

# CONFLICTS OF INTEREST AND ETHICS IN GOVERNMENT

## BRIEFING NOTE: GHANA

### **I. Jurisdictional Overview:**

Ghana is a constitutional democracy with a central government and ten administrative regions. Under Ghana's unicameral parliamentary system, the elected President appoints ministers of state from among members of Parliament. The Council of State acts as an advisory body to the President and is formed through appointment by the President and election by the 10 administrative regions.

The Government of Ghana (Government) does not have conflict of interest legislation or a code to that effect. Some conflicts of interests are addressed in a code of conduct for public officials within the Constitution of 1992, while other guidelines can be found in separate legislation. The Commission on Human Rights and Administrative Justice has published a report called "Guidelines on Conflict of Interest" to assist public officials in identifying conflicts of interest. This note will focus on these available applicable provisions.

### **II. Scope of Coverage of Conflict of Interest Provisions:**

The Constitution's Code of Conduct (herein after referred to as the "Code") applies to all public officials. A public officer is defined as a person who holds public office, which includes the President, the Vice-President, Members of Parliament, Minister of State or Deputy Minister, Chief Justice, Justice of the Superior Court of Judicature, chairman of a regional tribunal, the Commissioner for Human Rights and Administrative Justice and his deputies and all judicial officers, Ambassador or High Commissioner, Secretary to the Cabinet, Head of Ministry or Government department and officer in the Civil Service. The chairman, managing director, general manager and departmental head of a public corporation or company in which Ghana has a controlling interest in are also covered under the code.

Other relevant legislation includes the *Financial Administration Act of 2003* which applies to all persons or officers employed in the collection, management or disbursement of public or trust moneys or with the control of Government stores; and the *Public Procurement Act of 2003* which applies to all Government institutions, departments, ministries, enterprises, banks and agencies.

Violations of the Code or any piece of legislation by a public official can be investigated by the Commission on Human Rights and Administrative Justice (herein after referred to as the "Commission"), a body created by the Constitution, and the *Human Rights and Administrative Justice Act of 1993*. The Commissioner is appointed by the President and Council of State. The Commission's "Guidelines on Conflict of Interest" (herein after referred to as the "Guidelines") apply to all public officials listed in the Code. The Serious Fraud Office serves the same function and was established under the *Serious Fraud Office Act of 1993*. Both investigatory bodies rely on the Attorney General for prosecution of the cases investigated.

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### **III. Prohibited Activities:**

#### **A. General Prohibition on Conflicts of Interest**

A conflict of interest is defined as the confliction of personal interests with the duties of a public officer. The Code bars public officials from holding a chairmanship position on the governing body of a public corporation while holding a position of service in that corporation. The definition included in the Code is seen as limited by the Commission. The Guidelines define a conflict of interest as the promotion of a personal interest which conflicts with the duties of a public official or results in a benefit through the held position. Such conflicts of interest include any interest or benefit gained, involvement in a business transaction and any act or omission which conflicts with a public official's duties.

The Code does not prohibit a public official from accepting offers of employment or require the disclosure of offers made to the public officer.

The Code requires a public officer to declare all property and assets before taking office, and again every four years and at the end of their time in office. Any property or assets acquired by a public officer after the initial declaration that is not found to be reasonably attributable to income, gift, loan, inheritance or any other reasonable source will be held to violate the Code.

The Code does not prohibit public officials from disclosing or using information learned through the held position (insider information) for benefit. The Code does not prohibit the use of the public position to influence others for their interest or that of their family.

The Guidelines are more comprehensive than the Code but only serve to assist public officials in identifying and dealing with conflicts of interest.

#### **B. Gifts**

The Code does not prohibit the acceptance or offering of a gift by a public official. However, it is a criminal offence for a public official to accept a gift and be influenced by that gift, promise or any valuable consideration.

#### **C. Travel**

No prohibition on travel is contained within the Code or any other legislation.

#### **D. Contracts with government**

The Code does not prohibit a public official from entering a contract with a public sector entity in which the public official received a benefit. The Code does not prohibit a public official from gaining interest in a partnership or private corporation that is party to a

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contract with a public sector entity under which the partnership or corporation receives a benefit.

The *Public Procurement Act* does not require that the public officer or entity be impartial in allocating contracts with the government. The Act requires all officials to act in accordance with the Code requiring public officers not to put themselves in a position where personal interests conflict or are likely to conflict with the performance of the functions of their office duties. However, neither the Code nor the Act prohibit a public official from entering into a contract or allocating a government contract to an entity they have a direct benefit in.

