World Bank Legal Review of Ghana Asset Disclosure Legal Framework  
(Sept 2018)

1. **Background:** On May 26, 2017, the World Bank received a written request from the Auditor General of Ghana for technical and advisory assistance to improve effectiveness of the Asset Disclosure (AD) System as an important foundational pillar in the fight against corruption. As a result, the World Bank Group has agreed to finance the purchase of a database\(^1\) to support the AD System if the integrity of the underlying legal framework (on which effectiveness of the AD System ultimately depends) can be strengthened. The World Bank has also agreed to provide advisory and technical assistance to improve the legal framework deficiencies, as well as support full and effective implementation of an amended legal framework, including legally enforceable implementing regulations. Below is an analysis of the current AD System legal framework which identifies the most critical legal framework deficiencies which should be remedied, as an AD System based on weak integrity foundations is likely to be abused and corrupted.

2. **Summary:** Consideration should be given to solutions to reduce the AD cycle from 4 years to an annual cycle, and amend the POH Act to: (1) clarify delegation of legal authority and accountability for administrative implementation and regulatory enforcement (including identifying the agency to be responsible for establishment, maintenance and operation of an AD System database); (2) clarify the legal scope of officials subject to AD obligations; (3) enumerate the range of available regulatory sanctions to address regulatory non-compliance, and stipulate the responsible agency for compliance monitoring and enforcement; (4) make adoption of an on-going Monitoring and Evaluation (M & E) system mandatory, to ensure continued improvements to effectiveness and efficiency of the AD System, and identify the agency responsible for carrying out M & E analysis and reporting; (5) identify the agency responsible for adoption and effective implementation of legally enforceable AD regulations; (6) identify the list of property (in POH Act) to be declared as a non-exhaustive list; and (7) enumerate in the POH Act the process for compliance with AD obligations for appointed/hired officials, as well as elected officials. These legal framework improvements are fundamentally critical for an effective AD System and should be made prior to the design or purchase of the database.

**Asset Disclosure System Foundations**

3. An effective AD System requires a sound foundational legal framework that reduces risks of legal challenges to the validity of the AD System; and adequate systems and procedures to support effective operational implementation and enforcement. These are critical to ensure the AD System is grounded in adequate integrity foundations with legally enforceable transparency and accountability safeguards that minimize legal risks to the validity of the AD System\(^2\) as well as risks of corruption and inappropriate influence or manipulation. Reducing these risks will strengthen integrity in administration and operational management which will make the AD System a credible, effective and efficient tool for reducing corruption.

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1 World Bank Project P151447: Ghana Public Financial Management Reform
2 Legal validity of the AD System can be challenged in court if a claim of inequitable and unfair enforcement is successful.
4. Practice has shown that when legal and corruption risks of an AD System are not mitigated, the perception of corruption or political manipulation can seriously undermine trust of citizens/civil society in the Government commitment to fight corruption. Also, such system is likely to result in wasted resources as well as an AD System that perpetuates more corruption than it prevents. An electronic database to support the AD System would be advantageous to support integrity and efficiency of the AD System by automating some processing functions and providing a credible system for records management and maintenance. However, consideration should be given to the actual costs and benefits of an electronic database for an AD System with a 4-year cycle, and if the above-mentioned improvements to the integrity of the overall legal framework are not made.

Analysis of Legal Framework of Asset Disclosure System

5. The legal framework for Ghana’s AD System is comprised of sections §284-288 of the Ghanaian Constitution3 (Annex I) and the Public Office Holders (POH) Act of 1998.4 Many of the AD provisions of the Constitution are replicated verbatim in the POH Act which lacks elaboration of critical details and procedures necessary for effective implementation, administration and enforcement.

