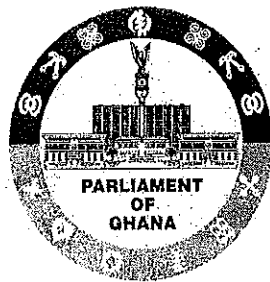


**IN THE SECOND SESSION OF THE SIXTH
PARLIAMENT OF THE FOURTH REPUBLIC OF
GHANA**



**REPORT OF THE COMMITTEE ON
CONSTITUTIONAL, LEGAL AND PARLIAMENTARY
AFFAIRS**

**ON THE
CONDUCT OF PUBLIC OFFICERS BILL, 2013**

NOVEMBER 2014

Xec No 1555 C,
Law No BR/CPOB/19.

1.0 INTRODUCTION

1.1 The **Conduct of Public Officers Bill, 2013** was presented to Parliament and read the first time on **Monday, 16th December, 2013**. In accordance with Article 106(4) and (5) of the Constitution and Order 179 of the Standing Orders of the House, the Rt. Hon. Speaker referred the Bill to the Committee on Constitutional, Legal and Parliamentary Affairs for consideration and report.

1.2 The Committee during the consideration of the Bill received a Memorandum from the Commission on Human Rights and Administrative Justice (CHRAJ) expressing its view on the Bill. In attendance to assist the Committee were Officials from the Drafting Division of the Ministry of Justice and Attorney-General's Department.

2.0 REFERENCE

2.1 The Committee referred to the following Documents during its deliberations.

- i. The 1992 Constitution
- ii. The Standing Orders of Parliament
- iii. The Public Officers Act, 1962 (Act 114)
- iv. The Public Office Holder's (Declaration of Assets and Disqualification) Act, 1998 (Act 550)
- v. The National Anti-Corruption Action Plan (NACAP) (2012-2021)

- vi. The United Nations Convention Against Corruption, 2003
- vii. The African Union Convention on Preventing and Combating Corruption, 2003

3.0 BACKGROUND

3.1 Chapter 24 of the 1992 Constitution provides for a Code of Conduct for Public Officers in respect of conflict of interest, declaration of assets and liabilities among others. Public office is defined in Article 295 of the Constitution, to ***“include an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament; and an office in a public corporation established entirely out of public funds or moneys provided by Parliament”***.

3.2 Article 284 of the Constitution places a responsibility on public officers not to put themselves in a position where their personal interest conflicts or is likely to conflict with the performance of the functions of their office.

3.3 In furtherance of the provisions of Chapter 24 of the Constitution, CHRAJ is tasked to investigate allegations of contraventions of or non-compliance with, the code of conduct for public officers, including conflict of interests. However, the Constitution does not define in detail situations that constitute conflict of interest.

3.4 The absence of a clear definition of conflict of interest and a unified code of conduct for public officers, make the process of investigating allegations of conflict of interest difficult for both CHRAJ and the public officer against whom an allegation is made. In addition, existing legislations relating to conduct of public officers are also not adequate to deal with public office accountability. Hence the need to define, identify and manage conflict of interest to ensure that, public officers perform their functions with integrity, in a fair and unbiased manner and in accordance with the Constitution.

3.5 As part of the efforts by CHRAJ to assist public officers to identify, manage and resolve conflicts of interest, CHRAJ in 2006 produced Guidelines on Conflict of Interest. The Document, though very useful and informative, did not contain enforcement that could be used to prosecute offenders. CHRAJ has identified that a number of corruption allegations that are handled emanate from conflicts between the public interest and private, professional or commercial interest of a public officer. CHRAJ therefore formulated the NACAP to complement the efforts aimed at fighting corruption.

3.6 Corruption is a canker which is known to foster public sector incompetence and ineptitude; debase public morality; promote and sustain inefficient service delivery;

perpetuate poverty; and ultimately, entrench underdevelopment. A strategy to combat corruption is therefore to understand, identify, manage conflicts of interest and create an enabling environment within which Anti-Corruption Agencies and Institutions of Governance including CHRAJ, the Economic and Organised Crime Office, the Judiciary, the Auditor-General and the Police Service can effectively operate.

