVE TO CORRUPTION.**
- To assemble evidence and exchange information with appropriate bodies ,including bodies or authorities of other countries in relation to corrupt practices. Upon completion of an investigation by the ACC, the matter related to corrupt practices or any other offence discovered during the investigation, the Director-General must refer the matter and all relevant information and evidence assembled by ACC, to the Prosecutor-General by in terms of section 31(1) and 31(2) of ACA .
- To take measures for the prevention of corruption in public, private bodies including the examination of practices, systems and procedures of public ,private bodies and the facilitation of discovery of incidents that constitute corrupt practices and secure the revision of those practices.

METHODS OF REPORTING

- Information regarding a corrupt practice can be received orally or in writing, but if orally it must be reduced to writing and signed by the informant/whistleblower (section 17 of ACA).
- The ACC can on its own accord initiate investigations of alleged corrupt practices.

POWERS OF ACC

- Persons can be summoned to appear in front of the Commission and to produce any document or article requested in such summons (section 21)
- Searches done under warrant but can also be done without warrant (section 22, 23, 24 & 25 of ACA).
- Searches of accounts at financial institutions can be done under a letter by the Director-General authorizing the authorized officer or special investigator to do so (section 27 of ACA)

POWERS OF ACC “cont”

Persons can be summoned before the Commission to furnish a statement setting out all movable and immovable property belonging to him/her, when it was acquired, how it was acquired, the price paid, any goods in trust (section 26 of ACA).

POWERS OF ARREST

- Authorized officers (Investigators) of the Commission (ACC) may without a warrant arrest any person whom he or she reasonably suspects has committed or is about to commit an offence under the Anti-Corruption Act (Section 28 of ACA).
- If during an investigation of a suspected offence under the ACA another offence is disclosed, the authorized officer may, without a warrant arrest a person if he or she reasonably suspects that the person has committed the offence and that such other offence is connected with or was either directly or indirectly facilitated by, the suspected offence under the ACA

POWERS OF ARREST “cont”

A person arrested must be taken forthwith to a police station to be dealt with in accordance with the Criminal Procedure Act, (Act No. 51 of 1977), which deals with administering of Judge's rules, detaining the suspect, charging the suspect formally, obtaining finger prints and taking the suspect to court. A suspect must be brought to court within 48 hours as from the time of arrest and detention. The suspect's attorney may be present when the suspect is interviewed to assist the suspect in answering questions or giving statement, also to see if investigators do not infringe the legal and constitutional rights of suspects.

Currently we are considering amending the law to accord us title as Peace Officers to exercise powers under the CPA to obtain fingerprints, photographs and serve process.

OTHER STAKEHOLDERS

- Financial Intelligence Centre (FIC)
- Office of the Prosecutor-General
- Ministry of Justice
- Ministry of Finance (Inland Revenue Department)
- Namibian Correctional services
- The public

Title: Case study on corruption and financial crime

Case study – The state vs Guo Yunhai & another

- The Anti-Corruption Commission received a complaint of alleged corrupt practices after a Taxpayer trading as ABC was placed in mora by Namibia Revenue Agency via letter of demand regarding outstanding Tax balance of eight million Namibian dollars.
- The taxpayer approached a staff member of NamRA with a preposition of corruptly offering a bribe of N\$150,000.00 to stop the envisaged investigations into his affairs.
- A joint sting Operation by the Anti-Corruption and Namibia Revenue Agency was conducted.
- The taxpayer was caught red-handed offering a bribe of N\$60,000.00 and was arrested on the scene.
- Taxpayer was charged and appear before court and granted bail of N\$50,000.00 with strict conditions.
- The matter is still in court roll for court proceedings.

DIFFICULTIES/CHALLENGES OF INVESTIGATING CORRUPTION CASES

- ❑ Secret nature of corruption
- ❑ Satisfied party/tainted witnesses
- ❑ Culture of silence
- ❑ Hostile witness
- ❑ Delay of trials
- ❑ MLAs are taking a long process that may delay the investigation

THANK YOU

FOR YOUR ATTENTION

ANY QUESTION?

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