

THE PUBLIC OFFICERS' ETHICS ACT, 2008*(Act 14 of 2008)***ARRANGEMENT OF SECTIONS**

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THE PUBLIC OFFICERS' ETHICS BILL, 2008

(Act 14 of 2008)

I assent

J. A. Michel
President

25th June, 2008



AN ACT to advance the ethics of public officers by providing for a Code of Conduct and Ethics for public officers and requiring financial declarations from certain public officers and to provide for connected purposes

(ACTED by the President and the National Assembly.

PART I
PRELIMINARY

1. This Act may be cited as the Public Officers' Ethics Act, 2008 and shall come into operation on such date as the President may by notice in the *Gazette*, appoint. Short title

Interpretation

2. In this Act -

“assets and liabilities” includes movable, immovable, corporeal and incorporeal property;

“Commission” means the Public Officers' Ethics Commission established under section 20 of this Act;

“member” means a member of the Commission and includes the Chairperson;

“public corporation” means a statutory corporation or a limited liability company which is directly or ultimately under the control of the Government or any other body which is carrying out a governmental function or service;

“public officer” means an officer, employee or member, including an unpaid, part-time or temporary officer, employee or member, of any of the following -

- (a) the Government or any department, service or undertaking of the Government;
- (b) the Judiciary;
- (c) the National Assembly;
- (d) any corporation, council, board, commission or other body which has power to act under and for the purposes of any written law relating to governmental functions, or otherwise to administer funds belonging to or granted by the Government or money raised by rates, taxes or charges in pursuance of any such law;
- (e) any other body prescribed by regulation for the purposes of this paragraph;

PART II
GENERAL CODE OF CONDUCT
AND ETHICS FOR PUBLIC OFFICERS

3 This Part sets out a general Code of Conduct and Ethics for public officers. General Code of Conduct and Ethics

4 A public officer shall, to the best of his ability, carry out his duties and ensure that the services that he provides are provided efficiently and honestly. Performance of duties

5 A public officer shall - Professionalism

(a) carry out his duties in a way that maintains public confidence in the integrity of his office;

(b) treat the public and his fellow public officers with courtesy and respect;

(c) to the extent appropriate to his office, seek to improve the standards of performance and level of professionalism in his organisation;

(d) if a member of a professional body, observe the ethical and professional requirements of that body;

(e) observe official working hours and not be absent without proper authorization or reasonable cause;

(f) maintain an appropriate standard of dress, and personal hygiene; and

(g) discharge any professional responsibilities in a professional manner.

6 A public officer shall carry out his duties in accordance with the law and give due recognition to the fundamental rights, freedoms and duties specified in Chapter III of the Constitution. Rule of law

7 A public officer shall not use his office to improperly enrich himself or others. No improper enrichment

Conflict of
interest

8.(1) A public officer shall use his best efforts to avoid being in a position in which his personal interests conflict with his official duties.

(2) Without limiting the generality of subsection (1), a public officer shall not hold shares or have any other interest in a corporation, partnership or other body, directly or through another person, if holding those shares or having that interest would result in the public officer's personal interests conflicting with his official duties.

(3) A public officer whose personal interests conflict with his official duties shall -

(a) declare the personal interests to his superior and comply with any directions to avoid the conflict; and

(b) refrain from participating in any deliberations with respect to any matter where his personal interests may conflict with his official duties.

Acting for
foreigners

9.(1) No public officer shall, in a manner that may be detrimental to the security interests of Seychelles, be an agent for, or further the interest of, a foreign government, organisation or individual.

(2) For the purposes of this section

(a) an individual is foreign if the individual is not a citizen of or resident in Seychelles.

(b) an organisation is foreign if it is established outside Seychelles or if it is owned or controlled by a foreign government, organisation or individual.

Care of
property

10.(1) A public officer shall take all reasonable steps to ensure that property entrusted to his care is adequately protected and not misused or misappropriated.

(2) A person who contravenes subsection (1) shall be personally liable for losses resulting from the contravention.