3.7 Ghana being a Member of the United Nations and the African Union is also obliged to upgrade its laws to meet the UN Conventions and African Union minimum standards as contained in the UN Conventions Against Corruption and the AU Convention on Preventing and Combating Corruption. Furthermore, the Inter-Governmental Action Force against Money Laundering in West Africa (GIABA) which Ghana is a Member, has also recommended the enactment of this Legislation to plug loopholes as far as the legal framework on anti-corruption for public officers is concerned. Hence the introduction of the Bill in Parliament.

4.0 OBJECT OF THE BILL

4.1 The Bill seeks to give effect to Chapter 24 of the 1992 Constitution, domesticate the United Nations Convention Against Corruption and the African Union Convention on Preventing and Combating Corruption already ratified by

Parliament. This will promote a high standard of ethics and reduce corruption in the public service as these Conventions provide the international template for anti-corruption.

4.2 The Bill also seeks to complement existing Legislations such as the Public Officers Act, 1962 (Act 114) and the Public Office Holder's (Declaration of Assets and Disqualification) Act, 1998 (Act 550), to shape the conduct of public officers further and make them more accountable to the people.

5.0 OBSERVATIONS

5.1 Section 4(1) of the Bill states "*A public officer who holds an office specified in the First Schedule shall submit to the Auditor-General, a declaration of*

(a) assets owned directly or indirectly by the public officer, and

(b) liabilities owed directly or indirectly by the public officer".

The Assets to be declared as stated in Clause 5(g) include "*jewelry or objects of art of the value of one thousand Ghana cedis or more*". The Committee observed that the value of jewelry or objects of art to be declared is too low. Clause 5(g) of the Bill states "*jewelry or objects of art of the value of one thousand Ghana cedis or more*". Considering the current value of jewelry and that of art

work, the Committee felt that public office holders would end up declaring almost every item of jewelry. The Committee therefore proposes to increase the value of asset to be declared in respect of Clause 5(g) to ten thousand Ghana Cedis. This will allow relatively more expensive items of jewelry and art work only to be declared.

5.2 Clause 14 of the Bill mandates the Commission on Human Rights and Administrative Justice to provide a Code of Conduct for all Public Officers. The Committee is proposing the deletion of the entire Clause because each public office has its own Code of Conduct since peculiarities exist in all the public service institutions. As a result each public service would develop its own Code of Conduct peculiar to it. It should therefore not be the responsibility of CHRAJ to determine a general Code of Conduct for all officers working in public office. What CHRAJ should do is rather to ensure that all the Agencies enforce their respective Codes of Conduct.

5.3 The Bill in Clause 22 lists the types of gifts public officers are permitted to accept whilst Clause 23 places on public officers the duty of check, whether the gift, favour or advantage being offered would not have any influence in a decision to be taken. Clause 25(1) prohibits public officers from accepting cash of any amount for the discharge of

official duty. The Committee however is of the view that gifts given to public officers in appreciation of an official duty should not form part of prohibited gifts.

5.4 The Committee also observed that the provision in Clause 24 of the Bill on forfeiture and disposal of prohibited gifts read together with Clause 56 raises the issue of implementation by the leading agencies: CHRAJ and the Auditor-General. The combined effect of the two Clauses is that power is being given to the leading institutions to carry out the same function, especially Clause 56(d) and (e). The Committee has therefore proposed amendments to bring clarity to the two (2) Clauses.

5.5 The Bill in Clause 32(1) prohibits public officers from engaging in political activity that would compromise or be seen to compromise political neutrality. Clause 32(1) states: "*A public officer shall not, in the performance of an official function*
(a) act as an agent for or further the interest of a political party, or
(b) indicate support for or opposition to a political party or a candidate in a public election."

The Committee observed that Members of Parliament (MPs) and Political Appointees according to the Bill, are banned from engaging in political activities since they are also public officers. The Committee has therefore

proposed an amendment to the Clause to exclude MPs and Political Appointees from been politically neutral.

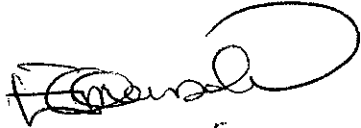
5.6 Finally, it was observed by the Committee that the provisions of Clause 44(6) provides some window of opportunity for public officers to indulge in corruption and get away with it. The Clause states: "*Subsection (5) does not apply where the public officer is seriously ill or dead*". The import of the provision is that, a public officer may contravene the Code and may not be prosecuted because the public officer is seriously ill or dead leaving his family members to benefit from the booty or assets he acquired through corruption. The Committee therefore proposes to delete the Sub-clause from the Bill to give way for public officers to be prosecuted in the circumstances.