Asset Disclosure Filing Obligations

6. Constitutional provision §286(1) mandates the submission of AD forms by public officers: (i) before taking office; (ii) every 4 years; and (iii) at the end of the term of office. The 4-year Asset Disclosure cycle is extraordinarily long and will significantly impede overall effectiveness of the AD System as a tool for corruption prevention and detection. Such lengthy AD cycle provides ample opportunity for corrupt officials transfer illegally obtained assets outside the jurisdiction to evade detection, and re-locate abroad making it significantly more complicated, expensive and time consuming for officials to identify incidents of corruption, and trace, collect evidence and prosecute corruption. Further, the 4-year AD cycle is longer than the public service careers of many officials, making it easier to leave the jurisdiction and avoid the AD filing requirement at exiting public service.

7. Given that a 4-year AD cycle will significantly undermine the effectiveness of the AD system as an effective tool for corruption prevention and detection, consideration should be given to other options for reducing the AD cycle to an annual filing obligation. For example, might an advisory opinion by the Supreme Court be requested to consider whether constitutional provision §286(b) was intended to strictly and absolute limit to AD filing obligation to only every 4 years, or whether there are any feasible options for reducing this cycle to an annual obligation, perhaps pursuant to the provision of POH Act §13 authorizing the Auditor General to issue regulations ‘for the effective implementation.’

8. The requirement of filing AD forms before exiting office can be of limited value, as it is common for corrupt officials to avoid filing the exit AD form and transfer illegally

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obtained assets (and other evidence of corruption) out of the jurisdiction, as well as re-locate abroad prior to leaving office. Additionally, it can be quite difficult and expensive in practice to enforce the AD filing obligation against officials leaving office, particularly against officials that have engaged in corruption. Once an official has exited public service, imposing sanctions for non-compliance, monetary penalties/files will often have to be enforced through the courts, which is time-consuming and expensive. If the official has left the country, the obtaining jurisdiction the court needs to execute a sanction is also difficult, expensive and time-consuming. Thus, most exit AD forms submitted are likely to be those from officials who have little to hide, which will be of limited usefulness in preventing and detecting corruption.

Clear Delineation of AD System Administrative Roles & Functions

9. The currently inoperative AD System is largely the result of the legal ambiguity in the delegation of legal authority for carrying out critical administrative and regulatory functions. Thus, provisions of the POH Act should be amended to more clearly articulate and delineate the responsibilities and accountabilities of each agency (ie., Auditor General and CHRAJ). Most importantly, legally ambiguous delegations of authority will prevent anyone from holding the responsible agency accountable for effective fulfillment of their mandate. Additionally, close collaboration of both agencies, which will be critical, will be easier and more effective when each agency knows precisely the roles and functions for which each is accountable. Both agencies will also be able to more effectively manage, plan and budget resources to fulfill their respective roles. Greater clarity in roles and functions will also enable other agencies that support the fight against corruption better collaborate to support the AD System. As effectiveness of the overall AD System will heavily depend on clarification of the legal mandates in respect of the critical roles and functions of the AD System, these amendments should be made prior to the purchase of an AD System database.

10. In this regard, the ambiguous language of Constitution §287 and POH Act §8 (identical provisions) refer to functions related to ‘investigations’ and ‘violations.’ But these provisions lack delegation of authority for carrying out the regulatory and operational administration and management functions critical for an AD System, including: (1) collecting and processing AD forms; (2) monitoring compliance with AD obligations; (3) administering regulatory sanctions in instances of non-compliance; and (4) analyzing AD forms for indications of potential corruption.

