

SEMINAR FOR PERSONS IN PUBLIC LIFE OF

MONTserrat

ON

THE INTEGRITY IN PUBLIC OFFICE Act 2010, No. 2 of 2010

by

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Objective of Presentation

This presentation aims to give holders of offices of persons in public life and senior public officers information as contained in the Integrity in Public Office Act, 2010 to enable them to appreciate the legal and regulatory regime and the responsibilities of persons in public life and be guided by them.

Background: Origin & Context

- International community and lending institutions concerns on corruption –
 - Emphasis on good governance and the elimination of corruption in the economic management of member states
 - (a) Commonwealth Law Ministers Conference 1996
 - (b) Edinburgh CHOGM 1997
 - (c) OAS Inter- American Convention Against Corruption (1996) (IACAC)
 - (d) United Nations Convention against Corruption (2004) (UNCAC)

Background: Origin & Context

IACAC PURPOSE: (Article II)

- To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and
- To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption specifically related to such performance.

Background: Origin & Context

IACAC Preventive Measures (Article III)

- States agree to create, maintain and strengthen , inter alia Oversight Bodies with a view to implementing modern mechanism for preventing, detecting, punishing and eradicating corrupt acts.

Background: Origin & Context UNCAC (2004)

Forward by UN Secretary General Kofi A. Annan

“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish.

This evil phenomenon is found in all countries—big and small, rich and poor—but it is in the developing world that its effects are most destructive. Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a Government’s ability to provide basic services, feeding inequality and injustice and discouraging foreign aid and investment. Corruption is a key element in economic underperformance and a major obstacle to poverty alleviation and development.”

Background: Origin & Context UNCAC

- Under Article 5 a State Party “shall endeavour to periodically evaluate relevant legal instruments and administrative measures with a view to determine the adequacy to prevent and fight corruption.”
- Each State Party is therefore required “to review its existing legislative, institutional and procedural provisions to strengthen what is in place and introduce what is required in order to develop a coherent and co-ordinated and anti-corruption strategy.”
- U.K. is a state party to UNCAC.

Background: Origin & Context (contd.)

- Anti-corruption legislation in other Commonwealth Caribbean States –
- Antigua and Barbuda:
 - Prevention of Corruption Act, 2004 No. 21 of 2004
 - Integrity in Public Life Act, 2004, No. 24 of 2004;
- Belize : Prevention of Corruption Act, 2007, No. 21 of 2007
- Dominica : Integrity in Public Office Act, 2003, No. 6 of 2003;
- Jamaica : Corruption (Prevention) Act 2001
- Grenada :
 - Integrity in Public Life Act, 2007, No. 14 of 2007
 - Prevention of Corruption Act, 2007, No. 15 of 2007;
- St. Lucia : Integrity in Public Life Act, 2004, No. 6 of 2004.

Purpose/Objects of IPO Act,2010

- Long Title of the Act
- Receiving declarations on the financial affairs of persons in public life, to establish **probity, integrity and accountability in public life;**
- Correlative purpose: Should protect reputations of innocent persons in public life from unsustainable allegations.

Information on the IPO Act 2010

- The Act, was passed in Parliament – 22nd January, 2010
- Act was assented to – 9th February, 2010 and published in the Official Gazette;

Composition and appointment of The Integrity Commission – Part II

- Commission is a statutory body established under the Act
- Commission comprises - a Chairman and two (2) other members. All appointments are for a period of three years.
- All members are appointed by the Governor, acting after consultation with the Speaker of the Legislative Assembly (section 4 of the Act;)

Composition and appointment of The Integrity Commission – Part II

- Membership must include either
 - (a) an attorney-at-law of at least fifteen years' standing;
or
 - (b) a chartered accountant of at least fifteen years' standing; or
 - (c) both of them.
- In making these appointments the Governor must be satisfied that the person is a “person of high public standing and reputation for personal integrity.”

Disqualification from Membership of the Commission – Part II

- Being a person in public life or is otherwise exercising a function in the public service;
- would be disqualified to be a member of the Legislative Assembly;
- has, at any time during three years immediately preceding the date of appointment, been a public officer;

Disqualification from Membership of the Commission

- has, at any time during five years immediately preceding the date of appointment, held office in a political party.
- Constitution of Montserrat, section 52(1)(a)
- “No person shall be qualified to be elected as a member of the Legislative Assembly who is by virtue of his or her own act, under any acknowledgement, allegiance, obedience or adherence to a foreign power or state and has not formally renounced it

Functions of the Commission – Section 9

- To receive, examine and retain all declarations filed with it under the Act;
- To make such inquiries as it considers necessary in order to verify or determine the accuracy of any declaration filed with it;