6.0 CONCLUSION

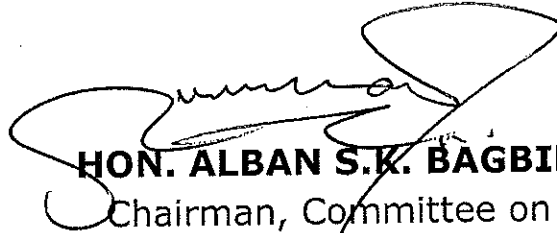
6.1 Public officers have a responsibility to be loyal to the state and maintain high standards of integrity in the performance of their official functions. It is the expectation of the Committee that, with the passage of the Bill, the way would be cleared for CHRAJ to litigate cases of corruption, especially conflict of interest situations involving public officers.

6.2 The Committee therefore recommends to the House to adopt its Report and pass the Bill subject to the attached Amendments.

Respectfully submitted.



ERIC OWUSU-MENSAH
Clerk, Committee on
Constitutional, Legal and
Parliamentary Affairs



HON. ALBAN S.K. BAGBIN
Chairman, Committee on
Constitutional, Legal and
Parliamentary Affairs

NOVEMBER 2014

APPENDIX

AMENDMENTS PROPOSED TO THE CONDUCT OF PUBLIC OFFICERS BILL, 2013

- i. Clause 5 – Amendment proposed – Delete paragraph (g) and substitute the following for paragraph (g):
“(g) jewellery or objects of art of the value of ten thousand Ghana cedis or more”.

- ii. Clause 5 – Amendment proposed – Add a sub-clause (2) to provide for an amendment of the amount by legislative instrument as follows:
“(2) The Commissioner may, by legislative instrument, amend the value of the jewelry or object of art specified in subsection (1)”.

- iii. Clause 6 – Amendment proposed – Delete Clause 6 and substitute the following:
“6. Where a public officer, after declaration of assets, acquires an asset which is required by section 5 to be declared, that asset shall be deemed to have been acquired unlawfully unless that asset is shown to
(a) have been acquired from
 - (i) the lawful income of that person;
 - (ii) a loan; or
 - (iii) any other lawful means; or

- (b) be
 - (i) an acceptable gift; or
 - (ii) an inheritance.”

- iv. Clause 9 – Amendment proposed – Delete paragraph (a) and substitute the following:
“(a) a court of competent jurisdiction.”

- v. Clause 11 – Amendment proposed – Delete “or clarification” from the heading.

- vi. Clause 11 – Amendment proposed – Delete “or clarification” in paragraph (a), line 1.

- vii. Clause 11 – Amendment proposed – Delete “or clarification” in paragraph (b), line 1.

- viii. Clause 12 – Amendment proposed – Delete sub-clause (3)(a) and substitute the following:
“(a) except as provided in subsection (2)(b), access information obtained under this Act and held by the Auditor-General’s Office,”.

- ix. Clause 13 – Amendment proposed - Delete “copies of” in sub-clause (2), line 1.

- x. Clause 14 – Amendment proposed – Delete Clause 14.
- xi. Clause 15 – Amendment proposed – Delete Clause 15.
- xii. Clause 16 – Amendment proposed – Delete Clause 16.
- xiii. Clause 17 – Amendment proposed – Delete paragraph (g) and substitute the following for “(g) observe the dress code of that public office.”
- xiv. Clause 20 – Amendment proposed – Delete heading and substitute the following:
“Use of office for personal gain”
- xv. Clause 20 – Amendment proposed – Delete sub-clause 1 and substitute the following:
“(1) A public officer shall not use the public officer’s office for the profit of the public officer or for the profit of any other person.”
- xvi. Clause 20 – Amendment proposed – Delete “improperly” in sub-clause (2), paragraph (a), in line 1.

- xvii. Clause 21 – Amendment proposed – Delete “from a person with whom the public officer comes into contact in relation to the public officer’s functions” in paragraph (a), lines 3 to 5.