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| 11. | A public officer shall not be influenced by partisan political considerations in the discharge of his official duties. | Political neutrality |
| 12. | A public officer shall not practise favouritism. | Favouritism |
| 13. | A public officer who has a duty to give advice shall give honest and impartial advice without fear or favour. | Giving of advice |
| 14. | A public officer shall not knowingly give false or misleading information to members of the public or to any public officer. | Misleading the public, etc |
| 15.(1) | A public officer shall conduct his private affairs in a way that maintains public confidence in the integrity of his office and shall not bring the public service into disrepute. | Conduct of private affairs |
| (2) | A public officer shall not evade taxes. | |
| (3) | A public officer shall not neglect his financial obligations. | |
| 16. | A public officer shall not sexually harass a fellow public officer or a member of the public.. | Sexual harassment |
| 17. | A public officer shall practise and promote the principle that public officers should be selected on the basis of integrity, competence and suitability. | Selection, etc. of public officers |
| 18. | A public officer shall submit any declaration or clarification required under Part IV to be submitted or made by him. | Submission of declarations or clarifications |
| 19. | A public officer contravenes the Code of Conduct and Ethics if- | Acting through others |
| (a) | he causes anything to be done through another person that would, if the public officer did it, be a contravention of the Code of Conduct and Ethics; or | |
| (b) | he allows or directs a person under his supervision or control to do anything that is a contravention of the Code of Conduct and Ethics. | |

PART III
ESTABLISHMENT AND FUNCTIONS OF PUBLIC
OFFICERS' ETHICS COMMISSION

Establishment
of
Commission

20.(1) There shall be established a Public Officers' Ethics Commission to investigate and determine whether a public officer has contravened the Code of Conduct and Ethics.

(2) The Commission shall consist of -

- (a) the Ombudsman;
- (b) the Auditor-General;
- (c) the Chairman of the Constitutional Appointments Authority;
- (d) two other members appointed by the President in consultation with the Chief Justice, the Speaker of the National Assembly, the Leader of the Opposition and the Leader of Government Business.

(3) The President shall appoint one of the members mentioned in subsection (2) as the Chairperson and chief executive of the Commission in consultation with the Chief Justice, the Speaker of the National Assembly, the Leader of the Opposition and the Leader of Government Business.

(4) A member appointed under section 20 (2) (d) shall hold office for a term of five years and shall be eligible for re-appointment.

(5) A member shall vacate office -

- (a) on death, or
- (b) on resignation;
- (c) if removed by the President in consultation with the Chief Justice, the Speaker of the National Assembly, the Leader of the Opposition and the Leader of Government Business for being unfit to continue in office;

- (d) at the end of the term for which the person was appointed.

(6) In the absence of the Chairperson a member authorised by the President shall act as Chairperson.

(7) The salaries or allowances payable to, and other terms and conditions of service of the members shall be such as may be prescribed by the President:

Provided that neither the salary or allowances nor other terms and conditions of service of a member shall be varied to the disadvantage of the member after appointment.

(8) The Commission may appoint such administrative and technical staff as it may consider necessary, on such terms and conditions as may be approved by the President.

21.(1) An investigation may be made on the Commission's own initiative or pursuant to a complaint by any person.

Investigations
by the
Commission

(2) The Commission may refer a matter to another appropriate body for investigation and that body shall investigate the matter within a reasonable time and submit a report to the Commission on its findings.

(3) An investigation may be conducted if the complaint is made during the tenure of office of a public officer.

(4) Where the Commission decides to investigate a complaint, the Commission shall inform the public officer concerned and the chief executive officer of the organisation.

22.(1) If an investigation discloses that the public officer has contravened the Code of Conduct and Ethics, the Commission shall, within the time period prescribed by subsection (2) refer the matter to the appropriate body or person for taking appropriate disciplinary action.

Disciplinary
action

(2) The time period referred to in subsection (1) is -

- (a) within thirty days after the completion of the investigation; or

- (b) if another body investigated the matter under section 21(2), within thirty days after the Commission receives the report of that body.