11. While the current language of the existing provisions appears to indicate that CHRAJ is to be responsible for investigating cases where indications of corruption are apparent, the regulatory operational functions needed to identify the cases where corruption may be occurring are not clearly delegated. The agency delegated responsibility for regulatory administration of the AD System should logically be responsible for regulatory implementation and monitoring compliance and enforcing regulatory sanctions. For example, the agency that collects AD forms should be responsible for imposing regulatory sanctions for regulatory infractions, like failure to submit an AD form on time, or unintentional error. Regulatory infractions should be addressed by direct application of sanctions (ie., warning letter or monetary penalty that should be specifically enumerated in the POH Act), in most cases, without recourse to courts.
12. In cases where regulatory violations may be indicative of corruption, such cases will require more extensive examination, including carrying out investigations. The POH Act might stipulate that cases where regulatory violations may be indicative of potential corruption, the Auditor General should refer such cases to CHRAJ for further investigations. Following such investigation, a decision on whether a formal corruption prosecution should be made by prosecutorial officials. In this way, consideration might be given to delegating specific roles and functions in the most logical, practical and efficient manner, for example:
- Auditor General to be responsible for fulfillment of all regulatory and administrative functions (i.e., collection, monitoring regulatory compliance, administering regulatory sanctions and analyzing AD forms) since the AG is already responsible for collecting and receiving AD forms of officials;
- CHRAJ to be delegated responsibility for investigation and if CHRAJ possesses the legal mandate to prosecute, they can do so, or alternatively refer prosecutions to the DPP in the Ministry of Justice.

13. The above suggested segregation of roles and functions would be logical in view of existing responsibilities of both the Auditor General and CHRAJ, and would enable each agency to better focus resources and planning efforts to more effectively carry out their respective operational functions. Amending the legal framework to clarify these mandates, it would improve accountability, and eliminate gaps, overlaps and duplication of functions that currently undermine AD System effectiveness. The POH Act might also stipulate that the Auditor General and CHRAJ should collaborate on adoption of internal risk assessment protocols and procedures for analyzing AD forms, and criteria on which cases should be referred to CHRAJ for further action.

14. As all AD System administrative functions are clearly executive branch functions, the delegation of any role in administration or enforcement of the AD System to the judiciary (i.e., Chief Justice) is legally inappropriate and contrary to universal principles of separation of powers. The role of the judiciary should be strictly limited to resolving disputes and criminal cases that come before the courts, rather than to play any role in activities that are should be carried out by executive branch agencies. Thus, the relevant provisions of the Constitution and POH Act in this regard should amended.

Legal Definition (scope) of Officials subject to AD obligations

15. While the legal definition of the scope of officials subject to AD obligations (POH Act §3 and Schedule I) is fairly objective, which reduces risks against arbitrary, unfair or selective enforcement, consideration might be given to improving Schedule I, sub-section (z) which lists rather general functions. As many jobs throughout public service would encompass these functions on a partial, part-time or back up basis, applying the criteria of this provision will require discretionary decisions to be made in respect of many officials that may (or may not) meet this criteria significantly enough in their position to warrant being subjected to the AD obligations. This gives rise to the issues of how these decisions are to be made and which official is authorized to make these subjective and  

5 heads of; accountants in; internal auditors in; procurement officers in; and planning and budget officers in finance and procurement departments of government ministries, departments & agencies, Districts, Municipal and Metropolitan Assemblies
discretionary decisions. Such provision gives rise to corruption risks as well as potential abuse of discretion.

16. These risks can easily be eliminated by either eliminating this sub-section (z) entirely, thus allowing all ‘other’ officials to be captured by subsection (aa).\(^6\) Another option would be to amend the POH Act to authorize the Auditor General (or Auditor General in collaboration with CHRAJ) to issue regulations as needed to more precisely specify which officials in specific agencies (below salary equivalent of Director in Civil Service) are required to comply with AD filing obligations based on identified corruption risks.

Regulatory Sanctions

17. The POH Act should mandate that regulatory sanctions be applied to fairly and equitably to all non-compliant officials, specify the scope of available regulatory sanctions and identify the agency authorized to impose regulatory sanctions. The range of available sanctions should be effectively dissuasive, proportional, and easy to administer. While monetary penalties can be included and can be effective in certain instances, officials engaged in the most serious forms of corruption are likely to pay fines which are invariably less than profits gained from corruption. Thus, removal from office should be included as the most serious regulatory violation for officials that simply refuse to comply. The POH Act should specify the range of available sanctions that can be applied in proportion to the seriousness of the violation, with the most severe sanction as dismissal from office for those who refuse to submit AD forms. Appeal procedures should also be specified in the law to allow officials to legally challenge the factual basis on which sanctions are applied, and to prevent abuse of discretion in applying sanctions by officials responsible.