- xviii. Clause 21 – Amendment proposed – Delete “from a person with whom the public officer comes into contact in relation to the public officer’s functions” in paragraph (b), lines 3 to 5.

- xix. Clause 21 – Amendment proposed – Delete paragraph (c) and substitute the following:
“(c) accepts cash of any amount for the discharge of a duty.”

- xx. Clause 22 – Amendment proposed – Delete “souvenir” in paragraph (a) and substitute “gift”.

- xxi. Clause 22 – Amendment proposed – Delete “and” in paragraph (f), line 1 and substitute “or”.

- xxii. Clause 23 – Amendment proposed - delete “is in appreciation of an official duty or” in sub-clause (1), paragraph (a), lines 1 and 2.

- xxiii. Clause 23 – Amendment proposed – Delete “flout” and substitute “contravene” in sub-clause (1), paragraph (e).
- xxiv. Clause 24 – Amendment proposed – Delete Clause 24 and substitute the following:
“24. The Commissioner may, by legislative instrument, make Regulations for
(a) the forfeiture and disposal of prohibited gifts;
and
(b) any other matter for the effective implementation of this Act.”
- xxv. Clause 24 – Amendment proposed – Delete Clause 24 and add to Clause 56 as sub-clause (2).
- xxvi. Clause 25: Delete sub-clause (2), paragraph (a) and substitute the following:
“(2)(a) declare the personal interest to the head of the public body in which that public officer is employed, the Commission or another appropriate body in writing, orally or in any other manner prescribed by law and the public officer shall comply with any directions to avoid or resolve the conflict;”.
- xxvii. Clause 25 – Amendment proposed – Delete sub-clause (3) and substitute the following:

“(3) A public officer who complies with a declaration under sub-section (2)(a) is not liable for a matter arising from the declaration.”

xxviii. Clause 26 – Amendment proposed - sub-clause (1), lines 1 and 2 and substitute the following:

“(1) A public officer shall report to the head of the public body in which that public officer is employed, the Commission or another appropriate body where”.

xxix. Clause 31 – Amendment proposed – Put “cash or” before “property” in sub-clause (1), line 2.

xxx. Clause 32 – Amendment proposed – Add a new sub-clause as follows:

“(3) Sub-section (2) does not apply to a Member of Parliament or a political appointee.”.

xxxi. Clause 35 – Amendment proposed – Delete “or neglect to settle them” in sub-clause (2), line 2.

xxxii. Clause 40 – Amendment proposed – Delete sub-clause (2) and substitute the following:

“(2) A public officer who contravenes subsection (1) commits a misconduct and is subject to the disciplinary rules of the public service concerned.”

- xxxiii. Clause 41 – Amendment proposed - Delete sub-clause (4).
- xxxiv. Clause 42 – Amendment proposed – Delete sub-clause (1) and substitute the following:
“(1) A public officer may in the discharge of official duty, publish a book, contribute to or participate in discussions in the media.”
- xxxv. Clause 42 – Amendment proposed – Delete “the public media” and substitute “discussions in the media” in sub-clause (2), line 2.
- xxxvi. Clause 43 – Amendment proposed – Delete “the directives of the institution to which the public officer belongs” and substitute “law”.
- xxxvii. Clause 44 – Amendment proposed – Insert “of the public officer’s office” after “Code of Conduct” in sub-clause (1), line 2.
- xxxviii. Clause 44 – Amendment proposed - Insert “of the public officer’s office” after “Code of Conduct” in sub-clause (5), line 2.
- xxxix. Clause 44 – Amendment proposed – Delete sub-clause (6).

- xli. Clause 46 – Amendment proposed – Interchange Clauses 46 and 47.
- xli. Clause 47 – Amendment proposed – Delete sub-clause (2) of the old Clause 47.
- xlii. Clause 48 – Amendment proposed – Delete “banker” and substitute “bank” in sub-clause (1), paragraph (c), line 2.
- xliii. Clause 48 – Amendment proposed – Delete sub-clause (2), paragraph (a).
- xliv. Clause 49 – Amendment proposed - Delete sub-clause (1).
- xliv. Clause 49 – Amendment proposed - Delete sub-clause (2).
- xlvi. Clause 49 – Amendment proposed – Delete “the” after “Where” and insert “involving a public officer” in sub-clause (3), line 1.
- xlvii. Clause 50 – Amendment proposed – Delete sub-clause (2) and substitute the following:
“(2) The administrative procedures shall be published in