Referral for possible civil or criminal proceedings

23. If, as a result of an investigation under this Part, the Commission is of the view that civil or criminal proceedings ought to be considered, the Commission shall refer the matter to the Attorney-General or any other appropriate authority.

Exceptions

24. This Part does not apply with respect to a person who holds an office for which the Constitution provides a procedure for removal for misbehaviour.

Administrative procedures

25. The Commission shall establish their own procedures for the administration of this Act.

PART IV DECLARATIONS OF INCOME, ASSETS AND LIABILITIES

Application of this Part

26. The provisions of this Part shall apply to every person belonging to any one of the following categories or descriptions of persons -

- (a) President, Vice-President, Designated Minister and Ministers;
- (b) Speaker, Deputy Speaker, Leader of Opposition, Leader of Government Business and Members of the National Assembly;
- (c) Constitutional appointees and public officers appointed by the President;
- (d) chairmen, directors, members of boards, authorities and commissions;
- (e) such other categories of officers as may be specified by regulations.

27.(1) Every person to whom this Part applies shall, within three months after the commencement of this Act make, in the form to be prescribed by regulation, a declaration of all that person's income, assets and liabilities as at the date of commencement of this Act to the Commission:

Duty to make declarations of income, assets and liabilities

Provided that the members of the Public Officers Ethics Commission other than the Chairperson shall make their declarations to the Chairperson of the Public Officers' Ethics Commission and the Chairperson to the Chief Justice.

(2) The declaration shall be sealed in the presence of the person making the declaration.

(3) The envelope containing the declaration may be opened only in the presence of the person making the declaration unless such person's presence cannot be obtained within a reasonable period of time or such person refuses to be present after being notified.

(4) Where a person who on the date of commencement of this Act, is not a person to whom this Act applies, becomes a person to whom this Act applies on a later date, the person shall within three months of such later date make the aforesaid declaration of income, assets and liabilities as at such date.

(5) A person who is required to make a declaration of income, assets and liabilities under subsection (1) or subsection (4) shall, unless such person ceases to be a person to whom this Part applies, make at the end of each calendar year after the first declaration of income, assets and liabilities, a fresh declaration of the income, assets and liabilities as at the date of each such declaration.

28. The Chairperson shall have the power to call for the salary particulars and other means of income of a public officer from any person or relevant authority for the purposes of carrying out his functions under this Part.

Power to call for salary particulars and income

29.(1) A person who has submitted a declaration under section 27 shall provide, without undue delay, any clarification requested by the Commission if the request is in writing.

Clarifications

(2) Without limiting what a request for clarification may include, such a request may include—

- (a) that any information that may have been omitted be provided; or
- (b) that any discrepancy or inconsistency, including a discrepancy or inconsistency arising because of information other than information included on the declaration, be explained or corrected.

Information
to be correct

30. A person submitting a declaration or providing a clarification shall ensure that the declaration or clarification is correct, to the best of his knowledge.

Power to call
for
declarations
of income,
assets and
liabilities

31. The Attorney-General and the Ombudsman shall, for the performance of their functions, have the right to call for and refer to any declaration of income, assets and liabilities.

Procedure
upon written
communica-
tion

32. (1) Any person may, by a communication in writing signed by the person and addressed to the Commission, draw the attention of the Commission to any recent acquisition of wealth or property or to any recent financial or business dealings or to any recent expenditures by a person to whom this Part applies which, to the knowledge of the person making the communication, is not commensurate with the known sources of wealth and income of the person to whom this Part applies.

(2) Upon receipt of a communication under subsection (1) the Commission shall investigate and if in the opinion of the Commission a prosecution or other suitable action under the provisions of any law is warranted, the Commission shall refer such matter to the Attorney-General.

(3) The Attorney-General shall cause such investigation as may be necessary for the purpose of deciding on a prosecution or other suitable action under the provisions of any law.

(4) Where the Attorney-General finds that the communication does not warrant a prosecution or any other action under the provisions of any law he shall so report to the Commission.

