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Understanding, Preventing and Fighting Administrative Corruption in the Business Registration Regime in Ghana

Clara Kowlaga Beeri Kasser-Tee*

SUMMARY

The greatest challenge identified in the business registration regime in Ghana is the delays in obtaining the requisite permits, licences and certificates to enable one to commence business in Ghana. Research conducted under the Strategic Partnerships to Prevent and Fight Administrative Corruption in Ghana Project, (the 'FSPPFACP') reveals that these delays are primarily the root cause of administrative corruption in the business registration regime in Ghana (PEF, Feb. 2020. Research Report Identifying and Detailing the Cost Implications the Gaps, Delays and Other Inefficiencies. https://www.pef.org.gh/index.php/en/2015-11-04-19-46-07/pef-research-reports/item/download/31_8f1e597e6b231bc2c38e0b94c6294864).

This article provides context and statistics to understand the cause of administrative corruption in the business licensing, permit and certification regime in Ghana. The article submits that the fight against administrative corruption in the business registration regime in Ghana will be a mirage unless it is targeted at eliminating unnecessary delays in the business registration regime. The article further makes recommendations on eliminating the delays in the business registration regime and on preventing and fighting administrative corruption in the business registration regime in Ghana through the effective implementation and use of service delivery charters and automation of services among others.

KEYWORDS

Administrative Corruption, Administering Agency, Bribes, Business Registration Regime, FSPPFACP, GIPC, RGD, Service Delivery Charter, TIN.

I INTRODUCTION

Ghana is ranked 118 among 190 economies in the ease of doing business, according to the World Bank annual ratings for 2019. This represents a deterioration, as Ghana was ranked 114 by the same ratings in 2018. The cause of the poor ranking over the years, and the drop of four places in 2019 is not unrelated to the delays in obtaining business operating permits, certificates and licences in Ghana. Research findings have shown that some of these delays are unnecessary or deliberate, and ultimately result in administrative corruption, which increases tremendously the cost of doing business in Ghana, particularly where one fails to, or is unwilling to, pay a bribe to some staff of some state agencies at certain times.¹

This article reviews the legal regime for permit/licensing/certification of businesses to enable them to operate in Ghana. The article also draws on research findings conducted by the author on the business certification, permit and licensing regime in Ghana under the Forming Strategic Partnerships to Prevent and Fight Administrative Corruption in Ghana Project, ('FSPPFACP'). The article submits that the root cause of corruption in the business registration regime is unnecessary delays in the licensing, permit and certification of the business regime in Ghana. The article suggests that although both private businesses and public officers know that the unofficial payments that private businesses make and the public officers receive (referred to in the industry as 'facilitation fees' and 'thank you fees') are bribes, private businesses continue to pay these bribes because the cost of not paying the bribes exceeds the cost of paying the bribes by between 550% and 1,200%. Public officers on the other hand feel entitled to receive the bribes in certain instances on account of 'low salaries' and lack of resources to provide the services requested. So although both sides (private business and public officers) decry corruption in the moral sense, each side engages in it because for the private person it is punitive not to do so, and for the public person it is expedient to do so.²

The article begins with an overview of the Ghanaian law on public service and administrative corruption. Next, the article reviews the legal regime for permit/licensing/certification of businesses in Ghana, and lists the permits/licences/certificates that a business needs to enable it to operate in Ghana. This part also discusses the time it takes to complete the registration of a business from pre-registration, registration and post-registration, (i.e. issuance of certificates, permits and licences), and compares this to other countries such as Singapore and Mauritius. Next, the article discusses research findings on administrative corruption in the business licensing regime in Ghana. In this part, the article draws on research findings that will show that an understanding of the factors that encourage administrative corruption in the business registration regime in Ghana is critical to preventing and fighting administrative corruption in the business permit, licensing and certification regime in Ghana. The final part of this article contains recommendations on eliminating delays in the business registration regime in Ghana, and preventing and fighting administrative corruption in the business registration regime in Ghana.