Functions of the Commission - Section 9

- ▶ To inquire into any allegation of bribery or act of corruption under the Act;
- ▶ Receive and investigate complaints regarding non-compliance with provisions of the Act; and
- ▶ Perform such other function as is required under the Act.
 - ▶ E.G.
 - ▶ (I) Annual Report to Legislative Assembly (s. 48) (s. 58)
 - ▶ (II) Make rules to regulate its procedures (s. 59)

Independence of the Commission – Section 13 with s. 11, s. 24, s. 52

- The Commission is an independent governance institution subject to oversight by the Supreme Court and Parliament.
- The Commission in the exercise of its functions under the Act shall not be under the control or direction of any person or authority – including the Governor, the Cabinet, the Premier, a Minister or the Speaker of the Legislative Assembly.

Independence of the Commission – Section 13 with s. 11, s. 24, s. 52

- Independence – ‘freedom from control, by, or subordination to’ – connotes a status or relationship to others that rests on objective conditions or guarantees.
- Requires (a) security of tenure (b) its financial security (c) its institutional relationship with respect to matters of administration to the executive branch of government bearing directly on its statutory function.

Independence of the Commission – Section 13 with s. 11, s. 24, s. 52

- Apart from section 13 express statement section 52(1) provides that:
“The remuneration and expenses incurred by the Commission for the purposes of the Act are a charge on the Consolidated Fund;
- Similar to section 15 of the ECSC Order (S.I. 1967, No 223 c.4 (U.K.) concerning expenses of the Supreme Court (including the remuneration and allowances of the judges) are charged

Independence of the Commission – Section 13 with s. 11, s. 24, s. 52

- Tribunal consisting of a Judge of the High Court, the Senior Magistrate or a Lawyer of 15 years standing at the bar to inquire into the question of the removal of a member of the Commission under section 7 of the Act.

Powers of Commission and Tribunal in conducting inquiry

- Sec. 11 gives the Commission the powers, rights and privileges of the Supreme Court at a trial, in relation to enforcing the attendance of witnesses and examining them on oath, affirmation or otherwise; compelling the production of documents; and the issue of a commission or request to witnesses abroad.
- Under section 24 a Tribunal conducting formal inquiry into the accuracy or fullness of a declaration filed with the Commission shall have and exercise the powers of a Commission of Inquiry under the Commission of Inquiry Act.
- The members of the Integrity Commission are obliged to carry out these duties in the manner prescribed in various sections of the Act; they must do so with independence and impartiality and in accordance with the relevant principles of public law. They must also keep secret and confidential the declarations and records of the Commission on the declarations and the business and the proceedings of the Commission

Persons in Public Life (PIPL)

- A person who holds an office or position as set out in the First Schedule to the Act; or
- A person acting continuously for a period of not less than six months in any office set out in the First Schedule of the Act.
- Ambiguity in meaning – “Chief Technical Officer”, “any Director or head of department or deputy head of department however described in a Government Ministry or Department.”

What is required of PIPL

Declaration of his financial affairs to the Commission.

What is required of PIPL

- Trust Property
- Where a person holds money or other property in trust for another, this must be stated in the declaration. (s. 17)
- Income, Assets & Liabilities of Agent
- The income, assets and liabilities of a person in public life includes income, assets and liabilities acquired, held or incurred by another person on his behalf or as his agent. (s. 18)

What is a Blind Trust (s. 19)

- A blind trust exists where the assets are vested in the trust company for its management, administration and control, in its absolute discretion without recourse or report to the person beneficially entitled to the asset, and conversion of assets into other assets is not to be communicated to him while he continues to be a person in public life;
- He has surrendered all control of his assets for the duration of the trust;
- PIPL may place assets in blind trust; when this is done he need not in his declaration give more particulars of those assets than the amount and description of the assets placed in that trust and the date of so doing.

Financial Disclosure – Part III

- Obligations of persons in public life – File declaration of financial affairs i.e.
 - His income, assets and liabilities
 - Assets of over \$5,000 of his dependents acquired through or traceable to his income
 - Any gifts or gifts made by him during the preceding income year to any person over \$5,000
 - Declaration must be in Form 2 of 3rd Schedule

Financial Disclosure

- When you should submit declaration
- How long must you continue to file
- What happens if you don't file
- What happens if you file late
- What happens when a declaration is received

Financial Disclosure

- What happens after a declaration is received?
- What happens if a person in public life fails to furnish particulars or explanations requested by the Commission?
- What is the purpose of all of these proceedings?