(5) The Attorney-General, upon deciding to investigate the material in any communication under this section -

- (a) may call for and examine the declaration of income, assets and liabilities made under this Act;
- (b) may summon and question or cause to be summoned and questioned the person making the communication; and
- (c) shall cause investigations to be made and concluded as expeditiously as possible and in any case before the lapse of a period of six months from the date of receipt of the communication.

33.(1) A person shall, except in the performance of the person's duties under this Act, preserve and aid in preserving secrecy with regard to all matters relating to the affairs of any person to whom this Act applies which may come to the first mentioned person's knowledge in the performance of that person's duties under this Act, and shall not communicate any such matter to any person other than the person to whom the matter relates, or permit any unauthorized person to have access to any papers or records which come into the first mentioned person's possession in performing duties under this Act.

Preservation
of
secrecy

(2) A person required to preserve and aid in preserving secrecy under the provisions of subsection (1) shall not be required to produce in any court any declaration of income, assets and liabilities or any other documents relating thereto, or to divulge or communicate to any court (matter or thing coming to the person's notice under this Act, except as may be necessary for proceedings instituted under, or for the purpose of carrying into effect, this Act or any other law.

(3) Any person who contravenes the provisions of this section commits an offence and is liable, upon conviction, to a fine of R100,000 or to a term of imprisonment not exceeding five years or to both such fine and imprisonment.

34.(1) A person who -

Offences
and
penalties

- (a) fails without reasonable cause, to make a declaration of assets and liabilities which the person is required to make under section 27 or provide a clarification requested under section 29;
- (b) makes a false statement in any such declaration or when a clarification is sought under section 29;
- (c) not being a person under investigation, fails without reasonable cause to give such additional information as the Attorney-General may require under this Part,

commits an offence and is liable upon conviction to a fine not exceeding R100,000 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

(2) A person who is convicted of an offence under subsection (1)(a) or (c) shall, within a period of fifteen days after the date of conviction, or in the event of an appeal against the conviction within a period of fifteen days after the date of affirmation of the conviction, make the declaration of income, assets and liabilities referred to in section 27 or provide the clarification requested under section 29 or give additional information sought by the Attorney General under this Part.

(3) The provisions of section 27 and of other preceding sections of this Part shall *mutatis mutandis*, apply to any declaration of income, assets and liabilities made by such person under subsection (2) in the same manner and to the same extent as they apply to a declaration of income, assets and liabilities made under section 27.

(4) Any person who fails to comply with the provisions of subsection (2) commits an offence and is liable upon conviction, to a fine not exceeding R200,000 or to imprisonment for a term not exceeding seven years or to both such fine and imprisonment, and to a further fine of R10,000 for each day of continuation of that offence.

(5) Where a person has been convicted of any offence under subsection (1) (a) or (b) the court shall bring the fact of such conviction to the notice of the Commission.

(6) A person who without lawful excuse, obstructs or hinders a person acting under this Act, commits an offence and is liable, upon

conviction, to a fine not exceeding R50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(7) A person who knowingly makes a false or malicious complaint against a public officer to the Commission under sections 21(1) or 32(1), commits an offence and is liable upon conviction to a fine not exceeding Rs50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

(8) A person who refuses or fails without lawful excuse to -

(a) provide the necessary information called for under section 28; or

(b) attend when summoned under section 32(5)(b),

commits an offence and is liable upon conviction to a fine not exceeding R10,000.

PART V GENERAL

35. No suit or other legal proceeding shall lie against the Commission or any member or any person acting under the direction of the Commission in respect of anything which is done or purported to be done in good faith in pursuance of this Act. Protection of action taken in good faith

36. The President may make regulations for carrying out the provisions or giving effect to the principles of this Act. Regulations

37. Where the provisions of this Act are in conflict or inconsistent with any other law, the provisions of this Act shall prevail. This Act to prevail over other laws

I certify that this is a correct copy of the Bill which was passed by the National Assembly on 17th June, 2008.



Marie Nella Azemia
Clerk to the National Assembly