2 PUBLIC SERVICE AND ADMINISTRATIVE CORRUPTION UNDER GHANAIAN LAW

Administrative corruption is generally defined as profiteering from public posts, and includes aiding or collaborating profiteering from public posts. It, (administrative corruption) includes a public officer's abuse of roles, powers, or resources in public bureaucracies.³ A public officer who, to do or for

¹ See D. Business, *Training for Reform*, Dostupno na 27 (2019), https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf, and PEF, *Research Report Identifying and Detailing the Cost Implications the Gaps, Delays and Other Inefficiencies*, (Feb. 2020), <https://www.pef.org.gh/index.php/en/2015-11-04-19-46-07/pef-research-reports/item/download/31>.

² *Ibid.*

³ See J. L. Perry, *Revisiting the Core of Our Good Government Ethos*, 75(2) Pub. Admin. Rev. 186–187.

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doing an act required of him or her as a public officer, secretly accepts, or agrees or offers secretly to accept any valuable consideration for his or her personal benefit is presumed by Ghanaian law to have acted corruptly.⁴ The presumption of corruption by a public officer therefore applies irrespective of whether the valuable consideration was received before or after the act by the public officer on account of the public office.⁵ In addition, it is a criminal offence for a person who, while holding a public office, corruptly or dishonestly abuses the office for private profit or benefit; or who, not being a public office holder, acts or is found to have acted in collaboration with a person holding a public office, for the latter to corruptly or dishonestly abuse the public office for private profit or benefit.⁶ Corruption under Ghanaian law is therefore linked to public office, which invariably is linked to the provision of public services.

Ghanaian law defines a public official to include any person holding an office by election or appointment under any enactment or under powers conferred by any enactment.⁷ Employees of state entities responsible for issuing certificates, licences and permits in the business registration regime in Ghana, (Administering Agencies), are therefore 'public officers' for the purposes of administrative corruption, as these persons are appointed under an enactment and exercise their powers pursuant to an enactment. Public service in Ghana includes the civil service and public corporations, except corporations set up as commercial ventures.⁸ Public services are therefore services provided by a public body in the general interest of the Ghanaian public pursuant to an enactment, for example, the Drivers and Vehicular Licensing Authority, Registrar-General's Department, Environmental Protection Agency, Land Use and Spatial Planning Authority, Department of Factories Inspectorate, etc. All agencies that issue certificates, licences and permits to enable a person to operate a business in Ghana therefore provide public services.

Article 1(2) of the Constitution requires every public officer to exercise the powers and authority given them by law for the welfare of the people. Looking out for the welfare of the people in the provision of your services is therefore a constitutional obligation, and it is a criminal offence under Ghanaian law to abuse public office for private benefit or private gain and/or to aid such abuse of a public office.

Since Ghana's independence in 1957, both the public and private sectors have consistently decried corruption on the one hand, while at the same time collaborating or abetting corruption on the other hand. The private sector has largely been the supply side of corruption in the business registration, permit and certification regime in Ghana, as it is the private businesses that have largely paid bribes to officials in the public sector in this regard, in spite of the fact that corruption is a crime in Ghana, and, the people involved, (both private persons and officials of the Administering Agencies), know that corruption ultimately affects the country negatively.⁹

This raises the question, why both the public and private sectors have consistently decried corruption on the one hand, while collaborating or abetting corruption on the other hand? Is the private sector mainly being hypocritical or is it helpless in preventing and fighting administrative corruption in the business registration regime in Ghana?

3 REVIEW OF THE LEGAL REGIME FOR PERMITS/ LICENSING/CERTIFICATION OF BUSINESSES IN GHANA

A research study of the regime for business registrations in Ghana identified that 145 or more business licences, permits and certification requirements were in force in Ghana and affected businesses to varying degrees.¹⁰ On realizing that addressing all 145 requirements in one go may be difficult to tackle, the Private Enterprise Federation decided to identify those permits, licences and certificates that affect all businesses, in effect those that are cross-sectoral. A review of the laws applicable to business in Ghana reveals that at least thirteen (13) cross-sectoral licences are required to enable a business to operate in Ghana, particularly where there is foreign participation in the ownership or workforce of the business. These cross-sectoral licences, permits and certificates are as follows:

- (1) Taxpayer Identification Number (TIN) Certificate, (a certificate issued by the Ghana Revenue Authority, (GRA)).
- (2) Business registration and commencement certificates, (certificates issued by the Registrar-General's Department, (RGD)).
- (3) Environmental permit, (a permit issued by the Environmental Protection Agency, (EPA), under the supervision of the Ministry of Environment, Science and Technology).
- (4) Environmental Certificate, (a certificate issued by the Environmental Protection Agency, (EPA) under the supervision of the Ministry of Environment, Science and Technology).
- (5) Building/Construction Permit (renovation permit and demolition permit), (a permit issued by the Metropolitan, Municipal and District Assemblies, ('MMDAs') and Land Use and Spatial Planning Authority under the Ministry of Local Government and Rural Development and the Ministry of Environment Science and Technology respectively).
- (6) Fire Certificate, (a certificate issued by the Ghana National Fire Service under the Ministry of Interior).
- (7) Business operating permit, (a permit issued by various MMDAs under the Ministry of Local Government and Rural Development).
- (8) Factories, shops and offices certificates, (a certificate issued by the Department of Factories Inspectorate under the Ministry of Employment and Social Welfare).
- (9) GRA/VAT registration certificate, (a certificate issued by the GRA).

⁴ S. 244, the Criminal and Other Offences Act, 1960 (Act 29).

⁵ See ss 244 and 245, *ibid*.

⁶ S. 179c, *ibid*.

⁷ S. 3, *ibid*.

⁸ Article. 190, the 1992 Constitution.

⁹ The PEF Research Report found that both private persons and public officials know that the giving and receiving of unofficial fees, (euphemistically referred to as 'facilitation fees' and 'thank you fees' are bribes and constitute corruption under Ghanaian law. They are also aware that corruption affects the country negatively.

¹⁰ PEF, *PEF Advocacy Action on Streamlining Cross Sectoral Licensing Requirements in Ghana Research* (May 2017), <https://www.pef.org.gh/index.php/en/354-research-articles/91-report-on-cross-sectoral-licensing-requirement>.

- (10) Certificate/Letter of Registration with the Social Security & National Insurance Trust, (SSNIT) issued by the SSNIT.
- (11) Certificate of registration with Ghana Investment Promotion Centre, ('GIPC'), (where there is foreign participation in the business). This is a certificate issued by the GIPC.
- (12) Automatic Immigrant Quota/Work permit issued by the GIPC.
- (13) Work permits, (required for all foreign nationals who will work for the business) issued by the Ghana Immigration Service.

It is suggested that a minimum of about thirteen (13) certificates, licences and permits to enable a person to commence business in Ghana is rather too many and thus burdensome requirements for doing business in Ghana, and therefore likely to result in breaches of some of the laws in certain circumstances. This article however focuses on understanding administrative corruption in the business registration regime in Ghana rather than the issue of the number of certificates, licences and permits for doing business in Ghana, which is the subject of a separate discussion.

3.1 Delays in Obtaining Certificates/Licences and Permits

Although the law in certain circumstances stipulates the timelines within which the above certificates, licences and permits must be issued, some public agencies hardly comply with these stipulated timelines.¹¹ For example, section 24 of the Ghana Investment Promotion Act, 2013, (Act 864), (the 'GIPC Act'), requires that on incorporation, an entity, (that has foreign participation) must be registered with the GIPC before it commences operations. Section 24(2) of Act 865 thereafter provides, in mandatory terms, that the GIPC must register a business within five (5) days of receipt of completed applications. Research conducted by the Private Enterprise Federation, 'PEF' on the cost of administrative corruption/delays in business licensing, permit and certification regime in Ghana indicates that the Administering Agencies do not deliver the listed services within the stipulated timelines in the absence of payment of 'facilitation fees' from customers.¹² Meanwhile, the GIPC Act does not make provision for the consequences of the GIPC's failure to comply with section 24 (2). The effect therefore is that a business simply has to wait for the GIPC to provide the certificate when it does, before such entity can commence business. It is worthy of note that the procedures for registration with the GIPC include submitting a letter from the Bank of Ghana confirming that the business has transferred the statutory minimum capital requirement into its bank accounts in Ghana. Delay in obtaining this letter necessarily means that one is unable to submit the application for registration to the GIPC, even after the business has completed registration/incorporation at the Registrar-General's Department and has been issued with the required certificate of registration/incorporation and commencement certificates.