Monitoring and Evaluation System

18. A Monitoring & Evaluation system should be required by the POH Act regularly and objectively assess overall effectiveness of the system. This will not only ensure effective functioning of the AD System, but also strengthen the integrity safeguards in administration and management. As those engaging in corruption constantly seek new ways to conceal corrupt activities in ways that are unlikely to be detected, an M & E system is critical to ensure on-going modifications are made to identify and detect new trends and methods of corruption. Additionally, an M & E System will help reduce administrative inefficiencies and unnecessary costs. Given that available resources are scarce, an AD System that is both efficient and cost-effective will be a more beneficial tool in the fight against corruption.

Other Legal Framework Issues

19. The POH Act §4 defines the type of property (assets and liabilities) to be declared.\(^7\) Such list should be amended to stipulate it constitutes examples of assets, but is non-

\(^6\) An officer in any other public office or public institution other than the Armed forces the salary attached to which is equivalent to or above the salary of a Director in the Civil Service.

\(^7\) §4: (a) lands, houses & buildings; (b) farms; (c) concessions; (d) trust or family property in respect of which the officer has beneficial interest; (e) vehicles, plant & machinery, fishing boats, trawlers, generating plants; (f) business interests; (g) securities & bank balances; (h) bonds & treasury bills; (i) jewelry & objects of art
exclusive, as due to the rapid evolution of technology, the concept of ‘assets’ is something that is expanding into new virtual dimensions due to the rapid growth of technology-based assets that are becoming very common throughout the world (like bitcoins). Therefore, this section should clarify that the list of assets and liabilities listed are non-exhaustive and can be expanded by regulation of the Auditor General.

20. The POH Act and relevant regulations should set forth the process of compliance with AD obligations for both elected and appointed officials. A specific provision should unequivocally prohibit any official from receiving any salary payment or other benefit linked to public service until after the initial (entry to service) AD form is received.

- **Appointed or hired officials:** Implementation procedures should require distributing AD forms with the standard form for personal bank account information through which officials will receive salary and other benefit payments. The POH Act should specifically prohibit the execution of any payment or benefit to any official (regardless of rank, position or status) until the initial AD form is received. In this way, no other sanctions or penalties for non-compliance would be needed as salary or benefit payments could not be executed until the AD forms are received.

- **Officials standing for election:** The POH Act should require that candidates applying to run for elected office must submit completed AD forms by a deadline specified by the Auditor General in conjunction with the National Election Commission or other authority responsible for certifying officials to stand in elections. Officials that fail to meet the AD filing deadline should not be certified to participate in the election.

21. The legal framework of an AD system needs to remove – to the largest extent possible – legal risks that may inadvertently result in challenges to the legal validity of the AD system. Legal challenges are most likely to occur when the AD System detects instances of corruption. A common legal strategy of officials defending against corruption charges (particularly those most likely to be guilty) generally include legal challenges to the validity of the system that identified the corruption. Such legal challenges can be successful if the AD System legal framework has loopholes, or where evidence can demonstrate unfair, biased or inequitably targeted enforcement. Where such deficiencies in the legal framework exist, a court could potentially invalidate the entire AD system and annul legal proceedings against a corrupt official, as well as disqualify evidence of corruption uncovered by the AD system. The best way to mitigate such legal risks is to improve the technical legal quality of the legal framework, and ensure it includes sufficient integrity, accountability and transparency safeguards against abuse of discretion and political manipulation in implementation.