The Act requires that the bid processes be fair, open and transparent. However, the Act focuses more on the misconduct of bidders than on the actions of the procurement entities. Government entities do not have to explain the basis of the decision-making process. As such the procurement process or basis of decision-making need not be disclosed to the public. Ghana does not have significant access to information provisions, which has been identified as a major problem in combating corruption. While the purpose of the Act is to handle state resources most efficiently, the only justification needed for a decision is to claim the successful bid was the most competitive one received.

### **E. Anti-Nepotism Provisions**

The Code does not prohibit public officials from entering into a contract or employment relationship with his or her spouse, common-law partner, child, sibling or parent. This may lead to a conflict of interest if the contract's fulfillment impedes a public official from properly carrying out their duties.

The Guidelines prohibit a public official from being involved in matters which affect the interests of friends or family, if the circumstance would lead a reasonable person to question the impartiality of the public official.

### **F. Outside Interests**

Public office holders are not prohibited from engaging in other employment or practice in certain professions. Public officials are prohibited from holding the position of chairman on the decision making body of a public corporation while he holds a position in that corporation. However, the Code does not stop a public official from securing an executive position in a private entity and allocating a Government contract to that entity.

The Guidelines state that a public official should not use his or her position in the promotion of a private interest.

### **G. Holding of Certain Assets**

Public office holders are not prohibited or restricted from holding any type of asset. This requirement in the Code is also addressed under *The Public Office Holders Act of 1998*. The only requirement is that public officer holders disclose their assets before entering

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office, every four years thereafter and at the end of the term of office. Any assets acquired after must be deemed reasonable by way of income, gift, loan, inheritance or any other reasonable source.

The Auditor General receives the declarations. The verification and review of the declarations is minimal. Instances of review occur only when the Commission launches an investigation.

### **IV. Affirmative Requirements:**

#### **A. Duty of Recusal**

The Code does not require that public office holder recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest. However, various pieces of legislation implement a duty on persons holding a public and private fiduciary position to disclose interests that may conflict with the duties of the position. The *Revenue Agencies Board Act of 1998*, the *Companies Code of 1963*, the *Social Security Law of 1991* and the *Civil Service Law of 1993* all address the need to disclose conflicts of interest.

#### **B. Duty of Disclosure**

##### **1. Confidential Report and Confidential Information**

The Code only requires a public official to disclose property and assets before entering public office. The Code does not prohibit a public official from disclosing public information. However, under the Constitution all public officials take a secrecy oath to not disclose or reveal any information gained while holding office.

The Guidelines state that a public official has a duty to not disclose confidential information to further personal benefits.

##### **2. Disclosure of Gifts**

The Code only requires a disclosure of a gift if it is an asset or property of the public official which must be declared. However, the Code does not address disclosure of gifts.

The *Financial Administration Act of 2003* requires any person whose public employment is connected to the collection, management, disbursement of public moneys, trust moneys or control of Government stores to not accept any money or consideration for the performance of a public duty. It is an offence under the Act for any person to offer gifts, money or consideration to influence a public official whose employment is connected to the collection, management or disbursement of public moneys.

The Guidelines state that a public official is not to accept or solicit any gift that will influence his or her duties. The acceptance of cash money is prohibited. The Guidelines

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state that unsolicited gifts, gifts from family members, honorariums, awards or any type of gift which is not connected to the public official's position can be accepted. The Guidelines recommend that gifts which are connected to a public official's duties be declined, returned or the market value of the gift be paid. A perishable item is recommended to be given to an appropriate charity.

### **3. Disclosure/Acceptance of Offers of Employment**

There are no rules in the Code or in any legislation that require a public official to disclose offers of employment. The Guidelines prohibit a public official from engaging in employment which may conflict with the duties undertaken as a public official. An official shall not solicit or negotiate any position that would conflict with his or her duties.

### **4. Disclosure and Public Declaration of Recusal**

There are no rules in the Code or other legislation requiring a public official to declare instances of recusal and avoidance of a conflict of interest. The Guidelines require a public official to disclose a conflict of interest to his or her superior officer, ethics committee of the institution and to the Commission and/or removing himself or herself from the conflict of interest.