¹¹ See PEF, *PEF Research Report on Cost of Administrative Corruption, Cost of Doing Business* (Feb. 2020), <https://www.pef.org.gh/index.php/en/2015-11-04-19-46-07/pef-research-reports/item/161-report-on-the-cost-of-administrative-corruption>.

¹² *Ibid.*

While the Ease of Doing business indicates that it takes about fourteen (14) days and official costs of about USD 114 to register and start a business in Ghana, findings of a research project commissioned by the Private Enterprise Federation under the Strategic Partnerships to Prevent and Fight Administrative Corruption in Ghana Project, and supported by Star Ghana, United Kingdom Aid (UKAID), Danish International Development Agency, (DANIDA) and the European Union on the other hand has reported that whether one is able to obtain the required certificates, permits or licences within the above timelines depends to a large extent on whether one is willing to pay a bribe to some staff of the Administering Agencies or not. The PEF research report finds that whereas it takes between a few days to two weeks to complete the business registration, licensing, permit and certification process on payment of unofficial 'facilitation fees', it could take up to five months or more to complete the same process on failing to pay unofficial 'facilitation fees' to staff of the Administering Agencies. The research therefore revealed that except where staff of the Administrative Agencies generally receive unofficial 'facilitation fees' from customers, Administering Agencies do not deliver the listed services within the stipulated timelines.

3.2 Cause and Cost of Delays

Participants in the PEF research attributed delays in the licensing, permit and certification regime to: (1) sluggishness and incompetence of staff mostly, (2) lack of resources at these Administering Agencies, (3) layers of bureaucratic and several documentation processes that business are required to go through before the required certificates, licences and permits are issued, and (4) a lack of knowledge on the requirements for obtaining certain licences, permits and certificates. Staff of the Administering Agencies who participated in the research on the other hand attributed the delays to lack of resources and bureaucracies, and indicated that the unofficial 'facilitation fees' often taken sometimes did indeed facilitate the process in terms of providing some of the resources needed to enable them to issue the licences, permits and certificates.

The business persons interviewed admitted to paying facilitations fees of as low as GHS 50 and as high as a GHS 1,000 each to staff of the Registrar General's Department alone, and a total of between GHS 2,000 and GHS 20,000 per business for the completion of the entire process in a bid to avoid delays in obtaining the requisite certificates, licences and permits. The cost of paying the bribes increased their cost of doing business by between 327% and 3,278% of the official costs of doing business in Ghana. Did the businesses absolutely need to pay the bribes?

As noted above, the research revealed that failure to pay unofficial facilitation fees could result in delays in obtaining the required licences, certificates and permits for up to five months or more. Some business owners who participated in the research estimated their losses during these delays in obtaining the requisite licences, permits and certificates to range between GHS 24,000 and USD 20,000 per business. Failure to pay unofficial facilitation fees to avoid delays therefore costs businesses between 550% and 1,200% of the cost of the bribe. It therefore made economic sense to the businesses to abet administrative corruption in the hope of reducing avoidable losses as a result of delays in obtaining the required certificates, licences and permits. Did businesses and staff of

the Administering Agencies know that making and/or receiving 'unofficial facilitation fees' in Ghana is a crime?

All of the participants, (i.e. Business Owners, Observers and Staff of Administering Agencies recognized that 'facilitation fees', (unofficial payments) that they make to staff of the Administering Agencies to avoid delays in the licensing regime constitute administrative corruption. The givers justified their actions on the grounds of wanting to avoid the unnecessary delays in the licence, permit and certification regime as the Administering Agencies do not provide the requested services in accordance with the stipulated timelines. They also explained, that payment of these unofficial fees to the staff of administering agencies did in fact achieve the purpose of avoiding unnecessary delays, as it took between a few days or weeks to complete the licensing, permit and certification process on the payment of such unapproved fees, but up to five months or more to complete the licensing, permit and certification process where one fails to pay the unofficial fees (i.e. engage in administrative corruption). Participants from the Administering Agencies on their part justified taking these unofficial fees for personal use or as transportation to the field for required inspections. They explained that often, the State Agency lacks the resources required for staff to undertake their official duties. For example, staff may not have access to transportation within the State agency to enable them to travel to a particular site for inspections. They therefore relied on the businesses to bear the cost of transportation for purposes of inspections, and this forms part of the unofficial fees that they receive from businesses. To them, these unofficial payments, (i.e. administrative corruption) did sometimes indeed facilitate the process of certifying, licensing and permitting businesses to operate in Ghana.