- (a) the *Gazette*, and
- (b) the electronic and print media.”

xlvi. Clause 52 – Amendment proposed – Delete “service” and substitute “body” in Clause 52, line 3.

xlix. Clause 53 – Amendment proposed – Add a sub-clause (2) as follows:

“(2) An appointment into public office is subject to subscription to the oath of office referred to in subsection (1).”.

i. Clause 54 – Amendment proposed – Delete Clause 54 and substitute the following:

“54. Each public officer shall sign the Code of Conduct of the respective office of the public officer before taking up office.”

ii. Clause 56 – Amendment proposed – Delete Clause 56 and substitute the following:

“56(1) The Auditor-General may, by legislative instrument, make Regulations for

- (a) the declaration of assets and liabilities;
- (b) the verification of assets for the purpose of judicial proceedings; and
- (c) the access to the declaration by the person who made the declaration and any other

lawfully authorised person.”

- (2) The Commissioner may, by legislative instrument, make Regulations for
- (a) the forfeiture and disposal of prohibited gifts; and
 - (b) any other matter for the effective implementation of this Act.”.

- lii. Clause 57 – Amendment proposed – Delete the definition of ‘Auditor-General” and substitute the following:
“Auditor-General” means the person appointed to that office under Article 70(1)(b) of the Constitution.”
- liii. Clause 57 – Amendment proposed - Insert “Justice” after “Administrative” in the definition for “Commission” in line 3.
- liv. Clause 57 – Amendment proposed – Insert a definition after “court” for “extended family” as follows:
““extended family” means a group of people who trace their lineage from a common ancestor”;
- iv. Clause 57 – Amendment proposed – Delete “means” and substitute “includes” in the definition for “family”.

- Ivi. Clause 57 – Amendment proposed – Insert “cash or” after “means” in the definition for “gift”.
- Ivii. Clause 57 – Amendment proposed – Delete “relative” and substitute “a member of the extended family” in the definition for “personal interest”.
- Iviii. Clause 57 – Amendment proposed – Delete the definition for “public office” and replicate the definition for “public office” in the Constitution as follows:
“ “public office” includes an office the emoluments attached to which are paid directly from the Consolidated Fund or directly out of moneys provided by Parliament and an office in a public corporation established entirely out of public funds or moneys provided by Parliament.”
- lix. Clause 57 – Amendment proposed – Delete the definition for “Public Records and Archives Administration Department” and substitute the following:
“Public Records and Archives Administration Department” means the department established under the Public Records and Archives Administration Department (Establishment) Instrument, 1996 (L.I. 1628)”.
- ix. Clause 57 – Amendment proposed – Delete the definition for “relative”.

- ixi. Clause 57 – Amendment proposed – Delete “participation” in the definition for “serious offence” in paragraph (a), line 1 and substitute “participation”
- ixii. Clause 57 – Amendment proposed – Delete “and” in the definition for “serious offence” in paragraph (a), line 5 and substitute “goods or”.
- ixiii. First Schedule – Amendment proposed – Delete paragraph 20 and substitute the following:
“Officials of the Driver and Vehicle Licensing Authority not below the rank of a clerical officer”.
- ixiv. First Schedule – Amendment proposed – Delete “Internal Revenue Service” and substitute “Internal Revenue Division of the Ghana Revenue Authority” in paragraph 22, line 2.
- ixv. First Schedule – Amendment proposed – Delete “Customs Excise and Preventive Service” and substitute “Customs Excise and Preventive Division of the Ghana Revenue Authority” in paragraph 22, line 2.
- ixvi. Second Schedule – Amendment proposed – Insert “Nature of interest in land” in the third columns of the first row in paragraph 2(a).

ixvii. Second Schedule – Amendment proposed – Delete “one thousand Ghana Cedis” and substitute “ten thousand Ghana Cedis” in paragraph 2(g).

ixviii. Second Schedule – Amendment proposed – Delete “one thousand Ghana Cedis” and substitute “ten thousand Ghana Cedis” in paragraph 2(i).