Confidentiality(of declarations and Proceedings of the Commission)

- A declaration filed with the Commission is **secret** and **confidential** and shall not be made public except where for the purpose of any court proceedings against or inquiry in respect of a declarant under the Act, the Commissions of Inquiry Act or perjury under the Perjury Act.

Confidentiality

- ▶ The Act takes every precaution to ensure secrecy and confidentiality.
- ▶ Exceptions to the confidentiality rules are in cases where particular information is required for any court proceedings against, or enquiry in respect of a declarant under the IPO Act, the Commissions of Inquiry Act or the Perjury Act. These exceptions are necessary if the purposes of the Act are to be realized

Code of Conduct – Sections 30 - 34

- The Code of Conduct is a set of rules governing the standard of behavior expected of public officials in the performance of their duties.
- Private interest must not conflict with public duties (see 306 of General Orders of Montserrat).
- Every person in public life must observe the Code of Conduct
- When a complaint is made under section 31 (breach of the Code), the Commission will examine the complaint to determine whether it has merit.

Code of Conduct

- If the Commission determines that the complaint is not frivolous or that it is within its jurisdiction, it shall institute an inquiry into the matter.
- The Commission may request the Police to provide assistance.(s. 53)
- The inquiry is to be held in private for the taking of evidence and the hearing of arguments. (s. 33(2))

Frivolous Complaint – Section 30 - 34

- Where the Commission rejects a complaint, the Commission may order the Complainant to pay the costs incurred by the Commission and by the person against whom the complaint was lodged.
- Burden of Proof : Under section 55 in any proceedings commenced on the allegations made by a person against a person in public life the burden of proof shall be on the person making such allegations.

Gifts – Section 35

- The Act prohibits the acceptance of gifts by a person in public life from any person as a reward or an inducement for doing official act.
- All gifts received should be reported in annual declarations.

Bribery and Corruption

- A person in public life shall not, without lawful authority or reasonable excuse, solicit, or accept any advantage as an inducement to or reward for or otherwise on account of his giving assistance or using influence in the promotion, execution or procuring of any contract with a public body for the performance of any work or the supplying of any article or material.

Bribery and Corruption

- Any person who offers an advantage to a person in public life also commits an offence under the Act.
- The Commission is required to inquire into any allegation of bribery or act of corruption under the Act.

Unaccounted Property

- The Act makes it a crime for a person to be in possession of unaccounted property. (Sec. 47)
- A person in public life found to be in possession of property or pecuniary resources disproportionate to his or her legitimate sources of income is guilty of an offence punishable by a fine and imprisonment.

Unaccounted Property

- Under Part VII of the Act the Commission is required to conduct an inquiry into the source of income where a person in public life or any other person on his behalf is **suspected** to be in possession of property or pecuniary resources disproportionate to his legitimate sources of income.

How suspicion arises

- **Suspicion** implies a belief or opinion based upon facts or circumstances which do not necessarily amount to proof.
- The Commission must have or be provided with facts on the basis of which reasonable **suspicion** may arise.

Proving Allegations

- In proceedings commenced on allegations made against a person in public life, the complainant has the burden of proving his allegations. (Section 55 (1))
- A person who maliciously makes false allegations against a person in public life commits an offence and can be fined or imprisoned. (Section 55 (2))

Formal Inquiry into Fullness of Declaration- Section 23

- The Governor on the advice of the Commission shall appoint a Tribunal comprising at least one member of the Commission to conduct an inquiry to verify the contents of a declaration or other statement filed with the Commission.
- The Tribunal may request in writing that the declarant and other persons attend before it to give information and furnish documents to assist it in verifying the declaration.
- An inquiry may not commence after 5 years from the date the inquiry is being conducted when the person in respect of whose declaration ceased to be a person in public life

Consequences of Breach of the Act

- Where the Commission, after inquiry, has cause to believe that a breach of the Act has been committed, it shall refer the matter to the DPP for further action. Such action, in the discretion of the DPP, may take the form of criminal prosecution. (Ss. 23, 34, 47 & 57)
- If the inquiry reveals that the declarant had made full disclosure, the Commission shall publish that fact in the Gazette and a newspaper, and the declarant is entitled to indemnity for his reasonable expenses incurred. (Ss. 25 & 26)

Ignorance of the Law

- The Commission has made this effort to inform the persons to whom the Act applies on its provisions but it remains the responsibility of every person in public life to know the law and conduct himself/herself accordingly.
- **‘Ignorance of the law excuses no one.’**
- The law imputes knowledge of all laws to all persons within the jurisdiction no matter how transiently!

THANK YOU

Montserrat

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