While business owners and staff of the Administering Agencies considered that an average of nine out of ten staff are engaged in administrative corruption, observers considered that an average of seven out of ten was estimated to engage in bribery and corruption within the agencies. The general reason suggested to be the cause of bribery was the high demand for the services and the low productivity of the staff. It causes persons to pay the facilitation fees to the staff at the agency. Ten out of forty-two admitted that they were aware that their actions amounted to bribery and corruption which was a crime in Ghana. Two out of forty-two stated that they were not aware. The rest were silent on the issue of bribery of whether they knew these bribes were illegal or not. The research thus confirmed staff of Administering Agencies do engage in administrative corruption, and that businesses become willing participants in administrative corruption in a bid to avoid unnecessary delays in the licensing, permit and certification regime of businesses in Ghana. Knowing that these bribes are a 'criminal offence', why would the private sector in particular pay? The PEF Research Report thus showed that it was far cheaper and more convenient for businesses to pay a bribe for timely delivery of services than not to.

4 RECOMMENDATIONS ON ELIMINATING DELAYS IN THE BUSINESS REGISTRATION REGIME IN GHANA, AND PREVENTING AND FIGHTING ADMINISTRATIVE CORRUPTION IN THE BUSINESS REGISTRATION REGIME IN GHANA

This article submits that to effectively tackle administrative corruption in the business registration regime, one must also

aim to eliminate the delays in the business registration regime if such fight is to be successful and beneficial to the business sector and the governmental developmental efforts. This article submits that a two-pronged solution of adequately resourcing the state agencies and ensuring transparency through the effective implementation and use of Service Delivery Charters will greatly assist to eliminate delays in the permit, licence and certification of businesses.

A Service Delivery Charter is an expression of an understanding between citizens and a provider of a public service on quantity and quality of services.¹³ The Service Delivery Charter must be a publicized document that defines the type, quality, and magnitude of service that the citizenry can expect from the particular State Institution. It must, among other things, describe services offered, responsibilities of employees to carry out a specific service; responsibilities of clients/citizenry, i.e. what end users are expected to do to avail the service; procedures of the service, and fees to be paid if applicable. In a nutshell, a Service Charter sets out the standards of service clients can expect from the administering State agency, as well as ways to make a complaint if they are dissatisfied with the service. A Service Charter thus aims to ensure that Administering Agencies:

- focus on Service Delivery
- measure and assess performance
- initiate performance improvement.

Whether or not a Service Charter is able to assist an agency to deliver transparent and efficient service as intended depends to a large extent on whether the Service Charter meets the above discussed criteria, and whether it is in fact implemented and adhered to. Any issues that instigate delays of the expected duration of a service, weakens the quality of the service, and eventually creates an overall adverse impression to the public.¹⁴

Once a Service Delivery Charter has been adopted, it must be reviewed periodically to assess whether or not it is of sufficient quality and fit for present purposes. It must also be well publicized.

In a research project that reviewed the Service Delivery Charters of three Administering Agencies, one of the gaps of all of the three Service Delivery Charters that the Consultant reviewed is that none of them contains any provisions on the fees for the various services that the Administering Agencies provide, thereby making it not feasible to discuss inefficiencies with respect to fees. To prevent and fight administrative corruption, it is important for the public to know the exact amount of official fees payable for each stated service. This empowers the public to differentiate between approved and unapproved fees. A clear knowledge of all official fees payable is key to fighting and preventing administrative corruption. This article recommends that the Private Sector ought to be involved in the fixing of fees. Obtaining their goodwill in this regard makes for effective regulation.