**Conclusions**

22. Where certain aspects of the AD system legal framework cannot be improved, a cost-benefit analysis should be undertaken to ensure that the AD System’s capacity for effectiveness reasonably corresponds with the investment to be made into the system. The AD System legal framework should be improved to strengthen integrity foundations of the AD System and mitigate risks of corruption and legal challenges to validity, upon which overall effectiveness and value in preventing and detecting corruption will equivalent value of 5 million or more Ghanaian Cedis; (j) life & other insurance policies; (k) such other properties as are specified on the declaration form.
ultimately depend. The following amendments to the legal framework should be considered:

- Reduce the AD cycle from 4 years to 1 year
- Clarify delegation of authority and accountability to agencies responsible for administrative implementation and regulatory enforcement before an AD System database is designed or purchased;
- Clarify the legal definition of the scope of officials subject to AD obligations;
- Enumerate available the regulatory sanctions to be applied (and by whom) to address non-compliance with regulatory AD obligations, and procedures for administrative appeals
- Delegate an agency responsible for regularly carrying out an M & E assessment of the AD System to ensure continued improvement of efficiency and effectiveness and to strengthen transparency and accountability in administration
- Specify which agency is responsible for adoption of legally enforceable implementing regulations that set forth more detailed procedures for administration and compliance.
- Identify the list of property to be declared in the POH Act as a non-exhaustive list
- Enumerate in the POH Act the process for compliance with AD obligations for appointed/hired officials, as well as elected officials
- The POH Act should require mandatory integrity, accountability and transparency safeguards to adequately reduce the risks of corruption of the AD System as well as legal risks to is fundamental legal validity

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284. A public officer shall not put himself in a position where his personal interest conflicts or is likely to conflict with the performance of the functions of his office.

285. No person shall be appointed or act as the Chairman of the governing body of a public corporation or authority while he holds a position in the service of that corporation or authority.

286. (1) A person who holds a public office mentioned in clause (5) of this article shall submit to the Auditor-General a written declaration of all property or assets owned by, or liabilities owed by, him whether directly or indirectly.

   (a) within three months after the coming into force of this Constitution or before taking office, as the case may be,
   (b) at the end of every four years; and
   (c) at the end of his term of office.

(2) Failure to declare or knowingly making false declaration shall be a contravention of this Constitution and shall be dealt with in accordance with article 287 of this Constitution.

(3) The declaration made under clause (1) of this article shall, on demand, be produced in evidence-
   (a) before a court of competent jurisdiction; or
   (b) before a commission of inquiry appointed under article 278 of this Constitution; or
   (c) before an investigator appointed by the Commissioner for Human Rights and Administrative Justice.

(4) Any property or assets acquired by a public officer after the initial declaration required by clause (1) of this article and which is not reasonably attributable to income, gift, loan, inheritance or any other reasonable source shall be deemed to have been acquired in contravention of this Constitution.

(5) The public offices to which the provisions of this article apply are those of –

   (a) the President of the Republic;
   (b) the Vice-President of the Republic;
   (c) the Speaker, the Deputy Speaker and a Member of Parliament;
   (d) Minister of State or Deputy Minister;
   (e) 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;
   (f) Ambassador or High Commissioner;
   (g) Secretary to the Cabinet;
(h) Head of Ministry or government department or equivalent office in the Civil Service;
(i) chairman, managing director, general manager and departmental head of a public corporation or company in which the State has a controlling interest;
and (j) such officers in the public service and any other public institution as Parliament may prescribe

(6) The Auditor-General shall make a written declaration of his assets and liabilities to the President in the manner and subject to the conditions provided in clauses (1) to (3) of this article.

(7) Before entering upon the duties of his office, a person appointed to an office to which the provisions of this article apply, shall take and subscribe the oath of allegiance, the oath of secrecy and the official oath set out in the Second Schedule to this Constitution, or any other oath appropriate to his office.

287. (1) An allegation that a public officer has contravened or has not complied with a provision of this Chapter shall be made to the Commissioner for Human Rights and Administrative Justice and, in the case of the Commissioner of Human Rights and Administrative Justice, to the Chief Justice who shall, unless the person concerned makes a written admission of the contravention or non-compliance, cause the matter to be investigated.

(2) 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.

288. In this Chapter, unless the context otherwise requires, "public officer" means a person who holds a public office.