### **5. Disclosure and Public Declaration re Financial Matters**

A public official must submit a written declaration of all assets or property to the Auditor General within three months of gaining a public position and then again after every four years and at the end of the term of office.

### **C. Duty to File a Summary Statement**

Public officials or public officers are not required to file a statement of the assets declared by the public officials or how those assets have been dealt with. The declarations are for the most part not reviewed unless the public official is being investigated.

### **D. Disclosure of Spending/Expenses and Misuse of Property**

There are no rules in the Code or other legislation requiring a public official to disclose spending or expenses.

The Guidelines prohibit a public official from misusing public property. Public property should only be used for the fulfillment of the public official's duties. It is expected that the property or assets be used with reasonable care.

### **E. Disclosure of Private Sector Contacts/Lobbying**

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The Government of Ghana lacks detailed laws or conflict of interest legislation which regulate the ability of a public official to hold a position in a private corporation. The Code only addresses the holding of a decision making position in an entity in which the Government has an interest in. This rule is not comprehensive and does not address all or even most circumstances in which a conflict of interest can be created.

The Guidelines prohibit a public officer from using a public office for personal benefit, endorsement of a private enterprise or interests of friends. This includes political parties and organizations which he or she is a member of or seeks employment with. The Guidelines also prohibit influence peddling where an official uses her or his post to influence another for private benefit.

### **V. Enforcement**

The Constitution allows committees of Parliament to supervise the work of public officers. The committees have the ability to launch investigations of public officers who may be involved in conflicts of interest.

Under the Constitution, the Commission is composed of three entities including a human rights institution, the Ombudsman and an Anti-Corruption Agency. The Anti-Corruption Agency works to investigate complaints of corruption, abuse of power and misappropriation of public moneys by a public officer. The Agency also works to investigate a public officer who has violated the Code. The Commission submits reports of the investigations to the Attorney General and the Auditor General.

The Commission has dealt with high profile corruption cases, including one against the President of Ghana, J.A. Kufuor. The Commission faces the challenge of inadequate and insufficiently clear laws on corruption and conflicts of interest. The Code is not comprehensive in dealing with varied types of conflicts of interest. Some laws are found in the Code or other legislation, which results in loopholes through which conflicts of interest can occur unnoticed or without sanction. The Commission also faces the challenge of the Government's tendency to protect certain public officials and its failure in fully committing itself to transparency and accountability. The Commission has called for an appropriate anti-corruption strategy, adequate laws and institutional support. The Commission also recommends the implementation of the UN Convention against Corruption and the AU Convention on Preventing and Combating Corruption.

The Serious Fraud Office, a statutory investigatory agency under the Attorney-General's Office has authority to investigate matters of conflict of interest or corruption. The Serious Fraud Office focuses on misappropriation and mismanagement of public moneys. However, the Commission and the Serious Fraud office serve the same purpose and overlap in their work in dealing with corruption in Government.

The Attorney General has the discretion and ability to move forward with criminal charges against public officials investigated by the Commission of Human Rights and Administrative Justice and the Serious Fraud Office.

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### **VI. Sanctions**

The Commissioner of Human Rights and Administrative Justice or the Chief Justice, as the case may be, may take such action as he considers appropriate in respect of the results of the investigation or the admission. The Commission does not directly have any power to sanction a public official for misconduct. The case against the President of Ghana J.A. Kufuor was inconclusive. The Minister of Transport, who was also a party to the investigation, was found to be involved in a conflict of interest. The Commission recommended to the President that the Minister be terminated and, as a result, the Minister resigned. It is unclear if the Commission has the necessary bureaucratic power to go beyond making recommendations to the executive and the Attorney General on cases of conflict of interest. The Commissioner has the power to take an investigatory case to court under *The Commission of Human Rights and Administrative Justice Act*.

### **VII. Post-Employment Prohibitions**

There are no conflict of interest provisions which deal with the actions of public officials once they leave the public service. The only relevant consideration is the secrecy oath taken by all public officials not to disclose any information learned during their tenure as public employees. However, there are no provisions stopping a public official from accepting employment in corporations or other bodies which could create conflicts of interest for the benefit of the corporation or the public official.

The Guidelines prohibit a public official from taking advantage of their previous public post with the government. For a minimum of two years after the public official's term ends he or she shall not assist or represent any person in a matter related to the office or state of public employment if the official was involved personally or supervised the matter.

### **VIII. References:**

#### **Legislation**

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