The formula for setting fees must reflect the cost of services rendered, otherwise, where such fee does not represent or reflect the cost of the stated service, it takes on the character

¹³ See Elke Löffler, Salvador Parrado & Tomas Zmeskal, *Improving Customer Orientation Through Service Charters. A Handbook for Improving Quality of Public Services*, Governance Int'l (2007).

¹⁴ See A. M. Fortuito et al., *Enhancing Public Service Delivery Through Organisational Modeling* (2016), arXiv preprint arXiv:1606.03548.

of a tax.¹⁵ It is also recommended that the law be amended to allow for fees to be retained by the Administering Agencies rather than paid into the consolidated fund. The current law which requires that fees be paid into the consolidated fund is unhelpful, as it serves to blur the lines between 'fees' properly so-called and taxes.

A Service Delivery Charter is an expression of an understanding between citizens and a provider of a public service on quantity and quality of services. The Service Delivery Charter must therefore be a widely publicized document that defines the type, quality, and magnitude of service that the citizenry can expect from the particular State Institution. Employees of the Administering Agencies must be involved in the drawing up of the Charter, and, the general public must be aware of and have access to these service delivery charters.

An informed private sector and citizenry is an asset in the prevention and punishing of administrative corruption in the business registration regime in Ghana. Workshops, education and sensitization will result in an informed private sector and citizenry on their rights when applying for the various licences, permits and certificates, and thereby secure much needed active public support in the advocacy, prevention and punishing of administrative corruption in the business registration regime.

Another way to eliminate the delays is through the use of effective and efficient electronic applications. This would not only reduce the timelines for issuance of permits/licences/certificates, it would also reduce drastically, if not eliminate, corruption in the licensing/permit/certification regime in Ghana.

One of the ways to be efficient is by collaboration between the agencies. This will not only prove faster and more efficient in avoiding unnecessary delays in the licence/permit and certification of businesses regime in Ghana, it would also reduce drastically, if not eliminate completely, the submission of forged and/or fictitious documents to some of the Administering Agencies in the licence/permit and certification process. Some members of the general public sometimes provide the agencies with fictitious documents, which could be avoided if the agencies collaborated amongst themselves.

It would therefore improve the ease of doing business in Ghana if the Registrar General's Department is able to link all other Administering Agencies to its database for purposes of confirming registration details of business entities and for

sharing of information where necessary in the licence, permit and certification process.

4.1 Reminders Sent by Agencies to the Public

It was recommended that Agencies should create a database of their customers and send them reminders to renew their permits/licences/certificates or suffer penalties for lateness.

5 CONCLUSION

The PEF research confirmed that some staff of Administering Agencies are engaged in administrative corruption, and that businesses become willing participants in administrative corruption in a bid to avoid unnecessary delays in the licensing, permit and certification regime of businesses in Ghana. The research further shows that participants from the private sector engage in corruption because the cost to the private sector in Ghana for not engaging in corruption far exceeds the cost to them for engaging in corruption. In other words, it is punitive to the private persons to not collaborate, aid and/or condone administrative corruption in Ghana. The implementation of the recommendations to eliminate or reduce administrative corruption in the business registration regime must therefore target eliminating delays in the business registration regime. The improved transparent, efficient, cost effective, and fair service delivery will also contribute to increased and more effective revenue mobilization for the administering State Agencies. The adoption of the Model Service Charter, incorporation of technology will aid in ensuring a more transparent, efficient, cost effective, and fair service delivery to the private sector and citizenry by the administering State Agencies.

The quest to provide quality services to the Ghanaian public is a quest to achieve the realization of a constitutional right. It is the duty of every public officer to exercise all powers given them by law for the welfare of the Ghanaian people, and it is the right of the Ghanaian people to expect this from public officers. A service Delivery Charter will, among other things, seek to ensure that Administering Agencies focus on service delivery, measure and assess performance and initiate performance improvement and contribute immensely to the fight against administrative corruption.

¹⁵ See *Emerson College v. City of Boston* 462 N. E 2d 1098 (Mass, 1984).